

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

In the matter of Flat 5, 46 Marine Road, Abergele, LL22 7PR

And in the matter of an Application under section 27A, section 19 and section 20C of the Landlord and Tenant Act 1985

Reference: LVT/0004/05/20

Applicant: Mr. Michael Isiguzo

Respondent: Secure Reversions Limited

Tribunal: Mr. A Grant (Chairman)
Mr. D Jones (Surveyor)
Mr. B Brereton (Lay member)

Decision

The Tribunal determines that the service charge demands for the years 2016 – 2021 have not been properly served and are not payable.

The Tribunal determine that any demands for payment of costs incurred in excess of 18 months prior to the service of a valid demand are not payable.

The Tribunal further determine that the Respondent's costs associated with this application must not be added to the service charge account.

Reasons

Background

1. This is an application made by Mr. Michael Isiguzo ("the Applicant") who is the owner of the Long Leasehold interest in the property known as Flat 5, 46 Marine Road, Abergele, LL22 7PR ("the Property").

2. The Applicant's interest derives from a lease dated the 12th September 2007 and which was made between Stephen John Jones and Lakhi Singh Manget. The term is for 125 years from the 12th September 2007.
3. The Freehold reversion is owned by the Respondent, Secure Reversions Limited.
4. The Applicant seeks an Order from the Tribunal that the service charge and ground rent payments for the years 2016 – 2021 are not payable or alternatively (in the case of the service charges) that if they are payable, then the sums demanded are not reasonable. The Applicant also seeks an order that the Respondents costs of the proceedings are not to be recovered through the service charge.
5. The matter was listed for hearing on the 19th January 2021. Due to the current Coronavirus restrictions the matter was listed for hearing remotely.
6. On that occasion, the Applicant was represented by his sister, Ms. Isiguzo and the Respondent was represented by Mr. Stephen Jones, who is the managing agent.
7. At that initial hearing, the Tribunal was not satisfied that it had sufficient information before it to enable it to properly deal with the issues. Accordingly, the matter was adjourned to be re - listed and directions were given as to the filing of further documentation. The relevant directions are set out at paragraphs 2 – 6 of the order dated the 19th January 2021.
8. The matter was re - listed for hearing on the 19th February 2021. Again, the hearing took place remotely.

The Hearing

9. The Applicant was represented by Ms. Reubens of Counsel and the Respondent was represented by Mr. Stephen Jones.
10. Ms. Reubens opened by stating that her client was challenging both the validity of the service charge and ground rent demands and, as regards the service charge demands, she was also going to challenge the reasonableness of the same.
11. At the start of the hearing the parties indicated to the Tribunal that the demands for 2014-2015 were no longer in contention given that it had been accepted by the Respondent that the Applicant had only purchased the property in November 2015. The years under consideration were 2016 – 2021.
12. It was submitted of behalf of the Applicant that service charge and ground rent demands for the years in question had not been properly served and that no demands had been received

at all until the Applicant had attempted to sell the Property in October 2019. At that stage, the Respondents solicitors had then written to the auction house on the 10th October 2019, stating that there were arrears outstanding on the account in the sum of £5,436.60. A copy of that e mail exchange appears at pages 995 and 996 of the hearing bundles.

13. Ms. Reubens highlighted the inconsistency in the sums claimed by the Respondent when writing to the auction house as compared to the sums subsequently sought by the Respondent in these proceedings.
14. The Applicant further contended that as far as he was concerned, he had been dealing with an absent landlord as previous correspondence had gone unanswered and in that regard the Tribunal was referred to pages 879 and 881 of the hearing bundles, which were letters sent to the Respondents solicitors complaining about the state of the Property and the failure by the Landlord to serve any demands or provide any supporting information to the Applicant.
15. The Applicant essentially sought to suggest that there had been no contact with the freeholder at all for a number of years until the landlord found out, somehow, that the Property was being sold and then opportunistically tried to demand payments from them when they were anxious to sell the Property.
16. Ms. Reubens also submitted that on the 10th August 2020, the Applicant had received a letter from the Respondent's solicitors purporting to serve all of the demands again. Whilst it was accepted on behalf of the Applicant that the demands were received it was submitted that they were not valid as they did not contain the necessary statutory prescribed information informing the tenants of their rights and in any event, the demands had been served too late and fell foul of the provisions of section 20B of the Landlord and Tenant Act 1985 in that in several cases demands had been made more than 18 months after the costs had been incurred.
17. Mrs. Reubens then called her witness, namely Ms. Isiguzo to give evidence.
18. Ms. Isiguzo confirmed that essentially the Property was purchased as an investment property. Both she, her brother (the Applicant) and her sister purchased the Property but it was held in her brother's sole name. She said that they appointed a property manager to manage the same for them who would visit the property occasionally. She confirmed that she and her siblings visited the Property approximately twice a year.
19. During examination by the Applicant's counsel, she confirmed that they never really knew who the landlord was and they did not know who to complain to. She was aware that a man had some involvement in the property and that he was called Steve Jones.
20. Ms. Isiguzo confirmed that it was not until they put the Property up for sale at auction in October 2019, that they then received communication from the Landlord for the first time.

21. She was asked if she accepted that the demands had been properly served in August 2020. She said “not totally”. She received some random documents and she said that to her it all looked “very shady”. She was asked if she received any notices providing a summary of her rights and obligations to which she replied “no”.
22. The witness was asked if the property was kept clean and in good repair. Ms. Isiguzo replied that the property had been neglected and was in a poor condition. She explained that during her visits she had seen faeces on the communal stairwell and electrical wiring hanging loose. She felt it was dangerous. She said the roof had leaked which had caused substantial damage to her flat. She explained that throughout their ownership of the Property they had not managed to get a tenant because of the state of the building. She said that her and her sibling had spent in excess of £30,000 trying to improve the Property. They were desperate to sell the property as the situation had become a nightmare. She referred the Tribunal to the letter from the managing agent which she had appointed “heritage” which confirmed the state of the premises.
23. M. Reubens asked if, during her visits to the Property, she had ever received any post at the flat. She said that they had never received any post.

Cross examination

24. Mr. Jones asked if she knew who they had brought the Property from. The witness stated that she was not sure who the seller was.
25. The witness was then asked if she had received any demands for payments (meaning service charge demands) and she replied that she had the first time that she had received a demand was in October 2019.
26. She was asked if she employed a managing agent called “Heritage”. She confirmed that she did.
27. Mr. Jones then went on say that in September 2019 he arranged to have fitted a new front door that had a key pad security lock and that she had never been provided with a copy of the security code. How could she have visited the property without the code? The witness that replied that she has not visited the property at all during the Coronavirus pandemic as you were not allowed to travel. It was against the law. She went on to say that the fact that she had not been informed of the code was a further example of poor management and a failure to communicate with the tenants.
28. The Tribunal asked the witness to confirm whom they had brought the Property from and asked if it was Dream Lets. The witness said that she could not recall the name of the seller.
29. The Tribunal asked the witness if the Applicant had received service charge demands each year during the Applicant’ ownership. She said that they had not.

Mr. Jones

30. Mr. Jones initially addressed the Tribunal on what he referred to as “the 18 - month rule”. He said that he had spoken with his solicitors and been told that the issue was irrelevant as these proceedings were restricted to dealing with the Scott Schedule. The Tribunal explained that the Applicants case was quite clear and that the issue of whether the service charge demands had been served in time was an issue which the Tribunal was able to determine.
31. He then addressed the Tribunal on the condition of the Property. He said that he had sold the Freehold because he could not carry on paying out money that he did not recover. He acknowledged that the Property suffered from the nature of the tenants in occupation. He said that many of the tenants were on benefits and that the Property was situated in an economically depressed area. The Property had been subject to use by those taking drugs and had been subject to “hot wiring” whereby Tenants interfere with the electricity supply to bypass their own meter. In essence, stealing electricity.
32. He said that often the Property would be occupied for 6 months and then vacated without any money being paid. The problem is that no one pays.
33. However, notwithstanding those difficulties, the property is cleaned weekly or monthly and was largely in a good state of repair.
34. He said that he had not been into Flat number 5 prior to this dispute.

Cross Examination

35. Mr. Jones was asked if he accepted that a statement of account was sent to the auction house in 2019. He replied that he would not make demands for payment of projected costs only final costs.
36. Mr. Jones confirmed that the Freehold was sold at the end of 2016 in or around November or December.
37. He confirmed that his company, Dream Lets Limited, was appointed to manage the building by the Freeholders solicitors, Morgan Hall.
38. When asked why he had taken no steps to recover outstanding arrears between 2015 – 2020 he replied that all demands had been properly served at the property. He stated that all demands had been served by post to the address which appeared at Land Registry. He said that any other documents would have been served personally, such as electrical certificates. When asked how they would have been served he replied “under the door I would have thought”.

39. Mr. Jones was asked if there was a postbox at the Property. He stated that there was a letter box and post would fall onto the floor of the communal area.
40. Ms. Reubens asked that if post fell to the floor, would it have been put to one side? Mr. Jones replied that it would, but not for long as it would pose a fire safety risk. Ms. Reubens then asked if post would then be thrown away? Mr. Jones replied that it would, but that it would not be thrown away by him. He did not say who did throw the letters away.
41. Mr. Jones was asked if he sent the demands by post. He stated that he did not always take them to the post office himself as sometimes his son helped him. In response to a question regarding the content of the envelope, he stated that it would contain a ground rent demand, a service charge demand and every 5 years an electrical certificate.
42. When asked if he sent a summary of the tenant's rights and obligations to the tenants, he replied that his solicitors told him to send them so he asked them to send them for him.
43. He confirmed in questioning that prior to 2019 he served all demands himself. However, he said that latterly he had refused to correspond with the tenants and thus all communication was through Morgan Hall.
44. Mr. Jones was then asked if he had any connection with the Freeholder. He stated that he had a connection but no monetary connection.

Deliberations

45. The Tribunal decided that following the completion of the evidence regarding service of the demands, that it would reach a determination on the issue of service of the demands and whether they had been validly served with the correct accompanying information relating to a summary of the tenant's rights and obligations.
46. The Tribunal only has jurisdiction to deal with those demands as relate to demands for payment of service charges. It does not have jurisdiction to determine issues relating to demands for payment of ground rent.
47. The Tribunal wishes to make clear that from the outset that the job was made very much more difficult in consequence of the manner in which the documentation had been produced, primarily by the Respondent. It was against that background that the Tribunal adjourned the hearing on the first occasion to give the Respondent the opportunity to present the evidence in a manner that would assist the Tribunal. Unfortunately, on this issue, that opportunity was not taken.

48. The papers before the Tribunal contain all of the demands for the relevant years together with separate documentation which sets out the prescribed statutory information required to accompany those demands. However, the Tribunal cannot say with any degree of certainty or indeed on a balance of probability by reference to the documents alone, that the demands appearing in the bundle were sent at the same time as the prescribed information or indeed were sent at all. The documentation simply does not assist in resolving that issue.
49. We turn to the witness evidence on this issue.
50. The Applicant's witness states that no demands at all were ever served prior to 2020. Indeed, all they received in October 2019 was a statement of arrears. Mr. Jones for the Respondent says that he sent demands in each of the respective years to the Property address. He seems to accept that the demands were not accompanied by the summary of right and obligations as he says that he instructed the solicitors to send that information and that they did so by way of a letter dated the 10th August 2020.
51. The Applicant states that they did receive the letter of the 10th August 2020, but they say that the demands were not accompanied by a summary of rights and obligations.
52. The Tribunal take the view that the Applicant's witness gave her evidence in a clear straightforward manner and she was consistent in her position that prior to August 2020 they had not received any demands for payments in respect of prior years. She was equally clear that the letter dated the 10th August 2020 did not contain any of the Prescribed information that should accompany demands for payment of service charges.
53. The Tribunal found the Respondent's evidence to be less straightforward and left questions unanswered. In parts, his answers lacked clarity. On occasion, he did not answer the question that was put to him but went off on a tangent. It was stated by Mr. Jones that he sent the demands each year to the Property. The evidence shows that if the demands had been sent as suggested, then they would have likely been left in the common passageway and put to one side as the Applicants Flat had never been occupied. The Respondent would likely have seen the demands on his visits to the Property and this would surely have put the Respondent on notice that the demands had not been received. However, equally, the absence of a demand may be due to the same having been collected by the Applicant.
54. In evidence, the Applicant stated that they visited the Property infrequently and neither they or their managing agent ever found any demands. There was no suggestion from either party that the post had been tampered with. In those circumstances, given that Mr. Jones visited the property more frequently, and in the circumstances as outlined, it seems that had any demands been received at the Property he would have seen them. The fact that he did not say that he has seen any demands and given that the Applicant had not collected them leads the Tribunal to the conclusion that the demands were not received at the Property.

55. There was also a degree of inconsistency in Mr. Jones evidence. He said that he would send the demands but then he also said that occasionally his son might do it.
56. Another striking feature is the failure by the Respondent to take any steps to recover the arrears in the period 2015 – 2019. Had the demands been served as alleged, then one would have expected action to have been taken to recover the arrears. However, that did not happen.
57. There is also further inconsistency between the figures demanded in the statement sent to the auction house and the figures claimed in these proceedings. There are various demands in the bundle some of which are for projected costs and some for final costs.
58. Notwithstanding the evidence of Mr. Jones, the Tribunal is unable to find on the balance of probability that any notices were served prior to the 10th August 2020. The Tribunal prefers the evidence given by the Applicant's witness. In any event, even if the Tribunal were wrong on that point it was conceded that the demands were not accompanied by the requisite prescribed statutory information and would not have been valid demands in any event.
59. As regards the 10th August 2020 letter from Morgan Hall solicitors, the Tribunal accepts the Applicant's evidence. She says that there was no summary of rights and obligations contained within the correspondence although the demands were in the letter. There is no evidence from the solicitor to gainsay that position. Mr. Jones cannot comment as he did not post the letter. The documents provided to the Tribunal do not assist even though the order dated the 19th January 2021 specifically requested the Respondent to provide the enclosures to the letter dated the 10th August 2020. It failed to do so.
60. We find as fact that the letter did not contain the summary of right and obligations as required by section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) regulations 2007. We would also comment by way of observation only (as we have no jurisdiction to determine the issue) that in the Tribunal's view the Respondent has also failed to provide the information required by section 166 of the Commonhold and Leasehold reform Act 2002 and the Landlord and Tenant (Notice of Rent) (Wales) regulations 2005.
61. In conclusion, the Tribunal finds that the demands in respect of the Service Charges for the years in question have not been properly served and as such are not payable as they fail to comply with the statutory requirements set out in paragraph 60 above.
62. The Tribunal consequently finds that any demands for costs incurred in excess of 18 months prior to the service of a compliant demand for payment can no longer be claimed as falling outside the time limit set in section 20B of the Landlord and Tenant Act 1985.
63. Given the findings reached by the Tribunal, a determination of the reasonableness of the charges for the years 2016 - 2021 is not necessary.

64. The Applicant has succeeded in his claim. In those circumstances, the Tribunal determines that the Respondents costs of these proceedings are not to be added to the service charge account.

Dated this 10th day of March 2021.

Andrew Grant
Chairman