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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0047/02/13

In the Matter of 132 Hendre Farm Drive, Newport, South Wales NP19 9LP (the Property)

In the matter of an Application under Section 175 of the Commonhold and Leasehold Reform Act 2002 for permission to appeal a decision of the Leasehold Valuation Tribunal to the UPPER TRIBUNAL (Lands Chamber) in the matter of an application under Section 20ZA of the Landlord and Tenant Act 1985 (the Act) and Section 27A (and 19) of the Act.

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| TRIBUNAL | Mr Paul Williams, Chairman<br>NFG Hill, Surveyor |
| APPLICANT | Mr Richard Elmes |
| RESPONDENTS | Newport City Homes |

**BACKGROUND**

The Appellant seeks to appeal against sections of a decision made by the Leasehold Valuation Tribunal on the 16th May 2013 in the above matter pursuant to Section 175 of the said 2002 Act. The stated reasons for the Application for permission to Appeal are that the decision shows that the Tribunal wrongly interpreted or wrongly applied the relevant law, the Tribunal took account of irrelevant considerations, or failed to take account of relevant considerations or evidence, or that there was a substantial procedural defect and the point or points at issue is, or are, of potentially wide implications. The specific Grounds for Appeal are set out in a statement dated the 3rd June 2013 submitted by the Appellant. The Tribunal hereby responds to the grounds raised:

**The Grounds of Appeal**

1. Major Works 2006/2007

(a)(1) The Appellant was not precluded from investigating and/or producing evidence as to any prejudice suffered as he had every opportunity to raise any such issue before both the Court and the Tribunal. At no stage did he claim that he had been prejudiced and nor did he raise any objection to the cost of the Works, although he did object to the necessity for some of the Works to be carried out and which objections the Tribunal duly considered.

(2) There was no evidence before the Tribunal that the Appellant had made numerous requests for a detailed inventory of the Works; but even if there had been the Appellant was aware of what Works were carried out and could have challenged either the necessity or the cost of such Works. He was not precluded from raising such issues and he did not raise any such points with either the Court or the Tribunal, despite having ample opportunity to do so.

(3) It was not impossible for the Appellant to obtain estimates to evidence that the Works were unnecessary or unreasonably incurred but he did not take this step. It might be more difficult retrospectively but this is not sufficient to preclude their obtainment.

(4) The Tribunal does not accept that the Appellant was precluded from investigating the position through passage of time. The Appellant knew that the Works were in progress from the outset, although it is accepted that he was not made aware of same through any prior consultation process.

(5) In the absence of prejudice we concluded that the costs should not be capped at £250.

(b)(1) It is not correct to state that Daejan Investments Limited v Benson and others [2013] UKSC 14 (the Daejan case) does not cover the difficulty in producing evidence in the absence of consultation. Paragraphs 65 and 66 of the Judgment address this issue and the Supreme Court concluded that whilst it might be more difficult to assess, this should not be regarded as a valid reason for the court to carry out an assessment. The Judgment continues in Paragraph 77 that it is the question of prejudice that is fundamental .In the present matter there was no evidence that the Appellant had been prejudiced and it was our judgment that he had not been prejudiced. We consider that the Works were necessary and we did not consider that the costs were unreasonable. Further, the Appellant did not seek to argue that he had been prejudiced and nor did he produce any evidence that the costs were unreasonable.

(2) Paragraph 67 of the Judgment in the Daejan case does address the issue of the burden of proof. The Supreme Court stated that the burden of proof is with the Landlord, although the factual burden of identifying some relevant prejudice would be on the tenant. Further, Paragraph 69 states that it is not onerous to suggest that tenants have an obligation to identify what they would have said if they had been able to make representations about the proposed Works. In this matter the Appellant did not produce any evidence, nor indeed argument, to show why he might have been prejudiced. The fact that the Judgment in the Daejan case was not unanimous has no relevance in our opinion as it remains good law.

2. Major Works 2007/2008

(a)(1) The evidence that we had before us was that the Works became due because of the introduction of the Welsh Quality Housing Standards and that a Fenestration Self Assessment Scheme certificate (the FENSA certificate) had been issued relating to two doors. Against this was the evidence of the Appellant that he had installed a front door to the Flat and a kitchen door in 2006.He stated that the kitchen door had not been replaced at all and that the door to the Flat had not needed replacing because it was relatively new. As the Appellant did not produce any evidence of purchase of either of the doors and did not produce any evidence that the door to the Flat was compliant with the said standards we had to make a judgment based on the evidence that we had before us. We were, of course, unable to view the door or doors that had been replaced. We preferred the evidence of the Respondent which was that the FENSA certificate would not have been issued unless the Contractor had replaced both doors and that the Contractor was satisfied that the replacement was necessary because of non-compliance with the said Standards.

(2) The Appellant had every opportunity to produce evidence of purchase and compliance to either the Court or the Tribunal but failed to do so. We do not consider that the desire to introduce fresh evidence falls within any of the reasons for an appeal as set out in Section 5 of the Application form dated the 3rd June 2013

(3) We agree that it was a difficult issue but we came to a conclusion based on the evidence before us.

(4) It is correct that we did not have any evidence of the purchase of the kitchen door by the Appellant, nor of the front door to the flat, but the Appellant had every opportunity to produce same to the Court or the Tribunal prior to the hearing. We also had the evidence of the FENSA certificate which we consider related to both the kitchen door and the door to the Flat.

(5) As stated, we had to determine the issue on the evidence before us and we do not consider that the introduction of fresh evidence, in this instance, falls within Paragraph 5 of the said Application form. The Appellant had the opportunity to produce this evidence prior to the Hearing.

(6) We also agree that this was a contentious issue but we were required to make a decision and duly did so.

(b)(1) We accept that if the Appellant was correct in his argument that the present kitchen door was the same one that he installed in 2006, then there would be implications for the Respondent and the contractor who issued the FENSA certificate. However, this was not established by the Appellant, and any such remedy now lies elsewhere.

(2) We do not believe that our decision in any way precludes the Appellant from pursuing a claim against the Respondent or the contractor in a different Court and accordingly we do not believe that it is imperative for the Appellant to be able to bring fresh evidence in this Matter.

3.(a) Repairs to the Block 2007/2008

(1) It is correct that we applied Section 19(1)(a) of the Act in considering the repairs to the defective door entry system.

(2) We do not agree that we were wrong in concluding that these costs, which amounted to £55.10p in total, and a charge to the Appellant of £13.78 were reasonably incurred.

(3) There was no evidence of the existence of a Guarantee, although the Appellant did state that he believed that there must have been one. In the absence of any documentary evidence we could not be certain of its existence. Further, even if one was in existence, we could not be certain of its duration, its extent, its conditions and whether it would have covered a replacement of the system to the current compliance standards. The Respondent did state that it would have cost more to investigate the position under any guarantee than to proceed with a relatively modest repair cost. Repairs to a door entry system are usually urgent and we took the view that it was not unreasonable for the Respondent to proceed without delay, which undoubtedly would have occurred if a Guarantee had to be investigated and the Guarantor contacted. Further, the item was not one that required consultation and we could appreciate that the costs of investigation might well outweigh the benefit of proceeding to carry out the works directly.

(4) We were aware of the case of Continental Property Ventures Inc v White [2006] 1EGLR 85, [2007] L &TR4. This case involved a party failing to carry out remedial work which subsequently resulted in an additional cost of over £38000.00, which claim was rejected by the guarantor because of the failure to carry out the remedial works expeditiously. The court ruled that the company could not claim the sum from the respondent in those circumstances. In the present matter we had no evidence of the existence of a Guarantee and the sum involved was minimal.

(5) The matter of the Guarantee was indeed considered by the Tribunal but it is acknowledged that we omitted to explain our deliberations. This is a matter for regret but it does not alter our conclusions in any way.

**OUR DECISION**

The Tribunal does not consider that it breached any of the reasons for appeal set out in Paragraph 5, sub-paragraphs (a) (b) or (d), of the said Application dated the 3rd June 2013. Our explanations for this decision are set out above. Permission to appeal the decision of this Leasehold Valuation Tribunal to the Upper Tribunal (Lands Chamber) is accordingly refused.

DATED this 18th day of June 2013

CHAIRMAN