

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

DECISION OF LEASEHOLD VALUATION TRIBUNAL

1. The Tribunal refuses permission to appeal to the Upper Tribunal.

BACKGROUND

2. This is an appeal by the Tenant against a decision (“the decision”) of the Leasehold Valuation Tribunal dated 7 September 2016 and sent by letter dated 8 September 2016. The Tenant’s application to ask the Leasehold Valuation Tribunal (“the Tribunal”) for permission to appeal to the Upper Tribunal (Lands Chamber) dated 28 September 2016 was received 29 September 2016. The application to appeal dated 28 September 2016 was received in time for it to be considered. A second appeal or modified appeal dated 29 September was received on 30 September 2016. This beyond the time limit to allow it to be considered. No request to extend the time limit was made.

3. The decision followed an inspection held on the 1st August 2016 commencing at 09.30am 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.

4. 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.

5. 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. Each section's common parts were carpeted and had a modern communal water supply facility. Refuse was stored in the basement of Dray Court.

6. The Tribunal had before it 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. 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 26 January 2016 and subsequently on 29 March 2016 and 6 May 2016. The Tribunal Chairman issued supplementary directions on 3 August 2016.

CLAIM

7. The claim with particulars dated 10 April 2015 are summarised 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".

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 Administration charges were also claimed but this aspect has been withdrawn by an open letter of 19 January 2016.

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 from the date that payment was due" ...but this was subsequently withdrawn by an open letter of 19 January 2016 which substituted interest being payable from 30 November 2015.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

DEFENCE

10. The Tenant has disputed the claim by a defence dated 27 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 did not comply 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*.

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

TENANT'S REASONS FOR APPLICATION FOR PERMISSION TO APPEAL

11. At paragraph 2 of the application for permission to appeal the decision of the Tribunal the Tenant essentially repeats in summary form much of his defence to the original claim and evidence already received and heard by the Tribunal at its two-day hearing. This paragraph does not actually state what part of the Tribunal's decision the Tenant wishes to appeal against. It summarises the evidence already heard in terms of; the nature of the service charge demands and their compliance with the legislation. The nature and timing of the service charge demands are dealt with in paragraphs 32, 33, 34, 35, 36 and 37 of the Tribunal's decision. None of the information provided in paragraph 2 of the reasons for appeal provides new evidence or reasons why permission should be given for appeal.

12. Paragraph 3 states..." To date, the Applicants case has been an abuse of process, as no monies are yet due". The Tribunal's decision at paragraphs. 29, 30, and 31 deals with this assertion and found that the amounts claimed are due and payable. There has been no abuse of process by the Landlord.

13. Paragraph 4 states..." The LVT did not take proper account of the points I made in my Scott Schedule, Skeleton Argument and Section 20C Costs Submissions. They went by an earlier decision for the development, which did not deal with many of the points I had raised. The earlier decision was different on the facts". The Tribunal's decision deals with the Scott Schedule at paragraphs 10, 11, 12, 13, 14, 15, 16, 17, and 18. The Tribunal's decision regarding the Skeleton argument is dealt with in paragraphs 19 – 43. The voluminous Skeleton argument submitted less than 24 hours before the hearing covers the entirety of the Tenants' argument and it is difficult to interpret what aspect is suggested to be appealed. The section 20C application was dealt with at paragraphs 41, 42, 43 and 44(3). Regarding reference to an earlier decision without it being cited specifically the Tribunal cannot comment save as dealt with in paragraph 36.

14. Paragraph 5 states *inter alia*..." the Tribunal could not grasp the fact that the Service Charge Accounts showed some £165,000 surplus for unrecovered Service Charge Demands, amounting to some 3 years' worth of charges for the whole development, again evidencing overcharging". The issue of alleged surplus is dealt with in the Tribunal's decision at perhaps 11, 12, and 31. The alleged surplus as explained in paragraph 31 is a debt accumulated by the Tenants who have not paid their service charges for several years.

15. Paragraph 6 states..." the LVT did not deal properly with the Electricity for Drays Court, which had been overcharged and not credited properly". The electricity charges were considered as an integral part of the service charges mentioned in paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, and 27 of the decision.

16. Paragraph 7 deals again with the section 20C application under The *Landlord and Tenant Act 1985* which was refused by the Tribunal. In this paragraph the Tenant refers to his defence filed at the County Court. The reasons for refusal of the application are dealt with in paragraphs 41, 42, 43, and 44(3) of the decision. Regarding costs in the County Court that is a matter for that jurisdiction to determine.

THE LAW & APPEAL TO THE UPPER TRIBUNAL

1. Section 231 of the *Housing Act 2004* allows a party following a refusal to appeal from the Residential Property Tribunal to seek permission from the Upper Tribunal.
2. Regulation 38 of the *Residential Property Tribunal Procedures and Fees (Wales) Regs, 2012* explains the appeals procedure.
3. Part 3 of the *Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 S.1. 2010 No. 2600 (L.15)* as amended explains the process for making an application to appeal.
4. You must apply for permission to appeal in writing to be received by the Tribunal no later than 14 days after the date on which the tribunal that made the decision under challenge sent notice of its refusal of permission to appeal to the Applicant.

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DATED this 21st day of October 2016

A handwritten signature in black ink, appearing to be 'J Rostron', written over a circular scribble.

J Rostron

CHAIRMAN