

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL
Section 27A Landlord and Tenant Act 1985 [The ‘Act’]

Reference: LVT/0033/11/15 – Dray Court

Property: 6 Dray Court, The Old Brewery Quarter, Caroline Street, Cardiff CF10 1FN

Landlord: Countrywide Residential (South West) Limited

Tenant: Mr Mark Andrew Tudor Roberts

Tribunal: Chairman J Rostron
Surveyor P Tompkinson
Lay Member J Playfair

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

INTRODUCTION

1. We were duly convened as a Leasehold Valuation Tribunal on Monday 1st August 2016 at 6 Dray Court, The Old Brewery Quarter, Caroline Street, Cardiff CF10 1FN. We had before us a transfer from The County Court at Telford an Order of District Judge Rogers made 15 October 2015 that the case of Countryside Properties (South West) Limited v. Mark Andrew Tudor Roberts be referred to The Property Chamber First Tier Tribunal for determination of the disputed service charge.

2. The appropriate jurisdiction is The Residential Property Tribunal Wales rather than The Property Chamber First Tier Tribunal which has jurisdiction in England. A Procedural Chairman issued directions on 26th January 2016 and subsequently on 29th March 2016 and 6th May 2016. The Tribunal Chairman issued supplementary directions on 3rd August 2016.

3. The claim with particulars dated 10th April 2015 are as follows:

“The Defendant [Tenant] is the owner of the leasehold interest in the property known as 6 Dray Court, The Old Brewery Quarter, Caroline Street, Cardiff, CF10 1FN. The Claimant [Landlord] is responsible for the management of common areas under the terms of the lease.

In breach of the express terms of the lease the Tenant has failed to pay the Service Charges....in respect of the period 01/01/2009 to 31/12/2015 and the ground rent...in respect of the period 01/01/2010 to 31/12/2015”.

Administration charges were also claimed but this aspect has been withdrawn by an open letter of 19th January 2016.

Interest was originally claimed...” from the date that payment was due” ...but this was subsequently withdrawn by an open letter of 19th January 2016 which substituted interest being payable from 30th November 2015. The letter further clarifies arrears of service charges are limited to the period beginning on that date. Similarly the letter further clarifies the matters which now require determination, are those relating to reasonableness, quantum and section 20 of the Act.

The Tenant has disputed the claim by a defence dated 27th May 2015. The relevant aspects of the defence [excluding those matters withdrawn by the Landlord] are summarised as follows;

“...Paragraph 3. The Tenant denies the Landlord’s Claim for the following reasons:

Paragraph 4. The Landlords have not produced the required evidence...to show the amount claimed is actually due and payable. The Landlords are claiming £12,452.00 for Service Charges, Ground Rent and [*Administration Charges*] including the current year to 31/12/2015...

Paragraph 5. In respect of Ground Rent, no monies are yet due. However, the Tenant has already paid some Ground Rent on account, which does not appear to have been taken into account...

Paragraph 6. The Landlords have to prove their Claim by evidence that;

- a. All Service Charge Demands were served on the Tenant at the Tenant’s pre notified address for service and the same Service Charge Demands complied with;
 - i. Section 47 of the Landlord and Tenant Act 1987, and
 - ii. Section 48 of the Landlord and Tenant Act 1987, and
 - iii. Section 21B of the Landlord and Tenant Act 1985, and
 - iv. The Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007.
- b. All Ground Rent demands were served on the Tenant at the Tenant’s pre notified address for service and that the same Ground Rent Demands complied with;
 - i. Section 47 of the Landlord and Tenant Act 1987, and
 - ii. Section 48 of the Landlord and Tenant Act 1987, and
 - iii. Section 166 of the Commonhold and Leasehold Reform Act 2002, and
 - iv. The Landlord and Tenant (Notice of Rent) (Wales) Regulations 2005, SI 2005 N0 1355.

Paragraph 7. In accordance with subsection (3) of Section 21(B) of the Landlord and Tenant Act 1985, a Tenant may withhold payment of Service Charges which have

been demanded from him if subsection (1) is not complied with in relation to the Demand.

Paragraph 8. In accordance with subsection (4) of section 21(B) of the Landlord and Tenant Act 1985, “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” ...

Paragraph 10. Further, or alternatively:

Paragraph 11. ...by section 19 of the Landlord and Tenant Act 1985, he [the Landlord] can only recover a reasonably incurred amount...the Tenant disputes the quantum of the Service Charges...claimed as they are unreasonable and excessive and some of the works were not carried out to a reasonable standard...

Paragraph 17. The Tenant is concerned that section 20 Landlord and Tenant Act 1985 may have been breached in respect of works in excess of £250...

Paragraph 18. The Tenant makes a request under section 20C of the Landlord and Tenant Act 1985 concerning the costs of these proceedings”.

INSPECTION

4 The Tribunal inspected the Property at 9.30 am 1st August 2016 in the presence of the Tenant and Landlord’s representatives; Mr Simon Bradshaw of Counsel and Mr John Socha, Managing Director of Orchard Block Management Limited the Landlord’s Managing Agent.

5 The Property is a mixed residential and commercial development in Cardiff city centre. It forms part of what is known as the Old Brewery Quarter. It consists of 42 flats split into four separate sections; Hop House comprising 6 flats; Coopers Court comprising 12 flats; Malt House comprising 12 flats and Dray Court comprising 12 flats. The Property consists of the redevelopment of an old Brewery. The residential component of the premises is mixed with a range of commercial uses.

6 The four sections of the residential component of the development are each served by separate lifts. Each flat is served by separate electricity supply and meter. The common parts also have separate electricity supply and meter. Each section’s common parts were carpeted and had a modern communal water supply facility. Refuse was stored in the basement of Dray Court.

THE LEASE

7 The Tenant acquired the Lease 10th December 2007. The Lease dated 10th November 2003 is for a term starting 10th November 2003 to 25th July 2201.

8 Counsel for the Landlord kindly produced a note of the salient aspects of the Lease which are relevant to the dispute and it is considered useful to restate it as follows:

“Block Common Parts” are defined on page 1 of the Lease as excluding flats but including office space used for management, areas used for housing the Landlords plant and machinery or which are required for the provision of service to flats, conduits (as defined below, other than those belonging to utility providers or let to tenants of flats) and entrances, hallways and passageways.

“Building Systems” are defined on page 2 of the Lease as meaning lifts, escalators, water and space heating, ventilation, air conditioning, lighting, fire detection and control, security, energy efficiency and similar systems, and related plant, equipment and conduits. (“Conduits” are described, also on page 2, in terms encompassing any form of pipe or conduits servicing the building or Building Services).

The “Service Charge” is defined on page 4 of the Lease as being the Service Charge payable by the Tenant in accordance with the Eight Schedule (Schd. 8) to the Lease.

Main part of Lease

By clause 4.1 of the Lease the Tenant covenants with the Landlord (and the Superior Landlord) to observe and perform the Tenant’s Covenants at all times during the term of the Lease.

By clause 7.5 of the Lease, where the Lease provides for a matter to be determined or certified by the Landlord’s Surveyor, such determination or certification is deemed to be conclusive except in case of manifest error.

Schedules to Lease

The Tenant’s Covenants are set out in the Fifth Schedule (Schd. 5) to the lease. Covenants relevant to the service charge are as follows;

- a. By Schd. 5 clause 1.2, the Tenant covenants to pay the Service Charge on the days and in the manner stipulated in Schd. 8, without any deduction (by way of set-off, counterclaim or otherwise).
- b. By Schd. 5 clause 5.2 provides that the Landlord may from time to time, notify the Tenant that the Landlord will repair or maintain any Building Systems.
- c. By Schd. 5 clause 28 the Tenant covenants to pay all reasonable costs, charges, fees and expenses including reasonable solicitor’s fees incurred by the Landlord in connection with matters including, by clause 28.4, the recovery of sums due from the Tenant under the Lease, and by clause 28.5, in connection with any breach or non-observance by the Tenant of the Tenant’s obligations under the Lease.

Provisions regarding the Service Charge are set out in Schd. 8, the key elements of which are as follows:

- a. Part one of Schd. 8 defines services as being:
 - i. Keeping in good repair the main structure of the estate as a whole.
 - ii. Keeping the block common parts in good repair.

- iii. Repairing, maintaining and renewing the plant, machinery and other items used to provide the services, and such building systems as have been notified to the Tenants under Schd. 5 clause 5.2 are being maintained by the Landlord.
 - iv. Providing facilities for the refuse store.
- b. Part 2 Schd. 8 defines "Expenditure" as being all costs and expenses incurred by the Landlord in, or incidental to, the operation and management of the building. It further provides a list setting out examples of such costs and expenses in the following categories:
 - i. Common parts.
 - ii. Plant, machinery and systems.
 - iii. Street furniture and signs.
 - iv. Refuse handling.
 - v. Landscaping.
 - vi. Legal compliance.
 - vii. Payment of outgoings, including expenses arising from the block common parts, water supply expenses, payment of service charges, insurance rent and other payments under the Superior lease, and payment of taxes on the Service Charge.
 - viii. Management and services.
 - ix. Common facilities.
 - x. Miscellaneous expenses, staff and management expenses, management accommodation expenses and general expenses, the latter being stated to include expenditure for the benefit of the building as a whole, the tenants or the management of the estate.
- c. Part 3 of Schd, 8 comprises clauses with the following provisions:
 - i. Clause 1 provides definitions, including that expenditure is the aggregate of the costs and expenses in Part 2 of Schd. 8, less recovery under insurance, and that flats pay an equal 1/42 proportion of the Service Charges.
 - ii. Clause 2 apportions Expenditure as that proportionately payable per flat.
 - iii. Clause 3 provides that the Service Charge may include recurring expenditure, whether paid or incurred before or during the term of the Lease, and including reasonable provision for future Expenditure.
 - iv. Clause 4 provides that the Landlord may at any time notify a Tenant of the reasonable estimate of Expenditure and of the Service Charge.
 - v. Clause 5 provides that the Tenant shall pay the Landlord the estimated Service Charge by equal instalments on the Quarter Days. If no estimate Service Charge has been notified, the Tenant will pay at the rate last payable for a Service Charge period
 - vi. Clause 6 provides that payment of additional sums in respect of estimates or revised estimates of Expenditure or Service Charge.
 - vii. Clause 7 provides for separate additional payments in respect of large and exceptional items of Expenditure.

- viii. Clause 8 provides that as the Landlord will provide the Tenant with a statement of Service Charge (defined as a certificate from the Landlord's Surveyor of Service Charge including a summary of Expenditure) as soon as practicable after the end of each Service Charge period. This statement is deemed conclusive save for a manifest error
- ix. Clause 9 provides that if the Service Charge exceeds the payments of estimated Service Charge and the additional sums set out above, the Tenant will pay the difference within 10 working days.
- x. Clause 10 makes corresponding provisions of clause 9 before a rebate in the event that the Service Charge is less than the payments within the Service Charge period.
- xi. Clause 11 provides for omitted Expenditures to be included in the subsequent Service Charge statement.
- xii. Clause 12 provides that documentation on Expenditure will be made available by the Landlord or the Landlord's managing agents for one month after the Service Charge estimate is delivered

Superior Lease

The Superior Lease provides and places obligations upon the Tenant by covenants at its clause 3.3 to insure the premises, and at 3.4 to repair, maintain and clean the premises, and at 3.8 to comply with obligations (including those of competent authorities such as local authorities) affecting the premises. These obligations upon the Landlord are those for which expenses incurred on items recoverable from Tenants under the Tenant's Lease.

Clause 3.2 of the Superior Lease obliges the Landlord to pay and indemnify the Superior Landlord against all rates, taxes, assessments, duties, charges, impositions and outgoings of an annual or other periodically recurring nature payable in respect of the premises".

THE LAW

9 The relevant extracts from the statutes applicable to the dispute are summarised as follows:-

Section 27(a) of the Landlord and Tenant Act 1985 Act provides that:-

- (1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable and, if it is, as to:-
 - (a) the person to whom it is payable
 - (b) the person by whom it is payable
 - (c) the amount which is payable
 - (d) the date at or by which it is payable
 - (e) the manner in which it is payable
- (2) Sub-section 1 applies whether or not any payment has been made.....
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 18(1) of the 1985 Act states that Service Charge means an amount payable by a Tenant

- (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.

Section 19(1) of the 1985 Act provides that "relevant costs should 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.

Section 21 B of the 1985 Act provides that:-

- (1) A demand for the payment of 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 the summaries of rights and obligations.
- (3) A Tenant may withhold payment of 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 Charge do not have effect in relation to the period for which he so withholds it.
- (5)

Section 20(C) of the 1985 Act provides that:-

- (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 the proceedings before a ... Leasehold Valuation Tribunal...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) ...

- (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.

Section 20 of the 1985 Act provides that:-

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of Tenants is limited in accordance with subsections (6) or (7) or both unless the consultation requirements have been either-
 - (a) Complied with..., or
 - (b) Dispensed with.
- (2)
- (3) ...
- (4) The Secretary of State may by regulations provide that this section applies...

[The regulations which apply are the Service Charges (Consultation Requirements) (Wales) Regulations 2004. The relevant contributions in respect of a qualifying works, is an amount which results in the contribution of any Tenant exceeding £250. In respect of qualifying long term agreement, an amount which results in the contribution by any Tenant in respect of any accounting period exceeding £100].

Section 47 Landlord and Tenant Act 1987 provides that:-

- (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....
- (2) Where...
 - (a) a Tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1), then...any part of the amount demanded which consists of a Service Charge...shall be treated for all purposes 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.
- (3) ...
- (4) In this section demand means a demand for rent or other sums payable to the Landlord under the terms of the tenancy.

Section 48 Landlord and Tenant Act 1987 provides that:-

- (1) 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
- (2) 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 purpose as not being due from the Tenant to the Landlord at any time before the Landlord does comply with that subsection.
- (3) ...

Section 166 of The Commonhold and Leasehold Reform Act 2002 provides that:-

- (1) A Tenant under a long Lease...is not liable to make a payment of rent under the Lease unless the Landlord has given him a notice relating to the payment, and the date on which he is liable to make payment in that specified in the notice.
- (2) The notice must specify-
 - (a) The amount of payment,
 - (b) The date on which the Tenant is liable to make it, and
 - (c) If different from that date, the date on which he would have been liable to make it in accordance with the Lease;and shall contain any such information as may be prescribed...

SCOTT SCHEDULE

10 The directions required the Landlord and Tenant to provide detailed comments as to the matters in dispute with regard to each service year 2009, 2010, 2011, 2012, 2013, 2014, 2015. The information contained in the Scott Schedule is comprehensive and summarised below.

11 THE PERIOD 01/01/2009 TO 31/12/2009.

The Landlord has made the following comments in the Scott Schedule.

“The Tenant refers to his original defence filed at court and in particular the paragraphs relating to Service Charges. The reasons for challenge are set out in the detailed defence.

Further, alternatively and in addition, if which, is not accepted, by the Landlord’s own admission in its letter dated 19th January 2016 paragraph 3, the Limitation Act applies to the Landlord’s claim and further by the Landlord’s own admission, the Landlord can only claim interest from 30 November 2015, being the date upon which the Landlord claims the demands were ratified and therefore their claim should be limited to 6 years in accordance with the Limitation Act.

Further, alternatively and in addition, if which, is not accepted. The demand relied upon is not a demand for all Service Charges that could be claimed. It is just a demand for "Service" due for the period stated. If it is a claim for anything claim is solely restricted to what is defined in the Lease as "Service" is defined on page 4 of the Lease and this is restricted solely to the matters set out in Part 1 of the Eighth Schedule on page 41 of the Lease.

Further this would be minus the "Building Systems" detailed in clause 3.2 of Part 1 of the Eighth Schedule of the Lease and as defined on page 2 of the Lease including the lifts, ventilation, air conditioning, fire detection and control, security, conduits and drains as the Landlord has never notified the Tenant in advance that they will be repaired and maintained by the landlord.

Further, alternatively and in addition, if which, is not accepted. In paragraph 10.3 of the Eighth Schedule to the Lease on page 47 it states that if the Service Charge is less than the payments, the overpayments will be credited to the Tenant against the next payment of estimated Service Charge. There is no provision in the Lease for a reserve fund. Further to section 19 (2) of the Landlord and Tenant Act 1985 "where a Service Charge payable before the relevant costs are incurred, no greater amount than is reasonably so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise. No payments or reductions have ever been made. The Landlord claims £1656 per annum and has done so for the last seven years. The accounts, only received with the legal pack show that the Service Charge account had an accumulated service of surplus of £51,882 as of 31-12-2009 rising to £160,397 as of 31-12-2014! On this basis the Service Charge claimed is unreasonable, because as of the 31-12-2014 there is in excess of 3 years' total Service Charge. The whole development shows a surplus brought forward, so there should not have been any, alternatively very little monies claimed during the times a Service Charge account is heavily in surplus.

Further, alternatively and in addition, if which, is not accepted the accounts disclose a Service Charge payable to the Superior Landlord. The Service Charge sections in the Head Lease mirror those in the Sub Leases and the Tenant is concerned about double charging the same services and also whether the freeholder is entitled to charge Service Charges as these are only shown in the accounts for the year ending 31-12-14. As the Tenants were not notified within 18 months of Service Charge liabilities either by the freeholder or the head lessee's agent it would appear that the 18-month rule applies to the claim for Service Charges.

Further, alternatively and in addition, if which, is not accepted the Tenant claims all individual or related items claimed for "Service" and alternatively, in addition "Service Charges" should be limited to the statutory maximum of £250, alternatively £100 in accordance with section 20 of the Landlord and Tenant Act 1985 as there was no consultation in these matters.

Further, alternatively and in addition, if which, is not accepted the amounts claimed in respect of lifts, water, management fees and cleaning are excessive and unreasonable and should be reduced".

12 The Landlord has responded to these comments as follows;

“...The Landlord accepts that the Service Charge which form the basis of this Tribunal determination were not fully and properly demanded until 30 November 2015, as clarified by the letter to the tribunal dated 29th December 2015.... The Tenant was therefore at liberty to withhold payment, under section 21 (B)(3) of the Landlord and Tenant Act 1985 until 30th November 2015. The Service Charges became payable on 30th November 2015...

...The Landlord accepts that neither administration charges nor interest is recoverable before 30th November 2015 on the Service Charge arrears for 2009, as clarified by the letter to the tribunal dated 19 January 2016 ...

...The Landlord accepts that the recovery of the service charge is limited to 6 years, from when it fell due. Accordingly, the Service Charge to 2009 is recoverable from 30th November 2009, due to the payment of the Service Charge being quarterly this reduces the Service Charge arrears for 2009 to £145.18...

The Landlord confirms that neither administration charges interest is being recovered before 30th November 2015 on the Service Charge arrears, as clarified by the letter to the Tribunal dated 19 January 2016). This is in accordance with section 21(B)(4) of the Landlord and Tenant Act 1985.

“Service Charge” is defined as “the Service Charge payable by the Tenant in accordance with the Eighth Schedule at page 46 of the Lease. Part 3 of the Eighth Schedule, from page 46 of the Lease, sets out what is included in the “Expenditure” recoverable as a Service Charge. The “Expenditure” includes all items identified in Part 2 of the Eighth Schedule and all items identified in Part 1 of the Eighth Schedule. Part 1 of the Eighth Schedule includes “Building Systems”.

The Tenant was sent an “Estate Budget” on 23rd September 2009.... This statement included the items as defined under “Building Systems” and conduits at page 2 of the Lease. Accordingly, the Tenant has been put on notice of the same in accordance with clause 5.2 of the Fifth Schedule and the same recoverable as the Service Charge.

The payments have never been possible, as a total of 7 leaseholders have never paid at all since 2009. This equates to the debtor owing £11,592 to 31st Dec 2015. Calculated by £1,656 x 7=£11,592.

The accumulated debt 31st December 2015 is £165,439.

The Service Charge has been increased to £1764 for 2016. This is to ensure that debts are paid as they fall due.

Once non-paying leaseholders pay their arrears the Service Charge can then be reviewed. Credit cannot be made until that time. The revenue from the 35 paying leaseholders are only matching the outgoings.

Attached are the year-end accounts for 2009, together with copies of the invoices upon which the year-end accounts are completed.

No Services have been double charged. The Superior Landlord has the responsibility for insuring the entire development. The Tenant pays this as per the proportion set out in the Lease.

A copy of the insurance certificate is sent to Tenant each year, as proof that the building is insured.

Repairs to the fabric of the building, such as the roof, repainting the render are carried out by the Superior Landlord and recovered through the Service Charge.

At no stage has the Tenant ever raised any questions about the Superior Landlord charge prior to this time. The Tenant agreed to pay the same when he signed the Lease.

The 18-month rule does not apply as the Tenant is obliged to pay the Superior Landlord charge as per the terms of the Lease. It has been properly demanded every year by the Landlord's managing agent.

The only item which needs to be considered with regard to section 20 of the Landlord and Tenant Act 1985 in 2009 is the works to the lift of £10,935.00 amounting to £260.36 per Tenant.

The section 20 limit is $42 \times £250 = £10,500$ for any single project in any given Service Charge year.

The attached schedule for 2009 shows 22 transactions. The largest of which was paid on 6 October 2009 for £3392.50p. This single item, which is below the consultation level, was for the replacement of one set of lift doors damaged by Cardiff Fire and Rescue Service effecting the rescue of a person trapped in the lift. The damage predated the Landlord's Managing Agent's management of the site which has been since 2008.

This single repair was to re-commission the lift in Coopers Court.

The rest of the repairs were mainly to call outs. Lack of funds prevented us from taking out service contracts, so a pay-as-you-go system was adopted.

Lifts - £10,935

Re-commissioning of the lift in Coopers Court was vital. Repairs are a legal requirement in the United Kingdom.

Water Rates £10,195

This is for a measured supply by Welsh Water. The charges cannot be avoided and are a statutory charge that must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,064

This covers 42 properties. This is £192 per annum including VAT at the time of 17.5%. This element is required by law; any person conducting the business with a turnover in excess of £67,000 has to charge 17.5%. The net amount Landlord's managing agents were charging a month before tax was £13.62p.

Cleaning £7,110

This covers the entire development spread over four apartment blocks and 42 units. This equates to £169.29 per apartment per year. £7,110 divided by 4 apartment blocks is £1,777.50 per annum, Cleaning is carried out every week, so dividing £1,777.50 by 42 equates to £34.18 per staircase and corridors per week. This also included visiting the site every Wednesday at 6am to place all the Eurobins in Caroline Street to allow Cardiff City Council refuse department to empty the bins. The bins then have to be put back in the basement of Dray Court after the bins had been discharged. In 2016 we are paying £40 per week just for the placement of the bins in Caroline Street at 6am and returning the bins to their room in the basement three hours later. Cardiff City Council does not allow bins to be left in Caroline Street due to the large number of pedestrians using the thoroughfare".

13 THE PERIOD 01/01/2010 TO 31/12/2010

The Tenant repeated his comments for the previous year in regard to this year. The Landlord largely repeats his comments for the previous year in regard to this year. The new comments are:

"There are no items in the 2010 Service Charge which are qualifying works for the purpose of section 20 of the Landlord and Tenant Act 1985.

Lifts - £4,888

The costs have been grouped together. With more funds available, a lift service contract was taken out, having brought maintenance up to date;

£1,833 - Basic service contract

£1,716 – Various repairs not covered by the contract

£1,339 – Lift insurance – legal requirement for 5 lifts (4 passenger and 1 goods lift)

Water Rates - £15,924

This is for a measured supply by Welsh Water. The charges that cannot be avoided and are a statutory charge must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,064

This covers 42 properties. This is £192 per annum including VAT. This element is required by law; any person conducting business with a turnover in excess of £68,000 must charge VAT for the year 2009/10.

Cleaning - £8,970

This is divided by 4 stair cases gives £2,242.50 per annum. Cleaning is carried out every week, so dividing £2242.50 by 42 equates to £43.13 per week. This also included visiting the site every Wednesday at 6am to place all the Eurobins in

Caroline Street to allow Cardiff City Council refuse department to empty the bins. The bins then have to be put back in the basement of Dray Court after the bins had been discharged. In 2016 we are paying £40 per week just for the placement of the bins in Caroline Street at 6am and returning the bins to their room in the basement three hours later. Cardiff City Council does not allow bins to be left in Caroline Street due to the large number of pedestrians using the thoroughfare”.

14 *PERIOD 01/01/2011 TO 31/12/2011*

The Tenant repeated his comments for the year 2009 in regard to this year. The Landlord largely repeats his comments for the previous year in regard to this year. The new comments are:

“There are no items in the 2011 Service Charge which are qualifying works for the purpose of section 20 of the Landlord and Tenant Act 1985.

Lifts - £5,063

The costs have been grouped together. With more funds available, a lift service contract was taken out, having brought maintenance up to date;

£1,928 - Basic service contract

£1,769 – Various repairs not covered by the contract

£1,366 – Lift insurance – legal requirement for 5 lifts (4 passenger and 1 goods lift)

Water Rates - £14,288

This is for a measured supply by Welsh Water. The charges cannot be avoided and are a statutory charge must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,235

This covers 42 properties. This is £196 per annum including VAT. This element is required by law; any person conducting business with a turnover in excess of £70,000 must charge VAT for the year 2010/11.

Cleaning - £10,435

This includes £60 for removal of dumped items. The net cost £10,375 is divided by 4 stair cases gives £2,593.76 per annum. Cleaning is carried out every week, so dividing £2242.50 by 42 equates to £43.13 per week. This also included visiting the site every Wednesday at 6am to place all the Eurobins in Caroline Street to allow Cardiff City Council refuse department to empty the bins. The bins then have to be put back in the basement of Dray Court after the bins had been discharged. In 2016 we are paying £40 per week just for the placement of the bins in Caroline Street at 6am and returning the bins to their room in the basement three hours later. Cardiff City Council does not allow bins to be left in Caroline Street due to the large number of pedestrians using the thoroughfare”.

15 *PERIOD 01/01/2012 TO 31/12/2012*

The Tenant repeated his comments for the year 2009 in regard to this year. The Landlord largely repeats his comments for the previous year in regard to this year. New comments are stated below:

“There are no items in the 2012 Service Charge which are qualifying works for the purpose of section 20 of the Landlord and Tenant Act 1985.

Lifts - £6,623

The costs have been grouped together. With more funds available, a lift service contract was taken out, having brought maintenance up to date;

£1,985 - Basic service contract

£3,122 – Various repairs not covered by the contract

£1,516 – Lift insurance – legal requirement for 5 lifts (4 passenger and 1 goods lift)

Water Rates - £13,773

This is for a measured supply by Welsh Water. The charges cannot be avoided and are a statutory charge that must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,064

This covers 42 properties. This is £192 per annum including VAT. This element is required by law; any person conducting business with a turnover in excess of £73,000 must charge VAT for the year 2011/12.

Cleaning - £8,705

This is divided by 4 stair cases gives £2,176.25 per annum. Cleaning is carried out every week, so dividing £2,176 by 42 equates to £41.85 per week. Reduction from 2011. This also included visiting the site every Wednesday at 6am to place all the Eurobins in Caroline Street to allow Cardiff City Council refuse department to empty the bins. The bins then have to be put back in the basement of Dray Court after the bins had been discharged. In 2016 we are paying £40 per week just for the placement of the bins in Caroline Street at 6am and returning the bins to their room in the basement three hours later. Cardiff City Council does not allow bins to be left in Caroline Street due to the large number of pedestrians using the thoroughfare”.

16 *PERIOD 01/01/2013 TO 31/12/2013*

The Tenant repeated his comments for the year 2009 in regard to this year.

The landlord largely repeats his comments for the previous year in regard to this year. New comments are stated below:

“There are no items in the 2013 Service Charge which are qualifying works for the purpose of section 20 of the Landlord and Tenant Act 1985.

Lifts - £5,689

The costs have been grouped together. With more funds available, a lift service contract was taken out, having brought maintenance up to date;

£2,014 - Basic service contract

£2,172 – Various repairs not covered by the contract

£1,503 – Lift insurance – legal requirement for 5 lifts (4 passenger and 1 goods lift)

Water Rates - £14,658

This is for a measured supply by Welsh Water. The charges cannot be avoided and are a statutory charge that must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,064

This covers 42 properties. This is £192 per annum including VAT. The VAT rate is now 20%. This element is required by law; any person conducting business with a turnover in excess of £79,000 must charge VAT for the year 2013/14.

Cleaning - £12,520

This is divided by 4 stair cases gives £3,145 per annum. Cleaning is carried out every week, so dividing £3,145 by 42 equates to £60.48 per week. This also included visiting the site every Wednesday at 6am to place all the Eurobins in Caroline Street to allow Cardiff City Council refuse department to empty the bins. The bins then have to be put back in the basement of Dray Court after the bins had been discharged. In 2016 we are paying £40 per week just for the placement of the bins in Caroline Street at 6am and returning the bins to their room in the basement three hours later. Cardiff City Council does not allow bins to be left in Caroline Street due to the large number of pedestrians using the thoroughfare”.

17 *PERIOD 01/01/2014 TO 31/12/2014*

The Tenant repeated his comments for the year 2009 in regard to this year. The Landlord largely repeats his comments for the previous year in regard to this year. New comments are stated below:

“There are no items in the 2014 Service Charge which are qualifying works for the purpose of section 20 of the Landlord and Tenant Act 1985.

Lifts - £4,278

The costs have been grouped together. With more funds available, a lift service contract was taken out, having brought maintenance up to date;

£2,045 - Basic service contract

£1,088 – Various repairs not covered by the contract

£1,526 – Lift insurance – legal requirement for 5 lifts (4 passenger and 1 goods lift)

Water Rates - £15,225

This is for a measured supply by Welsh Water. The charges cannot be avoided and are a statutory charge must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,568

This covers 42 properties. This is £204 per annum including VAT. This element is required by law; any person conducting business with a turnover in excess of £79,000 must charge VAT for the year 2014/15.

Cleaning - £0.00

The contractor did not submit invoices for this period”.

18 **PERIOD 01/01/2015 TO 31/12/2015**

The Tenant repeated his comments for the year 2009 in regard to this year.
The Landlord largely repeats his comments for the previous year in regard to this year. New comments are stated below:

“There are no items in the 2015 Service Charge which are qualifying works for the purpose of section 20 of the Landlord and Tenant Act 1985.

Management Fee - £8,568

Cleaning – 0.00

Lifts - £4,010

The costs have been grouped together. With more funds available, a lift service contract was taken out, having brought maintenance up to date;

£1,572 - Basic service contract (One payment omitted by Thyssen Krupp Elevator)

£944 – Various repairs not covered by the contract

£1,494 – Lift insurance – legal requirement for 5 lifts (4 passenger and 1 goods lift)

Water Rates - £11,443.00

This is for a measured supply by Welsh Water. The charges cannot be avoided and are a statutory charge must be paid under the Water Industry Act 1991 section 142.

Management Fee - £8,568

This covers 42 properties. This is £204 per annum including VAT. This element is required by law; any person conducting business with a turnover in excess of £81,000 must charge VAT for the year 2014/15.

Cleaning - £22,083

This covers 3 differing years, 2013, 2014 & 2015. The previous contractor failed to send invoices. He has continued to put the bins out every week for £40 per week.

Outstanding invoices:

2013 - £2,915

2014 - £11,935

2015 - £5,615

Total to pay to Nextline Cleaning is £20,465.

Total payable to Mr & Mrs Cleaning Services is £1,618. This equates to £31.63 per stair case and hallway per week.

This gives a total of £22,083

We are not in a position to pay this bill due to debtors not paying.

Since 1st August 2015 we are paying £40 per week just for the placement of the bins in Caroline Street at 6am. Bins are then returned to bin store three hours later. Cardiff City Council does not allow bins to be left in Caroline Street due to the large number of pedestrians using the thoroughfare.

£40 x 52=£2,080 plus £200 for extra dumped items £2,280.

This is now accounted for separately since 1 August 2015”.

DECISION

19 The issues raised in the claim and defence are best considered under the following heads;

- a) Quality and quantum of services delivered.
- b) To whom and when the service charges are payable.
- c) The nature and contents of demands.
- d) Ground rent.
- e) Costs of proceedings.
- f) Order.

a) Quality and quantum of services delivered

20 The Tribunal found at its inspection that in general terms the quality of services delivered to the common parts was of a reasonable standard. However, the facilities for the storage and management of refuse disposal was of concern. The smell in the basement of Dray Court was pungent. This smell however was not present in the other common parts. The carpeting in Coopers Court, Malthouse and Dray Court was reaching a stage where replacement needed to be considered. In Dray Court superficial repairs to the lift carriage control panel was required as was damage to the outside entrance door of the building.

21 Regarding quantum for the period over 01/01/2009 to 31/12/2009 the Landlord accepted that because recovery of service charge is limited to 6 years the operative period was from 30 November to 31 December. The admission was considered reasonable by the Tribunal.

22 Regarding quantum for the period 01/01/2010 to 31/12/2010. The Tribunal found the Service Charges cited in relation to the lifts, basic service contract, various repairs not covered by the contract, water rates, management fee and cleaning to be reasonable.

23 Regarding quantum for the period 01/01/2011 to 31/12/2011. The Tribunal found the Service Charges cited in relation to the lifts, basic service contract, various repairs not covered by the contract, water rates, management fee and cleaning to be reasonable.

24 Regarding quantum for the period 01/01/2012 to 31/12/2012. The Tribunal found the Service Charges cited in relation to the lifts, basic service contract, various repairs not covered by the contract, water rates, management fee and cleaning to be reasonable.

25 Regarding quantum for the period 01/01/2013 to 31/12/2013. The Tribunal found the Service Charges cited in relation to the lifts, basic service contract, various repairs not covered by the contract, water rates, and management fee to be reasonable.

26 Regarding quantum for the period 01/01/2014 to 31/12/2014. The Tribunal found the Service Charges cited in relation to the lifts, basic service contract, various repairs not covered by the contract, water rates, and management fee to be reasonable.

27 Regarding quantum for the period 01/01/2015 to 31/12/2015 it was noted that a previous contractor had failed to render invoices for 2013, 2014 and 2015. The Tribunal found the Service Charges in relation to the lifts, basic service contract, various repairs not covered by the contract, water rates, management fee and cleaning to be reasonable.

28 The Landlord reported that the Tenant along with 6 other Tenants have not paid any Service Charges. The Tribunal agreed with the Landlord that such a scale of Service Charge debt will inevitably prejudice the level of service which can be provided. The Landlord further explained because of the shortfall in Service Charge receipts it had prioritised payments to essential services such as utilities. The Tribunal considered such an approach was appropriate.

b) To whom and when service charges are payable.

29 The Tenant claimed that he was not notified within the 18 months of service charge liabilities as required by section 20B of the Landlord and Tenant Act 1985. The Landlord stated that the 18-month time period is not applicable as the Tenant was notified in writing that the Service Charge costs have been incurred. The Tribunal found that the Tenant had been notified as such for each of the years in dispute.

30 The Tenant claimed that the accounts disclose Service Charge payable to the Superior Landlord. The Tenant asserts that Service Charge section in the Head Lease mirrors those in the Sub Lease and the Tenant is concerned about double charging for the same services and whether the freeholder is entitled to so charge. The Landlord explained that there has been no double charging. The Superior Landlord has responsibility for insuring the entire development. The Tenant is required to pay his proportion as set out in the Lease. Copies of the insurance certificate are provided to the Tenant each year. Repairs to the fabric of the building, such as roof, repainting the render etc. are carried out by the Superior Landlord and recovered through Service Charge. The Tribunal agreed that the Tenant is liable to pay his contribution through the Service Charge.

31 The Tenant stated that in accordance with paragraph 10 of the Eighth Schedule to the lease on page 47 that if the Service Charge is less than the payments, the overcharge be credited to the Tenant against the next payment of estimated Service Charge. The Landlord explained that repayments have never been possible as several of the leaseholders have never paid at all which resulted in an accumulated debt of £165,439 at December 2015. The Tribunal agreed with the Landlord's explanation and believe that if this amount of accumulated debt had not arisen the level of service provision and overall viability of maintenance would have been much improved.

c) The nature and content of demands

32 The Tenant claimed that the demands are just demands for "Services" due for the period stated and should be restricted solely to what is defined in the lease as "Service" and this is restricted as defined on page 4 of the Lease and this is restricted solely to the matters set out in Part 1 of the Eighth Schedule on page 41 of the Lease. Further this would be minus the "Building Systems" detailed in clause 3.2 of Part 1 of the Eighth Schedule of the Lease and as defined on page 2 of the Lease including the lifts, ventilation, air conditioning, fire detection and control, security, conduits and drains, as the Landlord has never notified the Tenant in advance that they will be repaired and maintained by the Landlord. The Landlord explained that the Tenant's comments about "Service Charge" is defined as "the Service Charge payable by the Tenant in accordance with the Eighth Schedule" at page 4 of the Lease. Part 3 of the Eighth Schedule, from page 46 the Lease, sets out what is included in the "Expenditure recoverable as the Service Charge". The "Expenditure" includes all the items identified in Part 2 of the Eighth Schedule. Part 1 of the Eighth Schedule includes "Building Systems". The Tenant was appropriately notified of the "Estate Budget" which included the items defined under "Building Systems" and "Conduits". The Tribunal agreed with the Landlord's interpretation of the relevant parts of the Lease dealing with the meaning of "Service", "Building Systems" and "Conduits".

33 The Tenant asserted that all Service Charge demands were defective in that they did not comply with sections 47 and 48 of the Landlord and Tenant Act 1987. Similarly, the Tenant disputes the validity of the demands because they were not accompanied by a summary of the rights and obligations of the Tenants in accordance with section 21 of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Right and Obligations) (Wales) Regulations 2007. The Landlord accepted that such demands were defective but that they were subsequently rectified and amended demands issued. The Tribunal agreed that the Landlord had corrected the errors and the demands were now payable.

34 The Tenant stated that all Ground Rent demands were defective in that they did not comply with sections 47 and 48 of the Landlord and Tenant Act 1987, section 161 of the Commonhold and Leasehold Reform Act 2002 and the Landlord and Tenant (Notice of Rent) (Wales) Regulations 2005. The Landlord accepted that such demands were defective but that they were subsequently rectified and amended demands issued. The Tribunal agreed that the Landlord had corrected the errors that the service charge demands were now payable.

35 The Tenant issued his 'skeleton argument' at 10:42 pm 31st of July 2016. This document consisting of 106 pages was objected to by the Landlord because it did not allow them adequate time to digest the voluminous arguments before the Tribunal started at 9.30 am on 1st August 2016. The Tribunal had considerable sympathy with the Landlord's position and allowed an adjournment for them to consider the documents submitted by the Tenant. Because the Tenant was not professionally assisted in presenting his case it was decided that in all the circumstances the Tribunal would permit inclusion of the 'skeleton' argument. The 'skeleton' argument expressed concern that the invoices disclosed did not reconcile with the service charge accounts. The Landlord was requested in supplementary directions dated 3rd August 2016 to address this matter, especially in relation to; water charges, bank charges and Superior Landlord Service Charges.

36 The Tribunal was aware that a recent Leasehold Valuation Tribunal which considered an application by the Landlord under section 27A of the Act had heard evidence at a hearing held on 29th January 2016, for the service charge years 2009 to 2013. On its own initiative the Tribunal examined the relevant findings of that Tribunal being cognisant that both Landlord and Tenant had seen a copy. In particular its detailed analysis of the reconciliation of invoices to the service charge accounts. Taking account of this analysis and the further information provided by the Landlord in response to the 3rd August directions the Tribunal reviewed the financial information received and decided that the appropriate service charges for the period are;

2009 - £138 [being apportioned at 1/12 of the admitted liability under the Limitation Act.

2010 – 2015 - £9,936 [being levied at £1656 for each service charge year].

37 The Tenant's 'skeleton' argument further expressed concern as to the probity/authenticity of some of the documents submitted to the Tribunal. The Landlord explained that the date and time of the budgets (2009 to 2015) is shown on them. There was a change in format introduced in 2015 and they refute the Tenant's suggestion that relevant expenditure documents were produced after the event. The Landlord further explained that the annual Service Charge had been £1656 from 2009 to 2015 to ensure that the development is kept to a minimum standard, bearing in mind that 7 leaseholders failure to pay the service charges. The Tribunal accepted this explanation and found no cause for concern regarding either the authenticity or probity of the financial information provided by the Landlord.

d) Ground rent

38 Ground rent was initially claimed in the particulars of claim as £50 per year for the service charge years 2010, 2011, 2012, 2013, 2014, 2015.

39 The Tenant in his defence dated 27 May 2015 states that no monies are due and that he has already paid some Ground Rent on account, which does not appear to have been taken into account. Unfortunately, the Tenant could provide no compelling evidence of such payment at the hearing.

40 The position of the Landlord as regards liability of the Tenant to pay Ground Rent is that it is only payable from 30 November 2009. The Tribunal therefore determines that ground rent for 2009 is £4.16p [apportioned] and for each year 2010 to 2015 it is £50 per year.

e) Costs

41 The Tenant has made a request under section 20C of the Act concerning dispensation from the costs of these proceedings. The Tribunal was conscious of the fact that the Tenant had made no attempt to either query or pay part of the service charges previously demanded. The Landlord and managing agent have a responsibility to manage the Property and for them to carry out this function they need to be appropriately resourced. The Tenant for many years had been with holding payment under the misguided notion that the Service Charge demands had been unlawfully levied. The Tenant's lack of any meaningful attempt to engage with the Landlord was considered inappropriate by the Tribunal. The Tribunal was not at all impressed with the Tenants submission of a very lengthy document late on a Sunday evening when the hearing was scheduled to be held the following day and the Tenant had been given considerable advanced warning.

42 The Landlord opposes the Tenant's application under section 20C of the Act because they believe the Service Charges are reasonable and properly incurred. Failure by the Tenant to make payments prejudices the proper maintenance of the building's common parts.

43 For the above reasons the Tribunal refuses the application for dispensation under section 20C of the Act.

f) Order

44 The Order of the Tribunal is as follow

1. For the period 01/01/2009 to 31/12/2015 service charges of £10,077 is payable by the Tenant to the Landlord.
2. For the period 01/01/2009 to 31/12/2015 whilst we have no jurisdiction on the evidence before us ground rent of £304.16p is payable by the Tenant to the Landlord.
3. The Tenant's application for dispensation under section 20C of the Landlord and Tenant Act 1985 is refused.

DATED this 7th September 2016



CHAIRMAN J Rostron