

2686

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

The Landlord and Tenant Act 1985 (as amended) ("the Act") Section 27A, Section 20ZA and Section 20C

Re: 4 Winston House, Ensleigh Street, London WC1H 0EA ("the premises")

Ref: LON/00AG/LSC/2006/0229

THE TRIBUNAL'S DECISION

1. By an Application dated 29th June 2006, the Applicant, Mr Adrian Hadayah, lessee of the premises, challenged the service charges for the service charge year 2006/2007. The lessor and Respondent to this Application is The London Borough of Camden ("Camden").
2. Briefly, the basis of Mr Hadayah's claim was that Camden had on 19th May 2006 demanded a contribution to service charges of £12,907 as his share of the cost of major works. His case is that he never received the proper statutory notice under the Act and had been denied the opportunity to comment. Mr Hadayah also made an Application under section 20C of the Act and requested reimbursement of fees.
3. Both parties were represented at a Pre-trial Review at which they agreed that the Application be dealt with on papers only. Directions were issued requiring the Applicant to submit a Statement of Case and the Respondent to serve a Response. Mr Hadayah's Statement of Case was received at the Tribunal on 8th August 2006 and the Respondent's answer was duly received.
4. Mr Hadayah's case was that he had not received a Section 20 notice under the Act, which he refers to in his Statement of Case as 'an estimate'. He acknowledged that such a notice had been sent to his address early in March 2005 by recorded delivery post. He had been on holiday and the letter was returned to Camden undelivered. In support of this, he produced documentary evidence of non-delivery by Royal Mail. Having learned that other residents of Winston House had received such notices, he wrote to Edosa Eweka at Camden requesting her to re-send the notice, which request he said was not complied with. He did not provide the Tribunal with the date of the letter or a copy. He claimed not to have seen other residents' section 20 notices. Mr Hadayah also said that he had requested a copy of the Section 20 notice and estimate at a meeting.
5. Mr Hadayah's Application included copies of:
 - "A" - Camden Council's letter dated 19th May 2006 referring to their notice and estimate of '3/1/2005' concerning his contribution to the major works.
 - "B" - Evidence of returned mail.
 - "C" - letter from tenant of flat 25, Winston House.

- "D" - Copy of the Section 20 notice dated 2nd March 2005 addressed to Mr Hadayah at the premises, which he says that he did not receive until June 2006.
6. Camden's response to Mr Hadayah's Statement of Case consisted of a bundle of all relevant documents and a Statement in Response which was unsigned and undated. The bundle was not paginated. Camden said that the works were subject to the two stage process as required by the Act. Notice of intention was given on 9th July 2004. Notice of estimate was issued on 3rd March 2005 allowing a period until 8th April 2005 for observations. Mr Hadayah had not disputed having received the July 2004 notice of intention and was therefore aware of Camden's proposed works, although he alleges non-receipt of the March 2005 notice and estimate. Camden's normal practice was to re-post returned recorded delivery letters by first class mail. The Act does not stipulate how notice should be served. Camden submitted that it acted reasonably and cited *Haringey v Ball and Others*, a decision of His Honour Judge Roger Cooke in the Central London County Court dated 6th December 2004.
7. In the alternative, Camden requested the Tribunal to dispense with the consultation requirements under Section 20ZA of the Act. Camden's grounds included the following:
- It had made every reasonable effort to serve the notice both by recorded delivery and first class mail.
 - Having received the notice of intention Mr Hadayah was aware of Camden's intended major works and had an opportunity to make observations.
 - Mr Hadayah attended a meeting and wrote a letter dated 1st April 2006 commenting on the works and their cost. This was within the observation period given in the Section 20 notice. Camden believed that the meeting referred to took place on 17th March 2005, after the service of the Section 20 notice and pointed out that details of costs were available at that meeting.
 - Edosa Eweka replied to the above letter on 18th April 2005.
 - At the above meeting Edosa Eweka said that Mr Hadayah did not mention not having received the section 20 notice and estimate.
 - It was Camden's standard policy to consult extensively with residents about all capital works programmes. Sample consultation letters were included in the bundle.
- Camden had issued all notices in a reasonable and timely manner and submitted that it had complied with statutory requirements alternatively that such consultation requirements be dispensed with in the circumstances of the case. It submitted that the Applicant had not been disadvantaged having received the benefit of the works.
8. Although the Tribunal accept that it is the usual policy of Camden to re-post by first class mail letters that have been returned, there is no specific evidence that this occurred on this particular occasion, and the evidence of Mr Hadayah is that no such letter was sent to him. The Tribunal finds that the section 20 notice was not properly served on Mr Hadayah.
9. There is a conflict of evidence as to whether or not Mr Hadayah requested that a copy notice be sent to him. It was clear from the documents and submissions before the Tribunal that Mr Hadayah was an active member of the Winston

Tenants' Association; indeed, in April 2005 he was chairman. He was also aware that major works were in hand and had detailed knowledge of those works as evidenced from the correspondence and documents in the bundle. It is also clear that Camden posted a section 20 notice to Mr Hadayah on or about 2nd March 2005, that that notice was returned undelivered. Indeed, on his own evidence, Mr Hadayah knew that Camden had attempted to send the notice to him, as he requested a copy at the relevant time.

10. Although failure to ensure that the notice was received by Mr Hadayah is an unfortunate omission, in the particular circumstances of this case, the Tribunal is satisfied that it is reasonable to dispense under Section 20ZA of the Act with the strict consultation requirements. The Tribunal determines that the consultation requirements are dispensed with.
11. There is no challenge by Mr Hadayah to the standard or cost of the major works. Mr Hadayah contribution to the costs is therefore payable in accordance with the terms of his lease.

Mr Hadayah's application for an order under Section 20C

12. Mr Hadayah applied for an order that the costs incurred by Camden in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr Hadayah.
13. It was necessary for Camden to seek dispensation for their failure to ensure that the notice had been properly served. The Tribunal considers that it is just and equitable to make an order under section 20C and makes such order.

Mr Hadayah's application for re-imburement of fees

14. For the same reason stated in paragraph 13 above, the Tribunal considers that it is reasonable to require Camden to reimburse Mr Hadayah the fees of £200 paid by him in respect of these proceedings under paragraph 9 of the Leasehold Valuation Tribunals (fees) (England) Regulations 2003, and the Tribunal makes such an order.

CHAIRMAN.....*Anne Seifert*.....

DATE: 20th September 2006

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb
Mr P Tobin FRICS MCI Arb