Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL
Landlord and Tenant Act 1985, s27A

Premises:	10 Heol Rhyd y Garreg, Borth, Ceredigion, SY245NZ ("the premises")
RPT ref:	LVT/0026/09/15-Heol Rhydy Garreg
Hearing:	22nd February 2016
Applicants:	**Desmond Grey and Christine Grey**
Respondent:	**Tai Ceredigion Cyf**
Tribunal:	Mr JE Shepherd – Legal Chairman Mr D Evans FRICS

ORDER

1. The application is dismissed save for the application made pursuant to Landlord and Tenant Act, s.20C which is allowed. The Respondent shall be granted dispensation pursuant to Landlord and Tenant Act 1985, s.20ZA on condition that it pays the Applicants £100.

Dated this 4th day of March 2016

Lawyer Chairman

Introduction

1. The Applicant and his wife are the leasehold owners of premises at 10 Heol Rhyd y Garreg, Borth, Ceredigion, SY245NZ ("The premises"). They applied to the tribunal on 14th September 2015 challenging the recoverability of service charges originally incurred by Ceredigion Council ("Ceredigion") for roofing works carried out in 2009. Ceredigion are the Respondent's predecessor in title. The charges are now sought by the Respondent.

The Inspection

2. The tribunal attended the property at the time arranged on 22nd February 2016. We were invited in and inspected the interior and exterior in the presence of Mr and Mrs Grey. The Respondent was represented by Mr N Moffat of Tai Ceredigion. The Committee also had the opportunity to view the surrounding locality.

3. The property is located in the seaside resort of Borth on the Cardigan Bay coastline and about 8 miles north of the university town of Aberystwyth. In the village there is a primary school, post office, public houses, and a railway station.

4. Heol Rhydygarreg is adjacent to the B4572 roadway that leads from Borth in the direction of Aberystwyth through the hamlet of Clarach. No 10 is a first floor flat in a purpose built block of four units with two flats on the ground floor and two on the first floor. In all there are four similar type blocks in the crescent with a total of sixteen flats. Six flats have been purchased under the right to buy legislation and the remaining ten rented out by the Respondents.

5. From the communal pathway the unit is accessed by a pedestrian footpath shared with the ground floor flat in the complex and to the rear is an enclosed garden area. The flat is approached by an external staircase and provides the following accommodation: Hallway with staircase leading to Landing; Kitchen; Bathroom; Lounge; Two Bedrooms. The roof was inspected at street level from the front and rear of the block.

6. Mr and Mrs Grey were assigned the lease of the premises on 10th January 2000.

The Tribunal hearing

7. Neither party was legally represented at the tribunal hearing which took place at the Aberystwyth Arts Centre. Mr Grey appeared on behalf of the Applicants. The Respondent was represented by Mr Moffat, Eleri Jenkins, Director of Housing and Support, Mair Jones and Kate Cohen. Isata Kanneh and Karen Jones were in attendance at the hearing as observers.

8. In the statement that accompanied their application the Applicants challenged the consultation carried out by Ceredigion prior to the roofing works in 2009. They stated however that they received an invoice to pay £900 instalments for

the roof works. During the hearing Mr Grey confirmed that he knew that the instalments related to payment for the roofing works.

9. On 1st December 2009 the Respondent took over Ceredigion's housing stock pursuant to a Large Scale Voluntary Transfer (LSVT). Mr Grey confirmed that after this Ceredigion cancelled his monthly instalment payments and gave him a refund. He was told that Tai Ceredigion would get in touch about future payment. In the event Mr Grey said he did not hear from the Respondent until November 2011 when he was sent a letter demanding full payment for the roofing works. Mr Grey and other leaseholders had challenged the recoverability of these sums on the basis that the correct consultation had not been carried out. The Respondent had been unable to provide relevant paperwork in relation to the consultation which they said was carried out by Ceredigion. In turn Ceredigion told Mr Grey that all of the paperwork had been passed on to the Respondent. Most of the other leaseholders have now paid for the roof works.

10. The documents provided to the tribunal before and during the hearing broadly supported Mr Grey's account. The relevant documents were the following:

- The lease in which paragraph (3) of the Sixth Schedule covered the expenditure incurred on the roof.

- A letter from Ceredigion to the Applicants dated 11th February 2009 and said to be written in accordance with section 20 of the Landlord and Tenant Act 1985 stating that six contractors had been invited to tender for the roof works and that the lowest tender of D.T.Rees had been accepted. The cost to the Applicants was £4604.42 plus VAT. There was a further letter in similar terms sent on 18th February 2009.

- An email dated 4th March 2009 which makes reference to a meeting between Ceredigion and leaseholders including the Applicants. In a letter to the tribunal dated 22nd October 2015 Mr Grey stated that this meeting took place after the tender for the roof had been accepted.

- A letter from Ceredigion dated 11th December 2009 to the Applicants confirming that the Respondent was now the freeholder and that costs incurred between 1st April 2009 and 29th November 2009 (the date of transfer of ownership) were £4290.89.

- An undated letter from the Respondent to the Applicants stating that following the transfer of ownership the sums owed by the Applicants were £4096.66.

- A letter from Mr Grey to the Respondents dated 14th January 2012 seeking a breakdown of the bill for £4096.66.

- A letter from the Applicants to the Respondent dated 24th February 2012 seeking a copy of the s.20 notice relating to the roof works.

- A letter from Ceredigion to the Applicants giving details of their service charge account for the period 1st April 2009 - 31st March 2010. The letter confirms that the Applicants had been refunded sums that had been paid after the transfer to the Respondent.

- A letter from Mr Grey to the Respondent dated 4th September 2012 reminding the Respondent of its responsibility to send a summary of rights and obligations with a demand for payment of service charge (there were further emails repeating this).

- A letter from the Respondent's Chief Executive, Steve Jones, to the Applicants dated 14th October 2013 stating that the sum owed was £4106.65 and threatening legal proceedings.

- An email from Mr Grey dated 4th November 2013 requesting the original service charge demand for the roof repairs.

- An email from Mr Grey dated 7th November 2013 asking for copies of the section 20 notices issued relating to the roof repairs.

- A letter from Steve Jones to Mr Grey dated 7th November 2013 referring queries about the s.20 notices to Ceredigion and again threatening legal proceedings.

- A letter from Mr Grey to Steve Jones dated 18th March 2014 stating that because the Respondent could not produce the s.20 notice for the roofing works the cost of those works was limited to £250.

- A letter from Steve Jones to Mr Grey dated 20th March 2014 giving Mr Grey the opportunity to inspect his file. An inspection took place subsequently.

- A letter from Hugh James Solicitors to the Applicants dated 1st April 2014 stating that the sum owed was £4101.66.

- A debtor account statement issued by the Respondent on 26th November 2015 stating that the Applicants owed £4070.94. An earlier statement issued on 7th September 2015 stated that the amount due was £4094.53.

11. In its written and oral representations to the tribunal the Respondent relied on a deed of assignment under which Ceredigion passed over to them all rights and obligations in relation to the service charges. Ceredigion warranted that the service charge arrears were lawfully due at the date of the assignment. The Respondent had not sought to join Ceredigion to the proceedings but did state that they would be seeking to enforce the warranty if the tribunal's decision went against them.

12. The tribunal considers that the assignment between Ceredigion and the Respondent is of no relevance to the question of whether the requisite consultation took place. The fact that Ceredigion warranted that the service arrears were lawfully due doesn't mean that they carried out the consultation process properly.

13. In the week prior to the hearing the tribunal wrote to the Respondent in accordance with the decision in *Warrior Quay v Joaquim* LRX/42/2006 (Lands Tribunal unreported), referred to at paragraph 15-035 of Service Charges and Management 3rd Edition, Tanfield Chambers. In light of the fact that the Applicants had raised consultation issues the Respondent was asked if it wished to apply for dispensation pursuant to LTA 1985, s.20ZA. The Respondent duly made an application for dispensation on 16th February 2016. In the application for the first time the Respondent conceded that the consultation process had not been carried out properly by Ceredigion. In previous correspondence they had maintained a robust stance to the effect that the proper consultation had been carried out.

14. Mr Grey confirmed at the hearing that he had had sufficient time to consider the Respondent's dispensation application and indeed he had sought some advice from the Leasehold Advisory Service.

The issues

15. At the start of the hearing it was established that the principal issues were the consultation process pursuant to Landlord and Tenant Act 1985, s20 and whether there should be dispensation. Other issues however were the question of whether the service charges for the roof had been demanded within 18 months in accordance with Landlord and Tenant Act 1985, s.20B; whether demands sent by the Respondent had met the requirements in LTA 1985, s.21B (notice to accompany demands for service charges); and whether Mr Grey's application under LTA 1985, s.20C should be allowed.

The relevant law

Consultation

16. The LTA 1985, s20 and s20ZA state the following:

> *20 Limitation of service charges: consultation requirements*
>
> *(1) Where this section applies to any qualifying works or qualifying long term agreement, 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) he appropriate tribunal.*
>
> *(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, 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 or under the agreement.*
>
> *(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.*
>
> *(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—*
>
> *(a) if relevant costs incurred under the agreement exceed an appropriate amount, or*
>
> *(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.*
>
> *(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—*
>
> *(a) an amount prescribed by, or determined in accordance with, the regulations, and*
>
> *(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.*
>
> *(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in*

determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

20ZA Consultation requirements: supplementary

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—

(a) if it is an agreement of a description prescribed by the regulations, or

(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—

(a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,

(b) to obtain estimates for proposed works or agreements,

(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

17. The detailed consultation requirements are set out in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 (SI 2004/684).

18. In *Daejan v Benson* [2013] UKSC 14 [2013]HLR 21 the Supreme Court decided the following:

a) the purpose of a landlord's obligation to consult tenants in advance of qualifying works was to ensure that tenants were protected from paying for inappropriate works or from paying more than would be appropriate; that adherence to those requirements was not an end in itself, nor was the dispensing jurisdiction under section 20ZA (1) of the 1985 Act a punitive or exemplary exercise;

b) on a landlord's application for dispensation under section 20ZA (1) the question for the leasehold valuation tribunal was the extent, if any, to which the tenants had been prejudiced in either of those respects by the landlord's failure to comply; that neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation was a relevant consideration for the tribunal;

c) that the tribunal could grant a dispensation on such terms as it thought fit, provided that they were appropriate in their nature and effect, including terms as to costs;

d) that the factual burden lay on the tenants to identify any prejudice which they claimed they would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted;

e) that once a credible case for prejudice had been shown the tribunal would look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice

f) Per Lord Neuberger of Abbotsbury PSC, Lord Clarke of Stone-cum-Ebony and Lord Sumption JJSC: Where the extent, quality and cost of the works

were unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted.

18 month limitation

19. LTA 1985 s 20B states the following:

20B — Limitation of service charges: time limit on making demands.

(1) 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.

Cost recovery

20. LTA 1985, s.20C states the following:

20C — Limitation of service charges: costs of proceedings.

(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.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to the county court; (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

(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;

(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;

(c) in the case of proceedings before the Upper Tribunal , to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to the county court.

(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.

Notices to accompany service charge demands

21. LTA 1985, s.21B states the following:

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.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Application of the law

22. The sum claimed to be due by the Respondent at the date of the tribunal was £4096.66.This sum is largely if not exclusively made up of the disputed cost of the roofing works.

Consultation

23. The only evidence of consultation carried out by Ceredigion before the tribunal was the letters dated 11th February 2009 and 18th February 2009. These letters notified the leaseholders that the contract had been awarded. They plainly do not satisfy the detailed consultation requirements in the

regulations. During the hearing the Respondent rather reluctantly conceded this point. Indeed until its application for dispensation it had robustly defended the application on the basis that Ceredigion *must have* carried out the relevant consultation without any evidence to support this. Accordingly the tribunal finds that the s.20 consultation requirements have not been met in this case.

Dispensation

24. Mr Grey was candid and honest when he accepted that he was satisfied with the works carried out to the roof and that he had not suffered any financial prejudice by virtue of the failure in consultation. Accordingly applying the decision in *Daejan* the tribunal reluctantly agrees that the Respondent should be allowed dispensation in this case. The Respondent's conduct in a number of respects falls short of what one might expect from a social landlord. It took over the obligations of Ceredigion but was unwilling to accept that the former had patently failed in their consultation until a very late stage. The Respondent chose instead to defend the application without any evidential basis for doing so. Its correspondence with the Applicants was unyielding and threatening without proper justification. This is why the Tribunal is very reluctant to give dispensation but feels bound by the decision in *Daejan* to do so.

25. Mr Grey was equally honest and candid in confirming that he had not incurred significant costs in preparing for the hearing save for the £100 application fee. The tribunal has decided that the Respondent should pay the Applicants £100 as a condition of dispensation.

18 month limitation

26. Mr Grey accepted that in 2009 he had been required by Ceredigion to pay a standing order for works which he understood were the roof works accordingly in the view of the tribunal LTA 1985, s20B does not apply.

Notices with service charge demands

27. The tribunal accepts Mr Grey's evidence that the Respondent was slow to comply properly with its obligations under LTA 1985, s21B in that it needed to be reminded at least up until 2012 that it was the Respondent's responsibility to provide a summary of rights and obligations with a demand for payment. Significantly however Mr Grey accepted that he had been sent the summaries with effect from some time in 2012 onwards - possibly because he had told the Respondent that it needed to do this. Such demands included the roof works. Accordingly the service charges would have been lawfully due and Mr Grey was not entitled to withhold the service charge at the point that the summary was provided.

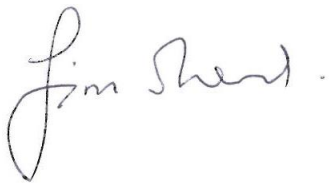
Cost recovery

28. During the hearing the Respondent indicated that it would be seeking to recover its costs from Mr Grey pursuant to his service charge. This was despite the fact that it was clear that the consultation carried out by its

predecessor in title was woefully inadequate and that they had only sought dispensation at a late stage. The Respondent indicated that its costs were in the region of £2500. The tribunal has no hesitation in allowing Mr Grey's application under LTA 1985, s.20C. In the circumstances it would be grossly unjust for the Respondent to recover its costs from Mr Grey's service charge and it should not be allowed to do so.

29. The Respondent indicated during the hearing that should the decision go their way it would seek to deal with the Applicants' debt on an amicable and fair basis. The tribunal would expect the Respondent to follow through on this commitment.

Dated this 4th day of March 2016



CHAIRMAN