

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0059/02/17 and LVT/0060/02/17

In the matter of 122 The Woodlands, Hayes Point, Hayes Road, Penarth, Sully, CF64 5QE and in the matter of 2 The Courtlands, Hayes Point, Hayes Road, Penarth, Sully, CF 64 5QG.

AND In the matter of an application under Section 27 A and 20 C Landlord and Tenant Act 1985 and schedule 11 of the Commonhold and Leasehold Reform Act 2002.

APPLICANT: Hayes Point RTM Company Limited

RESPONDENTS: Mr. Adrian Hibbert and Ms. Roselle Wells

TRIBUNAL: Mr. A Grant
Ms. A Ash
Ms. R. Thomas

HEARING: 14TH July 2017

UPON Hearing Ms. Sarah Gregory for the Applicant and Mr. Hibbert and Ms. Wells in person

DECISION

The service charge demands for the periods 24.07.2014 – 31.12.2014 and the 01.01.2015 – 30.06.2015 are reasonable. The Respondents application for an order under section 20 C of The Landlord and Tenant Act 1985 is dismissed.

REASONS

Procedural history

1. The Applicant, Hayes Point RTM Company Limited, issued 2 separate sets of court proceedings against the Respondents in the County Court Business Centre on the 3rd August 2015.
2. The Court proceedings sought payment of arrears of service charge payments for the periods 24.07.2014 – 31.12.2014 and the 01.01.2015 - 30.06.2015. Claim

number B5QZ8E63 sought payment of service charge arrears and interest totaling £1683.26 and claim number B5QZ8E66 sought payment of arrears and interest totaling £1622.52.

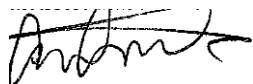
3. The payments were sought in respect of two properties owned by the Respondents namely, 122 The Woodlands, Hayes Point, Hayes Point Road, Penarth, Sully CF64 5QE (claim number B5QZ8E63) and 2 The Courtlands, Hayes Point, Hayes Road, Penarth, Sully, CF 64 5 QG (claim number B5QZ8E66).
4. A Defence to the proceedings was filed on the 25th September 2015 indicating that the charges were very high for a 1 bedroomed apartment and requesting a full breakdown of all the costs.
5. The claim was subsequently transferred to the County Court at Cardiff and on the 3rd November 2015 District Judge Morgan ordered that the "question of determination of the service charge and administration charge, if any, be transferred to The Leasehold Valuation Tribunal ". The order stayed the current proceedings until 28 days after the matter had been determined by the Tribunal.
6. The application was received in the Tribunal office on the 23rd February 2017.
7. On the same date, the 23rd February 2017 the Tribunal issued directions to the parties.
8. A further direction was issued to the Applicant on the 16th March 2017 requiring the Applicant to file a further witness statement.
9. The Respondents failed to comply with the Tribunal directions and failed to submit any evidence in support of their Defence.
10. The matter was listed for hearing on the 14th July 2017.
11. At 15.10 on the 13th July 2017 the Tribunal office received an e mail from Mr. Hibbert which stated, inter alia, "I would like to cancel the hearing planned for tomorrow at 10 am. I am in agreement to the outstanding service charge costs for the above properties (namely 122 The Woodlands and 2 The Courtlands) and would like to enter into an agreement where I can pay monthly which will enable me to pay the new service charges moving forwards with a surplus which will pay off arrears on a monthly basis "
12. It was not possible to adjourn the hearing which remained in the list to commence at 10am on the 14th July 2017.

The hearing

13. At the hearing, the Applicant was represented by Ms. Gregory and the Respondents appeared in person.
14. Mr. Hibbert once again confirmed that he was no longer challenging the reasonableness of the charges in question.
15. Ms. Wells also confirmed that she was no longer challenging the reasonableness of the charges.
16. The Tribunal asked Ms. Gregory to explain whether the Applicant had complied with the requirements of section 21 B of The Landlord and tenant Act 1985, namely that "A demand for 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".
17. Similarly, Ms. Gregory was asked to confirm if the Applicant had also complied with the requirements of Schedule 11 of The Commonhold and Leasehold Reform Act 2002 as regards administration charges which required a similar notice to accompany any demands for payment of an administration charge.
18. Ms. Gregory confirmed that the relevant notices were attached to each invoice sent to a tenant when demanding payment. She referred us to a sample of the notices which were exhibited to her witness statement at pages 215 – 222. Her evidence on this point was not challenged by the Respondents.
19. The Tribunal had regard to the Witness statement filed by Ms. Gregory and dated the 5th April 2017.
20. Having regard to the evidence submitted by the Applicant and in light of the fact that the Respondents had withdrawn their objections to the reasonableness of the charges, the Tribunal finds that the charges for the periods in question are reasonable.
21. The Applicant requested that it be allowed to add the costs of the proceedings to the Respondents service charge account. Upon enquiry by the Tribunal it was informed that the costs totaled £1900.
22. The Respondents objected to the costs being added stating that it would make their financial position worse than it already was.
23. Mr. Hibbert stated that the properties had been in negative equity from day one and that the rental income was insufficient to cover the outgoings. He said that he had not been able to sell the properties because they were in negative equity and the bank would not allow a sale at a loss.

24. Ms. Wells stated that she was a pensioner living in Spain. She said that whilst that may sound glamorous the reality was somewhat different. She lived in the hills and had limited income. She had wanted the properties sold many years ago.
25. In view of the manner in which this matter had reached the Tribunal, it was decided that the Respondents objection would be treated as an application for an order under section 20 C of The Landlord and Tenant Act 1985.
26. In light of that decision the Tribunal invited submissions on the point from the Applicant.
27. Ms. Gregory, on behalf of the Applicant, said that these arrears had been outstanding since 2015. She further submitted that the hearing today had been totally unnecessary as the Respondents had both withdrawn their objections at the very last moment. She said that she had always been prepared to discuss matters with the Respondents but there had been little contact.
28. Having considered the evidence and the submissions of the parties, The Tribunal dismisses the Respondents application for an order under section 20 C of The Landlord and Tenant Act 1985. In reaching its decision the Tribunal has regard to the fact that the original defence to the claim amounted to little more than a request for further information. The Respondents had both failed to comply with the directions issued by the Tribunal and at the very last moment had withdrawn their opposition.
29. In those circumstances, the Tribunal formed the view that the Applicant had been forced to incur costs unnecessarily and such costs could have been avoided had the Respondents dealt with the matter in a more timely manner.

Dated this 21st day of July 2017.



Andrew Grant
Chairman