

10 knots 2004

1. Mr Watson owns the freehold of a terraced house on an estate of houses and flats known as the Calverton Road Estate. All or most of the houses on the Estate are, it is understood, held freehold, and the flats are tenanted. The transfer to Mr Watson's predecessor in title, which is dated 1 October 1991, reserves to the transferor, Nene Housing Society Limited, an estate rentcharge, which is defined in the transfer as:

the perpetual yearly estate rentcharge of a sum equal to a fair and reasonable proportion attributable to the Property of the cost to the Society of providing ... Services ...

2. Mr Watson has questioned his liability to pay the rentcharge and the quality and value of the services provided and has, in protest at the Society's failure to respond to his complaints, withheld payment. In order to resolve the dispute, the Society has made an application to the tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine Mr Watson's liability to pay the rentcharge.

3. We are satisfied that the tribunal has no jurisdiction to determine this dispute. A service charge, as defined by section 18 of the Act, 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 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.

Mr Watson is not a tenant but a freeholder, and thus the charges he must pay are not service charges within the meaning of the Act. Although by section 30 of the Act a landlord *includes any person who has a right to enforce payment of a service charge*, since an estate rentcharge

payable by a freeholder is not, by definition, a service charge, it is not covered by the Act.

4. Mr Fielding and Miss Taylor, representing the Society, drew our attention to a decision of a tribunal of the Chiltern Thames and Eastern Panel in relation to *16 Towler Street Peterborough* (CAM/98/LVT/SC/050, heard 1 September 2000) where jurisdiction to determine the reasonableness of another estate rentcharge payable to the Nene Housing Society Limited was accepted. They told us that in a further similar case a tribunal of that Panel also accepted jurisdiction. We must respectfully disagree with those decisions as bad in law.

5. We agree that it is unfortunate that we are without jurisdiction, because both the Society and Mr Watson would like the dispute to be resolved and do not wish the additional expense of county court proceedings to determine whether the amount of the rentcharge is "reasonable in relation to [the] covenant" as required by section 2(5) of the Rentcharges Act 1977. Nevertheless, jurisdiction cannot be conferred by consent and the tribunal can do no more than attempt to facilitate an agreement; and such, we hope, may have emerged.

CHAIRMAN.....

DATE.....

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