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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LSC/2016/0377**
Property	:	**Flat 21 Southcott House Devons Road London E3 3HS**
Applicant	:	**Mr Nehad Ahmed Chowdhury and Mrs Lesmi Begum**
Representative	:	**In person**
Respondent	:	**Poplar Housing and Regeneration Community Association (Poplar Harca)**
Representative	:	**Ms Joanna Brownhill of Counsel**
Type of application	:	**For a determination of liability to pay and reasonableness of service charges pursuant to s. 27A of the Landlord and Tenant Act 1985**
Tribunal member(s)	:	**Professor Robert M. Abbey (solicitor)** **Mr Trevor Sennett (Professional Member)**
Date and venue of hearing	:	**11 January 2017 at 1.30pm at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**31 January 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the service charges of £1389.06 for April 2014 to March 2015 are reasonable and payable and that there has not been a breach of s20B of the Landlord and Tenant Act 1985 (The Act).

(2) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a determination of liability to pay and reasonableness of service charges pursuant to s. 27A of the Landlord and Tenant Act 1985. The total amount originally stated to be in dispute is in the sum of £1399.06 and relates to the service charge period April 2014 to March 2015. However, it was confirmed at the hearing that this sum included an amount of ground rent in the sum of £10 and therefore the net amount the tribunal was asked to consider was in the sum of £1389.06.

2. The applicant also raised issues regarding a parking space taken on licence from the respondent but the tribunal had to make clear to the applicant that it had no jurisdiction to deal with any issue in that regard and therefore could not consider the issue the applicant had raised. Additionally it was also clear that the main issue was not about the cost or reasonableness of the service charges but rather whether they are in fact payable given the terms of s.20B of the Act.

3. In summary, section 20B of the Act provides that if service charges were incurred more than 18 months before a demand for payment is served on the tenant then the tenant is not liable to pay. That is unless the tenant was notified in writing (within 18 months of the costs being incurred) that the costs have been incurred and that the tenant would subsequently be required under the terms of the lease to contribute to them by the payment of a service charge.

4. The relevant legal provisions are set out in the Appendix to this decision. Additionally, rights of appeal are set out below in an annex to this decision

5. At the end of the hearing the tribunal allowed the parties to make further written submissions after the hearing and these were duly made and lodged by the parties and were considered by the tribunal when making this determination.

The background

6. The respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

7. The landlord applicant claimed service charges of £1389.06 for the service charge year 2014-2015. It is this sum that is in dispute and is the item referred to the tribunal.

8. It seems that during September 2015 it became apparent to the respondent that there was going to be a delay in calculating the service charges for this and other properties under its control. Therefore it decided to issue a s.20B notice/letter (the notice). Accordingly the notice was issued to some 3000 tenants and the notice for the applicant was said to have been issued on 9 September 2015. A copy of the notice was produced to the tribunal.

9. The notice was in letter format and referred to a total figure of £8,017,418.00 for the whole of the respondent's stock including this flat. It went on to state that "The contribution due from you will be calculated according to the obligations contained in your lease".

10. On 20 October 2015 the final accounts were ready and as a result all leaseholders were then sent a "final accounts" pack and a copy of this was also produced to the tribunal. This showed the balance payable as being £1399.06 representing the final service charge due and the small amount of ground rent. The "estimated costs mentioned in the final accounts were set at zero because no estimates were actually issued.

11. The applicant says he did not receive either the notice or the final accounts. The applicant is doubtful of the veracity of the notice. In their statement of case they say of the notice that "This notice was recently produced by computer with back date. The notice does not have the landlord name and address. All the letters we have received from HARCA had a company logo on it. But funnily this notice does not even contain any logo".

12. At the hearing Mr Chowdhury specifically confirmed that this was the basis for his objection to the form of notice. The respondent refuted any allegations of falsifying the notice and said that the copy produced was lacking a logo because it had been produced on a mail merge system for the trial bundle and that all the notices were on headed paper with the Harca logo.

13. To confirm the nature of the preparation and service of the notice Mr Mathew Mitchell, a service charge office for Poplar Harca gave oral evidence. He confirmed a document management company was used

for the mass mail out of the notice to the some 3000 tenants affected by the process. He further confirmed that a template format was used for the letter and was printed on paper with the lessors name and address and with the logo as well. He asserted that the landlord was saying that the notice was not a fabricated letter and that it had definitely been posted. To confirm this he produced a spreadsheet prepared by the respondent at the time the notice was issued that showed that this operation had been fully completed.

14. The respondents referred the tribunal to lease clause 8.1 that was concerned with the service of notices. This clause states that any notice or other document required to be given or served shall be sufficiently given or served if left at the last known place of abode of the lessee or otherwise sent by ordinary post in a prepaid letter addressed to the lessee. It shall be deemed to be served if not returned through the Post Office. It will be deemed to have been received at the time at which it would in the ordinary course of posting have been delivered. The Respondent says and Mr Mitchell in his evidence specifically confirmed that there was no record of a return through the Post Office. Therefore the respondent says that the notice is deemed to have been received by the applicant pursuant to the lease/contractual provision.

The service charges claimed

15. Having read written submissions and statements and heard oral evidence and submissions from both of the parties and considered all of the copy deeds and documents provided, the tribunal determines the issue as follows.

16. The tribunal is persuaded by the evidence from the respondent that a valid notice was prepared and served upon the applicant by the respondent. The tribunal could find nothing that cast meaningful doubt on the evidence provided that there was a complete mail shot and that this included the mail to the applicant. Furthermore, by doing so the tribunal s satisfied that in view of the dates involved there is no timing breach of s20B of the Act.

17. Additionally and in particular, the tribunal considers that as a consequence of the operation of lease clause 8.1, the notice not having been returned by the Post Office it is thereby deemed to have been properly and effectively served. This clause has the clear effect of making the service of the mail effective and in accordance with the provisions of the lease and statute.

20C application and decision

18. The applicant also made an application under section 20c of the Act, i.e. preventing the landlord from adding the legal costs of these

proceedings to subsequent service charge accounts. Having read the submissions from the parties and listened to their oral submissions at the hearing and taking into account the determination set out above the tribunal determines that no such order should be made.

Name: Judge Professor Robert M. Abbey **Date:** 31 January 2017

ANNEX - RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20B

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