

UPPER TRIBUNAL (LANDS CHAMBER)



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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – service charges – address of landlord in demand to tenant for rent or other sums – whether address of landlord’s agent sufficient – held that it was not – appeal dismissed – Landlord and Tenant Act 1987 s 47

IN THE MATTER OF AN APPEAL AGAINST A DECISION
OF A LEASEHOLD VALUATION TRIBUNAL

BETWEEN

BEITOV PROPERTIES LIMITED

Appellant

and

ELLISTON BENTLEY MARTIN

Respondent

Re: Flat 22
Cornish Court
Bridlington Road
London N9 7RS

Determination on written representations

No cases referred to

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DECISION

1. This is an appeal by the landlord in a service charge dispute against a decision of a leasehold valuation tribunal. It raises a single issue: whether the requirement in section 47(1) of the Landlord and Tenant Act 1987 that any written demand to a tenant for rent and other sums must contain the name and address of the landlord is satisfied by giving the name of the landlord and the address of its agent. The LVT held that the requirement was not satisfied in this way. The landlord now appeals with permission granted by His Honour Judge Huskinson.

2. Section 47(1) provides 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.”

Subsection (4) provides that in this section “demand” means a demand for rent or other sums payable to the landlord under the terms of the tenancy (including, therefore, a service charge). Under subsection (2) where any demand for a service charge does not contain the information required by subsection (1) the amount demanded is to be treated as not being due from the tenant at any time before the information is furnished to him.

3. The LVT proceedings arose from a claim by the landlord in the county court for payment of arrears of service charges. It was transferred to the LVT, which thus exercised its powers under section 27A of the Landlord and Tenant Act 1985. The tenant failed to attend the hearing before the LVT. At the hearing the landlord abandoned one element of the amount claimed, and the LVT concluded that all other elements of the claim were made out: that the service charge for 2008 and the balancing charge for that year were reasonable in amount and that the on-account payments for 2009 and 2010 and amounts demanded for payments into a reserve fund were reasonable and payable. However, the LVT raised with the landlord the question of the address given in the demand for service charges, although it does not appear that this had been a matter of concern to the tenant. It acceded to the request of the solicitor who was appearing for the landlord that she be given the opportunity to make written submissions on this matter following the hearing, and, having received these submissions, it held that the amounts demanded were not payable because the demands had not complied with section 47 in that they had not contained the address of the landlord.

4. The demands, which had been prepared and sent by the landlord’s managing agents, BLR Property Management, contained the following statement:

“Notice is hereby given pursuant to the Landlord and Tenant Act 1987 section 48 that all notices (including notices in proceedings) may be served upon the Landlord
Beitov Properties Ltd
Hyde House
The Hyde
London NW9 6LH”

The address given was that of BLR. The LVT accepted the evidence of Mr E Hughes, a property manager with BLR, that the address of Beitov Properties Ltd was 266a Regents Park Road, London N3 3HN. It said that this was reinforced by the Land Registry entries, which recorded that as the company’s address; while a company search revealed that its registered office was at Sapphire House, 73 St Margarets Avenue, Whetstone, London N20 9 LD.

5. The LVT set out its reasons fully and clearly. It contrasted the requirements of section 47 with those of section 48, which provides for notification by a landlord of an address for service of notices, and it noted that in section 47 there was one piece of information that must always be contained in the demand, namely the name and address of the landlord. It said that the words used in section 47(1)(a) were to be construed as imposing an obligation to give the name and *the* address of the landlord and not the name and *an* address; but that where a landlord had more than one address (for instance a company’s registered office address and a different trading address) the landlord could choose which address to use in the demands. It accepted that there was no need to refer expressly in the demand to section 47 and that it was sufficient if it contained the specified information. It rejected the contentions advanced on behalf of the landlord that the address given in the demands was the landlord’s address because it was the address of its managing agents and its accountants and because it had some papers there. It also rejected the further contention that it was sufficient to give an address at which the landlord could receive communications, pointing out that, if that was all that was required, section 47 would be otiose since such requirement was contained in section 48.

6. In their written submissions in this appeal the appellant’s solicitors, Conway & Co, say that the landlord’s registered office address, Sapphire House, 73 St Margarets Avenue, Whetstone, London N20 9 LD, is an address of accountants, Lecome & Co. The landlord owns, it is said, a portfolio of properties, some of which, including the subject property, are managed by BLR from the address at Hyde House, while other properties are managed by VA Property Management Ltd, which is located at 266a Regents Park Road. There are two directors of Beitov. One of these is also company secretary and is a director and part-time employee of VA Property Management. The other is a director but not an employee of VA Property Management.

7. It is submitted that the demands in question complied with the requirements of section 47 as they specified the name of the landlord and gave Hyde House as the address. It is said that the Act does not prescribe or limit the particular address to be used by the landlord, so that the landlord is entitled to specify Hyde House as the address. Provided the address is one with sufficient connection with the landlord and at which it could receive communications, it is said, section 47 is satisfied. The landlord

receives mail addressed to Beitov Properties at the Hyde House address. It is there that the managing agent instructed by the landlord to manage and administer the portfolio of properties operates the business of administration of the property. The landlord's records, files and accounts relating to the property are held at this address, and it is at this address that leaseholders are notified that inspection of invoices may be carried out.

8. The submissions go on to draw attention to certain provisions in the Companies Act 2006 relating to the service of documents. They refer to section 1142, which provides that any obligation under the Companies Acts to give a person's address is, unless otherwise expressly provided, to give a service address for that person (and "service address" is defined in section 1141(1) to mean an address at which documents may be effectively served on the person). They also refer to section 1139, to section 1143 and, in particular, to Schedule 4 which provides (at paragraphs 1(1) and 4) that documents or information in hard copy form may be sent or supplied to a company (a) to an address specified by the company for that purpose, (b) to the company's registered office and (c) to an address to which any provision of the Companies Acts authorises the document or information to be sent or supplied.

9. It is, in my judgment, clear from the wording of section 47(1) that the purpose of the requirement in (a) to provide the address (as well as the name) of the landlord is not solely for the purpose of providing the tenant with an address at or through which he can communicate with the landlord. That is clear because (b) provides that, if the landlord's address is not in England and Wales, an address in England and Wales must be given at which notices may be served on the landlord by the tenant. Thus even if the landlord's address is not in England and Wales it still has to be given (and a further address provided for the service of notices). The purpose of the requirement in section 47 to include in any demand the name and address of the landlord, in my judgment, is to enable a tenant to know who his landlord is, and a name alone may not be sufficient for this purpose. To provide an address at which the landlord can be found assists in the process of identification.

10. That this is the purpose of the requirement to provide the landlord's address is in my view clear from section 47 alone. It is, however, to be noted that section 48 makes separate provision for "Notification by landlord of address for service of notices" (as the section is headed), so that that provision carries the implication that the requirement in section 47 is not solely for the purpose of providing the tenant with an address at or through which he can communicate with the landlord but has a wider purpose. For this reason the provisions of the Companies Act 2006, relied on by the appellant, are of no assistance because they are concerned with the service of documents or other information.

11. The address of the landlord for the purpose of section 47(1) thus seems to me to be the place where the landlord is to be found. In the case of an individual this would be his place of residence or the place from which he carries on business. In the case of a company it would be the company's registered office or the place from which it carries on business. If there is more than one place of residence or place from which business is carried on, then, depending on the facts, it may be that any one of such addresses will do.

I do not think that it is useful to say any more than this. Of course in many cases providing the address of a company landlord may for purposes of identification add nothing of practical value and is unlikely to be of any interest to the tenant, who will be more concerned about having an address at or through which he can communicate with the landlord. (In the present case there is nothing to suggest that the tenant was concerned to establish the company's address.) But there will be cases in which provision of an address does assist in the process of identification.

12. In the present case the address given, Hyde House, The Hyde, London NW9 6LH, was not the landlord's address because it was not the registered office of the company or an address from which it carried on business. It was the address of the agents of the company who managed the subject property, and the fact that they kept there the records, files and accounts relating to the property did not make it an address from which the company itself carried on business. The fact that it was an address to which communications to the company could be sent is nothing to the point. The LVT in my judgment determined the matter correctly in point of law, and the appeal must accordingly be dismissed.

13. Having said that, I should add that it is in my view generally inappropriate for a tribunal to take on behalf of one side in what is a party and party dispute a purely technical point, by which I mean a point that does not go to the merits or justice of the case. Here there is nothing to suggest that the tenant wished to know the address of the landlord or was concerned that the address given in the demands might not be the right one or that he was prejudiced in any way by not knowing the address. The LVT said that if the landlord were now to serve a demand that gave the address required by section 47 the service charges would be payable. No purpose will in the circumstances have been served in imposing on the landlord the need to deal with the issue raised, to serve a fresh demand and, quite possibly, to take further proceedings for recovery.

Dated 8 May 2012

George Bartlett QC, President