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

Case Reference : **BIR/OOGA/LIS/2016/0012**

Property : **Flat 10, Bridge Court, Leominster HR6 8HX**

Applicants : **Mr and Mrs J Moerman-Jones**

Respondent : **Anchor Trust**

Type of Application : **Service Charge s27A LTA 1985**

Tribunal Members : **Judge D Jackson
N Thompson FRICS**

Date of Decision : **12th July 2016**

Decision

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1. On 8th March 2016 Application for a determination of liability to pay and reasonableness of service charges was received by the Tribunal.
2. The Applicants sold their leasehold Property on 28th October 2015. At that time they paid to the Respondent the sum of £7475 by way of Deferred Service Charge. Respondent determined the amount of Deferred Service Charge Proportion at 2%. The Applicants' case is that they should have been charged at 1.25%.
3. The Applicants held the Property under the terms of a Lease dated 5th July 1988 made between William Weaver Ltd (1) and Mr PF and Mrs P Robinson. The Deferred Service Charge Proportion (Sinking Fund) is defined in the Lease as 0.75%.
4. Provisions in relation to the Deferred Service Charge are set out in clause 3.5 of the Lease.
5. The Deferred Service Charge is to be paid on completion of every assignment of the Property (clause 3.5.1).
6. Clause 3.5.2 provides that the amount of each Deferred Service Charge is, in the case of the Applicants who are not the original Lessee:
"the Deferred Service Charge Proportion of the amount paid by the Lessee on his acquisition of the Dwelling for each year (apportioned on the basis of complete months) that shall on each such occasion have elapsed since the date of his acquisition of the Dwelling."
7. Clause 3.5.5 provides that:
"The Lessor may prior to any disposition of the Dwelling by notice in writing to the Lessee adjust the Deferred Service Charge Proportion upwards or downwards to reflect the Lessor's estimate of the sinking fund requirements...."
8. By Deed of Surrender and lease dated 4th November 2010 made between the Respondent (1) and the Applicants (2) the Deferred Service Charge Proportion was varied to 1.25%.
9. Subsequently it would appear that the Respondent has adjusted the Deferred Service Charge Proportion under clause 3.5.5 to 2%.
10. On 25th April 2016 the Tribunal issued Directions in relation to consideration of striking out the application for want of jurisdiction.
11. Written representations were made by the Respondent on 12th May 2016 and by the Applicants on 22nd June 2016.
12. The Tribunal has determined this matter without a hearing under Rule 31(4).

13. The Tribunal only has jurisdiction in relation to variable services charges which are defined in s19 Landlord and Tenant Act 1985 as an amount:
 - 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.
14. We find that the Deferred Service Charge does not vary in accordance with the relevant costs and is in fact a fixed charge, which may be adjusted from time to time, levied on assignment based on number of years occupancy and the acquisition price.
15. Accordingly the Tribunal does not have jurisdiction to make a determination under s27A of the Act in this case and must strike out the proceedings under Rule 9(2) (a) of the Tribunal Procedure Rules.

D Jackson
Judge of the First-tier Tribunal
12th July 2016

Either party may appeal this decision to the Upper Tribunal (Lands Chamber). Any party seeking permission to appeal must first make application to the First-tier Tribunal in writing, stating grounds relied upon, which must be received by the Tribunal no later than 28 days after the date on which the Tribunal sends this Decision to the party seeking permission.