Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0042/04/12/Stanwell Road
In the Matter of 8,Stanwell Road, Penarth, CF62 3EA

In the matter of an Application under Section 27a, and 19 of the Landlord and Tenant Act 1985 dated 5th November 2012.

TRIBUNAL Chairman Mr Richard Payne LLB M Phil
Surveyor: Mrs Ceri Trotman-Jones FRICS

APPLICANT Brookland Management Company Limited

RESPONDENT Mr Nick Penberthy

DECISION

On the 5th June and 15th July 2013 this application was considered at a full hearing at the Tribunal Offices, Southgate House, Wood Street, Cardiff. The Applicant was represented by Mr Anthony Parkinson of Atlantis Estates Limited. The Respondent appeared in person.

1. Number 8 Stanwell Road is a three storey property situated near the centre of Penarth.
2. The current application was dated 5th November 2012 and sought a determination upon the reasonableness of the service charges for the years ending 31st March 2011, 2012 and 2013. In addition the application raised the issue of the outstanding service charges said to be owed by the Respondent when the agents Atlantis Estates took over management of the property on 26th September 2011 and sought a determination as to whether these arrears were payable and reasonable. The application form indicated that no payments had been made by the Respondent in respect of the amounts demanded for these three years.

Inspection and hearing on the 5th June 2013 and 15th July 2013

3. The subject property Flat 1, 8 Stanwell Road forms part of an Edwardian style semi-detached property that was originally constructed as a single dwelling but was in later years divided into flats. The property is substantial in proportion and set back from Stanwell Road in Penarth town centre by a front garden area, a vehicular driveway runs to the side of the property and parking and gardens to the rear .The property is of traditional construction for its age and type with facing brick elevations and walls supporting a timber roof structure overlaid with slates. There are bay windows to front and the property is constructed on lower ground floor, ground, first and second floor levels. There is a series of steps leading to the front door and communal area and stairs which provide access to the ground, first and second floor flats. Lower ground floor flats are accessed externally from the side and rear. There are five flats in total, two to the lower level (although one has not been fully converted) and one flat to each of the other floors. The subject flat No 1 is accessed from the ground floor rear and located at lower ground floor level.
4. The communal areas reached from the front door are carpeted and in fairly basic internal condition. The decorative finish is worn. There are meter cupboards for all of the flats at ground floor level and the Respondent has a key and access to this area.

   There is a car parking space to the rear for dedicated use with the property and there is a small area of garden immediately to the rear of the flat that is for use of Flat 8. The garden area is open plan with the rear car park and is not bounded although fairly easily defined.

5. Following our inspection on 5th June 2013 the hearing commenced but it became apparent that Mr Penberthy did not have a copy of the Applicant's documentation and therefore he sought and was granted an adjournment to consider these. Additional directions were given on the 5th June 2013 that were complied with by the parties and we had a comprehensive bundle of paginated documentation at the hearing on the 15th July 2013.

The lease

6. It is necessary to consider the relevant parts of the lease. The application included a copy of the original lease between William James Oliver and Gillian Mary Oliver of the first part, the Lessor, Brooklands Management Company Limited of the second part, and Mary Danaher, a predecessor in title of the Respondent, dated the 5th of October 1990

with regard to Flat 1, 8 Stanwell Road. The lease is not clearly and consistently numbered, but at page 12 under the heading “Service Charge” the lessee covenants with the lessor and separately with the management company to pay the proportions mentioned in the Sixth Schedule to the lease. The contribution is to be estimated by the management company as soon as practicable after the beginning of the year and it is to be paid to the management Company by two equal instalments on the 25th March and the 29th September.

7. The certificate of the Management Company or their auditors as to the amount due shall be final and binding on the parties. (Service Charge, (iii) page 13 of the lease.) The Fourth Schedule details the costs and expenses to which the lessee is to contribute (at page 25 onwards of the lease) and the Sixth Schedule with regard to the service charge proportion payable by Mr Penberthy is at page 30 of the lease. This records that he does not have a contribution for “such parts of the entrance hall landings and staircases of the building as do not form part of the roof or main structure of the building” as his proportion is 0%, but his contribution to the remainder is 12.5%. Other relevant clauses of the lease will be commented upon below in our determination where appropriate.

The law

8. The meaning of "Service Charges" and "relevant costs" is set out in section 18 of the Landlord and Tenant Act 1985.

> “*18 (1) in the following provisions of this Act "Service Charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
>
> *a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord’s costs of management, and*
>
> *b) the whole or part of which varies or may vary according to the relevant costs.*
>
> *(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.*
>
> *(3) For this purpose-*
>
> *1. "costs" includes overheads, and*
>
> *2. costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for*

which the service charge is payable or in an earlier or later period."

9. We are to determine the reasonableness of the service charges claimed and/or budgeted. The relevant law is section 19 of the Landlord and Tenant Act 1985 which limits service charges payable according to their reasonableness. Section 19 states:

> "*19 (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 provision of services or the carrying out of works, only if the services or works **are of a reasonable standard**;*
>
> *and the amount payable shall be limited accordingly.*
>
> *(2) Where a service charge is payable before the relevant costs are incurred, **no greater amount than is reasonable is so payable,** and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise."* (Our emphasis).

10. We are therefore to apply the law and to determine the reasonableness both of the amounts of any charges claimed and also to consider whether works and services done and provided are of a reasonable standard and have been reasonably incurred.
11. There are also a number of statutory pre-conditions for the recovery of service charges and these include the content of service charge demands. Section 47, Landlord and Tenant Act 1987 is headed "**Landlord's name and address to be contained in demands for rent etc".**
12. The precise wording of the section is as follows;

> *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, and*
>
> *b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.*

13. Section 47(2) of the Landlord and Tenant Act 1987 holds that where a tenant of any such premises is given a demand but it does not contain any information required to be contained in it by virtue of Section 47(1), then any part of the amount demanded which

consists of a service charge or an administration charge shall be treated 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.

14. In addition, any demand for payments of service or administration charges must, under the Landlord and Tenant Act 1985 Section 21B, be accompanied by a summary of the rights and obligations of the tenants of dwellings in relation to them. This applies to any demand for service charges served on or after the 30th November 2007 in Wales and to any administration charges payment on or after the 31st March 2004 in Wales.

15. Section 48 of the 1987 Act is headed **"Notification by Landlord of address for service of notices"**. Section 48(1) states that

> *"a landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant."*

Further, section 48(2) states that

> *"where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall…..... be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with subsection."*

16. There are further relevant clauses namely Section 20B which sets out the limitation of service charges by reference to the time limit on making demands. Section 20B(1) reads;

> *"If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
>
> *(2) Subsection (1) shall not apply if, 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 he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge."*

17. Section 20C deals with the limitation of service charges and the costs of proceedings and states;

> *"20C (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 Lands 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.*
>
> *(2) the application shall be made …..*
>
> *(b) in the case of proceedings before a leasehold valuation Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation Tribunal;*
>
> *(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."*

<u>The substantive hearing</u>

18. The application sought outstanding service charges of £416.08 said to be owing when the applicant management company took over management of the property. However in a letter from Atlantis Estates to the Tribunal dated 6th of March 2013, in response to a directions order, it confirmed that prior to Atlantis's involvement, the leaseholders were self-managing and they had not formally demanded the arrears from Mr Penberthy. Mr Parkinson confirmed this at the hearing and also indicated that he did not have any details of the periods to which the £416.08 related**. Mr Parkinson conceded therefore that these amounts had not been legally demanded in accordance with sections 47 and 48 of the Landlord and Tenant Act 1987 and are not recoverable against the Respondent.** In the light of this, although no formal decision was required from the Tribunal, we agree that Mr Parkinson's concession is correct.
19. With regard to the service charge demands since Atlantis estates had taken over management of the property, (at pages 59 – 66 of the bundle) Mr Penberthy accepted that these complied with the statutory requirements and that the amounts had been properly demanded. The Tribunal was informed that Brooklands Management Company is the freeholder and their registered office is that of Atlantis Estates in Reading.

Service Charge 2011 – 2012

20. The amount in dispute for the service charge year ending 31 March 2012, realistically the period from 29 September 2011 to 24 March 2012, was that demanded of £175. Mr Parkinson indicated that this covered Mr Penberthy's contribution to the building insurance, general maintenance, management fees, window cleaning and the company's annual return. He indicated that it had been based upon a budget of £2800 that took us to the invoices at pages 77 to 104 of the bundle which in fact total around £2150. Mr Parkinson indicated that his company's records start from the day that they started to work on this commission in September 2011 and all of the invoices that they relied upon after this date. He said that whilst 12 ½% would be roughly £270 for the year, he did not have a complete set of information and therefore £175 had been demanded.
21. Mr Parkinson indicated that insurance ran from March 2011 to March 2012 and this was accepted by Mr Penberthy who had initially thought that it ran from May to May. Mr Penberthy also indicated that his windows were not cleaned and the window cleaner and said that he did not charge for cleaning the downstairs windows.
22. We determine that the **£175 was a reasonable figure**. Mr Penberthy did receive insurance and management of the property during this period and the services supplied for this figure were reasonable and the costs reasonably incurred.
23. With regard to the further issues in dispute for this period itemised by Mr Penberthy in the Scott schedule supplied to the Tribunal, he had disputed £30 for a late payment charge which he indicated had been levied whilst his emails seeking information were being bounced by Atlantis' Internet server. We accept this to have been the case and that Mr Penberthy was seeking information in good faith rather than seeking to delay or avoid payment and **charge of £30 is unreasonable and is disallowed.**
24. The charge of **£30 described in the schedule as LPC 2 for non-payment of arrears is reasonable and is allowed.** Contractually the agents are able to charge £50 for this. With regard to **the £90 for passing the matter to EJ Winter solicitors**, Mr Parkinson explained that this fee is for work undertaken in referring the matter to solicitors but that this was in relation to the £416 and the £175. Since this is related to the larger amount of £416 which was accepted as being unrecoverable by Mr Parkinson**, we consider this £90 charge to be unreasonable and it is disallowed.**
25. Despite initial opposition from Mr Penberthy to the sum of £185 for repairs to the gutter, he accepted during the hearing that these works had been undertaken and that the fees were reasonable.
26. With regard to the **£117.60** which was sought against Mr Penberthy for **repairs to his window**, this was evidenced by an invoice at page 83 of the bundle and comprised materials of £58, labour of £40 plus VAT. Mr Penberthy had argued that £75 in total

would be a reasonable figure. The Tribunal invited the parties' comments upon clause J of the lease which is one of the tenant's covenants and appears at page 9 of the lease/page 36 of the bundle. The obligation upon the tenant under this clause is as follows "*to keep the demised premises and all walls party walls windows window frames doors doorframes sewers drains pipes cables wires and appurtenances thereto belonging (other than the parts thereof comprised and referred to in clause 5 (i) hereof) in good and tenantable repair and condition…"* . Clause 5 (i) is at page 13 of the lease/page 40 of the bundle and is a covenant made by the Management Company with the lessee and separately with the lessor "*To maintain and repair redecorate and renew (a) the roofs and main structure of the building (b) the boundary walls fences gutters and rainwater pipes of the Development (c) the gas pipes water tanks and pipes drains and electric and other cables and wires under and upon the Development other than those serving only one flat on the development (d) the entrance hall landings and staircases of the building…."*.

27. Mr Parkinson considered that the windows were not part of the main structure of the building but Mr Penberthy argued that they were. The Tribunal have considered these points with regard to the lease. We find that the tenant has covenanted to keep the windows and window frames in good and tenantable repair and condition and the obligation to do so therefore is clearly upon the tenant. The fact that clause (j) specifically refers to the tenant's covenants not extending to those parts referred to in clause 5 (i) demonstrates that the windows are not intended to be viewed as part of the main structure of the building. **We therefore determine that the obligation to maintain and repair the windows and the window frames is upon the tenant in accordance with the lease. We therefore disallow the claim against Mr Penberthy for £117.60 for the window repair because it is not chargeable to him under the lease.**
28. Further the sum of £168 was the total for window cleaning for this period. 12.5% of this is **£21. We again disallow this amount as against Mr Penberthy** since the obligation under the lease is upon Mr Penberthy to maintain the windows and we accept Mr Penberthy's evidence that his windows have not been cleaned in any event. **Therefore Mr Penberthy's service charge account should be re-credited with the £21 that has been charged to it.**
29. Mr Penberthy **agreed that 12.5% of the insurance costs namely £52.27 was a reasonable sum and he accepted the out of hours costs of £30 as being reasonable**. Mr Parkinson explained that this fee was paid to Cunningham Lindsey to take out of hours calls. This meant that property managers did not need to be on call and Cunningham Lindsey will arrange contractors or call the property manager next on duty

as appropriate. He explained that the £30 charge was annual and was charged as **£5 per apartment.**

Service Charge 2012-2013

30. The service charge for March 2012 to September 2012 was £175. Mr Penberthy had originally disputed this amount but he agreed that this was reasonable and he made it clear that he withdrew the comments that he had made in the Scott schedule with regard to the emergency leak in the roof and the gutter repairs. **We determine however that, 12.5% of the window cleaning costs of £252 (at page 119 of the bundle), namely the sum of £31.50 is to be re-credited to Mr Penberthy for the reasons given above at paragraph 28.**
31. The service charge for the period between September 2012 to March 2013 was £199.44. Mr Penberthy accepted that the amount for insurance was reasonable and he also accepted that there does need to be a management company. The breakdown of the costs for this period appeared at pages 118 and 119 of the bundle. **The £199.44 charge we consider relatively modest and we are satisfied that the services and calculations relating to this amount, evidenced at pages 118 and 119 are reasonably incurred and reasonable in amount. However, this is subject to there being a re-credit of the amount of 12.5% of the costs of window cleaning to Mr Penberthy already dealt with at paragraph 30 above.**
32. With regard to the **£199.44 for the period of March 2013 until September 2013**, this encompassed the hearing date and clearly was an estimate demanded in accordance with the lease. Mr Penberthy had argued that a fellow resident Mr Bamber was in fact dictating what needs to be done at the property to the management company Mr Parkinson did not accept this and indicated that it must also be noted that Mr Bamber apparently did not accept the version of events put forward by Mr Penberthy. He stated that Atlantis do as they are instructed by the client Brooklands Management Company Limited and that the client has spoken with Gethin Jones the Atlantis Property manager on several occasions including a prearranged office meeting and that Mr Penberthy had not raised these points before. **We determine that the £199.44 estimate is reasonable** taking into account the sort of expenditure that had been experienced on this property and the issues that had arisen previously.

Costs application.

33. Mr Parkinson for the applicant sought the costs of the hearing in accordance with the lease (Fourth schedule part 1 Clauses 1 and 5 refer). The Tribunal allowed Mr Penberthy to make an application under section 20 C (see paragraph 17 above). The Tribunal heard oral representations from the parties but also allowed a further 14 days for written representations upon the question of costs to be made since Mr Penberthy indicated that

he would wish to have the opportunity to further consider this matter and to take advice specifically upon the question of costs. Mr Parkinson indicated that as a relationship manager with the applicants, his hourly rate was the same as for a property manager namely £60 per hour. He added that the £980 was the fee quoted to Brooklands Management Company for the scheduled one day hearing and Atlantis had kept to these charges despite the matter actually taking two hearing days to resolve. The Tribunal subsequently received a letter from Atlantis dated 26th of July 2013 in which Mr Parkinson indicated that his costs for making the application, preparing for and attending at the hearing were £980 plus VAT, namely £1176. To this should be added the hearing fees of £220 making a total of **£1396** which they were seeking to recover from the Respondent.

34. The Respondent sent letters dated 26th and 28th of July 2013 and enclosures and an email of 29 July 2013 to the Tribunal upon the question of costs. The Tribunal has carefully considered all the representations and enclosures made by both parties, in addition to considering the totality of the documentary and oral evidence presented in this case. We have found that with regard to the £416 sought against the Respondent, there was no evidence that these demands had been served correctly and those amounts were disallowed. As above, we have found that certain of the charges demanded of the Respondent are reasonable, but other charges were not recoverable under the lease and certain charges were unreasonably incurred against the Respondent.
35. In the circumstances, we determine that it is just and equitable to order that the £1176 costs are not to be regarded as relevant costs to be taken into account in determining the service charge payable by the Respondent but **the application and hearing fees of £220 are recoverable against the Respondent** as relevant costs to be taken into account when determining the service charge payable by the Respondent for this period.

Richard Payne
Chairman
DATED this 10th day of September 2013