

Y Tribiwnlys Eiddo Preswyl
Residential Property Tribunal Service (Wales)
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Ref: LVT/0004/05/22

In the matter of: 4 Rumney Walk, Cwmbran, Torfaen, NP44 8RB

Landlord and Tenant Act 1985, S.27A

Appellant: John Bodinham
as executor of R.C. Bodinham (deceased)

Respondent: Bron Afon Community Housing Limited

Tribunal members: Judge Shepherd
Roger Baynham FRICS
Sue Hurds

DECISION AND REASONS OF LEASEHOLD VALUATION TRIBUNAL

1. In this case the Applicant, John Bodinham, acting as executor for R.C Bodinham deceased (“his late mother”) seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985. The Respondents are Bron Afon Community Housing limited. They are the freeholders of the premises at 4 Rumney Walk, Cwmbran, Gwent, NP44 8RB (“The premises”) the Estate of R.C. Bodinham are the leaseholders. In his application Mr Bodinham challenges service charges paid by the Respondents at the premises between the years 2010 until the current date. He states the following in his application:
2. *My mother brought the flat in a right to buy in 1981 from Cwmbran Development Corporation. She paid an additional amount as a one-off payment not to pay any service charges in perpetuity. No payments made for service charges or insurance by CDC or Torfaen when the estate passed to them in 2009 i.e.28 years. That is not the case for other leaseholders. I can recall vividly as I had just qualified as a surveyor my mother asked me should I pay the one-off payment in lieu service charge. I said yes as major repairs would occur when you are retired and can least afford it.*
3. In a document attached to his application Mr Bodinham said he had inspected the lease for the premises after his mother’s death. He asked Barry Gawthorpe a senior partner of Gwyn Hughes in Aberavon to inspect the lease. His report states the following:

I confirm that I've been asked by John Bodinham to inspect two documents namely a document that appears to be an original lease dated the 18th March 1981 between Cwmbran Development Corporation and Mrs RC Bodinham and

a copy of the counterpart of the same lease with the counterpart being a Land Registry copy. I confirm from the inspection it appears that the original document consists of the lease with two plans and seven sides of text. The document is clearly an original and is typed onto judicature paper and is bound with green ribbon and the tied end of the ribbon are sealed. Furthermore that document has been signed by the chairman of the Cwmbran Development Corporation and the chief legal and administrative officer of the organisation and has been sealed by that organisation. Having inspected the document I cannot see any evidence of the document having been tampered with insofar as the binding islets that have been placed through the document have been pressed over on the reverse side. There is no evidence at all of those studs having been removed. Furthermore, the sealed end of the ribbon has clearly not been tampered with. From looking at the copy counterpart lease it appears there is a third side of text which commences "policies of such insurance..." which clearly runs on from the previous side of text in clause 6(i) (d). Furthermore the 4th side of text in the copy counterpart lease states at Para 7(a)(iii) "used for the same until lay down and maintain" and this clearly runs with the next side of text which reads "repair and test drainage gas and water pipes". It seems clear therefore that the third and fourth side of text have been omitted from the original lease. Clearly, I'm unable to give any reason why this text is missing from the original lease although it does appear that this would be a full page (two sides)

4. The tribunal examined the lease at the hearing and it was clear that there was a page missing from the original lease. Mr Bodinham was adamant that he or nobody else had removed this page and his argument was that this was a clumsy variation of the lease made at the time his mother agreed to pay a lump sum for her service charges in the future. There was no documentary evidence of the alleged agreement between Mrs Bodinham and the landlord.
5. The lease issue was the first issue that the tribunal were asked to deal with. The second issue was a challenge to the reasonableness of costs incurred in replacing a roof at the premises. Mr Bodinham said it was unreasonable to expend the sums incurred because the roof was still capable of patch repair. The Tribunal inspected the roof and determined it had indeed been replaced and the work was of good quality.
6. The hearing of the case got off to a slow start because on the first date allotted for the hearing it was clear to the Tribunal that Mr Bodinham was not following the evidence because he has hearing issues. The hearing was adjourned to another date when a touch typist could be used in order to assist him to follow the arguments. He confirmed to the Tribunal that he was satisfied with this reasonable adjustment and that he was able to follow the evidence.
7. At the start of the effective hearing the Respondent's Counsel made an application to strike out the Applicant's case on the basis of *res judicata*. He said the issue of the correct interpretation of the lease had been resolved in 2014. A County court judge faced with a service charge dispute between the parties had reviewed the lease and

counterpart lease and decided that service charges were due. Mr Bodinham did not seek to appeal that decision indeed he accepted liability and paid for the service charges. Mr Bodinham accepted that the lease issue had been raised in the County Court in 2014. He said that the judge when making the order had told him that he would need to find more details and bring the case back. This was not the recollection of the Respondent's representative, Mr Richards.

8. Mr Bodinham accused the Respondent of destroying evidence or failing to produce relevant evidence which confirmed that no service charges were payable. In fact, evidence was produced prior to the substantive hearing which confirmed that service charges had been demanded and paid by the lessee of the premises.
9. Kevin Fuller gave evidence on behalf of the Respondent. He explained how records had been kept. The records were available for some time but they were then destroyed. He also gave evidence in relation to the roof works and explained that the consultation process had been carried out.
10. Craig Alford, the surveyor gave evidence. He was involved in the onsite procurement and associated works with regard to the roof replacement. He took the Tribunal to a number of photographs which showed that the roof was in a poor condition before it was replaced, there were holes in the felt, vermin nesting in the roof, the felt was sagging, tiles were broken and needed replacing and there was water ingress. In short Mr Alford confirmed that the roof had reached the end of its natural life and had to be replaced. The Applicant relied on evidence in a written form by Chris McLean who said that the roof didn't need replacing.

Determination

11. The Tribunal finds on a balance of probabilities that there was no agreement between the Respondent's predecessor in title in relation to a variation of the lease excluding ongoing service charges in return for a lump sum payment. There was no documentary evidence of the agreement and an examination of the lease revealed that a page had simply not been inserted. In addition, the Respondent is right to say that this matter had already been resolved by another court of competent jurisdiction. The Tribunal had the benefit of contemporaneous notes prepared by the Respondent's representative in the County Court. It is clear from these and the descriptions given that the judge considered the lease issue and decided against Mr Bodinham. He did not appeal that decision.
12. In relation to the roof the Tribunal prefers the evidence of Mr Alford over Chris Mclean who did not attend and give evidence. It is clear from the photos that the roof had reached the end of its natural life and needed to be replaced. The Respondents carried out a proper consultation exercise in that regard. It was the landlord's decision to replace the roof and this decision was a prudent one. The cost of the roof renewal at £9475 was reasonable.

Summary

13. The Applicant's application is dismissed. As the Applicant was unsuccessful the Tribunal will not exercise its discretion under s.20C Landlord and Tenant Act 1985.

Dated this 20th day of March 2023

Judge Shepherd