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REF LON 00AC/LSC/2011/0397

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION 27A and S20C

Address 303 Watling Avenue Edgware Middlesex HA8 0ND

Applicant London Borough of Barnet

Represented by Miss S Clifford Legal Department

Respondent Richard DaCosta

Represented by Mrs DaCosta

The Tribunal
Mr P Leighton LLB (Hons)
Ms S Coughlin MCIEH
Mr A Ring

Date of Hearing 17th November 2011

Date of Decision 22nd November 2011

DECISION

- 1 By an application to the Barnet County Court on 14th January 2011 the London Borough of Barnet commenced proceedings against the Respondent for the sum of £3,742.57 in respect of arrears of service charges for the period between April to October 2010.
- 2 Directions were given for the conduct of the application on 1st August 2011 and the application came before the Tribunal on 17th November 2011. The applicant was represented by Ms S Clifford of the legal department and the respondent was represented by his wife Mrs DaCosta.
- 3 The claim originally consisted of a claim for periodic service charges and a sum of £2,494.57 for major works but at the hearing it was conceded that all other service charges had been paid and that £250 had been paid toward the cost of the major works leaving a balance of 2,244.57.
- 4 It was agreed at the outset of the hearing therefore that the sole issue was whether a Section 20 notice had been served in respect of major works carried out in the autumn of 2009. The applicant contended that the notice had been served on 26th June 2009 and the respondent contended that the no notice had ever been received and that the applicant had not proved that it had been served.
- 5 The works in question consisted primarily of internal decorations to four blocks of flats at 269-311 Watling Avenue Edgware. Each block consisted of six flats and of the 24 flats in question, 11 were held on leasehold ownership and 13 were occupied by tenants of the applicant local authority.

The Law

- 6 Section 20 of the Landlord and Tenant Act 1985 provides that where the section applies to any qualifying works or any qualifying agreement then the amount recoverable from any tenant in respect of such works or under the agreement is limited in accordance with subsection (6) or (7) of Section

20 unless either the consultation requirements are complied with or the Tribunal grants dispensation in accordance with Section 20ZA of the Act.

7 The Service Charge (Consultation Requirements)(England) Regulations 2003 set out the requirements for consultation and in particular require the service of a notice of intention to carry out qualifying works .

8 Schedule 4 clause 1 requires that “The landlord shall give written notice in writing of his intention to carry out qualifying works:-

(a) to each tenant “

The issue in the present application was whether such a notice had been given.

9 For the purpose of proving service of a notice under section 20 of the Landlord and Tenant Act 1985 the Applicant relied upon section 7 of the Interpretation Act 1978 which provides as follows: –

“Where an Act authorises or requires any document to be served by post (whether the expression "serve" [or?] the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by [properly addressing prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

The Evidence

10 At the hearing Mr Kieran Luthra a leasehold development officer gave evidence on behalf of the applicant. In his evidence he stated that he had prepared the section 20 notice had produced 11 copies for each of the leaseholders and had placed them in window envelopes, tied them with a rubber band and taken them to the post room having marked each with a first-class stamp so that they were to be sent first-class to each leaseholder. He accepted that he did not physically post the letters themselves and also stated that at the time when these notices were sent there was no system of recording in a post book details of the posting.

works the tribunal holds that the sum of £2244.57 is recoverable in full. Mrs DaCosta indicated in the course of the hearing that she had been advised only to challenge the validity of the section 20 notice and therefore had not included other complaints regarding the works. It is to be noted that no such complaints were received either in the County Court proceedings nor before the Tribunal until it was raised at the end of the hearing.

- 23 In the circumstances the tribunal considers that it is far too late for any complaints regarding the work to be raised. The applicant has had no notice of any such complaints and would not be in a position to do with them at the hearing.
- 24 Accordingly, since the tribunal has concluded that the notice in question was properly served, the sum of £2244.57 is recoverable in full and payable forthwith.

Section 20 C costs

- 25 An issue was raised by the respondent concerning the question of costs to which Ms Clifford responded at the conclusion of the hearing.
- 26 The Tribunal indicated that in its opinion there might be some difficulty for the applicant to recover the costs on the basis that there appeared to be no provision in the service charge clauses for the recovery of legal expenses.
- 27 Ms Clifford referred to a clause in the lease regarding the recovery of costs in relation to the service of section 146 notices. The tribunal indicated that this clause might not be available to the applicant in the present case because the circumstances in which a section 146 notice had not yet arisen and might not ever arise. Under section 167 of the 2002 Act a section 146 notice may only be served or forfeiture obtained where arrears of at least three years service charges applied.
- 28 The Tribunal expresses no view on provisions of the lease for the recovery of service charges but in the exercise of its discretion under section 20C it

can find no grounds for disallowing any costs which the applicant might recover under the lease, since in the circumstances the applicant was perfectly justified in bringing proceedings for the recovery of the service charges in question. Accordingly the Tribunal makes no order under section 20 C.

Chairman Peter Leighton

Date 22 November 2011

A handwritten signature in black ink, appearing to read 'Peter Leighton', written in a cursive style.