

LEASEHOLD VALUATION TRIBUNAL FOR WALES

Case Ref: LVT/0027/04/12

IN THE MATTER OF AN APPLICATION

PURSUANT TO SECTION 27A of the Landlord & Tenant Act 1985

Tribunal: J D M Jones Chairman
Elfed Williams LLM FRICS
W Brereton

Property: Flat 1 Glan y Mor, Turkey Shore, Caernarfon LL55 1TA

Applicant 1: Carlton (North Wales) Ltd

Applicant 2: Abacus Land 4 Ltd

Respondent: Elizabeth Wynn Davies

Application

1. This is an Application under Section 27A of the Landlord & Tenant Act 1985 relating to the service charges relating to Flat 1 Glan y Mor, Turkey Shore, Caernarfon LL55 1TA (the property). Proceedings had been commenced by the Applicant in the Northampton County Court for recovery of the balance of Service Charges for the period from the 1st January 2011 to the 31st December 2011 and the 1st January 2012 to the 31st December 2012. Following transfer to the Caernarfon County Court on the 10th August 2012 the matter was referred to the Leasehold Valuation Tribunal and proceedings were stayed pending the decision of the Leasehold Valuation Tribunal as to the reasonableness of the Service Charge for the relevant years.

Direction

2. Directions were given on the 20th March 2013 in the forms set out in Schedule 1 hereto.

3. The respondent confirmed at the Directions Hearing that the issues to be considered by the Tribunal at the Hearing related only to the salary and on-costs of the house manager.

Inspection

4. The Tribunal inspected the property on the 14th March 2013 prior to the Direction Hearing and inspected the property again on the 8th July 2013.
5. Glan y Mor is a modern purpose built three storey block of flats close to the centre of the town of Caernarfon. It is conveniently located for the shops and other facilities. It is in the shadow of the town walls and close to the Castle and Harbour.
6. Glan y Mor fronts the public highway. There is secure parking some of it under cover. The exterior appears to be in generally good condition although there was some evidence of damage which appeared to have been caused by seagulls nesting near the property.
7. There are 18 flats, manager's flat, a guestroom and on the ground floor there is a laundry and drying room. In addition, on the ground floor is an entrance hall for use by the residence and a small kitchen area.
8. We did not have access to the individual flats but viewed the common parts on all three floors. We used the stairs and the lift. The property appeared to be in generally good order (apart from some damage apparently caused by seabirds).
9. There is a pleasant entrance hall with a secure door entry system and a small manager's office adjacent. A push button alarm system is available in each unit.

Hearing

10. Applicant 1 was represented by Miss S Ackerley of Counsel. Applicant 2 was not represented. The Respondent appeared in person.
11. The property is held under the terms of a Lease dated 10th day of July 1996 made between Watkin Jones (holdings) Ltd (1) and Helen Ruby Walters (2) for a term of 125 years from the 1st July 1993 (the Lease).
12. By clause 3.2 of the Lease the tenant covenants to pay the Lessor a share of the expenses and outgoings incurred by the Lessor in the repair maintenance, renewal and management of the building and the estate (as defined in the Lease) (including the house manager's flat).
13. The clause then goes on to set out the requirements to be fulfilled by the Lessor in preparing and certifying accounts.

14. By clause 5(10) of the Lease, the Landlord covenants “to use its best endeavours to maintain the services of a house manager for the purpose of being reasonably available to the tenants in the building to render reasonable assistance in case of emergency and to supervise the provision of services in the building and estate and to perform such other duties as the Lessor shall in his discretions stipulate”. At various times documents have been produced by the Lessor identifying the duties and responsibilities of the house manager and these documents have been circulated to the occupiers of the various flats.
15. The Applicant called Pamela Linch property manager to give evidence. She confirmed the terms of the Lease and the manner in which the service charge was calculated in accordance with the provisions of the Lease. She identified the expenses attributable to the house manager. These including rent of the flat, telephone line, electricity, salary, reimbursement of the cost of cleaning materials. She submitted that the Lessor had complied with the covenant in the Lease and that all the items claimed were supported by adequate documentary evidence.
16. The evidence disclosed that the house manager’s duties were in accordance with the terms of the Lease and included daily duties of providing assistance to residents keeping relevant records helping to ensure the wellbeing of residents. In addition, cleaning maintenance and reporting of major repair items was included.
17. Miss. Susan Rendell said that she was the proprietor of flat 9. She said that her father in law had been instrumental in starting the resident association. She said that she had known three caretakers over the years and that although the caretaker was part time, she considered that the job was full time and believed that the caretaker represented excellent value for money and considered the charges made to be reasonable.
18. Miss. Olive May Penlington said she resided at flat 14. She said that she has complete satisfaction of the caretakers work and considered the charges attributable to this service to be reasonable. She acknowledged that there had been some complaints in the past about the service provided but was satisfied that the charges currently made were fair and reasonable in all of the circumstances for the service provided in accordance with the terms of the Lease.
19. Dianne Peters confirmed that she had been the house manager for nearly two years. She referred to her job description (see Schedule 2) and said that her duties in fact extended beyond that list and included attendance in emergency at all times. She then described in some detail her daily duties.
20. Miss. Peters confirmed that she believed that 27 hours were necessary each week to do the job for which she had been appointed. She described in evidence how she had kept to a minimum the cost of the telephone which was charged to the tenants as part of the service charge.

21. The Respondent submitted that 15 hours per week were sufficient to do the work required under the covenants contained in the Lease. She pointed out that this was not a care home: most residents were independent and could manage on their own and there were few emergencies. She considered that the work being done and charged for went beyond the requirement to the Lease and the job description. The Respondent did not produce any evidence in support as to why she considered the hours unreasonable.
22. The Respondent said that she did not accept the evidence given on behalf of the Applicant regarding the employment of a house manager and the job description. She said that there had been objections to the proposed job description and it was wrong to seek to charge for additional work which was not necessary to comply with the terms of the Lease.
23. The costs of the caretaker identified in the estimates for the relevant years fall under the following headings:
 1. Caretaker – materials
 2. Caretaker – salary
 3. Caretaker – flat rental
 4. Caretaker – electric
 5. Caretaker – telephone allowance
 6. Caretaker – payroll services.
24. The sums claimed are financially documented and copies of the relevant vouchers appear in the bundle prepared for the Hearing.
25. On the basis of the evidence, we consider that the salary appears reasonable for the work required to be done to comply with the terms of the Lease. We accept that this is not a care home but it is a residential property for the use of persons over the age of 50 years. The Lease envisages a provision of a house manager's flat and on the basis of the evidence the rent charged appears to be reasonable. We are further satisfied that the other items listed in the claim for expenses attributable to the house manager are reasonable.
26. The Tribunal determines that there being no other challenge to the service charge additional to the cost of the house manager, we find that the figure in the Statement of Accounts before us are reasonable.
27. An application has been made by the Respondent for an order under section 20c which would preclude the Applicant's right to recover the cost of these proceedings in the service charge.
28. On the basis of the evidence and the view of our findings, we consider it would be unreasonable to make such an order.

29. We were further asked to make an order for the costs pursuant of the provisions of paragraph 10 of schedule 12 of the Commonhold and Leasehold Reform Act 2002.

30. Paragraph 10 provides that a Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances where he or she has made an application to the Tribunal which is dismissed on the grounds that they are frivolous or vexatious or otherwise an abuse of process. We have considered this application very carefully and on balance are not prepared to make such an order.

Dated this 20th Day of August 2013

A handwritten signature in black ink, appearing to be 'D. M. R.', written in a cursive style.

Chairman

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)
LEASEHOLD VALUATION TRIBUNAL

In the matter of Flat 1 Glan y Mor, Turkey Shore, Caernarfon, LL55 1TA

APPLICANT: Carlton (North Wales) Limited

RESPONDENT: Ms Elizabeth Wynne Davies

TRIBUNAL: J D M Jones (Chairman)
E R Williams LLM. FRICS.

DIRECTIONS

UPON HEARING Mr James Cullen of Counsel for the Applicant the Respondent appearing in person the following Directions are given for the disposal of the Application.

1. The Applicant shall by 12 noon on the 11th April 2013 provide the Respondent with one copy of a paginated bundle comprising copies of all documents to be used at the hearing including the Respondent's Lease and all documents relating to the salary and costs of the House Manager.
2. The Applicant shall by 12 noon on the 11th April 2013 provide the Tribunal with three copies of the paginated bundle referred to in 1 above
3. The Applicant shall by 12 noon on the 25th April 2013 file with the Tribunal three copies of the Statement of any witness to be called to give evidence and shall serve one copy on the Respondent.

4. The Applicant shall file with the Tribunal by 12 noon 14 days before the date fixed for the hearing three copies of a Case Summary and serve one copy on the Respondent
5. The Applicant shall by 12 noon on 27th March 2013 file with the Tribunal a written Statement of availability
6. The matter shall be listed for hearing on the first available date after these Directions have been complied with. (Time estimate 1 day)
7. Both parties shall be at liberty to apply for further Directions. The Tribunal may also issue further Directions should the Tribunal consider them to necessary or advisable
8. Any correspondence with the Tribunal by one party shall be copied to the other and shall so indicate.

WARNING: It is important that these Directions are complied with. Failure to do so may result in the Tribunal being unable to consider important evidence or documents and this could prejudice your case.

Dated this 20th day of March 2013



Chairman.

JOB DESCRIPTION

HOUSE MANAGER FOR GLAN Y MOR

- Live in Apartment 8.
- Carry out duties between 9am - 2pm Monday to Friday, and 9am - 11am Saturday. (27hrs/wk)

The house managers Duties include: *Mon - 9-2:30 Sun - Thurs 9-2 Friday*

Management

- Attend any emergency in Glan y Mor, at any time, if on site.
- Provide a daily call to each resident, unless the resident requests otherwise. (The request must be in writing and held on file at HLM).
- Maintain up to date records for each resident, including Residents Next of kin, Residents GP, Other essential numbers.
- Provide the above information to Goyal Mon. (emergency centre).
- Regularly test the emergency 'pull-cords'.
- Keep a daily record of incidents / events.
- Record any overnight absentees.
- Help with any other matters that will ensure and maintain the well being of the residents.
- Keep HLM informed of any issues that may affect the running of Glan y Mor, such as areas needing improvement, complaints etc.

Cleaning

- Clean all areas of Glan y Mor on a weekly basis.
- Ensure the foyer is cleaned at least every other day.
- Keep the lift and laundry clean at all times.
- Keep the rear car park areas tidy and clear of debris.
- Maintain petty cash records (used for cleaning materials and small items)

to re-cycling, deals with one covered to Luddeshall set to re-cycle in the car. @ involved in a day to day basis with some residents here with social services, cancer & hospitals

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Maintenance

- Undertake any minor maintenance jobs you feel you are able to do (eg. Changing light bulbs etc).
- Report any more major maintenance items, faults, breakdowns and damage to HLM who will employ a suitable tradesman to attend.
- Communicate with HLM on any issues affecting the site, even suggesting improvements to the building.
- Inform HLM of any Health & Safety issues within Glan y Mor.
- Attend training courses specified by HLM. (e.g. first aid, etc).
- Put out the rubbish bins for collection by the council when required.

Package

- Salary of £8500 to be paid monthly.
- Rent of flat included.
- Telephone bills paid (within reason, up to £200.00/yr).
- Water bills for flat paid.
- Electricity for flat paid.
- 20 days holiday plus the 8 statutory bank holidays will be paid. These must be booked in advance. (1 weeks notice for a day off, 1 months notice for a week off).
- Council tax not included.

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