

Y TRIBIWNLYS EIDDO PRESWL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0014/07/22

In the Matter of Flat 4, 52 Clive Road, Canton, Cardiff, CF5 1HG

And in the Matter of an Application under Section 27A Landlord and Tenant Act 1985

Applicant:	Jane M Proctor
Respondents:	(1) Gareth William Austin
	(2) Jason Hadyn Austin
	(3) David Iwan Wyn Jeffreys
Tribunal:	Colin Green (Legal Chair)
	Mark Taylor MRICS (Surveyor Member)
	Dr. Angie Ash FRSA (Lay Member)

SECTION 20C DECISION

The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that only 25% of the costs incurred by the Respondents in these proceedings should be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

REASONS

1. Pursuant to paragraph 41 of the Tribunal's decision of 5 May 2023 ("the Decision"), written submissions have been received from both parties concerning Mrs. Proctor's application for an order under s. 20C of the Landlord and Tenant Act 1985, the relevant parts of which provide:

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

...

(3) *The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."*

2. As mentioned in paragraph 41 of the Decision, the Tribunal is not determining whether the Respondents' costs fall within the definition of "Total Expenditure" in the Fifth Schedule to the Lease, and therefore that Mrs. Proctor would be liable for one-fifth thereof as part of her service charge. Both parties accept that such costs would also be subject to the requirement of reasonableness under s. 19 of the 1985 Act.
3. On the footing that an order under s. 20C is required, in considering what is just and equitable the Tribunal has taken the following matters into account.
 - (1) Mrs. Proctor was successful on many issues, such as the application to strike out, the insurance contributions, administration charges, cost of maintenance/repairs, and the failure to consult under s. 20. It was never her case that there was no service charge liability, only that the figures provided had not been properly justified or supported by invoices or receipts. In the context of the figures relied on by the Respondents there was a significant reduction.
 - (2) On the other hand, there were matters that were challenged on which she did not succeed, such as the existence of a reserve fund and the external works to the rear of the Property. Although Mrs. Proctor is not a lawyer, her questioning of Mr. Jeffreys was sometimes long and repetitious, notwithstanding several reminders from the Tribunal that she had already asked the same question on a point. Against this, Mrs. Proctor did have difficulties due to her not being provided with a hard copy of the bundle as directed, and there were times when Mr. Jeffreys was not particularly forthcoming in answering her questions.
4. Having regard to the above, the Tribunal considers that Mrs. Proctor's one-fifth service charge liability in respect of recoverable costs should be limited to 25% of such costs. That is to say, her liability in respect of the total costs is reduced from 20% (one-fifth) to 5%.

Dated this 14th day of June 2023

C. R. Green
Tribunal Judge