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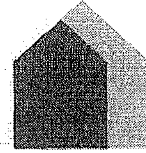

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AW/LSC/2010/0481

Premises:	133B Holland Road London W14 8AS
Applicants:	Mr M Singh Ms P Kaur
Represented by:	Mr Singh in person
Respondent:	Royal Borough of Kensington & Chelsea
Represented by:	Mr A Walder of counsel
Tribunal:	Mr NK Nicol Mr J Avery FRICS Mr P Clabburn
Date of Hearing:	11/10/10
Date of Decision:	11/10/10

REASONS FOR DETERMINATION

1. The Applicants are the lessees of one of 5 flats at 133 Holland Road, London W14 8AS of which the Respondent is the freeholder. They applied for a determination as to the payability of service charges in the sum of £7,885.96 in respect of a programme of major works carried out mainly between 19th March 2007 and 20th March 2008. The Tribunal directed on 3rd August 2010 that there would be a preliminary hearing on one issue in the hope that any remaining issues (concerning the standard of the works) could thereafter be dealt with in mediation. The relevant issue was whether the Applicant had been consulted in accordance with the requirements set out in s.20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

2. The Respondent purported to serve the two requisite notices, dated 1st August 2005 and 17th November 2006, in accordance with the consultation requirements by hand-delivering the first and sending the second by first-class post. The problem is that the Applicant did not receive them. He had moved out in 2002, sub-letting the flat, and, by the time of the first notice, he had moved to Buckhurst Hill. He alleged that the Respondent's failure to serve the notices at the Buckhurst Hill address was a failure to comply with the consultation requirements. The Respondent denied this and, in the alternative, sought dispensation from the consultation requirements under s.20ZA of the Landlord and Tenant Act 1985.

3. The Respondent also queried the Tribunal's jurisdiction. Under s.27A(4)(a) of the Landlord and Tenant Act 1985, an application may not be made to the Tribunal in respect of a matter which has been agreed or admitted by the tenant. Mr Walder, counsel for the Respondent, pointed out that the Applicant had stated in correspondence several times that he intended to pay what he owed and that he had agreed a payment plan for monthly payments towards his arrears. This he alleged, together with his tardiness in raising the issue of consultation, constituted an agreement or an admission as to liability. The Tribunal has no hesitation in rejecting this contention. In context, the Applicant's agreement to make payments was clearly to avoid being taken to court while he continued to dispute his liability for the sum claimed on the basis of alleged flaws in the standard of

works. He clearly never agreed that he was liable for the whole sum, nor did he bind himself not to raise the issue of consultation.

4. The service of notices is governed by s.196 of the Law of Property Act 1925, the provisions of which have been expressly incorporated in the Applicant's lease at clause 5(iv). Sub-section (3) provides,

   Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee … or, in case of a notice required or authorised to be served on a lessee …, is affixed or left for him on the land or any house or building comprised in the lease …

5. As at the date of service for each notice, the Applicant claimed that the Respondent knew his last-known place of abode was in Buckhurst Hill because he had informed them by letter dated 24th May 2005 and in conversations with a council officer at about the same time. The Respondent has no record of having received that letter and doubt they were told anything verbally because, in contrast, in June 2008 the Applicant informed the Respondent of his Buckhurst Hill address by phone and it was immediately actioned on their computer system. In any event, s.196 provides for an alternative, namely service at the land comprised in the lease.

6. It appears that the notices were served by being put through the letter flap in the communal front entrance door. At the time, there were no separate letter boxes inside or outside the property. The Applicant had actually taken this up with the Respondent during 2005 because he suspected that post was going astray. However, the use of the communal front entrance door by the Applicant is governed by the usual easements under the lease. Those easements are part of the land and are comprised in the lease. Therefore, service by posting through the communal letter flap constituted, in these circumstances, compliance with s.196. Therefore, the notices were properly served.

7. Even if the Tribunal is wrong on the interpretation of s.196, the Tribunal accepts that the Respondent did not receive the Applicant's letter of 24th May 2005 and did not know of his Buckhurst Hill address until June 2008. The Applicant had a number of opportunities to correct this misapprehension when he wrote letters to

the Respondent or received letters from them at the Holland Road address but failed to take any of them. He gave the clear impression to the Respondent that the Holland Road address was adequate, if not ideal, as a correspondence address or an address for the service of notices. Therefore, even if s.196 did not apply, on the facts of this case the Tribunal is satisfied that the Respondent gave notice in accordance with the consultation requirements.

8. As to the Respondent's application for dispensation from the consultation requirements, it would be a rare circumstance in which it would be granted where the error was as fundamental as a failure of service but it is not necessary to rule on that issue. However, there was arguably an error in the Respondent's notice dated 17th November 2006. Reg.11(10)(a) of the aforementioned Regulations requires all estimates to be available for inspection. The notice of 17th November 2006 referred only to "the priced specification", giving the impression that the estimates submitted by the unsuccessful contractors would not be available for inspection.

9. The Respondent's evidence was that this was a problem with the wording of the letter and anyone attending to inspect the relevant documents would have been able to see all the estimates. On that basis, the Tribunal is satisfied that this is a minor error, causing no prejudice to any potential recipients, and it would be appropriate to dispense with the consultation requirements to the limited extent of waiving this error. Having said that, the Respondent should consider revising the wording of such letters so that there can be no question of a problem in future.

10. For the above reasons, the Tribunal is satisfied that the Applicant was given notice of the major works programme in accordance with the consultation requirements. It now remains for the parties to work through their dispute on the standard of the works, preferably by mediation.

Chairman

Date 11th October 2010