



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00AY/LSC/2021/0165

Property : Flat 05, 333 Clapham Road, Stockwell,
London SW9 9BS

Applicant : Dorette M Danvers-Russell

Respondent : The Mayor & Burgesses of the London
Borough of Lambeth

Type of application : Payability of service charges

Tribunal : Judge Nicol
Mr C Gowman MCIEH

Date : 29th July 2021

DECISION

- 1) The service charge payable by the Applicant in respect of repair and maintenance works invoiced on 21st September 2018 is limited to £250.
- 2) The Respondent may not recover their costs of these proceedings through the service charge, in accordance with section 20C of the Landlord and Tenant Act 1985, or through an administration charge, in accordance with paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Reasons

1. The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable, namely £1,633.96 for the cost of repair and maintenance works invoiced on 21st September 2018, on the basis that she did not receive the consultation notice required under section 20.
2. The Applicant also seeks an order for the limitation of the landlord's costs in the proceedings under section 20C of the Landlord and Tenant Act 1985 and an order to reduce or extinguish the tenant's liability to

pay an administration charge in respect of litigation costs, under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

3. In accordance with the Tribunal's directions, the Tribunal considered the application on the papers, principally a bundle of relevant documents in pdf format compiled by the Applicant.
4. The parties' representations spend much time in a detailed legal discussion of whether the lease might have been varied, there might be an estoppel or formal "service" might have taken place. However, the issue is far simpler. By paragraph 1(1)(a) of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003, the Respondent were required to "give notice in writing" of their intention to carry out the relevant works. The Applicant claims that they did not do so.
5. The Applicant does not dispute that the Respondent sent out what are known as "section 20 notices" in purported compliance with paragraph 1(1)(a). However, they were sent to the properties owned by lessees. The Applicant does not live there. She had previously informed the Respondent of her correspondence address in Handsworth in Birmingham and the Respondent had been using that address to correspond with her for years.
6. The Respondent has explained that the reason the section 20 notice went to the property rather than to the Applicant's correspondence address was because they were implementing new working processes. They were automated and, therefore, expected to be more efficient. However, at least when the new system started, the Respondent was unable to use any address for correspondence other than the property itself.
7. The Respondent has thereby admitted that they knowingly and deliberately implemented a system whereby correspondence would be sent to the Applicant at an address where she would not receive it. By no possible definition may this be regarded as "giving notice". The Respondent clearly failed to comply with paragraph 1(1)(a).
8. The consequence of a failure to comply with the statutory consultation requirements is that the relevant costs are limited to £250. The only way around this is to apply for dispensation from the requirements under section 20ZA of the Landlord and Tenant Act 1985. The Respondent raised this issue in their Statement of Case but, by letter dated 25th June 2021, Judge Vance directed that, "If the Respondent wishes to pursue a s.20ZA dispensation application it must complete the relevant application form and pay the required tribunal fee." By letter dated 2nd July 2021 the Respondent replied, "The Council does not currently intend on making a separate application for dispensation."

9. Therefore, there is no issue of dispensation before the Tribunal and its decision that the relevant costs are limited to £250 stands.
10. In the circumstances, the Tribunal sees no basis on which to refuse the Applicant the requested orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that the Respondent may not recover from her any costs incurred by them in relation to this application.

Name: Judge Nicol

Date: 29th July 2021