

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: 1039094  
LVT/0039/04/12

In the Matter of Flat 6, 40 Bath Street, Rhyl LL18 3LU  
In the matter of an Application under Section 27A Landlord and Tenant Act 1985

TRIBUNAL AVS Lobley Chair  
C. Williams FRICS  
W Brereton Lay

APPLICANT Mr Joseph JesuLoba

RESPONDENT Ms Anne Osarens Egbowawa

ORDER

1. In February 2012, Mr JesuLoba had commenced proceedings in the Bedford County Court against Ms Egbowawa for payment of arrears of service charge and ground rent totaling £2907.31 including interest and costs. On 28<sup>th</sup> September 2012, a District Judge transferred the claim for service charges to the Tribunal. Directions were made on 30<sup>th</sup> October 2012 and subsequently both parties filed a statement of case. The Tribunal convened at the Town Hall, Rhyl on 18<sup>th</sup> December 2012 having previously inspected the property.

THE INSPECTION

2. The Tribunal inspected the property on 18<sup>th</sup> December 2012. Ms Egbowawa was in attendance but Mr JesuLoba was not. The Chair spoke to Mr JesuLoba on the telephone and he confirmed he was happy for the inspection to go ahead in his absence.
3. Flat 6, 40 Bath Street, is the top floor flat (rear) in a house converted into 6 flats on a busy one way street in the centre of Rhyl. There is some parking at the front to the house for one or two cars though the spaces are not reserved to any particular flat. Flat 6, up 2 flights of stairs, has a kitchen, bathroom, living room and bedroom. The latter opened directly onto the fire escape. The flat was unoccupied and had clearly been so for some time.

THE LEASE

4. Ms JesuLoba and Ms Egbowawa had entered into a lease in respect of the property on 12<sup>th</sup> November 2007 for a term of 125 years from 1<sup>st</sup> January 2007. Ms Egbowawa's address in the lease was 67, Norwich Walk, Basildon, Essex. The Lease provided for the Ms Egbowawa's share of the service charge to be 1/14th of the maintenance expenses. This was amended pursuant to a deed of variation dated 24<sup>th</sup> November 2009 to a 1/6th share. Ms Egbowawa's address in this deed was also given as 67, Norwich Walk, Basildon, Essex. Mr JesuLoba's obligations were provided for in the fifth schedule and he was responsible for repairing, rebuilding, improving and maintaining, operating, inspecting and keeping the

property in good and substantial repair, order condition and renewing and replacing all worn or damaged parts.

5. It was Mr JesuLoba's case that Ms Egbowawa was liable for 1/6<sup>th</sup> of the maintenance expenses pursuant to the lease and claimed service charges for the years 2007 to 2011 amounting to £2,153.85 on the basis that the sums claimed were reasonable. The sums claimed are:

2007	£34.31
2008	£380.85
2009	£380.59
2010	£355.00
2011	£1003.10

6. Administration charges were also claimed pursuant to Clause 3 of the 7<sup>th</sup> Schedule and/or Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
7. Mr JesuLoba had served the necessary statutory demands for payment of service charges as follows:

9 <sup>th</sup> July 2008	£223.61
12 <sup>th</sup> August 2008	£31.94
1 <sup>st</sup> September 2008	£63.88
15 <sup>th</sup> January 2009	£120.27
15 <sup>th</sup> February 2009	£30.07
15 <sup>th</sup> November 2009	£289.36
15 <sup>th</sup> March 2010	£120.27
30 <sup>th</sup> June 2010	£120.27
4 <sup>th</sup> October 2010	£60.14
1 <sup>st</sup> December 2010	£58.44
7 <sup>th</sup> April 2011	£116.88
6 <sup>th</sup> May 2011	£29.22
8 <sup>th</sup> July 2011	£87.66
8 <sup>th</sup> September 2011	£146.77
8 <sup>th</sup> October 2011	£571.81

8. All except the last demand (which was sent to 16, Meadway, Benfleet) were sent to 67 Norwich Walk. All were served in both the Welsh and English Language as required by the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007.



9. In his statement of case, Mr JesuLoba produced the accounts for years ending December 2007, 2008, 2009, 2010, and 2011. There were 3 items in each account, insurance, general repairs and maintenance and management fees and administration. The amounts were as follows:

	Insurance	repairs and maintenance	Management fees
2007	£55.85	£0	£150
2008	£485.10	£0	£1800
2009	£333.51	£150	£1800
2010	£330.02	£0	£1800
2011	£342.62	£3876.00	£1800

10. In her statement of case, Ms Egbowawa denied she had ever received any demands at all before the matter went to court and asserted the lease did not show what the leaseholder had to pay for, when the payments were due, how much the service charge is and how it had been calculated and if fixed or variable. She claimed no service charge was due as it had not been made within 18 months after she had acquired the leasehold. She admitted the service charge was due for 2012. She also raised issues as to service of a forfeiture notice which is not a matter the Tribunal could deal with.

#### THE HEARING

11. Mr Jenkins of Counsel attended with Mr JesuLoba and Mr McKeever, Mr Jesuloba's handyman-the latter for part of the hearing. Ms Egbowawa attended with Ms Hegwin of flat 3, again the latter for part of the hearing. Mr Jenkins outlined the basis on which the claim was made and accepted that the demands had been served at 67 Norwich Walk except the last one. Mr JesuLoba told the Tribunal that his solicitor had found another address but he did not know how. He did not have any supporting paperwork for the works claimed through the service charges but could produce them if necessary. The charge for 2011 was much higher as an enforcement notice had been served and works had needed to be done to the chimney, roof, gutters and fencing. The work was done by Mr McKeever's company, One Call Does It All. The management fee was a fixed sum charged at £300 per flat and Mr JesuLoba said that this figure was based on the amount of work he put in liaising with the builders, insurance companies, correspondence, stationary, accounting and book keeping and the use of his office. He did not employ anyone and he thought it was a fair amount. He employed Mr McKeever to inspect and Mr McKeever told the Tribunal that he cleaned inside and out. A written agreement for this was put in place a year ago but before he carried out the work informally. He did provide a quote for the work done in 2011.
12. Ms Egbowawa told the Tribunal she could not remember seeing the deed of variation and that she had moved to 16, Meadway, Benfleet 5 months after buying the lease. She had bought the lease from a Mr Token, the managing agent. No demands sent to 67, Norwich Walk would get through, it was sealed up. Mr JesuLoba told the Tribunal no demands had been returned. Ms Egbowawa said that she had not notified a change of address to Mr JesuLoba because there was a management company in place, Ultimax. Mr Token was aware she had moved as he visited her. She had initially paid about £50 to £80 to this company, it was part of the agreement when she bought the flat, there was an agreed rate with NACRO. She had understood the management company would deal with everything and provide the tenants. She had not seen the flat until last year when problems had arisen. For over half the time she had owned it, the flat had been empty. She had not

had a lawyer involved when she signed the lease and she did not read it as she trusted Mr Token. She did not receive any of the service charge demands until March 2012. She was aware that service charges would need to be paid. There was no separate agreement in respect of rent but she thought she had bought through a management company. She had a copy of an agreement between Ultimax Ltd and Nacro Enterprises Limited dated 10<sup>th</sup> September 2007. The copy in the Tribunal's bundle related to flat 4 but Ms Egbowawa's copy had the number 6 written on it. This was an agreement to use the flat as temporary accommodation for £365 a month. Ultimax was let go after 2 years because of a dispute with the leaseholders and she asserted Mr JesuLoba was aware of this though she also said that she had and no dealings with Mr JesuLoba.

13. Mr JesuLoba said he had bought the freehold and had agreed with Mr Token that the house would be divided up into flats and sold off but Mr Token went to each of the tenants without his agreement and agreed with them he would manage the flats and find tenants.
14. It was agreed that Mr JesuLoba would produce the invoices relating to the work claimed and any agreements with Mr McKeever or his company. The insurance invoices were produced at the hearing and the later documents were produced by Mr JesuLoba on 16<sup>th</sup> January 2013.
15. Mr Jenkins conceded that in respect of the 2011 invoices, the amounts claimed should be limited to £250 per leaseholder as Mr JesuLoba had failed to consult with the leaseholders before carrying out the works, pursuant to Section 20 of the Landlord and Tenant Act 1985. However, Ms Egbowawa had not raised this issue in the court proceedings and pursuant to *Staunton v Kaye* (2010) UKUT 270, the Tribunal cannot go beyond issues raised in the court proceedings. It is clear, however that the Tribunal can consider whether the amounts claimed are reasonable.

#### THE TRIBUNAL'S DETERMINATION

17. 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 Tribunal accepted the invoices had been properly served and the Service Charges were recoverable subject to reasonableness.

#### INSURANCE

18. The Amounts referred to in the accounts were difficult to reconcile with the documents produced by Mr JesuLoba and there appeared to be a period of overlapping insurance for the year 2009. In addition, Ms Egbowawa's share of the service charge for the years 2007 to 2009 was 1/14, not 1/6th. The table appended sets out the Tribunal's calculation of the insurance premiums payable by Ms Egbowawa.



## REPAIRS AND MAINTENANCE

19. Having considered the documents provided by Mr JesuLoba, the Tribunal accepted the charge for repairs and maintenance for 2009 to be reasonable (this was for the provision of a fire safety door), save that her share of the maintenance expenses was 1/14th until November 2009. Most of the charges for 2011 related to work carried out on the chimney following service of an improvement notice by the council. It was clear from the Tribunal's inspection that the chimney had been replaced and the Tribunal accepted the costs were reasonable. However, the Tribunal did not accept that £500 was a reasonable charge for the provision of a new front door in solid wood. The Tribunal allowed £300. Accordingly, of the total claim for repairs and maintenance of £4026, the Tribunal allowed £3701.

## MANAGEMENT FEES

20. The documents produced by Mr JesuLoba in no way justified a charge of £300 per flat or a total of £1,800 per annum. The Tribunal considered £180 to be more than adequate given the small number of flats and the amount of management time which this would engender.

## ADMINISTRATION CHARGES

21. No documents have been produced to justify these charges and the Tribunal did not find they are recoverable from Ms Egbowawa.

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

22. Under this provision, a tenant may apply to the Tribunal for an order that 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. Mr Jenkins submitted at the hearing that it was proper for Mr JesuLoba's costs to be recovered as Ms Egbowawa's position all along had been that the service charges could not be recovered as she not been sent any demands. She had conceded at the hearing she had not notified a change of address to the landlord and the demands had been properly served. Mr JesuLoba's solicitor's provided an estimate of their costs totalling £2,325, which included the costs of time spent by a solicitor and a paralegal (10 hours), counsel's fees for attendance at the hearing, court fees and VAT. None of this appeared to be unreasonable. Ms Egbowawa having failed to notify her change of address, Mr JesuLoba was forced to take proceedings to recover the service charge. He had been substantially but not wholly successful. The Tribunal restricted the amount to be recovered from Ms Egbowawa through the service charge to be 80% of the total figure.

23. The amounts recoverable from Ms Egbowawa are summarised below.

AMOUNTS RECOVERABLE FROM MS EGBOWAWA

	Insurance	repairs and maintenance	Management fees
2007	£37.70	£0	£150
2008	£27.35	£0	£180
2009	£46.2	£25	£180
2010	£50.67	£0	£180
2011	£56.09	£612.67	£180
Total	£218.01	£637.67	£870

Total service charge payable £1725.68

DATED this 12th day of February 2013

A handwritten signature in black ink, appearing to read 'Abdullah', is written in a cursive style.

CHAIRMAN

INSURANCE PREMIUMS

1. 31.08.07 to 31.08.08

Lease bought 12.11.07 therefore:

$$293 \text{ days} \quad \text{£}657.64 \times \frac{293}{365} \text{ divided by } 14 = \quad \text{£}37.70$$

2. 1.9.08 to 9.10.08:

$$39 \text{ days} \quad \text{£}450.11 \times \frac{39}{365} \text{ divided by } 14 = \quad \text{£}3.43$$

10.10.08 to 10.10.09

$$\text{£}334.93 \text{ divided by } 14 = \quad \text{£}23.92$$

$$\text{Total} \quad \text{£}27.35$$

3. 10.10.09 to 24.11.09:

$$46 \text{ days} \quad \text{£}298.81 \times \frac{46}{365} \text{ divided by } 14 = \quad \text{£}2.68$$

25.11.09 to 10.10.10

$$319 \text{ days} \quad \text{£}298.81 \times \frac{319}{365} \text{ divided by } 6 = \quad \text{£}43.54$$

$$\text{Total} \quad \text{£}46.22$$

4. 10.10.10 to 10.10.11:

$$\text{£}304.67 \text{ divided by } 6 = \quad \text{£}50.67$$

5. 11.10.11 to 10.10.12:

$$\text{£}336.55 \text{ divided by } 6 = \quad \text{£}56.09$$

