



FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference	:	LON/00AN/LSC/2012/0834
Property	:	116 West Kensington Court, West Cromwell Road, London W14 9AD
Applicant	:	West Kensington Court Limited (Freeholder)
Representative	:	Michael Walsh of Counsel
Respondent	:	The Estate of Claude Vaubert de Chantilly (Leaseholder)
Representative	:	Christopher Jones of Counsel
Type of Application	:	Service Charges - Section 27A Landlord & Tenant Act 1985
Tribunal Members	:	Judge Lancelot Robson Mrs S F Redmond BSc (Econ) MRICS
Date and venue of Hearing	:	8th June 2017 10 Alfred Place, London WC1E 7LR
Date of Decision	:	9th July 2017

DECISION

Decision Summary

The Tribunal decided:

- (1) That all the demands for service charges for the period in dispute contained the correct address for the landlord as required by Sections 47 and 48 of the Landlord and Tenant Act 1987 and the statutory Summary of Tenants Rights and Obligations as required by Section 21B of the Landlord and Tenant Act 1985 on the dates that they were served, and thus were validly served.
- (2) The accountant's certification of the service accounts for the years in question was in accordance with the Lease.
- (3) There were no administration charges made by the landlord in the service charges in dispute thus the Respondent's claim of invalidity of such charges was irrelevant.
- (4) The service charge contribution formula stated in the Lease was admitted to be inaccurate, but the Respondent remains contractually bound by such formula unless and until any corrective proceedings have been successful.
- (5) The Tribunal has no jurisdiction to amend the contractual provisions in the Lease in this application. The sum of £46,377.15 claimed by the Applicant for the period in dispute shall be payable within 28 days of the date of this decision, as the 18 Month Rule does not apply in this case.
- (6) The Tribunal made the other determinations as set out under the various headings in this decision.
- (7) The parties are requested to make any costs application within 28 days of this decision.

The application

1. By an application dated 11th December 2012 the Applicant applied under Section 27A of the Landlord and Tenant Act 1985 for a determination as to whether service charges were payable. The Respondent regrettably died on 16th May 2013. After the Respondent's death a dispute occurred as to who should be granted probate, resulting in a long delay and an application to the Birmingham District Registry of the Chancery Division.
2. A case management conference was held on 22nd June 2016. at which Directions were given. The Directions confirmed that the Respondent should be "the Estate of Claude Vaublert De Chantilly", rather than any individual executor. The Applicant was allowed to apply relating to demands for service charges in the period from 1st January 2010 to 30th June 2016. On 14th September 2016 letters

of administration of the Respondent's estate were granted to the Co-operative Trust Corporation. The Tribunal gave further Directions leading to this hearing on 1st March 2017.

3. Extracts of the relevant legislation are contained in the Appendix to this decision.

Hearing

4. There were no statements of case as such, but Ms Amanda Chinery (solicitor for the Applicant), Ms Tracey Lee Stewart (Assistant Manager of the Managing Agent) and Mr George Robert Weston (solicitor for the Administrator) made witness statements. Ms Chinery was unable to be present, but the other witnesses were examined. The Tribunal established that the Respondent had not queried the actual amounts of service charge during his lifetime but had written a number of letters to the Applicant raising a number of legal points on the validity of the demands, which the Administrator felt obliged to pursue, which were;

a) whether the Landlord's address for service stated in the service charge demands was in accordance with Sections 47 and 48 of the Landlord and Tenant Act 1987, and whether the demands had been validly served upon the Respondent.

b) whether the Summary of Tenants Rights and Obligations required by Section 21B of the Landlord and Tenant Act 1985 (which should accompany any demands for rent and service charge) was in the correct form and had accompanied the relevant service charge demands

c) effect of the 18 month rule if demands were invalid

d) accuracy of accountant's certification of the service charge accounts

e) Compliance with the Commonhold and Leasehold Reform Act 2002, Schedule 11 paragraph 4(4) relating to administration charges

f) Overpayment of service charge payable by Respondent due to a defective provision in the Lease.

Applicant's Case

5. Landlord's address on service charge demands - Mr Walsh on behalf of the Applicant submitted that the Applicant landlord's address on the demands had at all times been "West Kensington Court Limited, The Estate Office, West Kensington Court, Cromwell Road, London W14 9AG. Both parties agreed that the Applicant's registered address from 11th March 2011 was the above address. He submitted that Beitoy (noted below) made it clear that in the case of a company, it was not the Registered Office address that was relevant, but the address at which the landlord could be found. The address of the Estate Office in the same building fulfilled this test. Without prejudice to the validity of the original notices the landlord reserved the notices for the period 9th December 2009 - 11th December 2012 in 2013 curing the

alleged defects relating to the Applicant's address accompanied by a summary of the tenant's rights and obligations. Again without prejudice to the previous notices the Applicant served a further set of notices on the Respondent's solicitor at the start of this hearing. The Applicant also served a notification of the landlord's address for service in accordance with Section 48 of the 1987 Act on 20th May 2016.

6. Statutory Information - In correspondence the Deceased Respondent made a general allegation that the service charge demands did not comply with Section 21B of the 1985 Act. However it was not particularised and the Applicant submitted that they had been made in accordance with Section 21B. The Applicant called Ms Stewart who gave evidence that it was she who was responsible for preparing and serving the notices at all relevant times, described the procedure which she followed, and that she was satisfied that all the notices had been valid and were validly served.

7. Administration Charges - The Applicant had demanded no administration charges under the Lease. Thus the allegation that they had served them invalidly was irrelevant.

8. Accountant's certificate - The Respondent's correspondence alleging failure by the Applicant to comply with Companies legislation was irrelevant in this application. In any event the accountants' certificates were in the relevant accounts, as could be seen in the bundle. The sums demanded had taken account of the overcharge caused by the defective lease so that instead of 0.56% the sums demanded been reduced to 0.55721% of the costs

9. 18 Month Rule - The Respondent's submission that the 18 month rule set out in Section 20B of the 1985 Act would render sums demanded uncollectable if relevant notices were found to be invalid was misconceived. Whether or not the notices were valid, they had given notice of the charges to be made, and as noted in Woodfall "the effect of the statute is suspensory only". This was supported by the decisions in Johnson v Bideford and Cannon in the Upper Tribunal, which was binding on this Tribunal. Thus once any defect was cured, all arrears thereupon became due.

10. In support of his submissions, Mr Walsh referred to the following cases;
Beitov Properties Ltd v Martin [2012] UKUT 133 (LC)
Johnson v Bideford Ltd [2102] UKUT 457 (LC)
Cannon v 38 Lambs Conduit LLP [2016] UKUT 371 (LC)
He also referred to Woodfall on Landlord and Tenant Vol.1, at [7.067]

Respondent's Case

11. Landlord's address on service charge demands - Mr Jones for the Respondent submitted that Section 48 of the 1987 Act requires that a tenant be provided with an address where notices may be served on the landlord. This address must be in England and Wales and can be the name and address of a managing agent. Equally

Section 47 requires that any demand for sums due to a landlord must state the name and address of the landlord. However the Section 47 requirement was not met by providing an agent's address. In the case of a limited company the name of the registered office should be supplied. A tenant is not liable to pay the service charges until such time as that address was provided. "Address" was not defined in the 1987 Act, unlike the 1985 Act which defines address as a person's place of business, or in the case of a company, its registered office. Mr Jones suggested that the word "address" should be interpreted in the same way as the 1985 Act. Companies House searches on the landlord revealed that in 1997 the registered office was changed to an address in Weymouth Street, W1N 3LE, in 2002 it was changed to Church Street SE5 8TR, in 2004 it was changed to the Estate Office, West Kensington Court W14 9AG, in January 2009 it was changed to Vauxhall Bridge Road SW1V 1AU, in May 2010 it was changed to the Estate Office, West Kensington Court, Edith Villas, W14 9AG, in March 2011 to West Kensington Court, Cromwell Road, W14 9AG, and in September 2016 to West Kensington Court, W14 9AG. The address for the landlord given on the invoices in the deceased Respondent's papers was not the company's registered address as recorded at Companies House at the time the Respondent was in dispute with it, nor did it change in line with the changes at Companies House.

12. Statutory Information (Section 21B)- In Tingdene Holiday Parks Ltd v Cox [2011] UKUT 310 (LC) the Upper Tribunal clarified that the summary required by Section 21B of the 1985 Act must be sent at the same time as the demand, not separately. The Applicant was put to proof that it has complied with Section 21B and served the statutory information on the Respondent.

13. 18 month Rule (Section 20B) - Mr Jones agreed it was possible for a landlord to correct a defective address, however any costs incurred by a landlord in excess of the 18 months next before they are notified to the tenant are not recoverable. The Tribunal should rule on this argument before determining if any of the service charges are recoverable.

14. Accuracy of Accountant's certification - The Deceased Respondent had wished to challenge this point but gave no indication why it was challenged. The Respondent was put to proof as to its accuracy.

15. Administration Charges - again these were challenged by the Deceased Respondent. If any administration charges had been demanded then the Applicant was put to proof that it had complied with the statutory requirements set out in the 1985 Act.

16. The service charge formula - as set out in the Lease it was defective. The percentages worked out to 100.5 per cent. Thus the Respondent had overpaid.

Decision

17. Address for Service - The Tribunal considered the evidence and submissions. It disagreed with Mr Jones' submissions relating to the effect and interpretation of Sections 47 and 48. Beitov has made it clear (see para 11 of the judgement) that

Section 47 requires an address where the landlord is to be found. The landlord in that case was a limited company. Mr Jones in effect suggested Beitov was wrong, and that the Tribunal had discretion to interpret Sections 47 and 48 differently. However he offered no authority for this proposition. Mr Walsh considered that the Tribunal was bound by the Beitov case. While the Tribunal not agree with Mr Walsh that it was beyond doubt that Upper Tribunal cases decided before the 2013 Regulations governing this Tribunal's procedure came into effect were binding, neither side argued this point in any detail, and in any event the Beitov decision must be at least persuasive. Further, the Tribunal did not disagree with the Beitov view noted above. Mr Jones' argument that the definition of "address" in the 1985 Act was applicable to the 1987 Act, seemed to lead to unnecessary complexity by imposing a further technical hurdle for landlords to trip over. Without a more fully argued case, the Tribunal decided that it should prefer the Beitov view argued for by Mr Walsh.

18. The Deceased Respondent had argued that alleged failures to comply with Companies Acts legislation should also invalidate demands. The Tribunal decided that in an application under Section 27A, any such breaches were irrelevant.

19. Thus the Tribunal decided that the Applicant's stated address for the purposes of Sections 47 and 48 was correct.

Administration Charges

20. On the Section 21B point, the Tribunal heard evidence from Ms Stewart that at all material times she had been in charge of producing the service charge demands, and that she was satisfied from her own knowledge and the standard procedures in the office that the relevant statutory notices were attached to the service charge demands, and that they had been served by the porter by hand at the Respondent's flat. In the absence of any evidence to the contrary the Tribunal accepted that the notices in dispute had been validly served, and that therefore the sums demanded were lawfully due from the date of service.

21. 18 Month Rule

The Tribunal agreed with Mr Walsh's submission that the 18 month Rule did not apply on a proper reading Section 20B.

22. Accountants' certification

The Tribunal noted that the Respondent had never particularised his complaints on this issue. Without particularisation, there was no prima facie case for the Applicant to meet.

23. Defective service charge collection formula

The Tribunal decided that it had no jurisdiction under Section 27A of the 1985 Act to order that the service charge formula in the Lease be amended. Nevertheless, the Applicant had given the service charge payers credit for the overpayment. There appeared to be no loss to the Respondent. The defective formula could be rectified, but the Tribunal decided that until then the Applicant was entitled to collect the whole amount required by the Lease

Costs

24. The Respondent made a Section 20C application. Mr Jones submitted that nothing took the costs of this application outside the bracket of ordinary cases. The Applicant indicated that it might also wish to make an application relating to costs but would await the Tribunal's decision before doing so. It was agreed that the parties could make any costs applications after this decision was published. The parties are requested to make any such application within 28 days.

Tribunal Judge: Lancelot Robson

Dated: 9th July 2017

Appendix

Landlord & Tenant Act 1985

Section 18

- (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

- (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

- (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

- (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 these costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by payment of a service charge.

Section 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 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

- (1) A demand for 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 provisions 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.

**The Tribunal Procedure (First-tier Tribunal)(Property Chamber)
Rules 2013**

Rules 13(1) - (3)

- 13.-(1) The Tribunal may make an order in respect of costs only-
- (a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
 - (b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
 - (i) an agricultural land and drainage case,
 - (ii) a residential property case, or
 - (iii) a leasehold case; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on application or on its own initiative.
- (4) – (9)...
-