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Case No. BIR/00GL/LIS/2009/0022

MIDLAND RENT ASSESSMENT PANEL
THE LEASEHOLD VALUATION TRIBUNAL
RENTCHARGES

Landlord & Tenant Act 1985 as amended by
Commonhold and Leasehold Reform Act 2002

Decision

25 PARK STREET, STOKE-ON-TRENT, STAFFS., ST4 3JB

Applicants	Mr Stephen Evans and Mrs Nichola Tracy Evans And other Joined Parties identified on the attached Schedule
Respondent	Residential Management Group
Date of s.27A Application to LVT	22nd December 2009
Date of Pre-Trial Review	10th February 2010
Date of Preliminary Hearing	3rd June 2010
Heard At	Fenton Manor Sports Complex, Stoke-on-Trent

Appearances

For the Applicants	Mr and Mrs S. Evans
For the Respondent	Mr I.G.Thompson B.Sc. FRICS, Mr S.Latta MRICS, Mr P.Russell and Mr J. Goodwin

Tribunal

**LD. Humphries B.Sc.(Est.Man.) FRICS
W.H. Hatcher MA**

Decision

**The Tribunal finds that it has no jurisdiction to determine
Rent Charges for the subject property**

Background

- 1 The Applicants applied to the Tribunal for determination of service charges under s.27A of the Landlord & Tenant Act 1985 by application dated 12th December 2009 received by the Tribunal on 22nd December 2009.
- 2 The Tribunal held a Pre-Trial review on 10th February 2010 at which the Tribunal drew the parties' attention to the fact that the dispute at 25 Park Street was for a rentcharge, not service charge, as defined by s.18 of the Act.
- 3 Both parties' representatives asked the Tribunal to proceed in order to reach a solution to an ongoing dispute and accordingly the Tribunal issued Directions dated 17th March 2010.
- 4 On 18th March 2010 the Tribunal received an email from S.Latta Esq. MRICS of RMG who had not been present at the Pre-Trial Review, advising that in his opinion the Tribunal had no jurisdiction to proceed.
- 5 Accordingly, the Tribunal arranged a Preliminary Hearing held on 3rd June 2010 to hear the parties' submissions on the Tribunal's jurisdiction.

Submissions

- 6 The Applicant, Mrs Evans, asked the Tribunal to proceed to determine the charges for services in accordance with her case which had been well presented to the Tribunal.
- 7 Mr I.G. Thompson B.Sc.FRICS for the Respondents RMG asked the Tribunal to dismiss the applications for lack of jurisdiction. He submitted:

- i) that there was no 'service charge'

s.27A of the Landlord & Tenant Act 1985 gives the Leasehold Valuation Tribunal authority to determine whether a service charge is payable and if so

- 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.

The definition of a service charge is in s.18 of the Act which states:

- "(1) 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) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or superior landlord, in connection with the matters for which the service charge is payable."

Mr Thompson submitted that as there was no 'landlord' or 'tenant' in the subject agreement, the payment could not be construed as a service charge.

- ii) that the car parking spaces held on separate leases could not be construed as "dwellings" within the Act.

A "dwelling" is defined by s.38 of the Act as:

"a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it".

The car park spaces are held on separate leases and do not 'belong' to the houses. There is no restriction on assignment of the leases requiring the lessee to assign the car park space with the sale of the freehold house and accordingly the parking spaces could not be "appurtenances belonging to (the dwelling) or usually enjoyed with (the dwelling)" sufficient to bring them within the ambit of s.18(1) of the Act.

- 8 During the Hearing it became apparent that although the majority of Applicants occupied Freehold property, three of the Joined Applicants occupied leasehold property within the development subject to service charges that by agreement of the Applicants and Respondent would be subject to determination by the Leasehold Valuation Tribunal under the Landlord & Tenant Act 1985.
- 9 At the Hearing, Mr S. Latta MRICS gave an undertaking to the Tribunal to personally investigate and that the Respondent would remedy any errors in the charges paid by Mr and Mrs Bourne of 27 Park Street, Stoke-on-Trent who were Joined Applicants.

Decision

- 10 The Tribunal agreed with Mr Thompson that although the Rent Charge agreements had many similarities with covenants normally found in leases, there were substantial differences and, as the Applicant was not a tenant and the amount paid could not be construed as a service charge, the Tribunal had no jurisdiction to proceed to make a determination in respect of 25 Park Street.
- 11 However, to assist the parties, the Tribunal agreed to adjourn its Decision and allow a further period of six weeks for the occupiers of three properties in the scheme who were agreed by both RMG and Mrs Evans to be leaseholders, to make applications for determination of their service charges by the Tribunal. The properties were:

2 Elworth Court, Fenton, Stoke-on-Trent
6 Elworth Court, Fenton, Stoke-on-Trent
2 Vivian Road, Fenton, Stoke-on-Trent
- 12 The six week period expired on 28th July 2010 by which date no applications had been received.
- 13 The Tribunal therefore dismiss the application in respect of 25 Park Street for lack of jurisdiction.
- 14 In view of this, the Tribunal agrees to a refund of the application fee paid by Mr and Mrs Evans.
- 15 For the sake of clarity, nothing in this decision restricts future applications in respect of the service charges relating to the three properties named at paragraph 11 above.



I.D. Humphries B.Sc.(Est.Man.) FRICS
Chairman

Date **09 AUG 2010**