

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

Reference: LVT/0061/03/16 – Bay View

Property: Flat 2, 15 Bay View Road, Colwyn Bay, Conwy, LL29 8DW

Landlord: Mr David J Lombard

Tenant: Mr Eric G Smith

Tribunal: Chairman J Rostron
Surveyor T Daulby
Lay Member E Jones

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

BACKGROUND

1. Mr Eric G Smith (“the Applicant”) has made an application regarding the reasonableness of service charges levied by Mr David J Lombard (“the Respondent”), for the years 2014, 2015, and 2016, with regard to Flat 2, 15 Bay View Road, Colwyn Bay, Conwy, LL29 8DW.
2. In his application dated 8 June 2016, the Applicant wishes determination of the following;
 - (a) Reasonableness of fire alarm charges.
 - (b) Reasonableness of maintenance of communal areas charges.
 - (c) Reasonableness of building work charges (2015 only).
3. The matter was considered by a Procedural Chairman at the Tribunal Offices, Southgate House, 1st Floor, West Wing, Wood St, Cardiff. Directions were issued to the parties 16 March 2016 and amended directions subsequently on 13 April 2016.
4. The Applicant had also asked for a determination as to consultation requirements under section 20 of the Landlord and Tenant Act 1985 with regard to the building works mentioned in paragraph 2 (c) above. In the Applicant’s Statement of Response (undated) he withdrew this request.

DESCRIPTION OF PROPERTY

5. The Property as shown on the plan accompanying the lease comprises a one-bedroom ground floor flat. It contains a bedroom, lounge, bathroom and kitchen and small spare room. It forms part of a semi-detached house of four storeys with a basement. According to the Applicant It is constructed of solid brick walls approximately 500mm thick. The roof being of slate.
6. There are five flats comprising the Property which is approximately 100 years old. The rear of the Property incorporates an outrigger of single storey height. An elevated steel structure spans over a concrete yard at the rear which is not part of the demise. According to the Respondent this was a former ballroom but is now used as storage. At the front of the property is a car park with five spaces allocated to the Property and five spaces allocated to 16 Bay View Road served off a single access point. The Applicant has one car parking place allocated.

THE LEASE

7. The Applicant entered into a lease ("the Lease") dated 30 April 1993. The then Landlord, being Mrs Joan Boden. The Lease starts from 1 December 1992 and is for a period of 999 years.
8. The covenants of the Lease which principally concern the Applicant's request for a determination of the reasonableness of service charges are contained under clauses 3.3 and 3.10 and the Fourth Schedule. Clause 3.3 requires the Applicant to pay one fifth of the cost of the obligations stated in the Fourth Schedule. Clause 3.10 states that occupiers share the benefit of inter alia; party walls, party structures, yards, roads, paths, etc. and are required to contribute a fair proportion (fixed by a Surveyor nominated by the landlord) of the costs of repair, maintenance and cleaning on demand.
9. The Fourth Schedule which concerns services to be provided for;
 - 9.1 Repairing the roof, foundations and common parts of the building.
 - 9.2 Decorating the outside of the building every three years.
 - 9.3 Repairing and maintaining the sewers, drains, pipes, wires and cables in the building and its grounds which serve both the property and other parts of the building.

THE LAW

10. Section 27A (1) of the Landlord and Tenant Act 1985 ("the 1985 Act") provides:

"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 by whom it is payable,
 - (b) The person to whom it is payable,
 - (c) The amount which is payable,
 - (d) The date at or by which it is payable, and
 - (e) The manner in which it is payable."
11. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

12. In making any such determination, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

“Relevant costs shall 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.”
13. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which service charge is payable.”

DETERMINATION

14. The Property was inspected by members of the Tribunal at 10.00 a.m. on 4 August 2016. The members were accompanied by the Applicant and Respondent.
15. The inspection of the fire alarm system and emergency lighting to the common parts revealed the system to be appropriately installed. The system was not tested during the inspection, The general electrical supply was observed to consist of separate metering to four flats and the common parts. The Applicant informed the Tribunal that he had a separate supply of electricity to that seen in the hall way electricity meter cupboard.
16. The internal communal areas consist of hallway and stairs leading to other flats. They appeared to be in good decorative order with the walls painted in emulsion and wood work painted in gloss finish. The floor covering consisted in the hall way of tiles with the rest being largely covered in what appeared to be hard board. The internal level of cleaning was to a reasonably high standard.
17. The external common areas consisted of the car park at the front, side passage and rear access/storage area. The car park was surfaced in gravel which was level and well maintained. A hedge of considerable height was appropriately trimmed. The rear access/storage area was of concrete construction and whilst the concrete surface was well maintained the storage of building materials appeared somewhat incongruous. The Respondent informed us that these items were only stored temporarily.
18. The building works to the roof and wall were observed from the upper floor flat. There was evidence of historical penetrating damp which has been remedied by repairs to the roof and associated repairs to the wall render. The repair work appeared to have been carried out to a good standard. The occupier of the flat who was present at that part of the inspection informed the Tribunal that the repair work had prevented further penetrating damp.
19. The hearing was held at Colwyn Bay Town Council, Town Hall, Rhiw Road, Colwyn Bay, LL29 7TE. It commenced at 11.00am with only the Applicant attending. The Respondent did not attend the hearing because of ill health.
20. For the year 2014 the Applicant was disputing the reasonableness of the level of charges for the inspection of the fire alarm system which according to the invoices levied in that year

are undertaken every six months. The Applicant found the service level acceptable but the charge being £36 per year excessive. The Applicant was concerned that the charge should only be for inspection of the fire alarm and not the emergency lighting. The Tribunal formed the view that it was not realistic to separate the two elements and that all Tenants benefitted from both facilities. Individual inspection costs of £90 was for both 15 and 16 Bay View Road. On reviewing the documentation submitted the Tribunal agreed that this should be reduced by half. Two inspections were invoiced in 2014 on 9 June and 5 December costing a total of £180. The Tribunal therefore felt the Applicant's charge should be £18. The Tribunal considered the maintenance of communal parts to be of a reasonable standard and the charge of £72 appropriate.

21. For the year 2015 the Respondent in a letter dated 7 July 2016 concedes that regarding the servicing of the fire alarm system the contractor Abbey Electrical had not invoiced for a December inspection. It appears that the contractor's inspection in December had lapsed. The Applicant therefore conceded that the charge for 2015 should be £9. The Tribunal found that the apparent lapse in undertaking the six monthly inspection in December of concern. It encourages the Respondent landlord to ensure that the six monthly inspections are undertaken in view of the paramount importance of safety. The Tribunal considered the level of maintenance for the internal and external common parts to be levied at an appropriate amount of £72. It found the quality of maintenance was at a reasonable standard. Regarding the building work which involved repairs to the roof and rendering the quality of workmanship was considered to be to a high standard. No invoices are given in evidence as regards the total cost of the building repair work. The Respondent provides a figure of £1800 as an estimate. However, the Respondent in his letter of 7 July 2016 reduced the Applicants contribution to £250. In view of this and the Applicants withdrawal of his concern about the consultation requirements the Tribunal finds that the Applicants contribution of £250 is reasonable.
22. For the year 2016 the Respondent has submitted a summary of service charges along with the arrears claimed. For the matters in dispute the Respondent has proposed to charge the Applicant £108. This being one fifth of £360 for annual servicing of communal areas and £180 for fire alarm annual maintenance. The Tribunal finds the £360 for annual servicing of communal areas reasonable. It finds the £180 for the fire alarms unreasonable because it is for both 15 & 16 Bay View Road. The Tribunal therefore feels the £180 should be reduced to £90.
23. The Applicant at the hearing referred to the first page of a letter from Hampson Lewis Chartered Building Surveyors dated 29 October 2008 which he believed had relevance to the current dispute in relation to the Fourth Schedule of the Lease. The Tribunal understands the letter refers to a previous dispute and in its view was not relevant to the current one.
24. The Applicant at the hearing stated he voluntarily cleaned the floor of the ground floor internal common parts and that this supplemented the maintenance carried out by the Respondent landlord. The Tribunal considered that as the maintenance of all the internal common parts was to a satisfactory standard any voluntary contribution by the Applicant was simply that and had no bearing on the reasonableness of the service charges levied.

SUMMARY OF DECISION

25. The Tribunal finds the disputed service charge elements for 2014; for fire alarm and emergency lighting should be reduced to £18; for maintenance of the common parts should remain at £72.
26. The Tribunal finds the disputed service charge elements for 2015; for fire alarms and emergency light should be reduced to £9, for maintenance of common parts remains at £72; for the building works £250.
27. The Tribunal finds the disputed service charges elements for 2016; for fire alarm and emergency lighting £18 if two inspections are carried out; for maintenance of common parts £72.
28. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 20 of the Leasehold Valuation Tribunals (Procedure)(Wales)Regulations 2004. Any such application must be received by the Tribunal not later than 21 days after this decision is sent to that party.

Dated this 23rd day of August 2016



J Rostron
Chairman