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**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AJ/LSC/2011/0860

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985**

Applicant: Lyric Studios Residents Company Ltd

Representatives: Mr Joseph OHalloran (10) and Mr Bagusiewicz (12)

Respondent: Catalyst Communities Housing Association

Premises: 11-16 Lyric Drive, Greenford,
Middlesex UB6 9HQ

Date of Application: 24 November 2011

Hearing: 7 March 2012 (no attendances)

Decision: 8 March 2012

Leasehold Valuation Tribunal: Mrs V T Barran
Mr A Andrew

1. **The law**

Section 18(1) of the Landlord and Tenant Act, as amended states:

“In the following provisions of this Act “service charge” means 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”.

2. Section 27A of the 1985 Act states:

“An application may be made to a leasehold valuation 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.

Background

- 3. This application was made by a Management Company of six properties (11-16 Lyric Drive,). The application was made to the tribunal under section 27A of the Landlord and Tenant Act 1985, as amended, in respect of what were described as “service charges” for the years 2006/7, 2007/9 (sic) and 2009/11 and for 2011/12. The tribunal immediately wrote to the parties asking if the applicant owned the freehold and asking if there was a Management Scheme in existence. The matter was then listed for a pre-trial review (PTR).
- 4. It became clear from the documentation and at the oral PTR held on 18 January 2012 that the relationship between the parties is not one of landlord and tenant, as the applicant is a freeholder. In addition it was established at the PTR that the charges were not likely to be Estate Management Charges within the meaning of section 159 of the Commonhold and Leasehold Reform Act 2002. The tribunal sent the applicant details of pro bono legal advice available.
- 5. Mr O'Halloran wrote to the tribunal expressing the view that the charges may be Estate Management Charges. He did ask the tribunal if the matter is not “applicable” to refer them to the relevant authority.
- 6. By a Transfer of Part dated 20 March 2006 Keystart Housing Association Limited transferred the freehold property of 11 – 16 Lyric Drive, Garrick Road, Greenford, Middlesex UB6 9HQ to the applicant.

7. The Transfer contains "Transferees covenants" whereby the applicant is liable to contribute a fair proportion of various expenditure on the estate. These include at clause 13.3:

Transferee's Covenants

The Transferee(s) hereby covenant with the Transferor so as to benefit the remainder of the land comprised in the title above mentioned and so far as to bind the land hereby transferred into whosoever hands the same may come but not so as to render the Transferee(s) personally liable in damages for any breach of a restrictive covenant after they shall have parted with all interest in the land hereby transferred as follows:

- (a) To observe and perform the restrictive and other covenants agreements declarations and otherwise contained or referred to in the Register of the Transferor's Title so far as the same are now subsisting and affect the Property to indemnify the Transferor from and against any breach thereof so far as the same are capable of being observed and performed and*
- (b) To contribute a fair proportion to be assessed from time to time by the Transferor of:*
 - (i) The reasonable cost of repairing maintaining renewing and cleaning as the case may be the access roadways footpaths forecourts and lighting (if any) (so far as the same are not adopted or do not fall within the cartilage of any plot on the Estate) the Parking Spaces on the Estate the Conducting Media any hedges trees and shrubs boundary or perimeter wall entrance feature or fence of the Estate or part thereof (except as are within the cartilage of any plot on the Estate) and any communal gardens landscaped areas (except any private enclosed garden) or facilities or areas of the Estate made erected or constructed on the Estate within the Perpetuity Period intended for the use or enjoyment of the Transferee with the other occupiers of the Estate (hereinafter together referred to as the "Common Parts").*
 - (ii) The reasonable fees charges and expenses of either a professional qualified Surveyor or any accountant or other person whom the Transferor may from time to time reasonably employ appoint or delegate (with our without others) in connection with the management and maintenance of the Common Parts and communal facilities including the computation and collection of other monies, due from the Transferee hereunder and if any such work shall be undertaken by an employee of the Transferor then a reasonable allowance for such work.*

8. In the light of the above, on 10 February 2012, the tribunal issued a Notice of Dismissal under regulation 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. The tribunal

indicated to the parties that it may not have jurisdiction to deal with application and the applicant was directed to confirm that it wishes to withdraw the application. The tribunal explained that the county court appears to be the appropriate place for this dispute. A hearing was listed on the question of dismissal but no party attended or sent in further representations. The application has not been withdrawn.

The Tribunal's decision

9. The Tribunal determines that it does not have jurisdiction to deal with the application made by the Applicant. The application has not been withdrawn and for the reasons given in paragraph 7 of the Notice of dismissal dated 10 February 2012 the application is therefore dismissed.

Reasons for the Tribunal's decision

10. The applicant brought the current application because the residents of the six properties are unhappy at the level of these maintenance costs. We understand that it is confusing for the applicant that the respondent Catalyst sends demands for "service charges" rather than say maintenance or estate charges and also that in the past they have referred to leaseholds. The General Information provided by Catalyst does however explain that here a service charge is defined as "a payment you make towards providing services for and maintaining your estate".
11. We are satisfied that the parties had proper notice of the hearing and that we can proceed to make our determination on the basis of the written representations before us, albeit sent in somewhat piecemeal. We only have official Land Registry copies of one freehold and we would comment that there a number of matters not clear to us. The official copies of the Land Registry title AGL72710 dated 18 May 2007 for 10 Lyric Drive show this property is clearly owned by Arturo Bogusiewicz and Malgorzata Bogusiewicz as a *freehold*. However no mention is made in the Land Register of the Transfer of Part dated 20 March 2006 referred to above. Furthermore there is an entry in the Charges Register of a Transfer dated 19 February 1999 which contains restrictive covenants and we have seen a copy of this transfer which is of Part (10 Lyric Drive) out of 1-22 Lyric drive. The same covenants appear as in the 2006 Transfer (see paragraph 8 above). Mr O'Halloran questions this as this transfer is between different parties (not the applicant). He also asserts that the services provided are "exactly in line with the service provided by the local council".
12. It is also not clear to us how the costs are apportioned to the individual freeholders of 11 to 16 Lyric Drive, given the obligation to contribute lies on the Applicant.
13. However it is not for us to investigate these matters. We are sympathetic to the applicant but can only consider matters that Parliament has given us power to determine. We do not find that the "service charges for

maintaining the estate” can be “service charges” within the meaning of section 18 of the 1985 Act, because the Applicant is not a “tenant” within the meaning of that section. To this extent, the application under section 27A of the 1985 Act is misconceived.

14. No application was made other than under section 27A of the Landlord and Tenant Act 1985, but given the applicant is not legally represented we did explore whether an application could be made under any of our alternative jurisdictions.
15. The Tribunal can entertain an application to determine the reasonableness of “estate charges” but only where they arise under an estate management scheme, pursuant to section 159 of the Commonhold and Leasehold Reform Act 2002. Section 159 only extends to estate charges arising from schemes that have been *approved* by the High Court under section 19 of the Leasehold Reform Act 1967, or *approved* by this Tribunal under Chapter 4 of Part 1 of the 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 evidence that either of these apply in the present case.
16. Finally we noted that the Transfer dated 19 February 1999 also contains provision for a perpetual yearly estate rent charge of £1.00 (clause 2(f)) and this is recorded in the Charges Register of title for 10 Lyric Drive. It does not appear from the application that this is disputed, but for the avoidance of doubt this Tribunal does not have jurisdiction to decide rent charges.

Endnote

17. The parties would be well advised to meet and discuss the ability of Catalyst to charge costs and the level of those costs and try to come to a settlement. If that is not possible they should take independent legal advice and show this decision to the adviser. The correct forum for a formal dispute is likely to be the county court.

Mrs V T Barran



Chairman

Date: 8 March 2012