

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

Case No: CHI/00LC/LSC/2005.0018

Re: 7 Sheridan Close, Chatham, Kent, ME5 7NS

Between:

Ms Christina Doreen Wadsworth
("the Applicant")

And

Derwent Housing Association Limited
("the Respondent")

In the matter of an Application under Section 27A of the
Landlord & Tenant Act 1985

DECISION OF THE TRIBUNAL

Following a Determination made without a Hearing

TRIBUNAL

Mr A D McCallum Gregg sitting alone.

DATE OF ISSUE: The 26th day of September 2005

DECISION:

1. The issue to be determined in this case is whether or not the Leasehold Valuation Tribunal has jurisdiction to determine this application which is made under Section 27A of the Landlord & Tenant Act 1985.

A. Background To The Application

2. The Applicant who is the freehold owner of No 7 Sheridan Close, Princes Park Chatham, Kent, ME5 7NS has, on the 22nd of February 2005 sought a determination from the Tribunal as to the reasonableness of the service charges made by the Respondent for the years 2003 and 2004 and for the future years 2005/6/7.
3. The freehold interest in the property was purchased by Ian Paul Howard and Gillian Ann Howard on the 31st of October 1985 from the Respondent.
4. Paragraph 5 of the Deed of Transfer imposed maintenance obligations on the Respondent.

5. The fifth Schedule of the Deed of Transfer imposed an obligation on the purchasers to contribute a one two hundred and one part of the costs and expenses (including Management fees and expenses) of the Respondent in complying with its obligations contained in Clause 5.
6. The Applicant acquired the freehold interest in the property on the 2nd of September 1994 and her title was registered on the 30th of September 1994 and in so doing agreed to be bound by the Covenant in the original Transfer Deed.
7. In 2003 and 2004 the Respondent has made a demand for a contribution towards those service charges and the Applicant regards those demands as being excessive and unreasonable for the services provided.
8. On the 9th of May 2005 solicitors representing the Respondent wrote to the Tribunal expressing the view that the Tribunal did not have jurisdiction to hear this matter and asked that the application should be summarily dismissed.
9. On the 10th of May 2005 Directions were given which included the following:-

“.....by 4.00 p.m. on the 26th May 2005 that the Respondent shall file and serve a statement in support of its application for summary dismissal of the Applicant’s application and that by the 9th of June 2005 the Applicant shall file and serve a statement in reply.....”
10. On the 25th of May a Statement of Case on behalf of the Respondent was filed and the Respondent, amongst other matters made the following points:-
 - That the relevant legislation in respect of the service charge provisions are set out in Sections 45-51 of the Housing Act 1985 and not Sections 18-30 of the Landlord & Tenant Act 1985.
 - That Section 45(3) of the Housing Act 1985 specifically refers to Section 181 of the Act whereby the County Court has jurisdiction in such matters.
 - That Sections 18 to 30 of the Landlord & Tenant Act 1985 specifically referred to service charges for leasehold dwellings.
 - That Section 27A of the Landlord & Tenant Act 1985 gives the Tribunal jurisdiction in respect of service charges as defined in Section 18 of that Act which specifically refers to a service charge payable by a tenant of a dwelling.
 - That the correct definition of a service charge is found in Section 621A of the Housing Act 1985 which makes specific reference to a purchaser.
11. The Applicant responded to the Tribunal on the 29th of May 2005 and stated that whilst she accepted that she was liable to pay a service charge she felt that the percentage increase of the service charge was unreasonable and she also questioned the adequacy of the services provided.

12. No comment was made with regard to the legal argument put forward by the Respondent other than expressing the hope that the Tribunal had jurisdiction as a result of the service charge provisions having their origins from a time when the tenure of the property was apparently leasehold..

B. Review of the Statutory Provisions

13. The Tribunal has reviewed the Statutory Provisions applicable to this application and reminded itself that it is strictly limited by statute by its powers and in the absence of any express power in statute it could not make decisions on matters which were beyond its powers.
14. The issue in this case is straightforward, namely whether or not the Tribunal has the power under Section 27A to adjudicate on this matter which involves a freehold property and which does not involve a landlord and tenant as envisaged in the Landlord & Tenant Act 1985.
15. The Tribunal, having reviewed the representations and the relevant legislation is of the view that it does not have jurisdiction to adjudicate on this matter and that the appropriate jurisdiction is that of the County Court.
16. Furthermore, the Tribunal does not have the power to dismiss the application as requested by the Respondent, such power being reserved for the County Court and the High Court, but only to treat the application as withdrawn.

CONCLUSION

17. Accordingly the Tribunal directs that this application be treated as withdrawn due to lack of jurisdiction.

Dated this 19th day of September 2005


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Andrew Gregg

A member of the Panel appointed

By the Lord Chancellor