UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2020] UKUT 0115 (LC)
UTLC Case Number: LRX/119/2019

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – whether a demand had been made – effect of section 20B of the Landlord and Tenant Act 1985

AN APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

Dr ROSA COOKSON

Appellant

And

ASSETHOLD LIMITED **Respondent**

Re: 4 Concanon Road,
London,
SW2 5TA

Judge Elizabeth Cooke
Decision on written representations

Introduction

1. This is an appeal from a decision of the First-tier Tribunal about the reasonableness and payability of service charges in respect of two flats at 4, Concannon Road, London SW2. There were two applicants before the FTT, of whom only the appellant sought permission to appeal. Permission was given by this Tribunal in relation to one issue only, namely whether the landlord had complied with the provisions of section 20B of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of charges for the year 2016/17.

2. The appellant has not been legally represented; Ms Lucinda Cookson has corresponded with the Tribunal on her behalf. She represented the appellant, who is the lessee of flat C, before the FTT, as well as the other applicant to the FTT Ms Emily Wright, who is the lessee of flat B. The respondent landlord declined the Tribunal's invitation to make representations in response to the application for permission to appeal. Its managing agents in a letter of 14 November 2019 said that if permission was granted the respondent would want to cross-appeal; however, it has not served a respondent's notice, nor grounds of opposition, and therefore has neither participated in this appeal nor cross-appealed.

3. The appeal succeeds and the Tribunal substitutes its own decision for that of the FTT, namely that no sums are payable by way of service charges by the appellant to the respondent for the year 2016/17. In the paragraphs that follow I set out what little factual background is available and summarise the law and the FTT's decision; I then examine the issues raised by the appeal and explain why it succeeds. The appellant has herself suggested a further basis on which services charges might be payable by her to the respondent for 2016/17, and I comment on that suggestion in the final section of the judgment.

The factual background, the law and the FTT's decision

4. The FTT said that 4 Concannon Road is a terraced Victorian house in Brixton, converted into 3 self-contained flats. Since 10 October 2017 the property has been managed by the three lessees through an RTM company. The two applicants to the FTT are, as noted above, two of the lessees.

5. The lease of flat C is for a term of 99 years from 25 March 2005. It reserves a ground rent and obliges the lessee to pay a service charge. The service charge is to be paid on account on 25 March each year, and the usual arrangement is made for an initial advance payment at the start of the term and then for a notice certified by an accountant to be provided each year setting out the actual expenditure for the previous year, the estimate for the coming year, and the amount payable, credit being given for advance payments.

6. The application to the FTT related to the whole of the service charge year 2015/16 and to part of the year 2016/17 namely 25 March 2016 to 9 October 2016, after which the RTM company took over.

7. In the application form the appellant listed the items in issue for March to October 2016, at section 7 of the form, and asked the FTT to determine whether "the 18 month rule" of section 20B of the 1985 Act applied to some or all of those amounts. She also asked the FTT to determine their reasonableness and payability (pursuant to section 27A(1) of the1985 Act) if section 20B did not prevent the landlord demanding them. The service charges for the year 2015/16 are not itemised in the application form, but I assume they were itemised pursuant to the FTT's directions because they were considered in detail by the FTT.

8. Section 20B of the 1985 Act says this:

> "(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."

9. Section 20B(1) prevents a landlord from making a demand for service charges more than 18 months after they have been incurred. Section 20B(2) softens the rule by enabling a landlord to preserve its position by telling the lessee in writing that costs have been incurred and that a demand will be made later. A "service charge" is defined by section 18 of the 1985 Act as an amount that the tenant agrees to pay in addition to rent for costs incurred, or to be incurred, by the landlord.

10. The FTT in its decision found that section 20B did not prevent the landlord from recovering any of the service charges in issue; I shall revert to that decision shortly. The FTT then considered each of the sums charged for the two years in dispute; it allowed some, reduced some, and disallowed others on the basis that they had not been reasonably incurred. It made an order in favour of the applicants under section 20C of the Landlord and Tenant Act1985 preventing the respondent from recovering the costs of the proceedings through the service charge, and ordered the respondent to reimburse the applicants for the tribunal fees.

11. The appellant sought permission to appeal the decision about section 20B and some of the FTT's decisions about individual items within the service charge. The Tribunal gave her permission to appeal only on the section 20B point in respect of the 2016/17 charges. Obviously if that appeal is successful then nothing is payable for that period, regardless of the FTT's decisions about the reasonableness of the various charges.

The appeal: the effect of section 20B

12. The appeal of the FTT's decision about section 20B relates to the service charges for the period 25 March 2016 to 9 October 2016 only, as the appellant makes clear in her grounds of appeal at paragraph 4; she accepts that she had a proper demand for 2015/16.

13. What the appellant said in her application to the FTT was that she had never received a demand for the service charges for the period March to October 2016. Demands had been made of the RTM company, not of the lessees. It appears that the respondent took the view that once the RTM company took over it was responsible for the collection of service charges for the period that preceded its appointment. The bundle provided to the FTT, and to the Tribunal, includes an undated schedule of service charges headed "Expenses since 24 March 2016 accounts"; I refer to it as "the RTM schedule". The amounts listed in the RTM schedule are the ones listed in the appellant's application to the FTT and are the sums upon which the FTT adjudicated; the total for the whole building is £10,730.74, and the one third share attributable to each flat is £3,576.91.

14. The respondent in its statement of case to the FTT said this:

> "We do not understand the notion that the 18 month rule should apply. The final accounts were provided to the RTM company when they took over the management and well within the 18 months of the expenditure. A copy of the final statement of account is attached. This was simply a mid year statement, which the RTM company could then use to prepare annual accounts as it would be required under the lease. This is not a formal account as this was mid year. Any subsequent demands from ourselves included the required notices."

15. The FTT said at its paragraph 14

> "The respondent argued that S.20B did not apply. … There was no requirement on the landlord to send the actual bill within the 18 months, simply for the landlord to make the tenant aware, within 18 months of the cost being incurred, of that bill and its approximate size, to be issued at a later date. This had been done. There had been notification of a bill served on the tenant by March 2017; within the period required. …
>
> 15. Decision: In accordance with the requirements of S.20B, sufficient notice of the estimated costs for the service charges had been provided to the tenants. They did not have to be in a set form of be defined figures, be certified or be accompanied by the summary of rights to still be adequate notice."

16. The difficulty with that decision is that it is not possible to identify which document the FTT regarded as the notice complying either with section 20B(1) or with section 20B(2).

17. The bundle contains a service charge demand dated 4 March 2016 addressed to the appellant, but the amounts set out in it are different from those set out in the RTM schedule and are not the ones the FTT adjudicated upon; flat C's one third share is said in that demand to amount to £982.33. So that cannot be the "sufficient notice". the FTT referred, although there is more to say about it below. There is a demand for service charges dated

27 February 2017 ("the 2017 demand"), which states that the amount outstanding for the previous year is £3,387.48 but does not itemise the charges; it is a single sheet and does not appear to be certified or to contain the statement of the tenant's rights and obligations. There are later service charge demands in the bundle, for the years 2018/19 and 2019/20, which are not relevant to the year 2016/17.

18. There are two candidates to be the "sufficient notice" to which the FTT referred in its paragraph 15 quoted above. One is the RTM schedule. It is undated; it is addressed to the RTM company, it is not certified as required by the lease, and it does not set out the tenant's rights and obligations as required by section 21B of the Landlord and Tenant Act1985. It therefore cannot be regarded as complying with section 20B(1).

19. The other is the 2017 demand. It does not itemise the charges. The copy in the bundle is a single sheet; it is not certified and does not contain the requisite information. Accordingly the 2017 demand is not a demand for service charges for the period 2016/17.

20. The fact that the lessees were made aware that a charge would be made for that period, by the RTM schedule and by the 2017 demand, does not amount to compliance with section 20B (*Skelton v DBS Homes (Kings Hill) Limited* [2017] EWCA Civ 1139 paragraph 18: "it is not enough under section 20B that the tenant has received the information that his landlord proposes to make a demand").

21. Accordingly the FTT's decision on this point is manifestly incorrect and must be set aside.

Consequences of the successful appeal

22. The effect of the successful appeal on the section 20B point is – if the Tribunal substitutes its own decision for that of the FTT - that no service charges are payable by the appellant to the respondent for the period from 25 March 2016 to 9 October 2016. The appellant asks the Tribunal to consider whether the demand dated 4 March 2016, to which I referred in paragraph 17 above can amount to notice to the lessee pursuant to section 20B(2), limited to the amounts claimed in it and further by the FTT's determinations as to reasonableness. According to the appellant's calculations that would still leave the respondent owing her money because of sums she has already paid, the amounts by which some of the items were reduced by the FTT, and the respondent's liability for the FTT fees.

23. The appellant makes this suggestion in order to avoid further proceedings since. There is no mention of the demand of 4 March 2016 in the FTT's decision and it appears that this point was not raised before it. I agree that it is appropriate for the Tribunal to consider the effect of that demand with a view to making its own decision rather than remitting the matter to the FTT, in order to bring the matter to a conclusion.

24. The demand of 4 March 2016 is addressed at the top left of the page to the appellant. It continues "Dear Mr & Mrs Breton", and I understand that they were the previous lessees. The demand sets out charges for 2015/16, with which I am not concerned, and goes on over the page to list estimated charges for 2016/17 for the building. It sets out a total for

the building, and the one-third share attributable to flat C in the sum of £982.33. It requires payment of that one-third share, plus a debit of £50.55 from the previous year, and the ground rent. It states that it is "Certified by Eagerstates Ltd", the landlord's managing agents, and overleaf it sets out the tenant's rights and obligations as required by section 21B of the Landlord and Tenant Act 1985.

25. That estimate cannot be a notice that satisfies section 20B of the 1985 Act because it does not inform the tenant that charges have been incurred. It is a demand for service charges on an estimated basis. Therefore I cannot accept the appellant's invitation to regard this as a notice that complies with section 20B(2) of the Landlord and Tenant Act 1985. Nor was it relied upon by the respondent, either as a demand under section 20B(1) or as notice that charges had been incurred under section 20B(2). Any reliance would be inappropriate since the estimated figure bears so little resemblance to the eventual figures on which the FTT adjudicated. Accordingly the demand of 4 March 2016 cannot assist the respondent.

Conclusion

26. The appeal succeeds. The FTT's decision is set aside, and the Tribunal substitutes its own decision that nothing is owed by the appellant to the respondent by way of service charges for the period 25 March 2016 to 9 October 2016.

27. Although this is not a full costs jurisdiction the Tribunal is able to order the respondent to reimburse the appellant in the amount of the Tribunal's fees; I shall make such an order unless within 14 days the respondents write to the Tribunal to say why that order should not be made, in which case I will consider those representations and invite the appellant to respond if necessary.

Judge Elizabeth Cooke

9 April 2020