

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0023/09/20

In the matter of Flat 7, Britway Court, Britway Road, Dinas Powys, CF64 4AL

And in the matter of an application under section 27A of the Landlord and Tenant Act 1985

Applicants: Mr. Philip and Mrs. Kim Williams

Respondent: Britway Court Limited

**Tribunal: Mr A Grant, Chairman
Mr Roger Baynham, Surveyor Member
Mrs Juliet Playfair, Lay Member**

Decision

- 1. The Tribunal determines that the service charges for the years 2015, 2016 and 2018 are reasonable. The service charge for the year 2017 is reduced by £422.00. The service charges for the year 2019 are not payable until the Respondent prepares and serves service charge accounts which fully identify all items of income and expenditure and are certified by an accountant in accordance with clause 4 of Schedule 6 of the lease.**
- 2. Further, in respect of all years from 2015 – 2019 no sums are payable until the Respondent serves a valid demand which complies with the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007.**
- 3. The Tribunal also determines that the Respondent’s costs of these proceedings are not to be added to the service charge account.**

Deliberations

Introduction

- 1. This is an application brought by Mr. and Mrs. Williams (“the Applicants”). The Applicants are the holders of a long leasehold interest in the property known as Flat 7, Britway Court, Britway Road, Dinas Powys in the Vale of Glamorgan, CF6 4AL (“the Property”).**

2. The Application seeks to challenge the reasonableness of service charges levied in respect of the property for the period 2015 – 2021. They also seek an order pursuant to section 20C of the Landlord and Tenant Act 1985.
3. The Application is dated the 7th September 2020.
4. The Tribunal issued directions on the 25th September 2020. The matter was set down for a determination on the papers on the 9th February 2021.

The Property

5. The Surveyor member of the Tribunal conducted an external inspection of the property.
6. The development was constructed approximately 12 years ago. It comprises 14 residential flats situated in three separate blocks. It is situated over two storeys and is conventionally built with cavity brickwork which has been cement rendered. The pitched roof is overlaid in composite slate and the wooden window frames are double glazed.
7. There are flower and shrub borders to the front elevation and access between two of the blocks leads to a hard standing area with 14 designated car ports and limited visitor parking. The exterior of the property is well kept and in good condition.
8. Dinas Powys is a popular dormitory town with easy access to Cardiff and has the benefit of local shops and facilities while all other amenities are available in Cardiff which is approximately 7 miles distant.

The Application

9. The Applicants seek to challenge the reasonableness of the service charges in respect of the years 2015 to 2021.
10. In support of the application, they have attached some additional notes to the Application form itself and they also seek to rely upon the witness statement of Mr. Williams which is undated. They have also provided a bundle of documents for the use of the Tribunal.
11. The Respondents have also provided a bundle of documents.
12. By the directions order dated the 25th September 2020, the parties were ordered to complete a Scott Schedule which identified the items which were in dispute. Unfortunately, the Applicants have simply stated that they challenge “all services charges “in each year and refers to “attached legal argument “. There is no attempt to challenge specific items of the service charge accounts on an item-by-item basis at all. That was the purpose of completing the Scott Schedule.

13. The Schedule has not been completed by the Respondent at all.
14. The Applicant takes the point that in their view the Respondents are in breach of the terms of the Lease because the Service charge accounts are not audited. Further, they have not been served within 6 months of the financial year end.
15. The lease itself appears at pages 245 – 267 of the bundle of documents provided by the Applicant. The lease is dated the 18th March 2009 and is made between Britway Court Limited and Donald James Murray and Irene Susan Murray (“the Lease”). It is for a term of 999 years from the 20th December 2008.
16. Within the Lease, the service charge provisions are contained within Part 1 of the Sixth Schedule to the Lease. In particular clause 4 states that:

“A soon as reasonably practicable and at least within 6 months after the end of each accounting period the Landlord will prepare or cause to be prepared a statement of account showing the amount of the Estate Expenses for that period which it shall be certified by a Chartered or a Certified Accountant appointed by the Landlord and a copy of such certificate shall be served by the Landlord on the Tenant and within 14 days after such service the Tenants will pay to the Landlord the amount (if any) by which the Estate Service Charge for that accounting period exceeds the amount paid by the Tenant on account thereof under paragraph 3 of Part 1 of the Schedule and if the sum so paid on account exceeds the Estate Service Charge for the accounting period any such excess shall be credited against the next following payment or payments becoming due from the Tenant under this Schedule.”
17. As can be seen from the wording of clause 4, there is no requirement on the part of the Landlord to have the service charge accounts audited. The requirement is that it contains an accountant’s certificate.
18. The Tribunal has been provided with the accounts for all years up to 2019 and can see that in each case for the years 2015 to 2018 adequate information of costs and expenses has been provided and a certificate has been provided by the Accountant that has prepared the accounts. In those circumstances, there has been no breach of the terms of the lease as regards those years.
19. The accounts provided by the Respondent for the year 2019 are unacceptable in that they provide no accountant’s certificate and the information supplied is insufficient to enable the Leaseholders to properly understand the costs incurred. The information provided for the year ended 31st December 2019 is not in compliance with the terms of the Lease.
20. The Applicants also assert that the accounts have not been provided within 6 months as required by the terms of the Lease. The Tribunal find that point is made out as on several

occasions the accounts have been provided outside of that period. However, in itself that does not render the accounts invalid.

21. Further arguments are advanced by the Applicants.
22. The Applicants assert that there has been a failure by the Respondent to consult in circumstances where charges exceed £100 per flat. They quote by way of example Insurance, Management fees, cleaning and repairs.
23. The Tribunal have no evidence before us that any of the services quoted by the Applicant are provided under a long - term agreement running for a period in excess of 12 months. Indeed, the items appear to represent the cumulative totals of specific jobs and in those circumstances the requirement to consult with the tenants is not triggered. The Tribunal finds that there was no requirement to consult in respect of the insurance, cleaning and repairs.
24. As regards the reasonableness of those items, it is noted that the Applicants assert that the insurance could be obtained more cheaply. However, there is no documentary evidence available to allow the Tribunal to determine if the cheaper quote offered like for like cover. In the absence of supporting evidence the Tribunal find the charges reasonable.
25. The Applicants assert that the cleaning was not up to standard although they say that things have improved since 2019. On this issue there is insufficient evidence advanced by the Applicant to suggest that the charges are not reasonable. The Tribunal find the charges to be reasonable.
26. Whilst there is a general assertion that all of the charges are unreasonable the Tribunal finds that the Applicants have failed to provide sufficient evidence to support such an assertion. It therefore determines the charges to be reasonable.
27. The Management company have been in situ for a number of years and it seems that this element may fall within the consultation requirements. However, there is no evidence before the tribunal to suggest that there is a long - term agreement in place and accordingly we can make no finding that a consultation should have been held.
28. As regards the reasonableness of the Managing Agents fees, the Applicants have failed to advance any evidence that the charges are unreasonable. In those circumstances, the Tribunal determine that the charges are reasonable.
29. The Applicants assert that the additional fee charged by the Managing agent for “professional services” in the sum of £422.00 has never been properly explained. This element appears in the 2017 accounts. In its response the Respondent has made no attempt to explain this charge and in those circumstances the Tribunal find that the charge is unreasonable.

30. It is clear that the real complaint here is that there is a lack of communication from the Respondent. In the Tribunal's view the information provided in the accounts (save in respect of the year 2019) is sufficient to enable the tenants to make an assessment of the reasonableness or otherwise of the charges levied and to mount a challenge to individual items. That has not been done in this application. In the current circumstances, the Applicants have made a general challenge to each year's accounts without providing sufficient evidence to challenge the reasonableness of the charges.
31. The Tribunal determines that the charges for the years 2015, 2016 and 2018 are reasonable. A deduction of £422 must be made in respect of the service charge account for 2017. No payment is due in respect of the service charge demand for the year 2019 until accounts are prepared which properly identify all elements of income and expenditure for that year with the same being certified by an accountant in accordance with clause 4 of the sixth schedule to the Lease. There is insufficient information to make a determination for the years 2020 and 2021.
32. Additionally, the Tribunal notes that the demands that have been served upon the Tenants by the Respondent do not comply with section 3 of the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 ("the Regulations"), in that they are not accompanied by a summary of the tenant's rights and obligations set out in Welsh as prescribed by the Regulations. In those circumstances, the demands for payment are not valid demands and such sum are not payable until such time as the demands have been properly served and conform with the requirements of the Regulations.
33. Finally, the Applicants seek an order pursuant to section 20 C of the Landlord and Tenant Act 1985 that the Respondent's charges of these proceedings should not be added to the Applicants' service charge account.
34. The Tribunal takes the view that the Respondent's response to this application is inadequate. It did not address the limited number of specific issues raised by the Applicants and it did not comply with the order to complete the Scott Schedule. Further, given that the demands in respect of each year under scrutiny are defective then, in those circumstances, the Tribunal determines that the Respondent's costs of these proceedings are not to be added to the service charge accounts.

Dated this 22nd day of February 2021.

Mr. A Grant
Chairman