

**LON/00BD/LSC/2006/0390**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER SECTIONS 27A OF THE LANDLORD  
AND TENANT ACT 1985,**

Address                      Garage 2, Greystiles, 119 Queens Road, Teddington,  
London TW11 0ND

Applicant                      Greystiles Freehold Limited

Respondent                      Mr Richard & Mrs Wendy Fletcher-Cooke

Hearing date                      16<sup>th</sup> February 2007

Appearances                      No appearances by the parties

The Tribunal                      Mrs T I Rabin JP  
Ms A Hamilton-Farey FRICS

**GARAGE 2 GREYTILES 119 QUEENS ROAD TEDDINGTON LONDON  
TW11 ONL**

**FACTS**

1. The Tribunal was dealing with an application by the Applicant, Greytiles Freehold Limited, the Landlord of Garage 2 Greytiles 119 Queens Road Teddington TW11 ONL ("the Premises"). The application related to the liability of the Respondents, Mr Richard and Mrs Wendy Fletcher-Cooke, the long leaseholders of the Premises, to pay service charges that had been incurred by the Respondent. The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act") and related to resurfacing the driveway servicing the block of garages at Greytiles aforesaid of which the Premises form part.
2. The Applicant had commenced proceedings for recovery of the service charge in the Kingston upon Thames County Court and those proceedings had been transferred to the Tribunal by order of District Judge Gold following the filing of a defence by the Respondents. The order of the Court stated that the matters raised in the Respondents' defence, including the question of whether the Tribunal was the appropriate forum, should be determined by the Tribunal.
3. A copy of the lease of the Premises was provided to the Tribunal and the obligation to contribute a fair proportion of the costs of repairing replacing and maintaining any land or other items used in common with other owners or occupiers of land retained by the Respondent is set out in Clause 4.5 of the lease.
4. The application was set down for a pre-trial review and a jurisdictional hearing on the 16<sup>th</sup> February 2007 which was attended by none of the parties. In view of the fact that the application related to costs incurred in respect of service charges for a garage, the Tribunal had to consider whether there was jurisdiction to determine whether the charges were payable by the Respondents under the provisions of Section 27A of the Act.

**DECISION**

5. The Respondents referred the Tribunal to an earlier Tribunal decision **LON/ENF/1136/04 and LON/LVT/1722-1729/04** relating to South Quay Estate. This decision was not relevant to the application before the Tribunal as it related to collective enfranchisement of the Estate by the leaseholders under Section 24 Leasehold Reform Housing and Urban

Development Act 1993 and not to liability to pay service charges under Section 27A of the Act. The Applicant submitted comments regarding the work but, in view of the Tribunal's decision, these were not relevant.

6. The Tribunal considered the terms of the lease. Clause 1 provides that:

" The Landlord hereby demises unto the Tenant ALL THAT garage numbered 2 at the rear of Greytiles aforesaid coloured red on the plan annexed hereto TOGETHER with the main walls roof and foundations thereof and any drains pipes and other services thereto and therefrom (hereinafter called "the garage) ....to hold the same unto the Tenant from 1<sup>st</sup> January 1975 for a term of 125 years"

7. It is clear from the terms of the lease that the demise is of a garage only and that the letting is separate from any residential letting (of which the Tribunal has no information) that may be the subject of a lease granted to or vested in the Applicant as landlord and the Respondents as tenants.

8. Under Section 27A of the Act the Tribunal has the following jurisdiction:

(1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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

(2) Subsection (1) applies whether or not payment has been made

9. The expression "service charge" is defined in Section 18(1) of the Act as follows:

- (1) In the following provisions of the Act " service charge " means the 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.

Further guidance can be found in Section 38 of the Act where "dwelling" is defined as "a building or part of a building occupied or intended to be occupied as a dwelling together with any yard garden outhouses and appurtenances belonging to it or usually enjoyed with it"

10. The Tribunal took the view that this definition could only relate to residential property and that a garage would normally be regarded as an appurtenance to a dwelling and not a dwelling itself. The Applicant has indeed raised a service charge falling within the definition within Section (18) (1) (a) and (b) of the Act but the service charge must relate to a dwelling if the consultation and determination procedures in Sections 20 and 27A of the Act are to apply. The relationship between the Applicant

landlord and the Respondents who are tenants is governed by the terms of the lease which is a contractual document and binding on the parties. The jurisdiction relating to the determination of whether the service charges are payable conferred on the Tribunal by the Act will not apply to the Premises.

11. The Tribunal determines that it has no jurisdiction to determine whether the service charges are payable and it follows that the application is dismissed.

**CHAIRMAN**



**DATE:** 16<sup>th</sup> February 2007

**TRIBUNAL**

Mrs T I Rabin

Ms A Hamilton-Farey