UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2012] UKUT 0204 (LC)
UTLC Case Number: LRX/73/2012

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – Service Charge dispute – section 47 of the Landlord and Tenant Act 1987 – contents of demand

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF A LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN

TRIPLEROSE LIMITED **Applicant**

and

GRANTGLEN LIMITED AND CANE DEVELOPMENTS LIMITED **Respondent**

Re: Flat 58 & 60 Essendine Mansion
Essendine Road
London
W9 2LU

Determination on the basis of written representations

The following case are referred to in this decision:
Beitov Properties Limited v Elliston Bentley Martin [2012] UKUT 133 (LC))

DECISION

Introduction

1. This is an appeal by way of review from the decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel dated 7 March 2012. Permission was refused by the LVT on 8 April 2012. An application was made to the Upper Tribunal (Lands Chamber) for permission to appeal.

2. Permission to appeal was granted by the President, George Bartlett QC on 18 July 2012 with the following observations:

> "There is a realistic prospect of success on the grounds set out in the application. Permission is restricted to those grounds. The appeal will be dealt with by way of review."

3. On 9 November 2012, George Bartlett QC determined that this would be a written representations appeal and the parties were given a further 14 days to make further written submissions if they so wished.

The Background

4. The Appellant, Triplerose Limited, is the long leasehold owner of Flats 58 and 60 Essendine Mansions, London W9 2LY. Essendine Mansions comprises two blocks of six flats. The Respondent, Holly Marsh, Grantglen Limited and Cane Development Limited of 79A High Street, Potters Bar, Herts EN6 5AS, was the freeholder of both blocks and lessor of the flats until 30 September 2011 when a collective enfranchisement took place. At the time of the collective enfranchisement, there was a dispute as to the service charges for Flats 58 and 60 Essendine Mansions and an application was made on 7 October 2011 for a determination as to the services charges payable for Flats 58 and 60 for 2005 to 2011.

5. The matter came before the LVT for hearing on 13 February 2012 at which time oral evidence was given by Mr Moskovits on behalf of the Appellant and Mr Cheek, a Director of Cane Development Limited, on behalf of the Respondent. The disputed amount of service charge was £6,923.64 (£3,461.82 per flat). The LVT analysed the figures presented by the Respondent and determined that the allowable service charge for each flat for the period 2005 to 2011 was £3,225.38. Of this sum, £620.25 had already been paid, thereby leaving an outstanding balance of £1,605.73 per flat (or £3,209.46 in total).

The Appeal

6. The appeal attacks the decision of the LVT under two main headings:

(i) that the LVT erred in rejecting the Appellant's contention that the failure to name Grantglen Limited on the demands for service charge, but naming Paul Marsh (a director) instead, was a breach of the requirements of section 47 of the Landlord and Tenant Act 1987 and that the service charge was therefore not payable;

(ii) that the LVT erred in finding that dated letters had been sent out with the service charge demands together with the summary of rights, and that conclusion was against the weight of the evidence.

Section 47 of the Landlord and Tenant Act 1987

7. Section 47 of the LTA 1987 provides that the landlord's name and address is to be contained in demands for rent etc.

> "(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
>
> (2) Where
>
> (a) a tenant of any such premises is given such a demand, but
>
> (b) it does not contain any information required to be contained in it by virtue of subsection (1)
>
> then (subject to subsection (3)) any part of the amount demanded which consists of a service charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant
>
> (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges from the tenant.
>
> (4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of a tenancy.

8. The LVT rejected the Appellant's submission that no service charge was payable as a result of the failure to name Grantglen Limited on the demands and instead including the name of Paul Marsh, a Director of Grantglen Limited. The demands were

made in the name of Cane Developments, Paul Marsh and Holly Marsh instead of Cane Developments, Grantglen Limited and Holly Marsh.

9. The reasoning given for rejecting the submission was set out to be that the LVT did not regard the error of naming Paul Marsh rather than Grantglen Limited as breaching the requirement of section 47(1)(a) of the LTA 1987; that there was no prejudice because of the error; and that the error was rectified by the Respondent notifying the Appellant of the correct names of the landlord by reason of the written application made to the LVT which names the Respondent correctly. In my judgment the LVT erred in reaching these conclusions.

10. The definition of demand in section 47(4) includes demand for a service charge. Section 47 of the LTA 1987 does not require the tenant to suffer prejudice in order for there to be a breach of its provisions and the LVT erred in taking into consideration whether any prejudice had been suffered. It does not make any difference as to whether there has been any prejudice or not: the provision of the name and address of the landlord is obligatory.

11. The section 47 notice failed to correctly identify the landlord by incorrectly naming Paul Marsh rather than Grantglen Limited. Section 47 provides that the name and address of the landlord must be included in the demand.

12. The requirement to provide the name and address of the landlord is not simply for the purpose of providing the tenant with an address through which he can communicate to the landlord, it is to enable the tenant to identify the landlord (see *Beitov Properties Limited v Elliston Bentley Martin* [2012] UKUT 133 (LC)). Even if the inclusion of Grantglen Limited on the demand had no practical benefit in the circumstances of this case, it was a still a breach of the provisions of section 47(1) so that, pursuant to the provisions of section 47(2) of the LTA 1987, the service charge is not due before the information is furnished on the demand in accordance with section 47 of the LTA 1987.

13. The failure to include the name and address in accordance with section 47 could not be rectified by the provision of the name and address on the application to the LVT. The statutory requirement is to provide the name and address of the landlord on the demand.

14. I echo the sentiments expressed by George Bartlett QC, as President, in *Beitov Properties Limited v Elliston Bentley Martin* that it is generally inappropriate for a tribunal to take a purely technical point (namely one that does not go to the merits or justice of the case) on the part of one side, when the issue has not been raised by a party in a party and party dispute. However, in this case, the Appellant was raising the point and while it is correct that it is a purely technical point that does not go to the merits or justice of the case, the Appellant was entitled to raise the issue and to rely upon the statutory obligation imposed by section 47 of the LTA 1987.

15. Consequently, the LVT erred in finding that the service charge was payable. It will be necessary (if this step has not already been taken) for the demand to be re-served and, if necessary, for further proceedings for recovery of the service charge (now that the sum outstanding has been determined by the LVT) to be issued.

Conflict in Evidence

16. The LVT heard oral evidence from Mr Moskowits on behalf of the Appellant, and from Mr Cheek on behalf of the Respondent. The LVT additionally had sight of a number of documents. There was, as is recorded in the decision of the LVT, a dispute in the evidence Mr Moskowits and Mr Cheek as to whether the demands and summaries of rights, as required by section 21B of the LTA 1987, were served on the Appellant.

17. The LVT concluded that they preferred the evidence of Mr Cheek to that of Mr Moskowitz. The LVT determined that the Respondent was engaged in property business and that he was concerned with a number of properties, and therefore concluded that it was unlikely that the Respondent would have overlooked the requirement to serve demands together with the relevant summaries of rights. The LVT further determined that Mr Moskowits was a busy man and that he could therefore have forgotten or mislaid documents.

18. The Appellant complains that the LVT's decision to prefer the evidence of Mr Cheek to that of Mr Moskowitz was contrary to the weight of evidence and points, amongst other things, to a number of errors in the demands submitted by the Respondent.

19. With respect to this challenge, I do not consider there is any merit to it. It is a matter for the Tribunal at first instance to resolve factual conflict. The LVT heard from both Mr Cheek and from Mr Moskowitz
and determined that they preferred the evidence of Mr Cheek. That was a matter for them, and I do not consider that there is anything in the Decision which supports the contention that irrelevant considerations have been taken into account.

20. The LVT were perfectly entitled to come to the conclusion that they preferred the evidence of one witness to another, in light of the oral evidence they heard and the documentary evidence before them. This is a review hearing and there is no reason to interfere with the LVT's findings in this respect.

Conclusion

21. For the reasons out above, the appeal succeeds to the extent that the requirements of section 47 were not complied with and the service charge is therefore to be treated as not being due from the tenant (until a notice including all the necessary statutory information is served on the Respondent).

22. I do not find that second limb of the attack against the LVT's finding that it preferred the evidence of the Respondent's witness, to that of the Appellant, is a ground that can be made out.

Dated 7 May 2013

Her Honour Judge Walden-Smith