

UPPER TRIBUNAL (LANDS CHAMBER)



UT Neutral citation number: [2011] UKUT 261 (LC)
Case Number: LRX/110/2010

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – services charges – Landlord and Tenant Act 1985 as amended section 21B – The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 – whether a demand for service charges served after the commencement of section 21B must comply with that section where the items of expenditure in respect of which the demand is made were incurred before that commencement.

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

BETWEEN

MR V J AMOURGAM

Appellant

and

VALEPARK PROPERTIES LIMITED

Respondents

Re: Flat 3,
25 Priory Road,
London
NW6 4NN

Before: His Honour Judge Nicholas Huskinson

(Decision made upon written representations)

DECISION

1. The Appellant appeals to the Tribunal, with permission, from the decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel (“the LVT”) dated 24 June 2010 whereby the LVT gave a decision under section 27A of the Landlord and Tenant Act 1985 as amended as to the amount payable by the Appellant to the Respondent by way of service charge in respect of a large number of service charge items since 2002.

2. The appeal raises a short point as to the proper construction of section 21B of the 1985 Act as amended. This section was introduced by the Commonhold and Leasehold Reform Act 2002 section 153 and came into force on 1 October 2007 in England. Section 21B provides in subsections (1), (2) and (3) as follows:

- “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”.

The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (S.I. 2007/1257) prescribe the statement which is to be included.

3. The case has, by agreement, proceeded before this Tribunal by way of written representations.

4. The issue in this appeal is helpfully summarised in the Respondent’s Statement of Case paragraph 2;

- “2) That issue is,
 - (a) Whether (as the Appellant contends) s.21B *Landlord and Tenant Act 1985* (which came into force on 1 October 2007) applies to demands served on or after 1 October 2007 even though the costs to which the demands relate were incurred prior to 1 October 2007, or
 - (b) Whether (as the LVT held at paragraph 32 of the Decision) s.21B applies only to demands served on or after 1 October 2007 where the costs to which the demands relate were incurred on or after 1 October 2007.”

The Respondent in its Statement of Case accepted that the Appellant is correct in his contention that section 21B relates to demands served on or after 1 October 2007 notwithstanding the sums to which the demand relates were incurred prior to 1 October 2007.

5. In defence of the LVT it should be stated that the LVT was faced with a wide-ranging dispute covering 53 separate items of service charge over a period from 2002 onwards. The LVT gave separate consideration to these items and in summary placed the items in various categories as follows:

- 1) Items which were either no longer challenged by the Appellant or were not service charge items, such that the LVT was required to make no determination in respect of those items.
- 2) Items where section 20B of the Landlord and Tenant Act 1985 as amended was satisfied and where a demand for payment had been made before section 21B came into force – as regards these items the LVT found the Appellant liable to make payment in full.
- 3) Items where a failure to comply with section 20B of the Act prevented any recovery in respect of the item by the Respondent.
- 4) Items where no demand for payment satisfying section 20B(1) had been made but where section 20B(2) was satisfied, such that the item will be payable once a proper demand is made.
- 5) Items that were demanded sufficiently soon to avoid a problem under section 20B and where the items were incurred before the commencement of section 21B. In respect of these items the LVT held that they were recoverable in full, even though the demand was made after the commencement of section 21B and did not comply with it. The present appeal concerns this category of items.
- 6) Items demanded sufficiently soon after being incurred so as to avoid problems under section 20B, but where the demand did not comply with section 21B – the LVT held that as regard these items section 21B prevented recovery until a new demand complying with section 21B had been served, whereupon the items would be payable.
- 7) Items 39 and 49 which were given separate consideration on their own facts.

6. The Appellant in his application for permission to appeal sought to raise a large number of matters of complaint, but he was granted permission to appeal upon only one point. This was the argument summarised in paragraph 4 above.

7. The question therefore is this: where a demand for payment of a service charge is made after the coming into force on section 21B of the Landlord and Tenant Act 1985, must that demand comply with section 21B even if the relevant items of expenditure (i.e. the items of expenditure

which the landlord seeks to recover through the demand for payment of service charge) were incurred by the landlord prior to 1 October 2007? In my judgment it is clear from section 21B that the fact the items of expenditure for which service charge is demanded may have been incurred prior to 1 October 2007 does not excuse a demand made after 1 October 2007 from having to comply with section 21B. Section 21B applies to all demands for service charge made after the commencement of section 21B save in so far as such compliance is excused by the transitional provisions in the 2007 Regulations. Thus paragraph 4 of these Regulations makes special provision in respect of the situation where a first demand for the payment of service charges was served prior to 1 October 2007 and provides (inter alia) that the requirements of section 21B(3) and (4) of the Act are not to apply to a further demand for the payment of service charges where there has been a first demand for the payment of such service charges served before 1 October 2007 being a demand in respect of service charges due for payment before 1 October 2007.

8. I accept the argument put forward in the Respondent's Statement of Case that the only items out of the 53 items considered by the LVT which are affected by this decision are items 34, 35 and 36. As regards the other items which the LVT decided were payable in full by the Appellant (i.e. were already payable in full without the need for any further demand satisfying section 21B) items 3 – 11 inclusive were items which the LVT found were demanded prior to 1 October 2007. As regards item 39 it appears from paragraph 28D of the Appellant's grounds of appeal (on page 13 of 16 of his document) that it is accepted that item 39 is not an item to which the Appellant contends that paragraph 28D of his grounds of appeal applies.

9. It will therefore be seen that the amount involved in the only items affected by this present decision is very small, items 34, 35 and 36 involving the sums of £3.92, £6.19 and £4.43 respectively.

10. In the result I allow the Appellant's appeal but only to the extent of ruling that items 34, 35 and 36 are not yet payable in full by the Appellant but will become payable in full by the Appellant once the Respondent has served a fresh demand for these items which complies with section 21B of the 1985 Act.

Dated 4 July 2011

His Honour Judge Nicholas Huskinson

