

**Y TRIBIWNLYS EIDDO PRESWYL**  
**RESIDENTIAL PROPERTY TRIBUNAL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Reference: LVT/0028/11/22**

**In the Matter of Flat 1 Sheen Court, The Walk, Ystrad Mynach, CF82 7AY**

**In the matter of an Application under Section 27A Landlord and Tenant Act 1985.**

**Applicant: Katie Miller**

**First Respondents: Diane Gwyther and Michael Gwyther**

**Second Respondent: Sheen Court Management Company Limited**

**Tribunal:**

<b>Legal Chairperson</b>	<b>C Jones</b>
<b>Surveyor Member</b>	<b>K Watkins</b>
<b>Lay Member</b>	<b>C Calvin-Thomas</b>

**DECISION**

- (1) That Sheen Court Management Company Limited be joined as Second Respondent in these proceedings.**
- (2) That the Tribunal does not have jurisdiction to determine whether the relevant service charge is payable by the Applicant, by reason of the Applicant's admission for the purposes of Section 27A (4) of the Landlord and Tenant Act 1985.**

**REASONS FOR THE DECISION OF THE CASE TRIBUNAL**

**Background**

1. By an application received on 10 November 2022 under Section 27(A) (and Section 19) of the Landlord and Tenant Act 1985 ('the 1985 Act'), the Applicant sought determination as to liability to pay and reasonableness of a variable service charge raised by the First Respondents for the year 2018 – 2019.
2. The facts can be shortly stated as follows. In 2005, the Applicant acquired the lease ('the 2005 Lease') of a flat known as Flat 1 Sheen Court, The Walk, Ystrad Mynach, CF82 7AY ('the Flat'). The freehold reversion of the Flat together with a number of other flats became vested in the First or Second Respondents. A new, extended lease was granted by the

Second Respondent to the Applicant in 2015 in accordance with the tenant's rights under the Leasehold Reform, Housing and Urban Development Act 1993 ('the 2015 Lease').

3. In 2017, the Applicant approached the Building Control Department of Caerphilly County Borough Council ('Building Control') as she was concerned about the state of repair of the retaining wall of a raised parking area adjacent to steps to the Flat, which accommodated three parking spaces. One of the spaces was reserved for the Flat. Following input from Building Control, the First Respondents obtained quotes from two firms of builders and engaged the services of one of the firms to construct a replacement retaining wall. Following further input and direction from Building Control, the firm of builders engaged the services of an engineer in April 2018. The engineer produced a structural assessment and sketch diagram to show a recommended construction technique for the replacement wall.
4. Work was completed by the builder and the Respondents incurred costs in relation to construction of the replacement wall. Building Control confirmed in July 2019 that it considered that 'the danger had been removed' following the work. The First Respondents said that they paid £3,200 for the work in May 2018 and sought a one third contribution of £1066.67 for the work from the Applicant, which the Applicant declined to pay.
5. The Tribunal office received the Applicant's application for a determination as to liability to pay and reasonableness of the variable service charge under Section 27A of the Landlord and Tenant Act 1985 ('The 1985 Act') in November 2022.

### **The hearing and the materials considered**

6. The hearing took place at the Tribunal office, Oak House, Cleppa Park, Newport on the 4 May 2023. It was attended in person by the Applicant and her father and by the First Respondents. The First Respondents confirmed that they were the Directors of the Second Respondent company. The Tribunal was assisted by oral evidence and submissions provided by each attendee. The Tribunal had been provided with a hearing bundle, including the key documents as referenced by the parties. The parties had also provided helpful written submissions and it is not considered necessary to re-state the contents of those submissions. Each party asked questions of the other and the parties also answered questions posed by the Tribunal.

### **Inspection of the Site**

7. The Tribunal conducted an unaccompanied inspection of the parking space area on the morning of the hearing. It noted the generally poor state of maintenance of the parking space area. It also noted that the retaining wall adjacent to the steps leading to Flat 1, Sheen Court had been rebuilt. The new retaining wall itself showed no current signs of movement or instability. There was no clear evidence from the visual inspection as to whether the retaining wall was comprised of 450mm wide blockwork or a lesser width.

Some of the 'weep-hole sleeves' which directed water discharge onto the steps, exceeded 450mm in length. The Tribunal did not however consider this to be conclusive evidence of the width of the blockwork. A pipe leading water discharge away from the steps had been attached to one of the weep holes. The Tribunal noted that no adequate parapet wall or safety barriers had been constructed in accordance with the engineer's sketch diagram.

### **The Key Lease Provisions**

8. The 2005 Lease states as follows: -

'3 (1) The Tenant hereby covenants with the Lessor that the Tenant and all persons deriving title under the Tenant will throughout the said term hereby granted...

(b) Pay all...outgoings which may at any time be...imposed upon the demised premises or any part thereof or the owner or occupier in respect thereof and in the event of any of the...outgoings being...imposed in respect of the premises of which the demised premises form part to pay the proper proportion of such...outgoings attributable to the demised premises.

4. The Tenant hereby covenants with the Lessor and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the term hereby granted of the other flats comprised in the block that the Tenant will at all times hereafter during the said term: ...

(4) Contribute and pay annually on the First day of January one quarter part of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto...

#### **FOURTH SCHEDULE**

#### **Costs Expenses Outgoings and Matters in Respect of which the Lessee is to contribute**

...2. All rates taxes and outgoings (if any) payable by the Lessor in respect of the paths and garage spaces belonging to and used by the Tenants of the Block.

### **Key legislative provisions**

9. The key legislative provisions are as follows: -

#### **Landlord and Tenant Act 1985**

18 Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling...in addition to the rent—

(a) which is payable, directly or indirectly, for...repairs, maintenance, improvements...and

(b) the whole or part of which varies...according to the relevant costs.

(2) The relevant costs are the costs...incurred...by or on behalf of the landlord...in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and...

19 Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the...carrying out of works, only if the...works are of a reasonable standard;

and the amount payable shall be limited accordingly.

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works ... the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b)...dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

(2) In this section “relevant contribution” ... is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works...

21B Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand...

27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made...

(4) No application under subsection (1) ...may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant... [the Case Tribunal's emphasis]

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

## **Landlord and Tenant Act 1987**

47 Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord...

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1) then (subject to subsection (3) any part of the amount demanded which consists of a service charge... ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant...

## **Identification of the parties**

10. As a preliminary legal issue, the Tribunal identified the fact that the Landlord for the 2015 Lease was Sheen Court Management Company Limited, and the First Respondents were also its two Directors. The Applicant had however made her Section 27A application against the First Respondents in their personal capacities.

11. By consent of the parties, the Tribunal **ORDERS** that Sheen Court Management Company Limited be joined as Second Respondent in these proceedings, and it will accordingly be bound by the Tribunal's decision.

## **The Case Tribunal's observations regarding the Lease**

12. The 2005 Lease includes; 'The garage space numbered 1...' within the demised premises. However, the 2005 Lease does not match the circumstances on the ground. It appears that the parking area in question has never had garages constructed upon it. Instead, the 'garage space' has been used as one of three parking spaces. Also, whereas Clause 4 (4) of the Lease refers to a one quarter contribution and Flat 1, Sheen Court forms one of four flats, the relevant outgoings relate to three garage spaces. Difficulties are therefore presented by the terminology and drafting of the Lease.

## **S 27(4) of the 1985 Act – Relevant correspondence and evidence**

13. The Applicant's solicitor wrote to the First Respondents on 21 August 2019 as follows:-  
"Our Client note[s] that she has still not received an invoice confirming that payment has been made in respect of the car park retaining wall, and we [are] instructed once again to reiterate that our Client will not make any payment to the Management Company unless actual invoices and proof of payment are submitted." It appears from the correspondence in the bundle that certain "evidence of payment to the car parking area" was sent by the First Respondents to the Applicant on 12 September 2019.

14. The Applicant's solicitor then wrote to the First Respondents on 22 October 2019 as follows: "We have submitted contract documentation to the Purchasers solicitors and they require the enclosed leasehold property enquiries form to be completed on behalf of the Management Company. We should be pleased if you would completion [sic], sign and return to us as soon as possible. In relation to previous correspondence we are instructed by our Client to advise that on receipt of a receipted invoice for the construction of the retaining wall in the car park our Client will settle her proportion of the costs on completion of her sale."
15. On 31 October further evidence was supplied by the First Respondents as follows; "The bill I received (which I again enclose) was duly fully paid in good faith..." It also appears that a further copy was sent by the First Respondents on 28 January 2020 "I have contacted the builder and he has forwarded an invoice to me, a copy of which is enclosed".
16. In her written submissions to the Tribunal, the Applicant stated as regards the letter dated 22 October 2019: -"The reason for offering to pay upon completion of the sale of my flat was following legal advice from my solicitor who brought to my attention that if I were to contribute towards the rebuild of the wall, I would be accepting the wall in its state of repair and could later become liable for any accidents. Given that the retaining car park wall has been rebuilt without adequate vehicle and pedestrian barriers, I do not accept the wall in its rebuilt state and therefore have not paid my contribution. I am unable to sell my flat as SCM refuse to provide me with the freeholders questionnaire required for purchase. As such, Flat 1 Sheen Court is currently a rental property".
17. In response to questions from the Tribunal, the Applicant stated that the following occurred in the intervening period between communications ceasing in January 2020 and the making of the Section 27A application in November 2022. She had wished to avoid the costs of seeking further legal advice, the pandemic then happened, and initially therefore, she could not meet her solicitor. She also said that she had not wanted to "*pour good money onto bad*" and it became cheaper to buy another home for herself.
18. The Applicant also responded to questions as to whether, in the light of her Solicitor's letter dated 22 October 2019, she still challenged the service charge amount or the one third apportionment of the costs. The Applicant initially responded to say that she did not challenge the overall sum and then qualified her answer by saying that she had no idea what the cost included. The Applicant said that she had not seen any relevant accounts or bank statements. As to whether her application challenged the quality of the work rather than the amount of the service charge, the Applicant then said that she challenged these in equal measures. She said that the letter of 22 October 2019 was a way of saying that 'the ball' was in the Respondents' 'court' and she had wanted the property off her hands. The Applicant also confirmed that she did not challenge the one third apportionment and considered that the 2005 Lease provided for this apportionment mechanism.

## S 27(4) of the 1985 Act – The Case Tribunal’s Decision

19. The Tribunal considered whether the Applicant’s conduct, when looked at objectively, constituted an admission with regard to the service charge for the purposes of Section 27(4) of the 1985 Act. In doing so, it carefully considered the oral and written evidence of the parties as well as the chronology of events.
20. The Tribunal considered that until the Applicant’s solicitor forwarded his letter dated 22 October 2019, the Applicant had regularly declined to pay the service charge. The Respondents stated the Applicant made it clear in a text dated 24 July 2018, *“Nope, not paying”*. The evidence demonstrated that, whilst she had not directly challenged the total cost of the works, the Applicant had expressed ongoing concerns that the work to replace the retaining wall of the parking area had not been carried out to a reasonable standard. These concerns were articulated in a letter to the Chief Executive of Caerphilly County Borough Council on 13 October 2019. The application form in these proceedings, received in November 2022 repeated the concerns about quality of work to include the following; *“poor workmanship”, “the structure has not been built to plan”, “the new wall does not replicate the previous structure’ and ‘drainage failure.”*
21. The letter from the Applicant’s solicitor dated 22 October 2019 however demonstrated a clear change in position by the Applicant. In her oral evidence, the Applicant candidly admitted that by this point, she simply wanted to sell her leasehold interest. The Tribunal considered that it constituted a clear admission of the service charge at that time and this admission could not now be reversed. This is due to the fact that the letter was written by the Applicant’s solicitor and the admission had therefore been given with the benefit of professional legal advice. The letter did not challenge the cost of the works or level of the service charge (£3,200) nor indeed the one-third apportionment of that service charge (£1066.67). The Applicant’s solicitor requested a receipted version of the invoice for £3,200 as proof of payment of that sum. As to the “previous correspondence”, which had previously set out the total cost of the works and apportionment, the letter stated in express and unequivocal terms: - *“our Client will settle her proportion of the costs on completion of her sale.”*
22. The Tribunal was therefore satisfied that, whilst the letter of 22 October 2019 was drafted in conditional terms, it was nevertheless a full admission of the level of service charge and of the fact that the service charge was payable. It was conditional only as to timing of the payment rather than the amount or apportionment of the payment. It was also conditional in the sense that payment was being used as a bargaining tool to try to persuade the Respondents to complete the leasehold property enquiries form so that the Applicant could progress the sale of her the leasehold interest in the Flat. Whatever the motivation for making the statement, it was clear and conclusive.
23. In summary, whilst the Tribunal noted that the agreement was conditional upon the Respondents supplying the property form, the statement nevertheless constituted

admission as to the key issues of the amount of the service charge and the apportionment. Therefore, as to the question of whether the service charge was payable and the sum which the Applicant was expected to pay, the tasks which the Tribunal had been invited to undertake by the Applicant were complete. Thereafter the Tribunal lacked jurisdiction to consider any other consequential issue.

24. Finally, the Tribunal considered the case of *Cain v Islington Borough Council [2015] UKUT 542 (LC)* ('the Cain case') which is relevant in the context of Section 27(4) of the 1985 Act. Unlike the Cain case, the Applicant had refused to pay her contribution up until October 2019. Also, unlike the Cain case, the period of inaction of three years between October 2019 and November 2022 was not particularly lengthy bearing in mind the Covid 19 pandemic. The Tribunal nevertheless considered the period of inaction to be significant supporting evidence that the Applicant had already accepted the position conveyed by her solicitor in October 2019 that the service charge in this case was payable.
25. In the Cain case, the Judge referred to the effect of a compromise as being stated succinctly in 'The Law and Practice of Compromise' by Sir David Foskett (7<sup>th</sup> edition, 2010) as follows: "An unimpeached compromise represents the end of the dispute or disputes from which it arose. Such issues of fact or law as may have formed the subject matter of the original disputation are buried beneath the surface of the compromise."
26. For the reasons given above, it is the Tribunal's conclusion that the Applicant is precluded by section 27A (4) from bringing this application and that the Tribunal does not therefore have jurisdiction to determine the matter. It would not therefore be appropriate for the Tribunal to determine the questions as to whether the costs of the work were reasonably incurred or whether the work itself was of a reasonable standard.

### **Demand, Consultation and Notice Requirements**

27. As the Tribunal has decided that it did not have jurisdiction in this case, it would not be appropriate to make any formal finding as to whether the Respondents had complied with Sections 20 and 21B of the 1985 Act and Section 47 of the 1987 Act. The Tribunal nevertheless wished to stress the importance of the regulatory framework around raising service charges. Whilst complex, they exist to protect tenants from peremptory demands for service charges made without discussion with tenants and without a proper evidential basis. It is no excuse for any lessor or management company to say that they were unaware of such legal requirements, or that service charges have always been managed informally or that relationship breakdown has made compliance difficult.
28. Notwithstanding any failures by the Respondents regarding any irregularities within the builder's quotes and invoices supplied by the Respondents, any incorrect service charge demand, lack of consultation or lack of notice to the tenant of rights and obligations, an admission was found to have occurred. Such admission negates the impact of any



procedural irregularities. The Tribunal is therefore unable to intervene in this matter as clarified above.

29. The Tribunal would add the following as an advisory note to this judgment. It considered the ongoing dispute between the parties, which is clearly deep-seated, to be regrettable and it was troubled by on-going animosity and entrenched views. It was clear that each party had expended considerable time, energy and resources in relation to relatively straightforward matters, rather than engaging in meaningful and constructive dialogue. Whilst it is not for this Tribunal to dictate how future relations should be conducted between the parties, it was the Tribunal's sincere hope that the parties could resolve their differences and engage in respectful and constructive landlord and tenant relations, whether or not this was through the medium of an independent and impartial intermediary to ensure proper communication and cooperation between the parties.

### **Decision of the Case Tribunal**

30. It is the **UNANIMOUS DECISION** of the Tribunal that the Tribunal does not have jurisdiction to determine whether the relevant service charge is payable by the Applicant, by reason of the Applicant's admission for the purposes of Section 27A (4) of the Landlord and Tenant Act 1985.

**Dated this 24<sup>th</sup> day of May 2023**

**C Jones  
TRUBUNAL JUDGE**