

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0031/04/12
1024196

In the Matter of Flat 11, Llannerch Hall, Llannerch Park, Trefnant, Denbighshire LL17 OBD

In the matter of an Application under Section 27A Landlord and Tenant Act 1985

TRIBUNAL AVS Lobley
 C Williams FRICS
 ER Williams FRICS

APPLICANT Llannerch Hall Limited

RESPONDENTS Mr TEM McGregor
 Mrs SL McGregor

ORDER

- 1 In 2000, Mr and Mrs McGregor bought a 999 year lease of a flat in Llannerch Hall. The lessor's obligations under the lease were to maintain repair decorate and renew the main structure and in particular the roof chimney stacks gutters and rainwater pipes of the mansion, the gas and water pipes drains and electric cables and wires in and under and upon the mansion and enjoyed or used by the lessees in common with the lessees of the other flats, the main entrances passages landings staircases of the Mansion so enjoyed or used by the lessee and the boundary walks and fences of the Mansion. The lessees' obligation was to pay a proportion of the lessor's expenses in the repair and renewal of the building pursuant to the fourth schedule of the lease. Clause 6 of the lease allowed the lessor to include in the service charge sums for reasonable provision for anticipated expenditure.

- 2 In February 2012, Llannerch Hall Limited (Llannerch Hall) commenced proceedings in the Harrogate County Court against Mr and Mrs McGregor for payment of arrears of service and administration charges totalling £3128.34 for the year ending 30th June 2012. In their defence, Mr and Mrs McGregor claimed the service and administration charges were not reasonable, alternatively, they were entitled to set off the amount of the judgment in default in their favour in proceedings in the Rhyl County Court. The claim was transferred to the Rhyl County Court and then on 10th July 2012, by Order of Deputy District Judge Jones Evans dated 2nd July 2012, the case was transferred to the Leasehold Valuation Tribunal of Wales. Directions were issued in September 2012 and subsequently the parties completed a Scott schedule. The Tribunal convened at the Oriel Hotel, Upper Denbigh Road, St Asaph on 5th February 2013 having previously inspected the property.

THE INSPECTION

3 Llannerch Hall is a grade II listed building converted into 13 flats and situated on the outskirts of St. Asaph. The Tribunal inspected the property on 5th February 2013, particularly the common parts, the grounds and gardens. Ms Last and Mr Dean, directors of Llannerch Hall were present during the inspection but Mr and Mrs McGregor were not. It appeared from the inspection the property was being well maintained and extensive repairs had been carried out to the roof. All the windows had been repaired where necessary and repainted.

THE LAW

4 Pursuant to Section 19 of the Landlord and Tenant Act 1985, relevant costs shall be taken in to account in determining the amount of a service charge payable for a period (a) only to the extent they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

THE HEARING

5 Llannerch Hall was represented at the hearing by Haley Bellerby Of Watson Property Management Limited (WPM), who are now managing the property on behalf of Llannerch Hall, pursuant to an agreement dated 1st July 2011. Mr Dean and Ms Last were also in attendance with another tenant, Mr Broadhurst, as well as Mr and Mrs McGregor. The charges in dispute, the parties' positions and the Tribunal's determination are set out below.

COMMUNAL CLEANING

6 Mr and Mrs McGregor sought a copy of the cleaning contract, hours per week worked and hourly rates. Llannerch Hall, in the Scott schedule, stated cleaning was carried out fortnightly for an hour per visit and provided the invoices. They also pointed out that a previous Tribunal determination in June 2010 was that cleaning charges of a figure greater than the one sought now was reasonable. At the hearing Mrs McGregor, having sought confirmation of the hourly rate, accepted this charge was reasonable. The Tribunal confirmed the cleaning charge of £198 (£15.23 for Mr and Mrs McGregor) was reasonable.

ELECTRICITY COMMON PARTS

7 Mr and Mrs McGregor had sought the invoices and also confirmation of which areas were common parts. Llannerch Hall provided the invoices and responded, in the Scott schedule, that the common parts were defined in clause 5 (d) of the lease as being main entrances, passages, landings and staircases of the Mansion and again pointed out that a previous Tribunal determination in 2010 was that electricity charges of a figure greater than the ones sought now was reasonable. At the hearing, Mrs. McGregor accepted these charges. The Tribunal found the charges of £185.01 (£14.23 for Mr and Mrs McGregor's share) were reasonable.

GARDENING AND GROUNDS KEEPING

- 8 Mr and Mrs McGregor had sought a copy of any gardening or maintenance contract in place or confirmation of the hours per week worked and the hourly rates. Llannerch Hall, in the Scott schedule, provided the invoices and responded that gardening was carried out once a week in winter and twice a week in summer and again pointed out that a previous Tribunal determination in 2010 was that gardening charges of a figure greater than the ones sought now was reasonable. At the hearing, Mrs McGregor asserted these charges were not reasonable. The gardener attended 3/4 times a month and all he was doing was mowing and strimming. The edging was done occasionally, he was doing the absolute minimum. She had observed other residents doing the gardening. There was a contract for this and they had not been consulted. Mr. Dean told the Tribunal there was no hourly rate, it was a set charge per month and the gardener provided all the equipment and did all the work needed (varying upon the season). They had looked at other gardeners and felt his rate was reasonable. No other tenants had complained about this. The Tribunal accepted the gardening charges of £3600 (Mr and Mrs McGregor's share £276.92) were reasonable.

GENERAL MAINTENANCE AND REPAIR

- 9 Mr and Mrs McGregor had again sought a copy of any contract in place for the provision of these services and an estimate of the costs. Llannerch Hall, in the Scott schedule, provided the invoices and stated there was no contract in place with one contractor and again pointed out the Tribunal determination in 2010 had found a similar level of charges for general repairs to be reasonable. At the hearing, Mr Dean explained that in respect of the first invoice, there had been a leak in one of the pipes and they felt it sensible to get in a contractor who knew the Hall, as one of the original 70s pipes had begun to leak. Mrs McGregor asserted this was a freeholder's liability. Mr Dean asserted it was part of the fabric of the building. It was pointed out to Mrs McGregor that was covered under the service charge under clause 1 of the fourth schedule. Mrs McGregor accepted the amount was reasonable having seen the invoice. The Tribunal found the amount reasonable.
- 10 The next item was in respect of 2 doors and associated pipe and box work. Mr Dean explained this was a fire door at the bottom of the spiral staircase and an electrical cupboard. Both were rotten and had to be replaced. Mrs. McGregor had no further comments and the Tribunal found the amount reasonable.
- 11 The invoice in respect of a fire risk review was accepted by Mrs McGregor as being reasonable and the Tribunal so found. Similarly, charges in respect of drain clearance, electrical works, pest control, scaffolding and pointing work to the exterior of flats 12 and 14 were accepted by Mrs McGregor and also by the Tribunal. The Tribunal therefore found the figure of £2066.25 (Mr and Mrs McGregor's share £158.94) to be reasonable
- 12 WPM had included in the bundle invoices in respect of repairs to the windows, totalling £7200. Mrs McGregor was under the impression this work had been carried out in the previous year and there had been no consultation. In any event, the figure of £7200 was not included under this head in the Scott schedule. Miss Bellerby confirmed these invoices should not have been included in the bundle.

MAJOR WORKS

- 13 The figure of £26616 was claimed. Mr and Mrs McGregor disputed the figure on the grounds of failure to consult and the general cost. They sought copies of estimates and invoices in relation to phase 3 of the roof works and reports from surveyors in relation to the necessity for these works. Llannerch Hall provided the estimates and statutory consultation documents and said the figure of £26616 was an accrual as the works were carried out after the year end date of 30th June 2012. At the hearing, Mrs McGregor asserted these charges were a freeholder liability as the roof was not mentioned in the lease. She also asserted the amount was excessive.
- 14 The Tribunal found that there had been consultation about these works and that the amounts of £26,616 (Mr and Mrs McGregor's share £2047.38) were reasonable. The roof is specifically provided for in paragraph 1 of the fourth schedule.

PROFESSIONAL FEES

- 15 Mr and Mrs McGregor had sought copies of all contracts with professional advisors and Llannerch Hall provided, with the Scott schedule, the management agreement with WPM, under which WPM were to carry out work in connection with statutory consultation in respect of the major works, again an accrued figure as the works had been carried out after the end of the service charge year. Mrs McGregor said at the hearing that this year £8071 had been charged, there were concealed fees including statutory notices, administration charges and buildings commission. Mr Dean explained that Llannerch Hall now pay £250 plus VAT per consultation to WPM, the figure of £4250 was an accrual for SPP to oversee the roof works, work which had not been completed within this accounting period. There would be a reduction credited back to the leaseholders. The figure was based on previous charges.
- 16 The Tribunal accepted the figure of £4250 (Mr and Mrs McGregor's share £326.92) to be reasonable.

BUILDINGS INSURANCE

- 17 Mr and Mrs McGregor sought copies of the insurance policy and cover notes and details of the renewal premiums for the years 2011 and 2012 and details of the tendering process and any commission paid. Llannerch Hall provided these with the Scott schedule and gave details of how the insurance was placed and explained that the broker offered a 20% commission to WPM, who commissioned the insurance. The commission was deducted from the premium paid and was retained by WPM in accordance with its agreement with Llannerch Hall. It was pointed out again in the Scott schedule that out that a previous Tribunal determination in 2010 was that buildings insurance of a figure greater than the one sought now was reasonable.
- 18 At the hearing, Ms Bellerby explained that the insurance year was different to the service charge year and the bill actually covered 5 quarters and the 20% commission was not charged to the tenants. Mrs McGregor still thought the premiums were excessive and she asserted someone could get cheaper insurance if someone took the trouble to do it. She offered to do so (though it was part of the management agreement that WPM would arrange it).

LEGAL FEES AND INSURANCE CLAIM

- 19 No determination was needed from the Tribunal in respect of these items.

ADMINISTRATION EXPENDITURE (COMPANY SECRETARIAL DUTIES)

- 20 At the hearing, Mrs McGregor queried what these duties were. Mr Dean explained these were WPM's charges with dealing with paperwork for the AGM. The Tribunal accepted the charge of £432 (Mr and Mrs McGregor's share £33.23) was reasonable (this figure is taken from the invoice at P 42 of the bundle rather than the Scott schedule).

ACCOUNTANCY FEES

- 21 Mr and Mrs McGregor required copies of the invoices and Llannerch Hall provided these with the Scott schedule and again pointed out that a previous Tribunal determination in 2010 was that accountancy fees of a figure greater than the one sought now was reasonable. At the hearing, Mrs McGregor asserted that there were few invoices to be dealt with in the accounts. Mr Dean told the Tribunal he had looked at charges by other accountants and these charges were in line.
- 22 The Tribunal accepted the figure of £480 (Mr and Mrs McGregor's share £36.92) to be reasonable. The Tribunal took the figure from page 39 of the bundle as there appeared to be a typo in the Scott schedule

MANAGEMENT FEE

- 23 Mr and Mrs McGregor had sought a copy of any management agreement and otherwise confirmation of the duties undertaken, number of site visits and the method of calculating the fees. Llannerch Hall had provided a copy of the management agreement with WPM with the Scott schedule. Full details of WPM's duties are contained in the agreement and the fee was calculated on a fixed price of £173.42 plus VAT per unit. It was again pointed out that a previous Tribunal determination in 2010 was that the previous management fees charged were reasonable. The fee has been fixed according to RICS recommendations and the Tribunal considered the management fee to be reasonable and confirmed the charge of £2705.40 (Mr and Mrs McGregor's share £208.11).

ADMINISTRATION CHARGES

- 24 WPM had debited administration charges to Mr and Mrs McGregor's account. Mrs McGregor had disputed these at the hearing in relation to WPM's management fee. There was no doubt a history between the parties as to the recovery of service charges as they were always disputed by Mrs McGregor. Llannerch Hall was forced to take proceedings to seek recovery and Mrs McGregor was unsuccessful in her claims that the service charges were unreasonable. The Tribunal considered WPM ought to be able to recover the administration charges in full from Mr and Mrs. McGregor.

COSTS UNDER SECTION 20C OF THE LANDLORD AND TENANT ACT 1985

- 25 Under this provision, a tenant may apply to the Tribunal for an order that the costs incurred in proceedings before a court or Tribunal are not to be taken into account in determining the amount of any service charge payable by the tenant. Mrs McGregor made no such application and no order is made by the Tribunal.

TOTAL SUMS FOUND PAYABLE BY MRS AND MRS MGREGOR

- 26 These are summarised below

	Total	Flat 11
Cleaning	£198	£15.23
Electricity	£185.01	£14.23
Gardening	£3600	£276.92
General maintenance	£2066.25	£158.94
Major works	£26616	£2047.38
Professional fees	£4250	£326.92
Buildings insurance	£5886.31	£332.86
Company secretarial duties	£432	£33.23
Accountancy fees	£480	£36.92
Management fee	£2705.40	£208.11
Total	£46,418.97	£3450.71

NB there is a credit figure of £164.5 (312.65) to be applied to the above figures.

DATED this 27th day February 2013



CHAIRMAN