

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0009/05/24

In the Matter of: 6 Tudor Court, Murton, Swansea, SA3 3BB

In the matter of Applications under Section 19, 27A and Section 20C of the Landlord and Tenant Act 1985

APPLICANT: David Barlow

RESPONDENTS: First Port Property Management Ltd

TRIBUNAL: Tribunal Judge Kelly Byrne
Mr Hefin Lewis FRICS, Surveyor Member
Dr. Angie Ash, Lay Member

VENUE: On the papers

DATE OF HEARING: 15th November 2024

DECISION

- 1. The Tribunal dismisses the Applicant's Application under Section 27A of the Landlord and Tenant Act 1985**
- 2. The Tribunal dismisses the Application under section 20C of the Landlord and Tenant Act 1985**

Background

1. David Barlow ("the Applicant") applied to the Tribunal for a determination under section 19, 27A and 20C of the Landlord and Tenant Act 1985 ("the 1985 Act"), in respect of 6 Tudor Court, Murton, Swansea, SA3 3BB ("the property") for the service years ending 2022, 2024 and 2025.
2. The Applicant is the leasehold owner of the property, who derived ownership from a lease dated 20th September 2005, made (1) Peverel Investments and (2) Keziah Joan Gabriel ("the Lease"). The freehold owner of the Property and the Applicant's immediate landlord is Proxima GR Properties Limited ("Proxima").
3. OM Limited is the named management company in the Lease. Firstport Property Services Limited ("the Respondent") is a management company, which acts as a managing agent. Proxima GR Properties Limited is the head lessor in respect of the Property and is the Applicant's immediate landlord.
4. The Respondent is the company employed by Proxima to manage the development of which the Property forms part, including the provision of servicing and the demanding and collection of service charges.

The law

5. s.19 of the Landlord and Tenant Act 1985 states

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.

6. Section 27A of the Landlord and Tenant Act 1985 states:

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.

6. Section 20C of the Landlord and Tenant Act 1985 states that;

“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,.....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.”

7. The application in the case of proceedings before a Leasehold Valuation Tribunal is to be made to the Tribunal before which the proceedings are taking place and the Tribunal may make such an order on the application as it considers just and equitable in the circumstances.

The Lease

Service Charge

8. The service charges in respect of Maintenance Expenses are set out within the Eighth Schedule, which includes:
 - 1 The costs and expenses incurred by the Lessor in carrying out its obligations set out in the seventh schedule hereto
 - 2 The costs of inspection repairing maintaining replacing renewing decorating cleaning heating lighting and supplying hot water to all parts of the reserved property
 - 3 The cost of supplying providing hiring inspecting maintaining renewing or replacing repairing servicing and keeping in good and serviceable order and condition appurtenances fixtures fittings furnishings receptacles tool appliances materials systems equipment and other things in or on the reserved property or which the Lessor may deem desirable or necessary for the maintenance appearance upkeep or cleanliness of the Estate.
 - 4 The cost of insurance of any heating systems installations appliances and equipment in the reserved property to the extent that such insurance shall in fact be taken out by the Lessor.
 - 5 All rates (including water rates) taxes assessments and outgoings payable in respect of the Estate (other than the dwellings)
 - 6 The salaries wages and all other payments (including payments in respect of redundancy and unfair dismissal and the provisions of pensions (if any) paid to or in respect of the employment of or providing under contract the Warden the Relief Warden and any caretaker porter or other staff employed or contracted by the Lessor and the cost of the provision maintenance and renewal of any uniform or other equipment provided for them and any rent or licence fee in respect of any accommodation provided for them for their use and a notional rent (not exceeding a current market rent such rent to be determined by the Lessor's surveyors acting as an expert) for any such accommodation provided by the Lessor rent free.
 - 7 The fees and disbursements paid to any agents appointed by the Lessor in respect of the management of the Estate and in connection with the collection of rents and the service charge from the lessees of the Dwellings.
 - 8 The fees and disbursements paid to any accountant solicitor or other professional person in relation to the preparation audit or certification of any accounts of the costs expenses and outgoings and matters referred to in this Schedule and the collection of the rents and the service charges contributed by the lessees of the Dwellings.
 - 9 The amount which the Lessor shall properly be called upon to pay as a contribution towards the expense of making repairing maintaining rebuilding or renewing all ways pavements sewers drains pipes watercourses party walls party structures party fences or other conveniences which may belong to or be used for estate exclusively or in common with other premises near and adjoining thereto.
 - 10 Any expenses costs and fees incurred by the Lessor under or in relation to Section 136 of and Schedule 19 to the Housing Act 1980 (or any enactment modifying or replacing the same) and any expenses costs or fees incurred by the Lessor under or in relation to or otherwise howsoever arising out of the arbitration or contemplated arbitration or any proceedings or contemplated proceedings or disputes between two or more of the Lessor and the Lessee and a lessee or lessees of the other Dwellings under any of the provisions of this lease or in consequence of the alleged default of the lessee (or the equivalent provision of any lease of any of the other dwellings or in consequence of the alleged default of another lessee of such a dwelling.

- 11 All other expenses (if any) incurred by the Lessor or its agents in or about the maintenance and proper and convenient management and running of the Estate including in particular any interest paid on any money borrowed by the Lessor to pay any expenses incurred by it.
- 12 Any Value Added or other Tax payable in respect of any costs expenses outgoings or matters falling within any paragraph of this Schedule.
- 13 Any proper sum for future or contingent liabilities and any reasonable reserve and such sum or sums as shall be estimated by the Lessor or its agents to provide a reserve to meet all some or any of the costs expenses outgoings and matters mentioned in this Schedule which the Lessor or its agents anticipates will or may arise during the remainder of the term granted by this Lease.
- 14 The costs incurred in abating any nuisance or executing such works as may be necessary for complying with any notice served by a Local Authority or other authority in connection with the Estate or any part of it in so far as the same is not the liability of or attributable to the fault of any individual lessee of any of the Dwellings.
- 15 Preparing copying and supplying to the lessees of the Dwellings copies of any regulations notices or circulars made by the Lessor or any other person governing the use of the Dwellings and of the Estate.
- 16 The cost of taking all steps in making representations against or otherwise contesting or in complying with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations orders and bye laws made under them relating to the Estate or in respect of any servant employed by the Lessor in connection with the Estate except in so far as such compliance is the responsibility of the lessee of any of the Dwellings.
- 17 The provision inspection maintenance and renewal of any additional facilities or service or any alternative services for any of the matters referred to in the Seventh Schedule hereto of this Schedule which in the opinion of the Lessor or its agents it is reasonable to provide or carry out for the good management of the Estate or for the benefit of the lessees of the Dwellings.
- 18 Generally managing and administering the Estate and protecting the amenities of the Estate and engaging such persons or sub-contractors as may be necessary to carry out this and the other matters in Seventh and this schedule.
- 19 The fees of the Lessor for the provision or carrying out of any of the matters referred to in this Schedule that shall be undertaken by the Lessor and not a third party and the Lessor shall be entitled to retain for its own benefit any agency or commission paid or allowed to the Lessor in respect in respect of any insurance contract or otherwise and the full amount of any premium or payment payable there under shall be treated as expended by the Lessor for the purpose of this Schedule.

THE NINTH SCHEDULE before referred to:

The Service Charge

1. In this Schedule:

- (i) **“the Service Charge” means that proportion of the Maintenance Expenses shown as the service charge proportion in the particulars**
- (ii) **“the interim Service Charge” means a payment on account of the Service Charge as hereinafter provided**
- (iii) **“the Service Charge Statement” means an itemised statement of:-**
 - (a) **The Maintenance Expenses for a year (or on the first occasion of a shorter period) ending on the thirty-first day of March**
 - (b) **The amount of the Service Charge due in respect therefor (any apportionment necessary at the beginning or end of the term hereby granted shall be made on**

the assumption that expenditure on services is incurred as a constant daily rate) and

- (c) Sums to be credited against the service charge being the interim service charge paid by the lessee for that year or period and any service charge excess from the previous year or period accompanied by a certificate that in the opinion of the accountant preparing it the statement is a fact summary of the maintenance expenses set out in a way which shows how it is or will be reflected in the service charge and is sufficiently supported by accounts receipts and other documents that have been provided to him.
- (iv) “Service Charge Deficit” means the amount by which the service charge shown on a service charge statement exceeds any credit shown thereon.
- (v) “Service Charge Excess” means the amount by which any credit shown on a service charge statement exceeds the service charge shown thereon.
2. The tenant shall if required by the lessor pay to the lessor such sum or sums in advance and on account of the service charge as the lessor or its accountants and managing agents (as the case may be) shall specify at their discretion to be a fair and reasonable interim payment.
 3. The service charge statement for the period ending the thirty-first day of March One thousand Nine Hundred and Eighty Six and for each subsequent year shall be prepared by an independent member of the Institute of Chartered Accountants in England and Wales to whom the Lessor or its managing agents shall furnish all accounts and vouchers and the certificate of such an accountant as provided in paragraph 1(iii) above shall (unless any manifest error shall appear thereon and save on any question on law) be binding on the lessee.
 4. The Lessor or its managing agents shall as soon as reasonably practicable after receiving a service charge statement serve it on the lessee by sending him a copy thereof.
 5. Forthwith upon service on him of a service charge statement the lessee shall pay to the Lessor any service charge deficit shown thereon and any service charge excess shown thereon shall be allowed by the Lessor to the Lessee against future payments of the interim service charge and the service charge.
 6. The Lessor may in its absolute discretion amend the date on which the accounting period referred to above ends and the dates for payment of the interim service charge.

The Applicants case

9. The Applicant has submitted a Scott Schedule setting out that the service years from 01/04/2023 to 31/03/2025, which is summarised in the table below:

Item	Description	Amount	Challenge
1	Damp cavity wall insulation General maintenance	£416.67 (5000/12) £416.67 (5000/12)	November 2023 to present – 5 rooms unable to unpack and safely live in
2	No one on site Staff relief/deputy	£31.67 (380/12) and £29.17 (350/12)	No resident manager
3	Monitoring service	£49.33 x 2 (£592/12 x 2)	No such thing, don't have one
4	Contingency fund	£166.67 (£2000/12)	Nothing ever spent

5	Replace 2 Windows replacement And disturbance to loft	££240.00 (£2000/12) £2500	Nothing ever spent Total affect ETC
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10. On 26th June 2024 Directions were issued by the Tribunal requiring the Applicant to file a Scott Schedule, copies of any alternative quotes for works, photographs, a statement setting out his case and supporting evidence: with a signed witness statement.
11. Whilst the Applicant filed the Scott Schedule as summarised above and contained at page 18 of the hearing bundle, he has failed to provide any further documentation to the Tribunal.

The Respondents case

12. The Tribunal had before it the Respondents case statement [p.19-29] and supporting documentation. The Respondent submits that Service charges have been properly budgeted, demanded and accounted for. They state that the matters that are being challenged are matters that are expressly provided for as maintenance expenses under the lease and are therefore service charges.
13. They set out their response in respect of the reasonableness of the service charge which is what is disputed by the Applicant. They submit:

‘As to the specifics of the challenges, they have not been made with sufficient particularity, detail or indeed even with reference to any applicable provisions of the Lease. There are no comparables or other documents to substantiate them; they are bare challenges appearing to be an indication of what the Applicant considers he is owed, which is arbitrary and unjustified.’

‘Regarding the insulation referred to, this is simply not understood. There is no proper explanation or evidence given to explain/substantiate this’

‘Servicing is provided at the development to the requisite standard, evidenced by the annual service charge accounts’

That the Applicant will not be charged for a relief manager or equivalent

‘As to monitoring, leasehold owners have access to a 24-hour monitoring service via telephone, including for servicing requirements and emergencies/out of hours issues to be reported, looked into and dealt with. This is a necessary service, particularly for emergencies which can occur.’

‘As to windows the challenge is again, not properly explained/justified, including without any reference to the Lease. On review, windows appear demised to the Property (as set out above), so are the responsibility of the Applicant’
14. The Respondents further submit that the Applicant is the new leasehold owner of the property and was registered as such on 7th February 2024 as per the HMLR Official Copies of Register of Title (p.38-40). That the Applicant may only challenge service charges within his period of leasehold ownership and submit that the application should be limited accordingly.
15. The Respondents issued a service charge demand on the Applicant on 2nd April 2024, for the 2024/2025 service year, in the sum of £1,614.00. Under the Ninth Schedule within the lease,

service charges are demanded each service year, in advance and at the end of the service charge the will either be a balance charge or a credit given to the tenants.

16. The Respondent submits that *'The service charges challenged are reasonable and payable. The services/matters charged for are those prescribed by the Lease, the costs of which the Applicant is contractually obligated to contribute towards under the Lease. The Applicant has not been charged for and will not be charged for matters/services for which he is not obliged to contribute under the Lease'*

'The Respondent would respectfully ask the Tribunal to note that this is the Applicant's Application and as such the burden of proof rests with the Applicant (to prove the allegations of unreasonableness). The Applicant has not discharged that burden in that no comparable quotations or similar for servicing have been provided; there is also no evidence provided to substantiate the allegations of unreasonableness (which are essentially bare), despite the fact that the Tribunal had ordered a statement of case and the provision of comparables within the Directions.'

In conclusion:

'The Respondent respectfully requests that the Tribunal (i) limit the scope of the challenge as described, (ii) determine the challenged service charges as reasonable and payable by the Applicant and (iii) refuse to grant any Section 20C LTA 1985 Order (or appropriately limit the same where applicable, subject to the outcome of the proceedings).'

Decision

17. The Tribunal convened on 15th November 2024 to consider this matter on the papers. It had before it a 117-page Hearing Bundle comprising of limited evidence from the Applicant and detailed evidence from Respondent. The Tribunal has carefully considered all the evidence before it.
18. The Applicant does not appear to be disputing that the cost of the maintenance falls within the scope of the service charge provisions in the Lease, and the Tribunal was satisfied that in principle such expenditure, actual or anticipated, was permissible. As to whether the expenses were reasonably incurred, in the first instance the onus is on the Applicant to evidence such matters that might lead to a financial adjustment.
19. The Applicant has produced no comparable evidence to the Tribunal to demonstrate that the amount of costs are unreasonable, the Tribunal only had before it the application form and the Scott Schedule provided by the Applicant. Nor has the Applicant provided evidence to show that what has been claimed under the service charge has not been incurred.
20. The Tribunal agree with the submissions made by the Respondent that the service charge application should be limited to the period that the applicant owned the property, which is from 7th February 2024 as confirmed in the HMLR Official copy of register of title (p.38-40). The service charge years under the lease run from 1st April until 31st March. This application is therefore limited to the service year of 2024/2025.

21. The Tribunal must base its decision on the evidence before it. The Tribunal has not been provided with any evidence by the Applicant to establish a prima facie case and therefore finds that the service charge for 2024/2025 of £1,614.00 is reasonably incurred and payable.
22. The Tribunal is reassured by the Ninth Schedule within the lease that if the amount of service charge is too little, there will be a balance charge or if the tenants have paid too much, they will be credited with the unspent amount.

Application under s.20C of the 1985 Act

23. The Applicant made an application under s.20C of the 1985 in respect of the ability of the Respondent to recoup the legal costs in defending this application under the service charge provision within the lease.
24. The Tribunal again had little information from the Applicant as to why it should grant an application under s.20C.
25. The Respondent submitted that the Tribunal should 'refuse to grant any Section 20C LTA 1985 Order (or appropriately limit the same where applicable), subject to the outcome of the proceedings'
26. Paragraph 10 of The Eighth Schedule of the lease 'Maintenance expenses' provides for any expenses, costs or fees incurred during any proceedings between the lessor and lessee fall within the service charge.
27. The Tribunal must consider what is just and equitable in all the circumstances. This application was brought by the Applicant, who did not comply with the Directions issued by the Tribunal, save for providing a Scott Schedule. There was no supporting evidence or clarification of the matters disputed insofar as how they relate to the payability and reasonableness of the service charges within the lease. The Respondents on the other hand, have complied with the Directions and prepared a case to defend against the application, including instructing solicitors.
28. Tribunal therefore determines that it is just and equitable in all of the circumstances not to grant the s.20c application. The costs of these proceeding are to be attributed to the service charge.

Dated this 30th day of December 2024



Tribunal Judge K Byrne