

Contractual machinery and valid demands

Katherine Traynor

Structure of Service Charge Provisions

***Arnold v Britton* [2015] UKSC 36:**

- No special rule of construction;
- Focus on the meaning of the relevant words;
- Consider the words in their documentary, factual and commercial context;
- Identify the parties' intention by reference to what a reasonable person with all the background knowledge would understand.

Contractual Machinery: Service Charges

- Service charge demand:
 - Are there any procedural provisions or pre-conditions to the tenant paying service charges?
 - ***Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100**
- Interim payment on account?
- Time of the essence?
- Certification?
 - Conclusive or binding?

Valid Demands: S.47 LTA 1987

- S.47 LTA 1987 requires that a tenant **must** be provided with the following:
 - Landlord's name and address;
 - Landlord's actual address, or in the case of a company, the registered office or place of business: ***Beitov Properties Ltd v Martin* [2012] UKTU 133 (LC)**

NOTE:

- Director's name insufficient: ***Triplerose Ltd v Grantglen Ltd & Cane Developments Ltd* [2012] UKUT 221 (LC)**
- Managing agent's address is **not** sufficient

Valid Demands: S.47 LTA 1987

S.47(2) LTA 1987, “suspensory only”, see ***Tedla v Cameret Court Residents Association Ltd*** [2015] UKUT 221 (LC).

NOTE:

Triplerose Ltd v Grantglen Ltd & Cane Developments Ltd [2012] UKUT 204 (LC):

*“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.*”

Valid Demand: S.48 LTA 1987

- S.48 LTA 1987 requires:
 - a landlord to provide an address, which **must be** in England or Wales, at which notices may be served on them by their tenants or leaseholders.

Failure to properly comply with this provision results in rent or service charges demanded not being considered due: ***Dallhold Estates (UK) Property Limited v Lindsey Trading Properties Inc [1994] 1 E.G.L.R 93***

NOTE:

- Prevented from enforcing recovery.
- No prescribed form, but it **must** be in writing!

Time limit for making demands

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.

(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.

Summary of rights and obligations

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.

(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.

See the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007/1257

Summary of rights and obligations

NOTE:

- Must be legible in a typewritten or printer form, at least font size 10pts.
- Must contain title “Service Chagres – Summary of tenants’ rights and obligations”
- ***Tudor Roberts v Countryside Residential (South West) Ltd*** – errors in font size, paragraph numbering and Welsh translation, held to be “trivial” defects.

Thank you for listening

© Copyright Landmark Chambers 2023

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Contact us

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

Follow us

🐦 [@Landmark_LC](https://twitter.com/Landmark_LC)
📘 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers/)