

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0045/02/13 – Flat 3/LVT/0046/02/13 – Flat 4

In the Matter of Flat 3 and Flat 4, 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

APPLICANT     Mr. Joseph JesuLoba

RESPONDENT   Ms Agnes Oyewole

ORDER

1. Ms. Oyewole is the leaseholder of flats 3 and 4, 40, Bath Street, Rhyl. In January 2012, Mr. JesuLoba, the freeholder, had commenced proceedings in the Bedford County Court against Ms. Oyewole for payment of arrears of service charge and ground rent in respect of flat 3 totaling £2,529.06, interest, administration charges of £150 and costs. Judgment was obtained on 15<sup>th</sup> March 2012. Ms. Oyewole asked for that judgment to be set aside on 27<sup>th</sup> March 2012 and requested the case to be transferred to her local court. On 11<sup>th</sup> April 2012, the Bedford County Court transferred the claim to the Romford County Court.
2. On 3<sup>rd</sup> August 2012, Ms. Oyewole served a defence and counterclaim. She denied that Mr. JesuLoba had carried out his maintenance obligations under the lease so that he was not entitled to the service charge. It was said that as a result of his failure to maintain pursuant to the lease, Denbighshire County Council declared the property a category 1 hazard and the disrepair had not been rectified by Mr. JesuLoba. It was claimed that Ms. Oyewole had tried on many occasions to contact Mr. JesuLoba. In November 2007, she had been put on notice that the fire alarms were faulty and she had had to carry out the work herself. There was an inadequate power supply to the building and defective lighting on the stairs and landing. Ms. Oyewole had had to carry out major electrical work and rewiring, details of which were set out in a counterclaim with costs totaling £21,797.44.
3. In his response filed on 27<sup>th</sup> September 2012, Mr. JesuLoba denied that he had been put on notice that works were required. A faulty fire alarm had been fixed by him and he had no knowledge of any issue with the power supply to the building. Works said to be required in September 2008 were within the demise of the property and not the responsibility of Mr. JesuLoba.
4. On 24<sup>th</sup> October 2012, a District Judge ordered that, subject to outstanding ground rent and costs being paid, the judgment was to be set aside and the claim for service charges was to be transferred to the Tribunal “for determination of all questions falling within its jurisdiction”. A further order was made on 18<sup>th</sup> December 2012 (but not perfected until 5<sup>th</sup> January 2013) to transfer the claim to the Tribunal. Directions were made on

12<sup>th</sup> February 2013 for production of documents and the completion of a scott schedule. Mr. JesuLoba produced his statement of case on 26<sup>th</sup> February 2013 exhibiting the documents directed (and including the invoices in respect of matters covered under the service charges).

5. Proceedings were commenced in respect of flat 4 by Mr. JesuLoba in January 2012, claiming £2,529.06 and costs and administration charges. Judgment was entered in the Bedford County Court on 9<sup>th</sup> March 2012. Again the claim was transferred to the Romford County Court. The claim was transferred to the Tribunal on 30<sup>th</sup> January 2013, to be heard with the claim in respect of flat 3.
6. Directions were made on 12<sup>th</sup> February 2013. Mr. JesuLoba filed statements of case in February 2013, in similar forms for both flats. The Tribunal convened at the Town Hall, Rhyl on 18<sup>th</sup> April 2013, having previously inspected the property.

#### THE INSPECTION

7. The Tribunal inspected the property on 18<sup>th</sup> April 2013. Ms Oyewole and her solicitor, Mr. Oduntan and another leaseholder, Mr. Ola Shonowo, were in attendance but Mr. JesuLoba was not. Mr. Sam McKeever attended on his behalf.
8. Flats 3 and 4, 40 Bath Street are 2 small flats on the first floor at the front (flat 3) and second floor at the back (flat 4) 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. The Tribunal inspected both flats in the presence of the tenants.

#### THE LEASE

9. Mr. JesuLoba and Ms Oyewole had entered into identical leases for flats 3 and 4 on 12<sup>th</sup> November 2007 for 125 years from 1<sup>st</sup> January 2007. The Leases provide for Ms. Oyewole's share of the service charge to be 1/14<sup>th</sup> of the maintenance expenses. Both leases were amended pursuant to a deed of variation dated 24<sup>th</sup> November 2009 to a 1/6<sup>th</sup> share. 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.
10. It was Mr. JesuLoba's case that Ms. Oyewole was liable for 1/6<sup>th</sup> of the maintenance expenses for each flat pursuant to the leases and claimed service charges from December 2008 to October 2011 on the basis that the sums claimed were reasonable. 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.

11. 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 |

12. Attached to each 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           |

13. Mr. Jesuloba also produced in his statement of case the schedule summaries for the buildings insurance. These showed premiums and cover as follows:

|                              |         |
|------------------------------|---------|
| August 2007-August 2008      | £607.28 |
| March 2008 to March 2009     | £419.15 |
| October 2008 to October 2009 | £343.83 |
| October 2009 to October 2010 | £275.06 |
| October 2010 to October 2011 | £280.07 |
| October 2011 to October 2012 | £308.07 |

14. The parties produced for the Tribunal a Scott schedule showing their position in relation to the items covered under the service charge. Mr. JesuLoba stated that the service charge covered the general maintenance of the property. Ms. Oyewole's position was that Mr. JesuLoba had failed to carry out maintenance required under the leases and she had refused to pay the service charge as most of the work required was carried out or paid for by her through Nacro. In addition, Ms. Oyewole resisted the claims in the basis they could have been recovered from the insurance company. It appeared from email correspondence produced by Ms. Oyewole that repairs had been carried out by Nacro in 2007 and 2008 and

the cost was being recovered from the leaseholders by means of a reduction of rent being paid to them. Invoices were produced covering work done for Nacro during 2007 and 2008.

15. Mr. JesuLoba, in response to Ms. Oyewole's comments in the Scott schedule, said he was surprised that Nacro had taken over management of the building without his permission. He had not been contacted by Ms. Oyewole or Nacro with any request for work to be carried out. There was no need to make an insurance claim and Ms. Oyewole had failed to contribute to the cost of the insurance which was a breach of the lease.
16. In August 2012, Ms. Oyewole's solicitors arranged for a survey to be carried out of the property by Peter Large and company, who stated in their opinion that there was evidence of surface damage and disrepair as a result of damage by tenants and a lack of management and maintenance of the property. However, it appeared that the property complied with buildings regulations.

#### THE HEARING

17. Mr. Jenkins of Counsel attended with Mr. JesuLoba and Mr. McKeever. Ms. Oyewole attended with her solicitor and her tenant and Mr. Shonowo. Just before the hearing the Tribunal was given copies of statements by Ms. Oyewole and Mr. Shonowo. Ms. Oyewole's statement described the circumstances in which she had come to purchase the flats and the agreement with Nacro to take over the letting of the flats. She said Nacro had been forced to carry out repairs as they were unable to get hold of Mr. JesuLoba or a Mr. Jangbadi. She asserted she had been unable to contact Mr. JesuLoba to carry out essential repairs. She asserted none of the works claimed through the service charge had been carried out and the receipts were fake. She was withholding the service charge as Mr. JesuLoba had failed to consult her for any work before carrying it out, he had failed to provide any information about the insurance and he had failed to maintain the property as required under the lease. Mr. Shonowo's statement referred to Nacro cleaning and managing the property.
18. Mr. Jenkins told the Tribunal that the arguments were identical for both claims. Mr. JesuLoba claimed unpaid service charges and administration costs as set out in the statements of case. The issues raised by Ms. Oyewole were that Mr. JesuLoba had failed to fulfil his obligations under the lease in relation to the common parts and that Nacro, who had agreed to put tenants into the flats, required works to be done. Mr. JesuLoba's position was that he was not notified of the works and was not satisfied they needed to be done.
19. Mr. Oduntan raised an issue as the insurance policies and queried the summary in respect of the year 10<sup>th</sup> October 2008 to 10<sup>th</sup> October 2009, which showed the premium as being both £334.92 and £343.83.
20. As to the invoices themselves, Mr. Oduntan agreed the only improvement notice served by the Council was that served in June 2011. He was not aware that the notice had been revoked in October 2011. The Tribunal had been given a copy of this notice in connection with similar challenges to the service charges by the leaseholder for flat 6, which had been heard in December 2012, and a copy was shown to Mr. Oduntan.
21. Mr. Oduntan was invited to comment on the other invoices submitted. In respect of the charge for the door (invoice 6<sup>th</sup> October 2011), having seen the door at the inspection, he did not consider the cost of £300 was warranted. He considered a figure of £150 was more reasonable. He asserted the invoice for repair to the fire alarm system (28<sup>th</sup> November 2011)

was repetition of the cost of repairs already carried out and he referred to a schedule of works said to have been carried out by Nacro in 2007 and 2008, the subject of the counterclaim.

22. In relation to the invoice dated 6<sup>th</sup> October 2011 for £3,250, Mr. Oduntan submitted that given the amount, the leaseholders should have been consulted. At the hearing in respect of flat 6, Mr. Jenkins had conceded there had been a failure to consult but in respect of that claim, as the issue had not been raised in the county court proceedings, the Tribunal had found that it was not an issue it could deal with and the same point arose here (see *Staunton v Kaye* (2012) UKUT 270). Mr. Oduntan said that the issue had been raised in the witness statement (dated 17<sup>th</sup> April 2013).
23. Alternatively, Mr. Oduntan submitted that the invoices did not prove that the work had been done. Apart from the obvious evidence that the door had been replaced and work done to the chimney, there was no proof. It was said that the invoice for £360 dated 11<sup>th</sup> August 2011 did not prove that the work had been carried out. As the invoice was from Mr. McKeever's company, the Tribunal suggested he be called to give evidence he had carried out the work. This was resisted by Mr. Oduntan, who then wanted to call Mr. Shonowo to give evidence about his dealings with Mr. McKeever. The Tribunal declined to hear evidence from either as it could decide the reasonableness of the service charges on the balance of probabilities.
24. Mr. Oduntan concluded that there was no evidence that the work covered by the invoices had been done and it was not accepted there was any insurance cover in place. Mr. Oduntan pointed out there was some overlap in the periods of insurance cover and there was no reasonable explanation as to the fluctuation in the premiums. Mr. Jenkins agreed that Mr. Jesuloba would produce the policies of insurance. Further policy schedules were submitted subsequently and in a letter dated 13<sup>th</sup> May 2013, Ms. Oyewole's solicitors complained the policies themselves had not been produced, no explanation had been given for the 3 overlapping policy periods from August 2008 to October 2009 and the premiums fluctuated. The Tribunal was asked to conclude no insurance cost was payable. Mr. JesuLoba's solicitors responded that the schedules acted as proof of insurance and asked the Tribunal to find the sums claimed payable.
25. In respect of the charges for management, Mr. Oduntan submitted that in 2008 no repairs had been carried out so that no management fee could be due. In 2009, repairs and maintenance had been charged at £150. The only repair carried out had been the supply of a fire safety door and sign, at a cost of £150. Mr. Oduntan submitted the management fee was too high. In 2010, no repairs and maintenance had been carried out. It was accepted there would be a management fee for 2011 as major repairs had been carried out.
26. Mr. Jenkins referred to the Tribunal's previous findings in respect of flat 6 and said that even if repairs and maintenance were not being carried out, fees in respect of management would still be incurred and asked the Tribunal to stand by its previous decision.
27. In respect of the counterclaim, Mr. Oduntan produced a further schedule of works said to be carried out by "the Respondents". The schedule provided in the bundle was for the global sum. He was able to provide only a limited number of invoices. The Tribunal checked the figures given in the new schedule and confirmed with Mr. Oduntan and Mr. Jenkins that the total claimed should be £8,542.30.

28. Mr. Oduntan submitted that major electrical work was the responsibility of the freeholder but the work had been carried out by Nacro. Ultimax had been either managing or arranging lettings on behalf of the leaseholders and it was asserted that Mr. JesuLoba was fully aware of this. It was his responsibility to maintain the property and he had failed to do so.
29. Mr. Jenkins position on the counterclaim was that there was no legal basis for recovery. If these issues had been brought to Mr. JesuLoba's attention at the time he would have taken steps to undertake repairs, which would then have been charged to the leaseholders through the service charge. In addition, it was not easy to see from the schedule which works claimed were cosmetic, necessary or improvements. Other items claimed were not the responsibility of the freeholder, such as fire blankets.
30. Mr. Oduntan asserted the works were not cosmetic and referred to the Tribunal's inspection and to pictures he had submitted regarding the condition of the property. These showed the freeholder's lack of maintenance. His position was that no maintenance had been carried out. If there had been, the Tribunal would not have seen the deterioration seen today.

#### THE TRIBUNAL'S DETERMINATION

31. 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.

#### INSURANCE

32. 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 2008 to 2009. In its determination in respect of service charges in respect of flat 6, the Tribunal had apportioned these charges and its calculations are set out below (and in respect of the point raised by Mr. Oduntan at paragraph 19 above, the tribunal used in its calculation the lower premium figure). The Tribunal accepted the schedules of insurance, on the balance of probabilities, as evidence insurance was in place. The table appended sets out the Tribunal's calculation of the insurance premiums payable by Ms. Oyewole for each flat.

#### REPAIRS AND MAINTENANCE

33. The Tribunal had previously accepted the charge for repairs and maintenance for 2009 to be reasonable in its determination in respect of service charges payable for flat 6 and did so again (this was for the provision of a fire safety door). 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 again accepted the costs were reasonable. However, as previously, 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 £3826.

## MANAGEMENT FEES

34. Again the Tribunal did not accept a charge of £300 per flat or a total of £1,800 per annum was reasonable. 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

35. The Tribunal accepted Mr. JesuLoba's administration charges were reasonably incurred by reason of clause 3 of the seventh schedule of the lease or pursuant to Schedule 11 Part 1 of the Commonhold and Leasehold Reform Act 2002.

## THE COUNTERCLAIM

36. The Tribunal dismissed the counterclaim as it could not see any legal basis on which Mr. JesuLoba could be liable for works undertaken on the property by Nacro in 2007 and 2008.

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

37. 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. The Tribunal had reduced the service charges in respect of the management fee and some of the maintenance charges but the Respondent had not succeeded in respect of her counterclaim, which the Tribunal considered misconceived. The Tribunal was not persuaded an order was appropriate.


38. The amounts recoverable from Ms. Oyewole in respect of flats 3 and 4 are summarised below.

## AMOUNTS RECOVERABLE FROM MS. OYEWOLE

|       | Insurance | repairs and maintenance | Management fees |
|-------|-----------|-------------------------|-----------------|
| 2007  | £75.40    | £0                      | £300            |
| 2008  | £54.70    | £0                      | £360            |
| 2009  | £92.40    | £50                     | £360            |
| 2010  | £101.34   | £0                      | £360            |
| 2011  | £112.18   | £1225.34                | £360            |
| Total | £436.02   | £1275.34                | £1740           |

Total service charge payable £3451.36

DATED this 4<sup>th</sup> day of June 2013



CHAIRMAN

## INSURANCE PREMIUMS

31.8.07 to 31.8.08

Lease bought 12.11.07 therefore 293 days  $\frac{293}{365} \div 14 =$  £37.70

1.9.08 to 9.10.08 39 days  $\frac{39}{365} \div 14 =$  £ 3.43

10.10.08 to 10.10.09  $\frac{334.93}{14} =$  £23.92

£27.35

10.10.09 to 24.11.09 46 days  $\frac{298.81}{14} =$  £ 2.68

25.11.09 to 10.10.10 319 days  $\frac{298.81 \times 319}{365} \div 6 =$  £43.54

£46.20

10.10.10 to 10.10.11  $\frac{304.67}{6} =$  £50.77

11.10.11 to 10.10 12  $\frac{336.55}{6} =$  £56.09