IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2019] UKUT 241 (LC)
Case No: LRX/147/2018

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

SERVICE CHARGES – SECTION 47 LANDLORD AND TENANT ACT 1987 – SECTION 20B AND 21B LANDLORD AND TENANT ACT 1985

IN THE MATTER OF AN APPLICATION UNDER SECTION 84

OF THE LAW OF PROPERTY ACT 1925

BETWEEN:

WESTLAKE ESTATES LTD **Appellant**

and

OLUTOBI JAMES YINUSA **Respondent**

Re: Flat 6, Snowshill Place
30, Snowshill Road
London E12 6BF

Judge Elizabeth Cooke

Determination on Written Representations

The following cases are referred to in this decision:

Beitlov Properties Ltd v Martin [2012] UKUT 133 (LC)

Terhas Tedla v Camaret Court Residents Association Ltd [2015] UKUT 221 (LC)

Introduction

1. The appellant, Westlake Estates Ltd, is the freeholder of Snowshill Place, a purpose-built block of 17 Flats. It acquired the freehold in 2008 from Linkhaven Estates Ltd. The respondent, Mr Yinusa, is the tenant of flat 6. He holds it under a 125-year lease granted by Linkhaven Estates Ltd in 2006.

2. The lease contains obligations on the part of the tenant to pay service charges and ground rent. The respondent has not paid the sums demanded for the years 2012 to 2017, and the appellant has applied to the First-tier Tribunal ("the FTT") seeking a determination as to the payability of service charges pursuant to section 27A of the Landlord and Tenant Act 1985.

3. The FTT conducted a hearing and decided:

   a. that the service charges for those six years were not payable by the tenant because although they were properly served on the respondent they neither complied with section 47 of the Landlord and Tenant Act 1987 ("the 1987 Act") nor contained the information prescribed by section 21B of the Landlord and Tenant Act 1985 ("the 1985 Act");

   b. that the property was not insured in the appellant landlord's name and that therefore sums charged for insurance are not payable in any event;

   c. that the sums charged for management of the building were to be reduced, because of poor management, to £200 per annum (from the sums of just over £300 demanded in each year);

   d. that section 20C of the 1985 Act applied; and

   e. that costs of £1,300 were payable by the appellant to the respondent pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 because the appellant should have made itself aware of the "fundamental flaws" in its application in relation to section 47 of the 1987 Act and to the insurance problem.

4. Items b and c are not appealed. The appeal relates to item a above and the finding that the content of the notices was not compliant with the statutory requirements. If the appellant succeeds on that ground then the Tribunal is asked to consider items d and e.

5. On 18 February 2019 the Deputy President ordered that the appeal be determined under the Tribunal's written representations procedure unless either party requested an oral hearing; neither did. I have considered the appellant's notice, the respondent's response, and the appellant's further submissions in reply, and I have had before me the bundle used in the FTT. I have decided that the

appeal must be allowed on item a above. The service charge demands complied with the statutory requirements and therefore the service charges for each of the six years are payable, subject to the reductions made by the FTT. Accordingly the FTT's decisions on section 20C of the 1985 Act cannot stand.

The issues before the FTT

6. It is worth beginning by setting out exactly what the FTT had to decide. The respondent's Statement of Case said only that he had not received the service charge demands. He did not say that there was anything wrong with those demands, only that he had not received them.

7. However, following a case management hearing on 7 June 2018 the following issues were identified as being in issue:

- "whether the service charges have been properly demanded, including whether the formalities required by section 21B of the Landlord and Tenant Act 1985 and section 47 of the Landlord and Tenant Act 1987 have been complied with;
- whether the costs have been demanded in accordance with the service charge mechanism set out in the tenant's lease;
- whether the costs are payable by reason of section 20B of the 1985 Act;
- whether the costs have been reasonably incurred …; and
- whether an order under section 20C of the 1985 Act … should be made."

8. So the issues before the FTT were rather wider than those raised in the respondent's Statement of Case. The appellant has sought to argue that the questions of validity of the service charge demands, in the light of section 47 of the 1987 Act and section 21B of the 1985 Act, were not within the FTT's jurisdiction; however, I find that those issues were before the FTT as a result of the directions of 7 June, even though the respondent had not initially raised them.

Section 47 of the 1987 Act

9. Section 47 of the 1987 Act reads, so far as relevant, as follows:

> "(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.

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

10. Following the directions of 7 June 2018 the appellant disclosed documents, which were then included in the hearing bundle. I find there the service charge demands made in July in each of the six years (each preceded by a "budget" or estimate sent out in January). In the bundle are three sets of consecutive pages: (1) a covering letter on the headed paper of Westlake Estates Ltd which sets out the name "Westlake Estates Ltd" followed by the appellant's address at 148 Cranbrook Road, Ilford, Essex; (2) a sheet headed "Service Charges – summary of tenants' rights and obligations"; and (3) the service charge invoice itself, being an itemised list of sums due and a total, on a sheet headed "Westlake Estates Ltd" and setting out the same address in Ilford.

11. At paragraph 13 of its decision the FTT said that it found that the service charge demands were sent to the respondent on the dates recorded in the letters, to his address at Flat 6, that that was the correct address for them to be sent to, and that he received them. At paragraph 14 it went on to say:

"However, the FTT finds that none of those demands included the statutory information required under section 47 of the 1987 Act and therefore the sums demanded in them are not yet due or payable by the tenant: *Beitlov Properties Ltd v Elliston Bentley Martin* [2011]."

12. That is the only reference made by the FTT to section 47 under the heading "The tribunal's decision and reasons" (which precedes paragraph 12). In its discussion of the respondent's case in paragraphs 10 and 11 the FTT does not indicate that the respondent claimed that section 47 had not been complied with.

13. In its ground of appeal the appellant observes that there is no case law to the effect that section 47 requires any indication, in the service charge demand, that the name and address given are the name and address of the landlord (except in circumstances where more than one name and address is given, in which case of course an indication is needed to avoid confusion: *Terhas Tedla v Camaret Court Residents Association Ltd* [2015] UKUT 0221 (LC)). There is no suggestion to that effect in *Beitov Properties Ltd* (the case referred to by the FTT, to which the correct citation is [2012] UKUT 133 (LC)).

14. In response the respondent argues that it is clear from *Terhas Tedla* that merely giving the name and address of the landlord is not sufficient and that in every case the name and address must be identified as that of the landlord. I disagree. In *Terhas Tedla* the Deputy President said at paragraph 37:

> "The statutory requirement is not simply that the name and address of the landlord must appear on any written demand. The tenant must be informed of the name and address of the landlord, hence the requirement that "the demand must contain the following information". A demand which provides the name and address of two or more different companies without identifying which of them is the landlord does not, in my judgment, provide the required information. The tenant is not to be left to guess which of two or more parties is the landlord, but is to be informed to the landlord's identity."

15. I see no indication that where there is only one name and address given the tenant is to be told that they are the name and address of the landlord. The information is clear (and is clear whether or not the tenant happens to be familiar with section 47 of the 1987 Act).

16. The respondent also says "neither the body of the covering letter nor the body of the invoice contained the appellant's name or address". The objection seems to be to the fact that the name and address are set out in the header and footer to the covering letter and invoice, and I see no substance in that.

17. Accordingly I have to say that the FTT's finding on section 47 of the 1987 Act was not open to it and could not reasonably have been made on the evidence before it. The appeal is upheld on this point.

18. The respondent makes a number of observations about the estimates sent out in January each year. Copies of these are also in the bundle. They are not the basis of the FTT's findings and are not the subject of the requirements in section 47. I note that the covering letter sent with the estimate in each case was headed with the appellant's name and address. I also note – although it makes no difference to my decision in this appeal – that the FTT found as a fact (paragraph 12 of the decision) that the respondent knew the landlord's identity when he took an assignment of the lease.

Section 21B of the 1985 Act

19. Section 21B of the 1985 Act reads, so far as relevant, as follows:

> "(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."

20. I quoted above what the FTT said in paragraph 14 of its decision about section 47 of the 1987 Act. The remainder of paragraph 14 reads as follows:

> "The FTT finds information notifying the tenant of his rights was not included, Landlord and Tenant Act 1985: Section 21B section 153 of the Commonhold and Leasehold Reform Act 2002 and Summary of Tenants Rights and Obligations, (England) Regulations 2007)." (sic)

21. That is all that the FTT says about section 21B in its "decisions and reasons" (section 153 of the Commonhold and Leasehold Reform Act 2002 was of course the provision that inserted section 21B in the 1985 Act, and the other reference is to the regulations made under section 21B(2)).

22. At paragraph 6 the FTT referred to the appellant's evidence that copies of the demands were included in the bundle together with a summary of the tenant's rights. The FTT does not say that the respondent said that the summary, found in the bundle between the covering letter and the invoice itself, was not in fact sent to him with the invoice; nor is there anything to that effect in the respondent's witness statement before the FTT. Nor is there any suggestion, in the evidence or argument recounted by the FTT or in its own reasoning, that the summary sent was not in the prescribed form.

23. In its response to the appeal the respondent complains that the covering letter did not say that the summary of rights and obligations was included, and says that therefore the appellant has not proved (as it was obliged to do) that section 21B was complied with. It is not suggested for the respondent that he raised this point before the FTT, and it is not open to him to raise it now; in any event there is no substance in it since he has not given evidence that the summary was not included and the disclosed documents indicate that it was. The respondent also complains that the appellant's Statement of Case did not state that it had complied with the requirements of section 21B; but there was no need for any such statement at that stage. I agree that after the case Management Hearing the section 21B point was is issue before the FTT, but it appears that the respondent did not take the point at the hearing and there was certainly no evidence before the FTT from the respondent that section 21B had not been complied with.

24. In the presence of evidence – in the form of the disclosed documents – that the summary had been provided to the respondent, and in the absence of any evidence to the contrary I take the view that the FTT could not reasonably have made its finding about section 21B.

25. In the summary of its decisions, set out on page 2 and before paragraph 1 of its decision, the FTT states:

> "Service charges demanded outside of the '18 months' period from when the service charge costs were incurred are not payable by the tenant."

26. I take it that that is a reference to the provisions of section 20B of the Landlord and Tenant Act 1985, which is not mentioned in the substantive part of the FTT's decision. In view of my decision on the appeal, whatever effect that statement had, it is now of no effect.

The FTT's orders on section 20C and on costs

27. In the light of my findings on the appeal, it is difficult to see any justification for the FTT's order that section 20C should apply, and I determine that it does not. Nor can there be any justification for the award of costs against the landlord; the reason given for that award was that the appellant should have been aware of the weakness of its case under section 47 and in connection with the insurance policies (which the FTT disallowed from the service charge because the policy had not been in the appellant's name). The point about section 47 falls away, and the appellant's mistake about the insurance policy does not justify a finding that it behaved improperly, unreasonably or negligently, as would be required before a costs order could be made under rule 13.

28. Accordingly the FTT's order that section 20C applies, and its costs order, are set aside.

Dated: 11 July 2019

Elizabeth Cooke
Judge of the Upper Tribunal