

Y Tribiwnlys Eiddo Preswyl**Residential Property Tribunal Service (Wales)****Leasehold Valuation Tribunal (Wales)****DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL
S27A LANDLORD AND TENANT ACT**

Premises	22D New Road Porthcawl CF36 5DN
RPT ref:	LVT/0050/01/21
Hearing:	18 th May 2021
Order :	No sums are currently due
Applicant:	Fryhouse Enterprises Limited
Respondent:	Charlotte Dibdin
Tribunal:	Mr JE Shepherd – Judge Mr R Baynham FRICS - Surveyor member Dr A Ash - Lay Member

DETERMINATION

This has been a remote hearing which has been consented to by the parties. A face to face hearing was not held because it was not possible due to the Covid 19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The documents that were referred to are in a bundle, the contents of which we have recorded and which were accessible by all the parties. Therefore, the tribunal had before it an electronic/digital trial bundle of documents prepared by the parties, in accordance with previous directions.

1. In this case, which was heard on 18 May 2021 the Applicant, Fryhouse Enterprises Limited were seeking a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the payability of service charges by the Respondent, Charlotte Dibdin. Miss Dibdin is the leaseholder of premises at 22D New Rd, Porthcawl CF36 5DN (The premises). She occupies pursuant to a lease dated 8 April 2004.
2. 22 New Road, Porthcawl consists of a two-storey building with two shops on the ground floor (Shoe 22 and the Paint Shop) with an adjacent door providing access to

two first floor flats. At the rear, and approached by an unmade lane, is a concrete hard standing area allowing the occupiers to park motor vehicles.

3. The building was constructed approximately 100 years ago, and the main fabric has solid brick walls although an extension to the rear has conventional cavity brick and block work. The exterior walls have been pebble dashed. The main pitched roof has a slate covering although there is a bitumastic flat roof to a small rear single storey. The two flats have double glazed uPVC windows.
4. The entire building together with the freehold interest was previously owned by Mr. M. R. Jones who, over time, sold the two flats and one of the shops on a long leasehold (99 years from 8th April 2004) basis. The remaining shop (Shoe 22) continued to be rented to the Applicant but she eventually purchased it together with the freehold reversion of the entire building.
5. The Respondent is the leasehold owner of the flat above the Paint Shop having purchased it in July 2015. The Tribunal were informed that the Respondent does not reside at the flat and rents it out, although it is vacant at the present time.
6. The claim originated as a claim in the county court brought by the Applicant against the Respondent seeking payment of unpaid service charges which amounted to £295.19 including the court fee. In fact, during the hearing the Applicant's representative Mr Pounder for the Applicant rightly conceded that the tribunal did not have the jurisdiction to deal with the part of the claim in relation to ground rent so the amount claimed was actually £250.19. From the outset the Tribunal notes that although this was a relatively small amount of money a disproportionate time and effort has been spent in dealing with this case by both the parties and necessarily by the Tribunal.
7. The hearing on 18 May 2021 was short. This was because the Applicant's representative Mr Pounder rightly conceded that the demands that were made for the sums due were not in the correct form. The demands which were contained in the hearing bundle at pages 45 and 49 were made as demands for a ground rent when in fact in the present context the insurance element of the demand should have been claimed in the prescribed form with the notice to accompany the demand detailing the summary of rights and obligations of tenants of dwellings in relation to service charges. This notice is required to be in both the English and Welsh languages. The regulations prescribing the form of demand are the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 (SI 2007/3160).
8. Technically speaking the effect of this was to mean that the sums due were not in fact due and the Respondent had withheld payment of the service charges pursuant to her rights under section 21B(3) LTA 1985. The tenant's liability is not extinguished entirely, it is merely suspended.

9. Miss Dibdin was well aware of the requirement to serve a correct demand and had relied on this technical error by the landlord. It is fair to say that she had on a number of occasions pointed out the error to the Applicant. At the tribunal hearing she said that she could rely on limitation pursuant to section 20B of the Landlord and Tenant Act 1985. However, it is clear that s 21B is only suspensory and any liability would reference to time when the demands were served. Also, although the demands were in the incorrect form they had clearly raised the issue of the Respondent's liability for a contribution to the insurance and therefore they fell within the criteria of section 20B(2), whereby within the period of 18 months beginning with the date when the relevant costs in question were incurred the tenant was notified in writing that those costs had been incurred and that she would subsequently be required under the terms of the lease to contribute to them by the payment of the service charge. Therefore, it is wrong to suggest that the demands are now time-barred. The Applicant can re-serve correct demands and liability will be revived.
10. In summary the Tribunal finds the sums due in relation to the service charges claimed in the County Court are nil. It is for the County Court to deal with the ground rent issue and any costs consequent on that. Mr Pounder asked the tribunal to order costs in the Applicant's favour. The Tribunal had some sympathy for the Applicant because it's clear that Miss Dibdin was not prejudiced by their failure to serve the correct form of notice. However, she is entirely correct to say that the sums are not due until the correct form is served.
11. The Tribunal found the dispute between the parties, which is clearly deep-seated, to be regrettable. Some of the allegations made by Miss Dibdin were serious but were denied by the Applicant. In the event the Tribunal did not have to resolve any of these issues that she raised in determining the issue transferred from the County Court.
12. The Tribunal urged the parties to overcome their differences so that they can hopefully seek to live in some sort of harmony in the future. The parties were warned that the Tribunal would not welcome any further cases of this type where it is believed that the parties' differences are being fought out in the disguise of a Tribunal hearing. A tribunal hearing is very expensive. It involved in the present case the time of three professional people sitting as the panel. The Tribunal hopes that the parties will take notice and will also look proactively to try and resolve their differences for the sake of harmony in the future.
13. After the hearing Ms Dibdin contacted the Tribunal raising issues about disrepair at the premises. She had tried to file late evidence prior to the hearing but this was rejected by the Tribunal because there was no reason why it should not have been served earlier. In any event there was no pleaded counterclaim on behalf of Ms Dibdin. If Ms Dibdin wishes to raise issues of disrepair they should be raised before the County Court in the proper form.

Dated this 22nd day of June 2021

Judge Shepherd