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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00BA/LSC/2012/0338
Premises:	Flat 6, 71-75 Worple Road, Wimbledon, London SW19 4LS
Applicants:	Mrs Carolyn Molly Broom and Mr John William Broom
Respondents:	Mr I Moskovitz and Mrs C Moskovitz (Trustees of the Friends of Achiezer Arad Charitable Trust)
Representative:	Conway & Co Solicitors
Date of hearing:	18 October 2012
Appearance for Applicants:	Mr John Broom
Appearance for Respondents:	Mr Philip Sissons (Counsel)
Leasehold Valuation Tribunal:	Mr Robert Latham Mr D Banfield FRICS Ms S Wilby
Date of decision:	2 November 2012

Decisions of the tribunal

(1) The Tribunal determines that the sum of £8,705.09 is payable by the Applicants for the years 2003 to 2008. This sum is specified in the invoice dated 4 August 2008.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(3) Neither does the Tribunal direct that the Respondent should reimburse the Applicants any of the Tribunal fees which they have paid.

The Application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2002/3 to 2008/9. The Applicants also seek a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") whether they are liable to pay an administration charge of £300 for the replacement of a garage door which was demanded on 25 April 2012.

2. Two Bundles have been produced for this hearing. The Applicants' Bundle is neither indexed nor paginated. However, it is divided into sections with some documents numbered in the top right hand corner. References to this will be prefixed by "Tab.__". The Respondent produced a Supplementary Bundle which will be prefixed by "SB.___".

3. The Tribunal gave directions which are at Tab 4. Pursuant to these directions, the parties have produced a Scott Schedule which is at Tab 11T. The Applicants deny that they received any of the invoices for the years 2003/4 (Tab.11T); 2004/5 (Tab.11U); 2005/6 (Tab.11V); 2006/7 (Tab.11W); 2007/8 (Tab.11X); and 1.4.08 to 30.9.08 (Tab 11.T). The Applicants deny that any demand for payment was made. They deny receiving any of the relevant invoices during this period. They contend that none of the relevant costs would now be payable by virtue of Section 20B of the 1985 Act. They also contend that the invoices which the Respondents assert were sent would not have complied with the statutory requirements of sections 47 and 48 of the Landlord and Tenant Act 1987 ("the 1987 Act"). The Applicants do not take issue with the reasonableness or their liability to pay any of the individual items specified in the service charge accounts. The dispute relating to the £300 administration fee is pleaded at Tab.11Z.

4. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

5. Mr Broom appeared in person to represent both himself and his wife. Mr Sissons represented the Respondents.

6. The Tribunal heard evidence from Mr Broom. The Respondents adduced evidence from Mr David Babad, an employee of Avon Estates (London) Limited ("Avon Estates") who managed the premises between October 2002 and October 2008, and from Ms Jeanine Cohen, an employee of Y and Y Management Limited ("Y & Y") who has managed the premises since August 2008.

7. It is not necessary for the Tribunal to determine the dispute concerning the administration fee. On 24 April 2012, the Applicants sought consent to replace the garage doors which were in disrepair. On 25 April 2012 (at Tab.27), the Respondents sought a payment of an administration charge of £300 to look into the application. In the event, this sum was not paid. The Applicants proceeded to replace the doors without consent. In the circumstances, the Respondents have not sought to enforce this charge and do not intend to do so. They assert the right to take action under the terms of the lease for breach of covenant. That is not a matter for this Tribunal.

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Our Decision

9. The Applicants derive their interest in Flat 6, 71-75 Worple Road ("the premises") under a lease dated 6 September 1985. The lease is for a term of 99 years at a peppercorn rent. There are two buildings consisting of 27 flats. Some 40% of the flats are sublet. The lease is at Tab.27. The accounting year for the service charge is the year ending 31 March. The Applicants contribution to the service charge is 4.474%. Clause 7 makes provision for an interim service charge to be collected to cover the estimated expenditure for the year and a contribution towards a reserve fund. As soon as practicable after the end of the account year, the landlord is to certify the amount by which the interim service charge has either exceeded or fallen short of the estimated expenditure for the year. The appropriate reconciliation is to be made.

10. The applicants acquired their leasehold interest on 17 July 1987. The Office Copy entries are at SB.73. The Applicants have never occupied the premises. Mr Broom described how during their period of ownership, they have had at least a dozen tenants. However, he admitted that he had not notified his landlord of these lettings as required by clause 3(15) of his lease. He stated that he visited the premises every month.

11. The Respondents acquired the freehold interest on 16 October 2002. The Office Copy entries are at Tab 13. The proprietor is described as "Israel Moskovitz and Chavi Moskovitz of 17 Rostrevor Avenue, London N15 6LA, the trustees of the charity known as Friends of Achiezer Arad Charity Trust". Chavi is the wife of Israel Moskovitz. He is known as "Mr Moss".

12. It is common ground that there is a close relationship between the Respondents, Avon Estates and Y & Y. All use the same business address, namely 17 Rostrevor Avenue, London N15 6LA. Ms Cohen described how Y & Y had been established in 2007 with the specific purpose of dealing with block management. She described Avon Estates as "a sister company".

13. The relevant Service Charge Accounts for the years 2002/3 to 2008/9 are at Tab.6. However, the real issue in dispute are the invoices at Tab 11J to 11R. The Applicants deny that any of these invoices were received. The first of these invoices is dated 13 May 2003; the final one is dated 18 July 2008. These can be cross-referenced to the service charge account dated 10 October 2012 which is at SB.51. This records that the sum of £8,705.09 was payable as at 4 August 2008. We are told that the arrears now exceed £10,000. One of the surprising features of this case is the failure of the Respondents to take any effective action to enforce the payments of these arrears.

14. The invoices at Tab 11J to 11R require some explanation. These do not accurately reproduce the copy of the invoices which the Respondents assert were sent to the Applicants. Mr Babad described how they were "recreated" from their computer. A more accurate record of the form of invoice that was actually sent is to be found at Tab 26. Thus the invoice dated 10 January 2005 (at Tab.11L) which the Respondents assert was sent to the Applicants on 10 June 2005, would rather have been in the form at Tab.26. The relevant differences are as follows:

> (i) The invoice is signed "Friends of Achiezer Arad, c/o 17 Rostrevor Avenue, London N15 6LA". We must consider whether this adequately contains "the name and address of the landlord" as required by section 47 of the 1987 Act.
>
> (ii) The notification of an address for service of notices, as required by section 48 of the 1987 Act is specified in these terms: "Please note that pursuant to the Landlord and Tenant Act 1987 s47 and s48, your landlord is Friends of Achiezer Arad, and all notices, including notices in proceedings, should be served on them at the above address".

15. The first issue which we are required to determine is whether the landlord has made a lawful demand for these service charges. The Respondents assert that the first time that they were aware that the Applicants were living at 158 Coulsdon Road, Surrey was when they received the letter dated 31 August 2007 which is at SB.43. Mr Broom did not suggest that he had notified the Respondents of this address prior to this letter. He rather suggested that the Respondent should have been aware of their address when they acquired the freehold interest in October 2002. Mr Babad stated that had he been aware of this address, he would have used it. This was the position adopted by Mr Moss in his letter of 11 September 2007 (at SB.45). We accept this evidence.

16. Mr Babad asserts that the relevant invoices were addressed to the Applicants and sent to them at the premises. We are satisfied that these invoices were dispatched by Avon Estates and that they would have been delivered to the premises in the normal course of the post. Thus lawful demands were made for payment of the relevant service charges.

17. We reach this decision for the following reasons:

(i) There are 27 flats in the building. Avon Estates would have issued invoices to all their tenants. None of the other tenants dispute that they received them. The Applicants were the only serial defaulters in respect of the payment of their service charges.

(ii) Over the relevant period of 13 May 2003 to 18 July 2008, some 10-12 invoices would have been sent to the premises. We find it highly unlikely that none of these would have been received in the normal course of the post.

(iii) Throughout this period, the premises were occupied by a succession of tenants. It is quite possible that the tenants failed to pass these on to the Applicants.

(iv) We are satisfied that Mr Broom does not have a clear recollection of the correspondence that he has received. Thus on 6 August 2008 (at SB.54), Mr Broom asserted that he had not received any demands for service charges over the previous five years. This was clearly wrong. On 31 August 2007 (at SB.43), Mr Broom had written to Avon Estates in respect of an invoice dated 24 April 2007 which had been delivered to his flat.

(v) The recreated copy of the invoice dated 24 April 2007 is at Tab.11P. We are satisfied that it would have been delivered to the premises in the normal course of the post some days later. We note that in his letter dated 31 August 2007, Mr Broom states that he had "just collected" the invoice which had been delivered to the premises. This indicates a delay of some four months between the invoice being delivered to the premises, and the tenants passing it on to Mr Broom. This suggests that it is highly likely that there were other invoices which were delivered to the premises which the tenants failed to pass on to the Applicants.

(vi) Further, we note the letter dated 27 August 2010 (at SB.94) which Y&Y sent to Mr Broom at 158 Coulsdon Road by registered post. This enclosed copy invoices for the period 2003-7. We are satisfied that this would have been delivered. Mr Broom denied receiving this letter. It was only when Mr Broom attended Y & Y's offices on 8 March 2012, that he confirmed receipt of the relevant invoices (see the signed receipt at SB.101). Again, this confirms our view that Mr Broom does not have an accurate recollection of the documents that he has received.

18. Given our finding that the Applicants were notified in writing that the relevant costs had been incurred, it is not necessary for us to consider the impact of Section 20B of the 1985 Act. We are satisfied that no relevant costs were

incurred more than 18 months before a demand for payment was served on the tenant. In any event, we accept Mr Sissons' contention that section 20B would have provided the Applicant's with limited assistance. He referred us to *Holding & Management (Solitaire) Limited v Miss Stephanie Sherwin* [2010] UKUT 412 (LC), a decision of the President, George Bartlett QC. Most of the demands were for interim payments, namely for prospective costs that had yet to be incurred. These fall outside the ambit of section 20B (see [21] and [25] of the decision and the references to *Gilje v Charlesgrove Investments Ltd* [2004] 1 All ER 91). Section 20B would only have applied to any demand for an excess service charge which was invoiced when the annual reconciliation was completed (see the invoice dated 9 September 2004 at Tab.11K which demanded an excess service charge of £153.03).

19. Mr Broom sought to persuade us that the information specified in the invoices failed to satisfy the requirements of section 47 of the 1987 Act (see para 14(i) above). Any demand for a service charge must contain "the name and address of the landlord". Mr Broom makes two points:

> (i) Name of the landlord: This should have been: "Israel Moskovitz and Chavi Moskovitz, trustees of the Friends of Achiezer Arad Charity Trust". It rather stated: "Friends of Achiezer Arad".
>
> (ii) Address of the Landlord: The address given was the business address of the charity and/or its managing agents. It should rather have been the Residential address of the trustees.

20. We reject this contention. We are assisted by the judgment of the President, George Bartlett QC, in *Beitov Properties Limited v Elliston Bentley Martin* [2012] UKUT 133 (LC). The legislative purpose of section 47 is quite different than that of section 48. Its purpose is to enable the tenant to know who his landlord is. The name alone may not be sufficient for this purpose. To provide an address at which the landlord can be found assists in the process of identification (see [9] of the judgment). We are satisfied that the information provided in the invoices was sufficient to identify the landlord. The business address of the charity was sufficient.

21. Even were we to be wrong on this, it would not assist the Applicants. Where a landlord is in default with this obligation, the obligation to make payment is only frozen until the default is rectified. On 9 September 2009 (at SB.86), Y&Y issued an invoice for all the outstanding services charges which, by then, amounted to £10,225.75. Mr Broom accepts that this complies with section 47. This would rectify any default had this existed. This is just one of many subsequent invoices which would have remedied any default.

22. Again, we are satisfied that the information specified in the invoices, satisfies the requirements of section 48 (see para 14(ii) above). Were we to be wrong on this, again the invoice dated 9 September 2009, and the subsequent invoices, would have cured any defect.

23. There has also been a suggestion that the landlord failed to satisfy the requirements of section 21B of the 1985 Act in that demands for the payment of service charges were not accompanied by the requisite summary of rights and obligations. This requirement only applied to demands served on or after 1 October 2007. The Respondents contend that all demands made after this date were accompanied by the summary at SB.87. Mr Broom did not dispute this.

24. We thus conclude that the Respondent has made lawful demands for the relevant service charges and that these demands have complied with the relevant statutory requirements of the 1985 and 1987 Acts.

Application under s.20C and refund of fees

25. In their application form, the Applicants apply for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable in the circumstances to make such an order. The Applicants have not succeeded in any part of their application.

26. The Applicants also made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they have paid. Given that the Applicants have not succeeded on any part of their application, the Tribunal does not order the Respondents to refund any of the fees paid by the Applicants.

Chairman: _____

[Robert Latham]

Date: 2 November 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18. Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 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 provisions 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.

Section 27A. Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

Section 20B. Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C. Limitation of service charges: costs of proceedings

(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 the 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, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(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.

Section 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.

Landlord and Tenant Act 1987

Section 47. Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which
notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—

(a) a tenant of any such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48. Notification by landlord of address for service of notices.

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an
address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

(3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the

proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).