

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

REF: RPT/0059/03/19

In the Matter of Flat 7, 45 – 47 Despenser Street, Riverside, Cardiff, CF11 6AG

And in the Matter of an Application pursuant to sections 27A of the Landlord and Tenant Act 1985.

Between

Applicant: Despenser Street Management Limited

Respondent: Mr. Lino Malnati

Tribunal: Mr. Andrew Grant (Legal Chairperson)
Mr. Hefin Lewis (Surveyor)
Dr. Angela Ash (Lay member)

Decision

The Tribunal finds that the service charge demands for the years 2015 – 2019 are reasonable and are payable in the sum of £2,933.36. However, they are not enforceable until they have been re - served upon the Respondent accompanied by the correct summaries of rights and obligations.

Reasons

Introduction

1. This is an application brought by Despenser Street Management Limited seeking a determination in respect of service charges and administration charges pursuant to section 27A of the Landlord and Tenant Act 1985 (“the Act”).
2. The charges relate to Flat 7, 45 – 47 Despenser Street, Riverside, Cardiff, CF11 6AG (“The Flat”). The Flat is owned by the Respondent.

3. The charges in respect of which a determination is sought are for the years 2015, 2016, 2017, 2018 and 2019.
4. The application was lodged with the Tribunal on the 22nd March 2019.
5. Directions were issued by the Tribunal on the 11th April 2019.
6. A hearing was listed to take place on the 16th July 2019 at the Tribunal office situated at Oak House, Cleppa Park, Celtic Springs, Newport, NP10 8BD.
7. Ms. Turton appeared for the Applicant. The Respondent did not attend and has taken no part in these proceedings.
8. Prior to the hearing the Tribunal inspected the Property. It was accompanied by the Tenant of Flat 5, Nathan David, who acted as day to day caretaker of the Property for the Freeholder.

The Property

9. Dispenser street apartments comprise of 10 flats converted from a mid - terrace (No 47) and end terrace (No 45) traditional town house ("the Property"). The apartments are arranged over 3 floors and are self - contained. The Property is situated in an established, predominantly residential area conveniently located to Cardiff City Centre.
10. Construction is of traditional solid stone walls under a pitched tiled roof. Windows are of replacement PVCu.
11. The general appearance of the Property is consistent with its age and type of construction. Some works of repair and maintenance are required. In addition, elements of the Property are ageing and likely to require attention.
12. The Property has been affected by structural movement, evidenced by general distortion to gable ends and around window and door openings. We understand that the movement has received some remedial measures.
13. Externally, the grounds require some attention to maintenance and general upgrading. It is understood that Japanese Knotweed has been identified within the boundaries and is currently subject to treatment by specialist contractors.
14. The internal common areas are well presented. Emergency lighting and fire prevention measures are installed, though not tested.
15. The subject Flat comprises of a ground floor flat accessed independently from the rear of number 45/47. We were not able to gain access to the Flat. We understand the Flat to be a one-bedroom apartment with bathroom and kitchen/living areas.

16. Flats 2 and 7 do not benefit from the common areas and do not contribute towards lighting and heating of those areas. The service charge applied to both Flats is adjusted accordingly.

Background

17. The Applicant is the Management Company for the property known as 45 - 47 Despenser Street, Riverside, Cardiff, CF11 6AG ("the Property"). The Directors are Mr John Joseph Feehan and Ms. Alexandra Turton.

18. The Freehold interest in the Property is registered at HM Land Registry in the names of Mr John Joseph Feehan and Ms. Alexandra Turton under title number WA319530.

19. Mr Feehan and Ms. Turton are therefore both the Freehold owners of the Property and directors of the Management Company.

20. The Respondent is the Tenant of Flat number 7, 47 Despenser Street, Riverside, Cardiff, CF11 6AG. He holds the Flat pursuant to the terms of a lease dated the 19th August 1986 and made between Yewrose Limited and Ian Christopher Pike and Elaine Karen Pike for a term of 99 years commencing on the 25th March 1984 ("The Lease").

21. The Respondent is registered at HM Land Registry as being the holder of the long leasehold interest having been registered as such on the 17th April 2008. The Respondent's title is held at HM Land Registry under title number WA367629.

22. In each of the years for which a determination is sought the Applicant served upon the Respondent a ground rent and service charge demand. Copies of the demands which were served upon the Respondent appear at pages 4A – 4D of the bundle provided by the Applicant at the hearing. Each demand gave a breakdown as to how the sum demanded had been calculated so that the Tenant could easily see what the money had been spent on.

23. Each notice was accompanied by two further documents. The first was entitled "Service Charges – summary of rights and obligations" and the second was entitled "The Administration charges (summary of rights and obligations) (Wales) Regulations 2007".

24. For each of the years in question the Respondent had failed to pay the sums demanded.

The Lease

25. At Clause 2 (2) of the Lease the Respondent covenanted to pay and discharge all existing and future rates taxes duties charges assessments impositions and outgoings now or at any time hereafter during the said term charged on or payable in respect of the Flat or any part thereof or charged on or payable by the owner or occupier thereof.

26. At Clause 3 (7) the Respondent covenanted to pay to the Lessor the Lessee's contribution to the Lessors expenses as defined by and assessed pursuant to and in the manner set forth in the Sixth schedule hereto and so that such contribution shall be recoverable by distress as if the same were rent in arrears.
27. Part 1 of the Sixth Schedule defined the " Lessors expenses " as including (1) all costs charges and expenses properly and reasonably sustained or incurred by or on behalf of the Lessor in or about the observance and performance by the lessor of the covenants on the part of the Lessor contained in Clause 4 of the Lease.
28. At Clause 4 (1) of the Lease the Lessor covenanted, inter alia that "during the said term to paint, repair uphold cleanse maintain and manage the retained property in accordance with the provisions of the Fifth schedule hereto.
29. The Fifth Schedule of the Lease further set out the Lessors obligations as to the repair maintenance and management of the Property.

The hearing

30. Ms. Turton appeared on behalf of the Applicant. There was no attendance by the Respondent.
31. She explained that although she also owned the Freehold of the Property, she was also the joint owner of Flat number 5. This had now been let out to a Tenant. She said that she was previously the Tenant in occupation when the Freehold was offered for sale by the previous owners.
32. Ms. Turton informed the Tribunal that the Respondent's service charge account had been in arrears since she had purchased the Freehold in 2015. They had not received any payments since the 5th May 2016 when the Respondent paid £100.00.
33. She stated that she had not really had much personal contact with the Respondent as he did not occupy the Flat. She said that the Flat had been let to a Housing Association.
34. In consequence of the fact that the Respondent did not reside at the Flat the Applicant had adopted the practice of hand delivering each demand to an alternative address at which it was believed the Respondent resided namely, 16 Heol Tasker, Nelson, CF46 6JB. Indeed, she stated that she had previously had limited communication with the Respondent following service of the demands. She seemed to think that the Respondent had fallen on hard times and was unable to pay the demands.
35. Ms Turton said that she had attempted to communicate with the respondents Mortgagee but they would not discuss the issue with her for reasons of Data Protection.

36. The Tribunal asked Ms. Turton if each demand was accompanied by the documents which appeared at pages 4E and 4F of the bundle. These were the notes setting out the Tenant's rights in respect of each demand. Ms. Turton confirmed that each demand was accompanied by those documents. The Tribunal enquired as to whether the notes relating to the Service Charges were also presented in Welsh as well as English. Ms. Turton said they had not been presented in Welsh and only the English version was attached.

Determination

37. The Tribunal was provided with a hearing bundle by the Applicant. It contained a witness statement from Ms. Turton, copies of the relevant demands, information provided to tenants in support of the demands and associated paperwork.

38. The respondent had not filed a defence and had not complied with the directions order dated the 11th April 2019.

39. Although the Tribunal has to determine the reasonableness of the demands in the application it must first be satisfied that the demands are legally valid and enforceable.

40. Section 21(B) (1) of the Landlord and tenant Act 1985 ("the Act") states that "a demand for the payment of a service charge **must** be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges (our emphasis).

41. Under Section 21 (B) (2) of the Act, the secretary of state may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

42. Section 21B (3) of the Act states that "a tenant may withhold payment of a service charge which has been demanded from him if section (1) has not been complied with in relation to the demand ".

43. Section 21B (4) of the Act goes on to say that "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. "

44. This is a mandatory provision if the service charge demand is to be enforceable.

45. For properties situated in Wales the prescribed regulations are "the Service Charges (Summary of Rights and obligations, and Transitional Provisions) (Wales) Regulations 2007. These came into force on the 30th November 2007 ("2007 Regulations").

46. Regulation 3 headed " Form and Content of Summary of Rights and Obligations states that " where these regulations apply, the summary of rights and obligations which must accompany a demand for payment of a service charge must be legible in a type written or printed form of at least 10 point, and **must** contain " (our

emphasis). Thereafter it lists the title and at 3 (b) “the following statement”. What follows is then a detailed number of paragraphs first written in Welsh and then in English. The wording is such that it is mandatory and must be reproduced in exactly the same wording and order as in the regulations. There are no saving provisions which enable the information to be provided in a substantially similar although not identical form.

47. It therefore follows that if a service charge demand served in Wales after the 30th November 2007 does not comply with the 2007 regulations the demand will not be valid.
48. Similar provisions apply in respect of demands served demanding payment of Administration charges.
49. Although it has not been suggested that the Respondent has withheld payment of his service charge due to a failure to comply with the Regulations, The Tribunal must still have regard to the validity of the demands and to ensure that they satisfy the legislative requirements. The service charge demands in the current application do not comply with the requirements of the 2007 Regulations. The demands do not set out the rights and obligations in Welsh as is required under the Regulations. It follows that they are not enforceable until fresh demands have been properly served accompanied by relevant and correct summaries of rights and obligations.
50. However, subject to the above comments, the Tribunal went on to consider the reasonableness of the demands which were the subject of the Application.
51. The Tribunal is satisfied that the sums demanded are properly payable by the Respondent under the terms of the Lease.
52. The Tribunal carefully considered the sums demanded within each year. It was clear that in respect of each year which was the subject of this application the service charge demands were reasonable and the Tribunal makes that determination.

Conclusion

53. The Tribunal finds that the Service Charge demands for the years 2015 – 2019 are reasonable and (subject to paragraph 54 below) are payable.
54. However, to be enforceable the demands must be re - served upon the Respondent accompanied by the relevant and correct summaries of rights and obligations.

Dated this 9th day of August 2019

Andrew Grant
Chairman.