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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOBA/LSC/2015/0314**
Property	:	**Various Flats, Brockham Close, Wimbledon, London SW19 7EQ.**
Applicant	:	**Mr. D. Kearney & Mr. A. Stapleton and Others**
Representative	:	**In person**
Respondent	:	**Regis Group Barclays (Freeholds) Limited**
Representative	:	**Pier Management**
Type of Application	:	**S.27A Landlord & Tenant Act 1985.**
Tribunal Member	:	**Ms. A. Hamilton-Farey** **Miss J. Dowell**

Decision

The tribunal has no jurisdiction to determine the reasonableness of the amount claimed in relation to a Fire Risk Assessment/Health and Safety Report.

REASONS

Background:

1. The tribunal received an application on behalf of the tenants on 20 July 2015. The application related to the payability of a charge levied by the landlords in respect of a Fire Risk Assessment/Health & Safety Report. It was the applicants' opinion that their leases did not enable such a charge to be made.

2. The tribunal wrote to the parties on 24 July to say that a preliminary hearing would be held today, 12 August 2015 to determine whether or not the tribunal had jurisdiction to deal with the matter.

3. The hearing was attended by Mr. Kearney, Miss. Fernandes (on behalf of her mother) and Mrs. Hall for the applicants; and Mr. David Bland of Pier Management on behalf of the respondents.

4. Mr. Bland confirmed that the charge of £40.00 per leaseholder had been withdrawn as it was not cost effective for the landlord to chase such a relatively small sum. Mr. Kearney said that he wished to continue with the determination on the basis that the landlord would make a charge for the same item in subsequent years, and the leaseholders required clarification on whether it was entitled to do so.

5. The tribunals' preliminary opinion was that the lease did not enable the landlord to make a charge for the report, and Mr. Bland was asked to demonstrate which covenants/clauses of the lease permitted the landlord to do so.

6. He relied on Clause 20 of the Leaseholders' Covenants which said; -

   To comply in all respects at the Lessee's own cost with the provisions of the Fire Precautions Act 1972 and any other statutory instrument rule order or regulation and any order direction or requirements made or given by any authority or any appropriate Minister or Court so far as the same affect the Maisonette (whether the same are to be complied with by the Lessor the Lessee or the Occupier and forthwith to give notice in writing to the Lessor of the giving of such order direction or requirement as aforesaid and to keep the Lessor indemnified against all claims demands and liabilities in respect thereof.

7. He also relied on the RICS Management Code in relation to best practice for the management of the properties, but accepted that The Regulatory Reform (Fire Safety) Order 2005 ("FSO") only applied to common parts of blocks of flats, and from the lease plan and Mr. Kearney's evidence there did not appear to be any common parts over which the leaseholders had any rights, or to which they were required to contribute.

8. He confirmed having read the lease that it appeared there was no mechanism for the landlord to recover any service charges, apart from the insurance premium. However he was concerned that if the tenants failed in their obligations under Clause 20, to carry out any requirements under the FSO that this might invalidate the landlord's insurance policy.

9. As far as he was aware, the landlord had not written to the leaseholders and asked them to confirm or provide evidence of compliance with Clause 20 if applicable, or that any Order had been served by any of the statutory authorities regarding the building.

Reasons:

10. We are not satisfied that Clause 20 of the leaseholders' covenants can provide for the landlord to undertake a fire safety or health and safety audit of the buildings and recover the cost from leaseholders. Clause 20 requires the leaseholders to comply with the provisions of the FSO, and to notify the landlord if any Order/Direction or Requirement is served on them by any Authority and to indemnify the landlord against all claims, demands and liability arising from that Order/Direction. No such Orders/Directions have been served on the leaseholders.

11. We are not satisfied that the Fire Safety Order applies in this instance in any event as there do not appear to be any common parts to which the Regulations would apply.

12. Finally, we are not satisfied that there is any mechanism in the lease that enables the landlord to recover any charges with the exception of ground rent and insurance. As the lease does not provide for any other charges to be made, the tribunal has no jurisdiction to determine whether any charges are reasonable.

Name: A. Hamilton-Farey **Date:** 12 August 2015