Y Tribiwnlys Eiddo Preswyl

Residential Property Tribunal Service (Wales)

Leasehold Valuation Tribunal (Wales)

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DECISION OF LEASEHOLD VALUATION TRIBUNAL (WALES)
LANDLORD AND TENANT ACT 1985 s.27A

Premises:	27B Wells Street, Canton, Cardiff
LVT ref:	LVT/0022/07/14 Wells Street
Hearing:	5 November 2014
Applicant:	Mr Neal Evans
Respondent:	Miss Stacey Cowan
Tribunal:	Mr R S Taylor – Lawyer Chairman Mrs R Thomas MRICS

ORDER

1. The Applicant's application for the sum of £1,475 on account of service charges is dismissed.
2. The Respondent shall forthwith file a copy of this decision at the Cardiff Civil Justice Centre (with the case reference A00CF375 noted in her covering letter).

5 November 2014

Lawyer Chairman

REASONS

Background.

1. The Applicant's claim for the sum of £1,475 on account of service charges was initially made to the County Court in a claim form issued on 20 March 2014. The claim also included a claim for possession and unpaid ground rent which we are not concerned with.

2. The Respondent filed a defence dated 28 March 2014, in which she accepted that there was unpaid rent but disputed the other sums owing:-

    a. In the Defence form the Respondent ticked "No" to the question "If the particulars of claim give any reasons for possession other then rent arrears, do you agree with what is said."

    b. Under the "No" tick the Respondent stated, "I have attached a response to each of Mr Evans allegations."

    c. With the Defence form a cheque for the sum of £1,950 was enclosed, with a covering letter which stated, "Please find attached my document (sic) evidence supporting my version of events also a cheque for £1,950 made payable to Mr Neil Evans, I would ask that you forward payment to him as Mr Evans continually refuses to bank any payments I try making."

    d. The £1,950 is particularised as compromising £300 on account of ground rent, £1,475 on account of maintenance and repairs and £175 court costs. Next to the £1,475 the Respondent states, "I am yet to receive any documentation supporting this amount."

    e. Later in the document the Respondent refers to not being able to afford a solicitor and that "should the case continue I will represent myself."

    f. Attached to the Defence form is a rebuttal of what is said by the Applicant in his claim including, so far as the claim for service charges are concerned, "Whilst the Defendant has always accepted 50% liability of maintenance work, she has always made the Claimant fully aware that she only disputed the costs the Claimant was charging."

3. The court sent the Applicant the cheque under cover of a letter dated 2 April 2014. The Applicant replied to the court on the 5 April stating, "This

cheque will not be banked as Court Proceedings are pending as I now want possession and not payment." At the hearing on the 5 November 2014 the Applicant tried to say that this reply related to a cheque for £50 only on account of unpaid ground rent. When looking at the chronology of the letters this cannot be right and must have referred to the £1,950.

4. The matter came before District Judge Crowley on the 14 April 2014. In the recital to the order the issue of limitation is flagged up and the Applicant was required to file a statement of truth setting out the detail of his claim and when the monies fell due. The Respondent stopped the cheque after this hearing.

5. In compliance with this order the Applicant filed a statement of truth dated 1 May 2014 in which he stated that the monies fell due in October 2006. Confusingly, the £1,475 is also described therein as related to work which was carried out in 2007. We were shown a letter dated 2 November 2006 in which the Applicant is making a demand for the sum of £550 for work and a letter dated 6 December 2007 in which a claim for £1,200 is being advanced on account of works "carried out." The s.146 notice served in advance of court proceedings refers to "2007 maintenance work."

6. We note that within the service charge provisions in the lease (Clause 3(25)) provision is made for service charges to be demanded in advance of work being undertaken, which may explain the disjointed chronology.

7. It is the Applicant's case, as per his statement of truth, that the money fell due in October 2006.

8. The matter came back before Deputy District Judge Doull on the 25 June 2014 and the learned judge transferred the determination of service charges to this tribunal.

The two preliminary issues before the tribunal.

9. Directions were given on the 25 September 2014 which provided for a preliminary hearing to deal with two points, namely:

    a. Does the tribunal have jurisdiction to determine this matter or has jurisdiction been lost by reason of the Respondent having "agreed or admitted" the sums due by virtue of s.27A(4)(a) of the Landlord and Tenant Act 1985.

b. Is the Applicant's claim statute barred by reason of operation of the Limitation Act 1980. (The issue of the service charge possibly being reserved/deemed as rent in the lease was flagged in the recital to the directions.)

Documents marked "without prejudice."

10. The parties have each filed documents in response to these directions. Each party appears to have been unrepresented throughout the duration of the court and tribunal proceedings. Many documents have been placed before us which are headed "without prejudice." At the outset of the hearing on the 5 November 2014 the tribunal explained that it would not normally be the case that a tribunal would be party to without prejudice documentation. However, each party was content to waive their privilege in this respect and stated that they were content for this tribunal to proceed, notwithstanding that we had seen many documents marked without prejudice. In light of this helpful concession we do not need to explore what documents were, in fact, actually without prejudice.

The Applicant's case.

11. The Applicant's case, set out in his statement of truth dated 23 September 2014 was that the relevant limitation period was 12 years as his action was brought under a deed, pursuant to s.8 Limitation Act 1980. Further, he stated that the fact that a cheque was proffered when proceedings were issued "is an admission/agreement that she owed me the disputed sum as she would not send a cheque which could be banked immediately if she did not agree to owing the money."

12. During his evidence and submissions

    a. Clause 3(25) of the lease was put to the Applicant. This provides at one point, in respect of unpaid service charges, for the Lessor "... to take any or all means of recovery of such sum and/or interest as mentioned below *as if reserved as rent"* (our emphasis).

    b. The case of *Escalus Properties Limited v Robinson* [1996] QB 231 was put (and a copy provided to both parties) to the Applicant, the essential point being that if a lease contains express provision that a service charge is or is deemed to be rent, then the service charge will be treated as

such for all purposes, even if the deeming provision is not contained within the *reddendum* to the lease.

c. The Applicant's attention was also drawn to the fact that s.8(2) of the Limitation Act which provides that the 12 year period "...shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act" and the limitation period for rent being 6 years is by virtue of s.19 of the Limitation Act.

13. The Applicant had no substantive response to these technical issues, save to assert that money was owed and that it related to maintenance and must therefore be a service charge.

The Respondent's case.

14. The Respondent submitted to us that she had not intended her cheque for £1,950 to be sent immediately to the Applicant but that she expected the court to hold it in escrow pending what she thought would be a final determination at a first directions appointment on the 14 April 2014. She stated that it was not an admission of liability and that she expected the court to hold on to it pending the hearing. Her letter sent with the Defence form was put to her, in which she stated "I would ask that you forward payment to him as Mr Evans continually refuses to bank any payments I try making." It was suggested that this appeared to contradict what she was now saying, that it was expected the cheque would be kept in escrow. The Respondent denied this and suggested that she had simply not made herself clear enough as she was acting as a litigant in person.

Our determination.

15. We determine that we do have jurisdiction to deal with this matter and that the £1,475 has not been admitted by the Respondent. Whilst some aspects of the Respondent's contradictory evidence to us was less than satisfactory, we are satisfied, looking at the matters in the round that she had not agreed or admitted that the sum of £1,475 was payable. The Respondent filed a defence and gave an account that she accepted the principle but not the amount, as the Applicant had failed to provide any documentary evidence to back up his claim of £1,475. Further, we note s.27A(5) of the Landlord and Tenant Act 1985 which provides that ".. the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment."

16. We have also concluded that the service charge is deemed to be rent on a plain reading of the lease. It follows that the relevant period of limitation is 6 years has now expired (s.19 Limitation Act 1980).

17. It follows that the Applicant's claim for the £1,475 must fail.

5 November 2014

Lawyer Chairman