FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/24UN/LSC/2022/0123**
Property	**:**	**8 Swan Court, East Street, Andover, SP10 1EZ**
Applicant	**:**	**Lisa and Anthony Ross**
Respondent	**:**	**DPS Company Ltd**
Type of Application	**:**	**S.27A '85 Act**
Tribunal Members	**:**	**Judge Dovar**
Date of Decision	**:**	**9th June 2023**

DECISION

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Introduction

1. This an application, dated 5th November 2022, for the determination of the payability for service charges for the years ending 2020, 2021 and 2022.

2. On 23rd January 2023, the Tribunal sent out directions to the parties. As well as stating its intention to deal with the matter without a hearing, it set out a timetable for statements of case from the parties and the submission of witness statements.

3. The Respondent has not engaged in the proceedings in any way. The application, directions and statement of case of the Applicants were sent to the Respondent at the email address 'Jess.potter@danielstores.co.uk'. That is the email address which the Applicants have historically used to communicate with the Respondent, Jess Potter is the Respondent's Senior Property Portfolio Manager and has emailed the Applicants using that address.

Challenges

4. The specific challenges set out in the application form are:

   a. The demands have been made more than 18 months after the costs have been incurred (s.20B of the Landlord and Tenant Act 1985);

   b. The demands were not accompanied by a statement of tenants rights and obligations (s.21B of the Landlord and Tenant Act

1985) nor complied with ss.47 and 48 of the Landlord and Tenant Act 1987;

c. The demands are not made in compliance with the lease terms;

d. The landlord has failed to provide evidence of work done;

e. The work that has been done, has not been to a reasonable standard;

f. Insurance claims have not been pursued.

Background

5. In about August 2022, the Lisa Ross contacted Jess Potter in relation to their proposal to sell their lease of the Property. She did that because she had been told that she was in arrears and she wanted to sell her flat. Lisa Ross said she did not have a record of any receipt of service charge invoices being sent.

6. On 5th August 2022, Jess Potter sent through three invoices for the years 2020, 21 and 22. This was the first time the Applicants had received these invoices, they paid them under protest in order not to jeopardise their sale.

7. On 9th November 2022, Jess Potter confirmed that the invoices that had been sent were '*for back dated service charges*.'

8. As for the invoices, they share the same following common features:

a. All are dated 1st June 2022 with a due date of 30th June 2022;

b. None are accompanied by a statement of tenants rights and obligations;

c. The description for each is '[2020/2021/2022] Service Charge for 8 Swan Court.', for 2020 that is followed by 'Breakdown as per Lease';

d. No address for service is given;

e. Each is for £972.17 plus VAT of £194.43, totalling £1,166.60.

Statutory limitations on residential service charges

9. A landlord has a number of hurdles to overcome to ensure that any service charge demand is payable. Of particular relevance to this matter are:

Landlord and Tenant Act 1985, s.20B.— Limitation of service charges: time limit on making demands.

(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.

Landlord and Tenant Act 1985, s.21B Notice to accompany demands for service charges

(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.

Landlord and Tenant Act 1987, s.47.— Landlord's name and address 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 [or an administration charge]1 ("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.

Landlord and Tenant Act 1987, s.48.— Notification by landlord of address for service of notices.

(1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.

10. In addition the Applicants have raised issues of the quality of the works and services provided (which may impact on questions of whether any sum demanded should be capped on the basis that it is in relation to a service or work that has not been carried out to a reasonable standard (s.19 of the 1985 Act)). However, given that the Respondent has not condescended to provide any details of how the actual demands have

been calculated, it is not possible to determine what the sums relate to and therefore what the standard of that service of work is.

11. Further, it is not possible to determine whether the sums are on account demands or actual costs incurred. However, given that for each year the sum is identical, that is a pretty strong indication that each is an on account demand. The Applicant's lease permits on account payments, being quarterly interim payments based on the estimate for the yearly cost.

Basic defaults

12. None of the three invoices are payable.

13. Firstly, they are accompanied by a summary of tenants rights and obligations as mandated by s.21B of the 1985 Act.

14. Secondly, they do not contain an address for service on the Respondent as mandated by s.48 of the Landlord and Tenant Act 1987.

Other Grounds

15. Section 47 has been complied with, in that an address has been given for the Respondent, which is in England and Wales.

16. In relation to s.20B of the 1987 Act, that prevents the recovery of service charges for costs incurred over 18 months prior to the date of the demand. However, that only applies to demands for actual costs incurred, not for legitimate on account demands made under the terms of a lease. In *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284

(Ch), Etherton J considered that s.20B did not apply to on account charges, with the result that if an estimate exceeded the actual costs for the year, the landlord need not worry about any limitation on recovery as in those circumstances, on reconciliation, there was no need to serve a further demand.

17. I assume from the fact that the demand for each year is identical that these are in fact on account demands. In which case, for two years, an on account demand has been demanded after the year end to which it relates. That is not a legitimate demand under the lease terms.

18. The lease provides for the on account demands. They are to be provided in advance of each accounting year, but if not, then the default is that paid in the previous accounting year. Whilst time is not normally of the essence for service charge demands, and so they can be served late, I do not consider that that means that an on account demand can be served when the actual amount incurred is known or is capable of being ascertained. In *Southwark LBC v Akhtar* [2017] L&TR 36, UT , Judge Cooke, whilst recognising that time was not of the essence for the service of an on account demand, considered the position when it was served at the end of the accounting year. She stated

> *"34 ... Time is not of the essence, and so the landlord has flexibility within the year: but that flexibility does not mean that time can be extended indefinitely. I note that rather greater flexibility was given to the landlord in Skelton (at [31] above); but that is unsurprising since in Skelton there was no*

> *provision for the landlord to pick up any shortfall in advance payments by making a demand later. Here the landlord who has missed the para 2 (1) boat* [payment on account] *can recover the charge by using para.4(1)*[deficit demand]*."*

19. Under the Applicants' lease, as is common in leases, there is provision for a deficit demand. Accordingly, whilst time is not of the essence, in this case, the boat for an on account demand will have sailed once the relevant accounting year was over.

20. That would therefore mean that if, as appears to be the case, the first two demands for the years ending 2020 and 2021, are on account demands, they are too late. This does not apply to the last demand which was served midway through the year to which it related.

21. However, in relation to that last demand, given that this decision is dated 9th June 2023, that year has now passed and given the non-compliance with s.21B and s.48 set out above, that demand is not payable.

Conclusion

22. No sums are payable pursuant to the three demands served on 5th August 2022 on the Applicants. They fail to comply with basic statutory requirements, in respect of s.21B of the 1985 Act and s.48 of the 1987 Act. Further, in relation to the first two demands, if they are on account demands then they have been served too late. If they are demands based on actual costs incurred, then the first is barred by s.20B as being served over 18 months from the date the costs were incurred.

23. Given the successful challenge, I make an order under s.20C of the Landlord and Tenant Act 1985 prohibiting the Respondent from seeking to recover any of the costs of these proceedings through the service charge from the Applicants or the long leaseholder of flat 7, Mr Milner, who has provided a signed statement seeking the protection of that section.

Judge Dovar

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.