

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

S.27A Landlord & Tenant Act 1985 (as amended) ("the Act")

Case Number:	CHI/43UF/LIS/2009/0057
Property:	11 Beckett Road Coulsdon Surrey CR5 1RZ
Applicant:	Fairdene 4 (Netherne on the Hill) Management Company Limited
Respondent:	William J. King
Tribunal:	Mr. Robert Wilson LLB (Lawyer Chairman) Mr. Neil Cleverton FRICS (Valuer Member) Mr. Roger Wilkey FRICS (Valuer Member)
Date of the Tribunal's Decision:	31st March 2010

THE APPLICATION

1. This matter has been transferred to the tribunal by the Croyden County Court (case number 9H100442) and involves a determination of the respondent's liability to pay estate rent charge and ground rent.

DECISION IN SUMMARY

2. The tribunal determines for the reasons set out below that it has no jurisdiction to determine the application and it is accordingly transferred back to the Croyden County Court.

JURISDICTION

Section 27A of the 1985 Act

3. The tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease

where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The tribunal therefore also determines the reasonableness of the charges.

4. By section 18 of the 1985 Act service charges are defined as an amount *payable by the 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 landlords costs of management, and
 - (b) the whole or any part of which varies or may vary according to the relevant costs

PRELIMINARYS / ISSUES IN DISPUTE

5. On 13 August 2009 the tribunal issued directions for the case. It identified a preliminary issue namely the tribunal's jurisdiction to make a determination in this case on the grounds that the claim to service charges appeared to be in relation to a freehold transfer deed and not a lease. The directions stated that this might mean that the service charges claimed are not service charges within the meaning of Section 18 of the 1985 Act and hence may not be within the tribunal's jurisdiction. The tribunal thus directed that the matter of jurisdiction should be dealt with as a paper determination unless either party requested an oral hearing.
6. Paragraph 5 of the aforementioned directions stated that if either or both parties claimed that the tribunal does have jurisdiction, they shall within 28 days from the date of the directions prepare a statement or skeleton argument as to their respective positions, together with all relevant documents and any case or statute law and send copies of these to the other side and to the tribunal.
7. In response to these directions the applicant wrote to the tribunal with a copy of a letter that it had written to the County Court on 9 June 2009. The letter states *we respectfully refer the Court to the fact that this is a dispute in respect of service charge arrears concerning a freehold property and not a leasehold property. From previous cases before the LVT we are of the understanding that the LVT does not have jurisdiction in such cases. Service charges are defined under section 18 of the 1985 act as an amount payable by the tenant. This precludes freehold owners as in this particular case. In all the circumstances we would be most grateful if this file could be referred back to the district judge for the consideration of the entering of directions for the future determination of this case before the county court.*
8. The tribunal received no representations from the respondent.
9. As provided for in the directions the tribunal proceeded to determine the preliminary issue on the basis of the papers filed and without an oral hearing.

THE TRIBUNAL'S DELIBERATIONS

10. The tribunal's jurisdiction to determine the reasonableness of service charges arises out of section 18 of the 1985 Act; the relevant section of which is set out in paragraph 4 above. As pointed out by the applicant's solicitors and identified in the tribunals directions, section 18 of the 1985 act defines service charge *as an amount payable by a tenant of a dwelling*. In the opinion of the tribunal this wording is quite clear that the

jurisdiction extends only to service charges arising out of a lease and not estate rent charges or ground rent arising out of a freehold transfer deed.

11. From the papers lodged with the application, the tribunal could see that the applicants claim against the respondent is stated to be based on estate rent charges arising from a transfer deed. The tribunals papers include copy Land Registry entries showing the respondent's title to the property to be freehold and not leasehold. Accordingly the amount claimed is not from a tenant of a dwelling as defined by section 18 of the 1985 Act and as such the tribunal has no powers to hear the case.
12. In the circumstance, as the tribunal has no jurisdiction to determine this matter, the proper course of action is for the case to be transferred back to the Croydon County Court as requested by the applicant, and the tribunal so directs.

Signed
R.T.A.Wilson LLB solicitor chairman

Dated 31st March 2010