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RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0020/09/23

In the matter of Flat 19, Chulmleigh Close, Rumney, Cardiff, CF£ 4BL

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

APPLICANT :	Joseph Henly
RESPONDENT:	Board of Directors of Rumney Court Company Ltd
Tribunal:	Tribunal Judge Trefor Lloyd Mr. H Lewis FRICS (Surveyor Member) Dr. A Ash (Lay Member)

Date of determination: 12th July 2024.

DECISION

The Tribunal declares that under Sections 19 and 27A of the Landlord and Tenant Act 1985 :

(a). In relation to both service charge sums claimed in respect of scaffolding, in the sum of £91.67 respectively the Applicant is both liable and the sums are reasonable. However, due to the failing to date of the Respondent to serve a valid Section 21B the sums are not currently payable.

(b). As regards the service charge sum initially claimed by way of advanced payment relating to warranty insurance (in the sum of £166.66) subsequently confirmed at an actual cost of £59.16 the Applicant is liable and both sums are reasonable. However, due to the failing to date of the Respondent to serve a valid Section 21B the sum is not currently payable.

REASONS FOR DECISION

Background

1. This is an application by the Applicant Mr Joseph Henly concerning service and administrative charges arising under a lease of flat 19 Chulmleigh Close Rumney Cardiff CF3 4BL ("the property").

2. The initial application related to three items being payment for scaffolding for common parts in the sum of £91.67 and a claim for landlords legal costs in the sum of £300. Both these items fall within the service charge year 1st September 2022 to the 31st of August 2023. A further administrative fee in the sum of £500 which falls within the 2023 to 2024 service charge year. More latterly by

consent between the parties a further sum of £110.38 relating to a claim for insurance premium as also included.

3. In accordance with the eventual tribunal directions, statements from the parties were served together with a Scott schedule. The Scott schedule contained the first three items as referred to in paragraph two above as agreement was only reached in relation to dealing with the third item once the Scott schedule had been filed and served. The hearing took place on the 12th of July 2024 using a virtual hearing room. Mr Ian Henly the Applicant's father represented the Applicant. The Applicant himself did not attend the hearing. The Respondents were represented by Mr Owain James of Counsel.

4. Mr Ian Henly and Mrs Jean Henly gave evidence on behalf of the applicant and Mr Steven Sean Phelan and Mr. David Simpson gave evidence on behalf of the Respondents.

5. Prior to the parties opening their respective cases the matters in dispute were summarised. At that stage Mr Phelan took issue with the inclusion of the fourth item being the claim for insurance premium. It was explained to him that the then solicitor acting for the Respondents had agreed for this matter to be included as well and the Respondents' counsel was referred to an e-mail from Mr Alex Harvey the solicitor. As clearly Mr. James would not be able to take instructions whilst in the hearing room a short adjournment was agreed so that instruction could be taken.

6. Following the adjournment Mr. James confirmed that the Respondents were happy for the 4th item to be considered as part of these proceedings. He also went on to confirm that the Respondents were now for the purposes of these proceedings conceding two of the items claimed being the Landlords legal costs of £300 and the administration fee of £500. As a consequence, all that remained to be considered was the charge for scaffolding in the sum of £91.67 and the charge for insurance in the sum of 110.83.

7. Having confirmed to the parties that we as a Tribunal had read the bundle which extends to some 236 pages we went on to hear the evidence the Applicant via Mr Ian Henly introducing his case first with cross examination by Mr. James and then evidence on behalf of the Respondents in respect of each of the two items.

8. Mr Henly gave a brief opening from which it became apparent that the main matter in issue between the parties was the withholding of Landlord's consent for sub-letting the property. As had been made abundantly clear at earlier case management conferences that was not a matter for this tribunal and certainly not a matter given that the Respondents were now no longer pursuing the legal charges and administration fee which in total amounted to £800 as aforesaid.

£91.67 – charge for scaffolding.

9. In relation to this matter we were referred to page 123 in the bundle which was the first page of a letter dated the 5th of August 2022 to leaseholders making reference to attaching scaffolding to cover the repaired areas.

10. The Applicant's case in relation to this payment is that he had paid it twice.

11. Mrs Henly gave evidence first confirming the accuracy of her witness statements which could be found at pages 12 to 15 in the bundle and a further supplemental statement at pages 16 to 19. Mrs Henly was cross examined by Mr James and confirmed that:

    (i) All paperwork relating to the purchase by the Applicant was sent to her and Mr Henly and in effect they were overseeing the purchase on the Applicant's behalf. She maintained that they were never sent a bill or informed of the first section 20 consultation.

    (ii) It is common ground between the parties that the applicant did not purchase the property until 9/9/22. It would therefore follow that it would not have been possible for the Applicant to have been served directly with the first section 20 consultation. In this regard it is the respondent's case that copies were sent to the conveyancer at the time dealing with the matters.

    (iii) It is clear however that the Applicant was sent the second section 20 consultation notice dated the 14th of March 2023 and we have seen copies of the same within the bundle at pages 130 to 135.

    (iv) Mrs Henly agreed that the cost of scaffolding was reasonable and was required but paid for twice.

12. In relation to paying twice it is the Applicant's case that he paid £91.67 on the 31st March 2023 but that this sum was also included within a further payment of £2,458.38 made on the 4th May 2023. Evidence of the payments can be seen at page 156 which is a copy of the statement of account for the property. By way of corroboration as to the first payment we were referred to the invoice at page 144 from JAB scaffolding. In relation to the second payment we were taken to the section 20 notice dated the 14th of March 2023 and specifically the quotation at page 134 which included scaffolding. The total for the work was proposed at £14,750 with 1/6 being £2,458.38 the figure paid by the Applicant. Mrs Henly said that she was told that if both were paid the second one would be credited to forthcoming section 20 process.

13. After hearing evidence from Mrs Henly we heard evidence from Mr Simpson who confirmed the accuracy of his witness statement at pages 68 to 72 with exhibits to from page 73 to 100.In relation to the scaffolding payment Mr Henly crossed examined Mr Simpson upon the basis that the Applicant had been charged and paid twice.

14. When it was put to Mr Simpson that he had not included the initial section 20 notice within the LP1 file as there was no mention of the same within the document dated 16th June 2022 he said that he had sent the initial section 20 Notice by e-mail under separate cover. When asked why he did not disclose the copy e-mail he simply said that he had not been asked to do so.

15. When pressed in cross examination with reference to the entries at page 151 of the account for the property as to who made the entries on the account his answer was "us". He qualified that by saying it was his company Simpson BMC and that he and other members of staff made entries. He could

not however honestly recall if it was he who had done so. When it was put to him that it was incorrect as entered twice he quite candidly said "I can't recall". We were also referred to page 131 in the bundle which was the section 20 notice dated the 14th of March 2023.

16. Mr H Lewis (surveyor member of the Tribunal) read out the first numbered paragraph as follows:
"The works to be carried out under the agreement are as follows:
To a) erect **further scaffolding** as required for each part of the work.

and asked Mr Simpson what he understood it to mean:

17. Mr Simpson's evidence was that this must have related to additional scaffolding. Mr Henly at this stage interjected saying he did not agree. In turn when, Mr Henly was asked by Mr H Lewis why the word "further" would be used unless to denote the fact that this was additional scaffolding. Mr Henly disagreed but was not able to explain the basis of his disagreement or a different interpretation to the wording.

Insurance Payment £110.38

18. In relation to the £110.38, this refers to an overpayment of the insurance back guarantee. The quotation at page 134 and specifically 135 confirmed the cost to be "under £100" and 1/6 of the £1,000 quote was charged at the same time as the other S20 Notice payment and included within the £2,458.38 payment on the 14th March 2023. When the actual invoice was submitted the figure on its face was £300 (page 139). Despite this it seems the actual payment made was £335 (see the advance notice of payment document page 141). Accordingly, the Applicant asserts that the actual payment should have been £55.83 (i.e 1/6 of £335) and not £166.66 (i.e 1/6 of £1000) thus rendering an overpayment of £110.83.

19. Mr Phelan was the last witness to give evidence. He stated that any money left over at the end of the process would be repaid.

20. Mr Henly then made the section 20C costs application stating that the claims he was defending had been malicious and vexatious.

Closing Submissions

21. On behalf of the Respondents Mr James closed his case first making the following points:

(i) The scaffolding was required and there was no issue in relation to the sum contended for. There had been some confusion with the works that previously did not go ahead.

(ii) Mr Henly on behalf of the Applicant provided no evidence as to an industry standard of roofers also obtaining scaffolding in quotes.

(iii) The application before us and the only one we could determine is one relating to a challenge to the Section 20 process and reasonableness of sums contended for. Despite this, the reality of the Applicant's complaint is that he wished to recover alleged overpayments.

(iv) In relation to the £110.83 again this was an argument relating to overpayment. The Respondents rely on the initial quotation within the S20 process. It was not unusual for sums to change and the Respondents had confirmed that at the end of the day any overpayment would be credited to the account relating to the property.

(v) In relation to the section 20C claim Mr James stated that was an exception not the rule and arguments of the type we heard are of a type that are passionately argued from day-to-day under the microscope. To disallow costs would be too high a hurdle to cross but if we were minded to do so Mr James sought to reserve the right to provide further written submissions on the point dependent upon our findings.

22. Mr Henly for the Applicant submitted that:

(i) There was no evidence of service of the first section 20 on the applicant and there was no demand for it so the was no compliance with section 21(b).

(ii) He maintained there was clear evidence the scaffolding was paid for twice and it was reasonable to challenge that overpayment because it was unreasonable to have charged twice for the same thing.

(iii) In terms of the £110.83 insurance backed premium overpayment he again made the same points and submitted that it was unreasonable to simply keep the money in "the coffers".

23. Mr Henly also enquired about claiming the Applicant's cost but when asked if the Applicant had incurred any costs he said he had not.

The Law

24. Section 19 of the Landlord & Tenant Act 1985 ("the Act") places limitations on the recoverability of service charges on the basis of reasonableness. Section 27A of the Act provides the Tribunal with power to determine the amount of service charge payable in respect of costs incurred relating to repairs and maintenance.

25. Section 20 of the 1985 Act provides a requirement of a consultation in respect of qualifying works if a leaseholder is expected to pay more than £250.

26. Section 21B prescribes certain details that have to be provided with any demand for payment of service charges.

The Detail

27. The Consultation procedure to be followed is set out in the Service Charges (Consultation Requirements) (Wales) Regulations 2004 SI 2004/684 ("The Consultation Regulations"). By virtue of Regulation 6 of The Consultation Regulations, in the absence of a valid consultation, the amount that the freeholder can lawfully recover from the leaseholder for work is capped at £250.

28. Section 19 of the Act provides as follows:

19 Limitation of service charges: reasonableness.

(1)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.

(2)Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

28. Section 21B of the Act provides as follows:

21B Notice to accompany demands for service charges

(1) 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.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) 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.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

29. Section 27A of the Act provides as follows:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a)the person by whom it would be payable,
(b)the person to whom it would be payable,
(c)the amount which would be payable,
(d)the date at or by which it would be payable, and
(e)the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a)has been agreed or admitted by the tenant,
(b)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c)has been the subject of determination by a court, or
(d)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)in a particular manner, or
(b)on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

30. In relation to the Application under Section 20C. Section 20C of the 1985 act provides:

(1) "20C(1) a tenant may make an Application for an Order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Court, Residential Property Tribunal or Leasehold Valuation Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the Application.

(2) The Application shall be made:

(a) in the case of Court proceedings, to the Court before which the proceedings are taking place or. if the Application is made after proceedings are concluded, to a County Court;
(aa) in the case of proceedings before a Residential Property Tribunal to a Leasehold Valuation Tribunal.
(b) in the case of proceedings before a Leasehold Valuation Tribunal, to the Tribunal before which the proceedings are taking place or, in the Application is made after proceedings are concluded, to any Leasehold Valuation Tribunal.

(3) The Court or Tribunal to which the Application is made may make such Order on the Application as it considers just and equitable in the circumstances".

31. In accordance with Section 20C of the 1985 Act, the Tribunal may make such Order as it considers just and equitable in all the circumstances and a number of cases provide guidance in this regard.

Discussion

31. The applicant's application is based upon the reasonableness of the sum charged and also the liability to pay. No issue was taken in relation to the consultation process itself. Conversely, the applicant takes issue and asserts that none of the requirements under section 21B were adhered to.

32. Dealing with the latter issue first. At no stage were we referred to a demand which complied with the statute requirements under section 21B. The later requirements therein being that a demand for payment of a service charge has to be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges. In Wales the provisions are governed by the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (Wales) Regulations 2007 which require that a bilingual copy of the summary of rights and obligations have to be served. Absent the same being undertaken the sum(s) are not due and in the event of payment being withheld no avenues open under the provisions of the lease can be relied upon to enforce payment. The fact that a payment have been made matters not (Section 27A(5)) unless the sum(s) demanded have been agreed.

33. Given the above we have no difficulty in finding that the Respondents have failed to comply with the requirements of Section 21B and as such the sums paid are not currently due. That position can, of course, be rectified retrospectively by the Respondents serving the appropriate demand(s) for payment accompanied by the summary of right and obligations as aforesaid.

34. That being the case we determine it appropriate to proceed to consider in isolation the questions of liability and reasonableness appertaining to each payment.

35. Given the common ground between the parties that the initial scaffolding cost stood alone at £91.67 (i.e. under the £250 limit to trigger consultation) there would not be any need to follow the statutory consultation process. That, in itself deals with the Applicant's point that he was allegedly never shown the initial Section 20 Consultation without the need for us to determine that aspect one way or another.

36. It is clear from the papers and the evidence that the only challenge to liability was predicated upon the Applicant's case that he had paid twice for the same thing.

37. In relation to reasonableness of the £91.67 this sum was not challenged but indeed agreed by Mrs Henly under cross examination as reasonable. In the circumstances we find that this sum is a reasonable sum to be paid but for the reasons set out above (although paid) is not yet due and will only fall due once a Section 21B demand is made.

38. The real nub of the issue here was whether or not scaffolding had been paid for twice. In reality, the Applicant was seeking a repayment rather than anything else.

39. As to payment twice for the same thing it is clear when one considers the wording of the quotation at page 131 in the bundle (as referred to in paragraph 16 of this decision) that the use of the word "further" given its usual meaning would relate to something extra / additional we find as a fact that the Applicant has not paid twice for the same thing. We find that the Applicant is liable for this second sum of £91.67 and that this sum is also reasonable in all the circumstances. For the reasons as set out above, this sum of £91.67 (albeit also having been paid) is not due and will not fall due until there has been compliance with the Section 21B requirements.

40. In relation to the insurance payment of £110.83 that clearly relates to a request for a repayment rather than anything else given the evidence we heard about the way the figure was calculated. We accept the submissions on behalf of the Applicant that it is not unusual for section 20 exercises to initially be based upon estimates (when calculating the advance service charge) and then reviewed upon receipt of the final invoice. The Applicant did not advance any positive case against the in principle liability or the reasonableness of the actual sum paid. Having considered the evidence we find as fact liability for this sum and that the initial sum of £166.66 (1/6 of £1,000) to be a reasonable sum by way of estimate and furthermore the final sum of £59.16 to be reasonable. Again, for the reasons as aforesaid neither the sum of £166.66 or £59.16 (despite having been paid) are not due and will not fall due until there has been compliance with the Section 21B requirements.

Section 20C Application

41. The current position is that the abandoned claims about legal fees and administrative charges for the first time on the morning of the hearing despite the matters being live issues from the outset and to an extent the Applicant has succeeded with the live outstanding matters to the extent that until the Section 21B procedures have been followed correctly the sums will technically not be due.

42. Against this background parties are invited to file and serve further submissions limited to the issue of costs relating to the Section 20C Application within 21days of the date of this decision (i.e. by no later than 12 noon 2nd September 2024).

Dated this 12th day of August 2024.

Tribunal Judge T. Lloyd