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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

DECISION ON A PRELIMINARY ISSUE ON AN APPLICATION UNDER 27A LANDLORD AND TENANT ACT 1985

Ref : LON/00AR/LSC/2011/0700

Property:	Unit 6 Centreview Court, 46/48/48A Victoria Road, Romford, Essex RM1 2JH
Applicant:	Centreview (Management) Limited
Respondent:	Mr R Barker *(freeholder)*
Hearing date:	9th November 2011
Attended by:	Mr L Georgiou of Ringley Legal, legal advisers to Ringley Estates, agents for the Applicant The Respondent was not present and was not represented
Tribunal:	Mr P Korn (Chairman) Mr P Roberts Dip Arch, RIBA

BACKGROUND

1. The Property (Unit 6) forms part of a building known as Centreview Court (**"the Building"**) comprising 9 units in total, 7 of which are residential and 2 of which are commercial. The Tribunal has been provided with copies of leases in respect of most of the units, and all of these leases show the Respondent to be the landlord and the Applicant to be a party to the lease as the management company.

THE LAW

9. Under Section 27A(1) of the 1985 Act *"an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable..."*.

10. Under Section 18 of the 1985 Act *"service charge"* is defined as *"an amount payable by a tenant ... as part of or in addition to the rent ... payable for services repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs"*.

APPLICATION OF LAW TO FACTS

11. The Tribunal notes that Section 27A of the 1985 Act confers on it jurisdiction to determine whether a "service charge" is payable and that Section 18 of the 1985 Act defines "service charge" as being "an amount payable by a tenant".

12. The Applicant's position (which appears from the evidence provided to be correct) is that the Respondent in this case is the registered freehold owner of the Building and the landlord in respect of all units in the Building other than the Property. The service charge provisions in the leases of the other units (or at least the ones seen by the Tribunal) require the tenant thereunder to pay a one-ninth share of the Building service charge (there being 9 units in total). There are also other provisions relating to maintenance charges in the residential leases which require the tenant to pay a one-seventh share of that charge (there being 7 residential units in total). This is as one would expect, and if and for so long as there are vacant units the freeholder would expect himself to absorb the remainder of the service costs.

13. The Applicant in this case is the management company under the leases of the other units and it appears from its application that the Respondent is refusing to pay or bear the proportion attributable to the Property. This in turn leaves a shortfall and makes it harder for the Applicant to provide the services. The Respondent has not submitted a case in response to the Applicant's case.

14. The issue, though, is whether the Tribunal has jurisdiction to determine that the Respondent must pay the proportion of the service charge attributable to the Property. As noted above, section 18 of the 1985 Act defines a service charge as being payable by a "tenant". Whilst it does not define the word "tenant" it seems clear to the Tribunal (and it put the point to Mr Georgiou at the hearing) that a person cannot be deemed to be his own tenant. Whilst a tenancy does not necessarily need to be in writing in order to be a tenancy, it seems to the Tribunal that one essential element of a tenancy is that it is a contract between two or more parties, one of whom is the landlord and one of whom is the tenant. A freeholder cannot be deemed to be his own tenant and

therefore cannot be liable to pay a service charge, whether directly to himself or to or through a managing agent. Therefore, the Respondent is not liable to pay a "service charge" in respect of the Property within the meaning set out in section 18 of the 1985 Act. The Tribunal expresses no view on the question of whether the Applicant has any other means of recourse, whether against the Respondent or against Mr Azzopardi.

15. It is noted that Mr Azzopardi has asked to "be made a party" to these proceedings. Under paragraph 6 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 any request to be joined as a party *"shall specify whether the person making the request wishes to be treated as (i) an applicant; or (ii) a respondent to the application"*. Mr Azzopardi has not so specified and was not present at the hearing to clarify his request. Considering also the circumstances of the Tribunal having made the determination on the substantive issue referred to above the Tribunal refuses his request to be joined as a party.

DECISION

16. The Tribunal determines that the Respondent is not liable under the 1985 Act to pay a service charge in respect of the Property.

17. In its application the Applicant has also applied for an order under section 20C of the 1985 Act. However, section 20C applications can only be made by tenants and therefore no order is granted.

18. No other cost applications have been made.

Chairman: 

Mr P Korn

Dated: 9th November 2011