

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL
[Section 29(1)(b)(ii) Landlord and Tenant Act 1985 the “Act”]

Reference: LVT/0006/05/21

Property: The Rest, Rest Bay, Porthcawl, CF36 3UP

Applicant: The Rest Residents Association (Phase 1)

Respondent: Mayo Property Development Limited

Tribunal: Chairman Dr J Rostron
Surveyor N Martindale
Lay Member C Calvin-Thomas

DECISION

The tribunal finds the Applicant is an association of qualifying tenants (whether with or without other tenants) which is recognised for purposes of the provisions of the Act relating to service charges.

REASONS FOR THE DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

BACKGROUND

1. An application dated 13th May 2021 by The Rest Residents Association (Phase 1) (the “Applicant”) concerns recognition under section 29 of the Act dated 13 May 2021 was received by the tribunal.
2. The Application on Form LVT 9 is signed by Elizabeth Pritchard, Chair of the Applicant and contains a statement of truth. The application is accompanied by a list of 23 names of members of the Rest Residents Association (Phase 1).
3. The Applicant has also submitted a detailed constitution of the Rest Residents Association (Phase 1) and copy of letter dated 5th May 2021 to the Respondent asking them to recognise the Applicant.
4. Directions to the Applicant and Respondent were issued on 9th June 2021.

APPLICANT’S EVIDENCE

5. The Applicant submitted a statement of case which states the Property is a Grade II listed building that has been converted to 35 apartments. It further says 31 apartments have been sold at the date of the statement. The statement is undated. The Property involves the conversion of a former convalescence home. There is a second phase which is a new building and has not been occupied.
6. The salient points raised by the Applicant's statement can be summarised as follows:
 - 6.1 By creating a resident's association, they believe they have been able to collate and summarise the key issues, some of which are considered serious. Such information has been referred to the developer, managing agent, freeholder, Welsh Water and Bridgend building control team. The main problems are deficiencies in the drainage and sewage system and bird infestation.
 - 6.2 The residents have grave concerns about the viability and structure of the future management company as set out by the freeholder and developer. Without an elected resident's association, it is considered it would be difficult for individual tenants to have problems adequately dealt with. As a consequence, it is considered that the establishment of a residents association is necessary.
 - 6.3 There has been a breakdown of trust between the residents, the freeholder and the developer. Until the association was formed, individual residents were unsuccessful in having the deficiencies remedied.
 - 6.4 The residents consider there is a conflict of interest between the long-term goals of the tenants, and developer and freeholder, whose focus is short term.
 - 6.5 It will be several years before the management company becomes functional and this will cause unacceptable delays to tenants who have owned their apartments for more than 18 months.
 - 6.6 The formation of the residents association will act as a catalyst in developing a community of retirees, golfers and surfers, second home owners and full-time residents.

RESPONDENT'S EVIDENCE

7. The Respondents have not responded to either the Applicants letter of 5th May 2021 or the tribunals directions dated 9th June 2021.

THE LAW & GUIDANCE

8. An application for certificate of recognition under section 29 of the Act provides as follows;

A recognised tenants' association is an association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the provisions of the Act relating to service charges either-

 - (a) by notice in writing given by the landlord to the secretary of the association or
 - (b) by a certificate-
 - (i) in relation to dwellings in England, of the First-tier Tribunal; and

- (ii) in relation to dwellings in Wales, of a member of the local rent assessment committee panel.
9. In the case of *Roslyn Mansions Tenants' Association v. Winstonworth Limited (1015) UKUT 0011*, which was an appeal against the decision of the First-tier Tribunal Property Chamber refusing a certificate under section 29 of the Act, HH Judge Huskinson referred to a Guide published by the Department of Communities and Local Government as follows:
- “As a general guide, an association should represent at least 60% of the flats in the block in respect of which variable service charges are payable”.
10. The Upper Tribunal Judge also, at paragraph 11, referred to *Guidance issued by H M Courts & Tribunals Service in document T545* which states:
- “There is no statutory specification of the matters to which the tribunal is to give regard in giving or cancelling a certificate of recognition and each application will be considered on its merits.
- In practice, the tribunal will want to be satisfied that the constitution and rules of association are fair and democratic and that it is independent of the landlord...the tribunal will be concerned to see that the actual paid-up membership of the association represents a substantial proportion (as a general rule not less than 60%) of the potential membership”.
- The Upper Tribunal Judge also referred to *Guidance issued by H M Courts & Tribunals service T545 2018* provides that a certificate may not be given if the tenant's association represents fewer than 60% of the qualifying tenants.

DETERMINATION

11. The tribunal considered the evidence provided by the Applicant. In particular it noted that 23 tenants out of a potential of 35 tenants constituted the current membership of the residents' association. This amounts to 66% of qualifying tenants. This scale of membership well exceeds the 50% or 60% limit recommended by the above-mentioned authorities, which although of English origin have significance in Wales as the Act applies to both jurisdictions.
12. The tribunal took note of the reasons given for the majority of tenants wishing to form a residents' association, they being *inter alia*: - increased ability to collate and summarise issues regarding potential service charge deficiencies, collectively express concern about currently identified deficiencies, and concerns about the administrative structure and efficiency of the management company etc.
13. The lack of response by the Respondent to the Applicant's letter of 5th May 2021 and tribunal's directions dated 9th June 2021 was noted by the tribunal with some disappointment.
14. The tribunal considered the constitution of the residents' association covered the issues which would be expected in such a document, they being: identity, objectives and aims, membership, committee, officers, elections, subscription, meetings, voting, minutes, finance, accounting and audits, alterations, dispute resolution, indemnity, disclaimer, and. Dissolution.

15. The tribunal noted the Applicant's concern that it will be several years before the management company becomes functional. In view of this a period of 5 years is considered appropriate for the duration of the initial certificate.
16. For the above reasons the tribunal considered the Applicant is an association of qualifying tenants (whether with or without other tenants) which is recognised for the purposes of the Act relating to service charge and duly issues a certificate to that effect.

Dated this 16th day of September 2021

J Rostron

Chairman

RESIDENTIAL PROPERTY TRIBUNAL
RENT ASSESSMENT COMMITTEE

CERTIFICATE OF RECOGNITION

An application from The Rest Residents Association (Phase 1) for a Certificate of Recognition under the provisions of section 29 of the Landlord and Tenant Act 1985 as amended by Paragraph 10 of Schedule 2 to the Landlord and Tenant Act 1987 has been considered by

Dr J Rostron

Mr N Martindale

Mrs C Thomas

who are persons appointed to act as a Rent Assessment Committee.

This is to certify that

The Rest Residents Association (Phase 1)

Is a Recognised Tenants' Association for the purposes of the aforesaid Section.

This certificate shall be valid for a period of 5 years commencing on 8 September 2021 unless previously cancelled.

Dated this 16th day of September 2021

Signed

J Rostron

Chairman

(One of the persons appointed by the President of the Residential Property Tribunal as a member of the Rent Assessment Committee)