FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AD/LSC/2019/0175**
Property	**:**	**31 Moyle House, Little Brights Road, Belvedere DA17 6BF ("the flat")**
Applicants	**:**	**Matthew Perry & Tracey Winder ("the tenants")**
Representative	**:**	**BW Residential Ltd**
Respondent:	**:**	**Belvedere Park Management Company Limited ("the management company")**
Representative	**:**	**Pinnacle Group**
Type of applications	**:**	**Liability to pay service charges**
Tribunal members	**:**	**Judge Angus Andrew** **Trevor Sennett MA FCIEH** **Leslie Packer**
Date and venue of hearing	**:**	**7 August 2019** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**13 August 2019**

DECISION

Decision

1. The service charges demanded by the management company in respect of the service charge years from and including 2013/2014 to and including 2019/2020 are payable by the tenants in full.

2. Interest of £276.76 is not payable to the extent that it relates to any period during which the tenants' obligation to pay the service charges was suspended by the operation of section 21(b)(3) of the 1985 Act.

3. We decline to limit the landlord's ability to recover the costs of these proceedings either through the service charge or as an administration charge under the terms of the tenants' lease.

The applications and the hearing

4. On 13 May 2019 the tribunal received the tenants' applications under sections 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The application was for a determination of the tenants' liability to pay service charges of £8,548.57 in respect of the years from and including 2013/2014 to and including 2019/2020. The application did not explain why the tenants objected to paying these service charges. There is an argument that in the absence of such an explanation the tribunal had no jurisdiction to accept the application because it did not identify a dispute between the parties. Nevertheless, the application was accepted and directions were issued on 15 May 2019.

5. In their application the tenants also applied for orders under section 20C of the 1985 Act and under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002. By these applications the tenants sought orders limiting the management company's ability to recover the costs of these proceedings either through the service charges or as an administration charge under the terms of the tenants' lease.

6. Direction 7 required the management company to give disclosure of the relevant service charge documents by 5 June 2019. Direction 8 required the tenants to submit a statement of their case by 18 June 2019. The management company initially failed to give disclosure but on 17 June 2019 the tenants submitted a statement by Bernard Wales said to be given in compliance with direction 8. The management company eventually gave full disclosure on or about 2 July 2015. At the start of the hearing Mr Wales on behalf of the tenants handed in four copies of a complete document bundle. Having read the bundle, Mr Elsy on behalf of the management company agreed that we could accept it.

7. At the hearing the tenants were represented by Bernard Wales, FIoD FIRPM. The management company was represented by Alex Elsy who is a regional manager of the Pinnacle Group.

Background

8. The lease under which the tenants hold the flat is dated 31 July 2013 and is for a term of 125 years (less 3 days) from 4 July 2007. It is a tripartite lease made between Bellway Homes Ltd, the tenants and the management company. We were told that all the long leaseholders have a share in the management company, which is therefore under their control. Under the terms of the lease the management company is responsible for the repair and maintenance of both the estate and the block in which the flat is situated. It recovers its costs through the payment of service charges by the long leaseholders. In the usual way there is provision for on-account payments with balancing charges becoming payable at the end of each service year. The terms of the lease are not an issue and we say no more about it.

9. The management company appointed the Pinnacle Group ("Pinnacle") as its managing agents. At the beginning of each year Pinnacle produced a comprehensive budget that formed the basis of the on-account payments that were demanded from the tenants and the other long leaseholders. Service charge accounts were produced at the end of each year and again appropriate balancing charges were demanded from the tenants and the other long leaseholders. A running account produced by Pinnacle shows that at the beginning of 2019 the tenants were £5,523.21 in arrear with their service charges. It seems that these arrears were largely discharged by Mr Perry's father because he did not want his son to have an adverse credit rating. When we asked Mr Wales why the tenants had not paid their service charges he told us that: *"Mr Perry has difficulty with the concept that he has to pay service charges"*.

Issues in dispute

10. The only issue identified by Mr Wales in his statement of 17 June 2019 was a failure by the management company to include in its demands the correct summary of the rights and obligations required by section 21B of the 1985 Act. The demands included a summary but it was the summary set out in the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. That is, the summary did not include the amendments required by the Transfer of Tribunal Functions Order 2013 that came into effect upon the formation of the First-tier Tribunal. The summaries in the demands were defective in that (a) they referred to the Leasehold Valuation Tribunal rather than the First-tier Tribunal and (b) they omitted to include a summary of the potential costs consequences of applications and appeals to the First-tier Tribunal and the Upper Tribunal.

11. Upon receipt of Mr Wales' statement of 17 June 2019, the accounts department at Pinnacle transferred the matter to Alex Elsy, the regional manager. Mr Elsy immediately arranged for the re-issue of the demands with what he believed to be the correct summary of the rights and obligations. In re-issuing the demands he retained the original demand dates.

12. In an e-mail of 4 July 2019 Mr Wales objected to the re-issued demands. That e-mail, which formed the basis of the tenants' case, is at page 94 of the hearing

bundle. Mr Wales agreed that his objections to the reissued demands could be summarised as follows: -

a. In paragraph (7) of the summary an "E", had been used instead of a "£" so that the paragraph indicates that a landlord may recover no more than "E250" or "E100" if it has not consulted on proposed works or a proposed agreement; and

b. All the demands should have been dated 2 July 2019 being the date upon which they were re-issued by Pinnacle; and

c. In consequence any expenditure incurred by the management company prior to 2 January 2018 was caught by section 20B of the 1985 Act and could not be recovered through the service charge.

13. In answer to our questions Mr Wales told us that the tenants had no other objections to the service charges. Save for the technical points taken above they disputed neither the reasonableness of the costs incurred by the management company nor the payability of the demanded service charges.

14. For the sake of completeness, we now set out sections 20B and 21B of the 1985 Act:-

Section 20B

(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.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

Reasons for our decisions

15. During the hearing we drew Mr Wales attention to paragraph 12-08 of the 4th Edition of Service Charges and Management by Tanfield Chambers and to the Upper Tribunal decision in Tudor Roberts v Countryside Residential (South West Ltd) 2017 UKUT 0306 (LC).

16. The use of "E" instead of "£" in paragraph (7) of the summaries was a *"trivial"* defect within the contemplation Her Honour Judge Robinson's decision in Tudor Roberts and could be disregarded. The meaning and intention of the summaries was perfectly clear and they conveyed the required information.

17. Section 21B provides that *"a tenant may withhold payment of a service charge which has been demanded from him"*. A failure to provide the correct summary of rights and obligations does not invalidate a demand: it simply suspends the leaseholders' obligation to pay the sum demanded. In this case the obligation to pay was reinstated on 2 July 2019 when the demands were reissued and the suspension was lifted. The demands themselves still took effect on the dates upon which they were originally issued and Pinnacle acted correctly in retaining the original demand dates.

18. As Her Honour Judge Robinson pointed out in Tudor Roberts a letter before claim which restated sums previously demanded and which included all the information required by section 21B was a valid demand, albeit that the date for payment had *"long since passed"*.

19. Even if the demands could be regarded as having been issued on 2 July 2019 (when they were re-issued) the tenants still could not rely on section 20B. The original demands constitute a sufficient notice for the purpose of the section 20B(2). The tenants would have understood that the costs that were the subject of the demands had been incurred and that they would be required under the terms of their lease to contribute to them by the payment of service charge. The demands admit no other reasonable interpretation.

20. Consequently, and for each of the above reasons we determine that the demanded service charges are payable by the tenants in full.

21. The running account provided by Pinnacle included £276.76 in respect of *"Interest on Late Payment"*. Before us Mr Wales did not dispute that interest. Nevertheless, Mr Elsy's agreed with our observation that (to the extent that the tenants' lease permits the recovery of interest) the management company could not recover interest in respect of any period during which the tenants' obligation to pay the service charges was suspended by the operation of section 21(b)(3).

22. Finally, we turn to the section 20C and paragraph 5A applications. Mr Elsy accepted that because the summaries in the original demands were defective Pinnacle would not seek to recover the costs of these proceedings from the tenants as an administration charge.

23. That concession apart we can see no justification for making an order under either section 20C or paragraph 5A. Although the tenants had a technical argument in their objections to the original demands, their case as advanced at the hearing was unattractive and without merit. Interest on late payment aside (which they had not actually disputed), they had been wholly unsuccessful in these proceedings. Indeed, had it not been for the original defective summaries we would have considered it appropriate to order the tenants to pay the management company's costs under rule 13 of the 2013 Rules.

Name: Angus Andrew Date: 13 August 2019