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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AN/LSC/2013/0349

Property : 24 Star Road, London, W14 9XW

Applicant : London Borough of Hammersmith & Fulham

Representative : N/A

Appearances for Applicant: (1) Ms K. Moxam, Client Officer, Service Charge
(2) Ms S McHugh, Legal Executive

Respondent : Mr Sabour Mansour

Representative : N/A

Appearances for Respondent: Mr Sabour Mansour

Type of Application : Application under Section 27A Landlord & Tenant Act 1985

Tribunal Members : (1) Mr A M Vance LLB(Hons) (Chair)
(2) Mr J F Barlow JP FRICS

Date and venue of Hearing : 10 Alfred Place, London WC1E 7LR

Date of Decision : 21.10.13

DECISION

Decision of the Tribunal

1. The Tribunal does not have jurisdiction to deal with the Application which should now be referred back to the West London County Court.

Background

2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act) as to the amount of charges payable by the Respondent in respect of 24 Star Road, London, W14 9XW ("the Property") for the years 2006 to 2012.
3. Proceedings were originally issued in the West London County Court under claim no. 2YL69067 and then transferred to this tribunal
4. The Respondent is the freehold owner of the Property, a three storey terraced house built circa 1960. By deed dated 17.02.86 ("the Deed") the Property was the subject of a transfer of part of freehold land granted by the Applicant to David John Holley and Joan Betty Holley.
5. The Respondent purchased the Property from David John Holley and Joan Betty Holley in around May 1995 but was not registered as the freehold proprietor of the Property until 17.10.00.
6. Clause 12 to the Third Schedule of the Deed contains a covenant by the Transferee "to pay to the Council upon demand a service charge being 0.468 per cent of the costs and expenses incurred by the Council under Part II of the Fourth Schedule..."
7. Such costs and expenses include (amongst other matters) the costs of the Council complying with its covenants to maintain and repair roadways, common areas and installations serving the Estate in which the Property is located.
8. The Applicant contends that the Transferee's obligations set out in the Deed are binding on the Respondent and that he is required to contribute towards the costs set out in Part II of the Fourth Schedule. The Council's position is that he has not done so and in the County Court proceedings referred to above sought payment from him of the sum of £2,372.20. The Respondent filed a Defence following which the proceedings were transferred to this Tribunal.

Pre-Trial Review

9. A pre-trial review took place on 11.06.13 at which the Respondent attended. Directions were issued by the Tribunal on the same day.

The Hearing

10. At the commencement of the hearing and at the Tribunal's request, the Applicant provided Office Copy Entries for the freehold of the Property. These identified the Respondent as the Freehold owner.

11. Both parties confirmed that the Respondent does not hold any leasehold interest in the Property.
12. After a short adjournment for the Tribunal to consider its jurisdiction the parties were informed that the Tribunal considered that it may lack jurisdiction to determine the Application. This was because there was no relationship of landlord and tenant between the Applicant and the Respondent and the charges demanded from him did not amount to 'service charges' as defined by s.18 of the 1985 Act.
13. The Tribunal sought representations from both parties on the question of jurisdiction but none were received.

Decision and Reasons

14. The Tribunal does not have jurisdiction to determine this application.
15. Under s.27A of the 1985 Act an application may be made to this tribunal for a determination whether a service charge is payable and, if it is, as to –
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
16. Under Section 18(1) of the 1985 Act "service charge" is defined as an amount payable by a Tenant of a dwelling as part of or in addition to the rent –
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
17. "Relevant costs" are defined in s.18(2) as "the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable"
18. The Property is a freehold property and there is no relationship of Landlord and Tenant between the Applicant and the Respondent. The charges sought by the Applicant appear to be estate rent charges and not service charges. Without prior approval of the estate management scheme by the High Court pursuant to section 19 Leasehold Reform Act 1967, or prior approval by this Tribunal under Chapter 4 of Part 1 of the

1993 Leasehold Reform, Housing and Urban Development Act 1993 (see section 69 of that Act) or under section 94(6) of the 1993 Act we have no jurisdiction to determine the reasonableness of estate rent charges under s. 159 Commonhold and Leasehold Reform Act 2002.

Amran Vance

Judge of the First Tier Tribunal

Dated 27.10.13