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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00BG/LSC/2015/0037

Property : 20 TRINITY GREEN, MILE END,
LONDON E1 4TS

Applicant : LONDON BOROUGH OF TOWER
HAMLETS

Representative : TOWER HAMLET HOMES

Respondent : GILLIAN ANN STEELE

Representative : IN PERSON

Type of application : Liability to pay estate charges

Tribunal member(s) : Judge Lesley Smith

Venue : 10 Alfred Place, London WC1E 7LR

Date of directions : 5 March 2015

TRIBUNAL'S DECISION

Summary of the Tribunal's decision

- (1) The Tribunal does not have jurisdiction to deal with the claim issued by the Applicant and transferred to the Tribunal by the County Court;
- (2) Accordingly, this matter should be remitted back to the Bow County Court (case number A56YP857) for further directions to be made and the claim determined.

Background to the application

1. On 23 October 2014, the Claimant, London Borough of Tower Hamlets, issued proceedings in the County Court (under case number A56YP857) against the Defendant, Ms Steele for recovery of service charge arrears plus interest and costs relating to the property at 20 Trinity Green, Mile End Road, London E1 4TS ("the Property").
2. A defence was filed by the Defendant and the claim was allocated to the small claims track. By order dated 14 January 2015, the claim was transferred to this Tribunal.

The law

3. Section 18(1) of the Landlord and Tenant Act 1985 as amended states:-

"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 cost of management, and

(b) the whole or part of which varies or may vary according to the relevant costs."

4. Section 27A of the 1985 Act states:

"An application may be made to the appropriate tribunal for a determination whether a service charge is payable...."

The facts

5. The Property is part of Trinity Green, a self contained group of 23 surviving almshouses some of which are in private ownership and some of which are still owned by the Claimant.
6. In addition to owning some of the properties which form part of Trinity Green, the Claimant retains the surrounding land, roads and services. The transfer deed of the Property from the Claimant to the Defendant therefore contains mutual covenants and rights of way between them.

7. Paragraph 2.1 of the transfer deed contains a covenant for the Defendant to pay the Claimant an estate rent charge of £1 per annum with a further sum payable as an additional rent charge of a fair proportion of the "Expenses" (as defined in the deed) if incurred by the Claimant. It is those "Expenses" which form the basis for the County Court claim.
8. An oral case management hearing took place on 5 March 2015 attended by Ms Kokoruwe on behalf of the Claimant/Applicant, Ms Steele and her friend, Mr Flavin. Ms Steele had already raised in correspondence the issue that the Tribunal might not have jurisdiction because she is a freeholder and not a leaseholder. The Tribunal therefore raised this issue at the outset and indicated its view that it did not have jurisdiction. Both parties agreed. Mr Flavin did ask if the Tribunal could accept jurisdiction, the County Court having transferred the claim but the Tribunal explained that, as a creature of statute, the Tribunal only has jurisdiction where expressly conferred by statute. Mr Flavin also enquired whether the Tribunal could give directions for the progress of the matter once remitted to the County Court but the Tribunal did not consider that to be appropriate (even if it had jurisdiction to do so which it doubts). The way in which the case should be progressed after remittal to the County Court is a matter for that Court.

The Tribunal's decision

9. The Tribunal accordingly determines that it does not have jurisdiction to deal with the claim and that it should be transferred back to the County Court.

Reasons for the Tribunal's decision

10. Although the claim form refers to "service charges", the costs claimed by the Claimant/Applicant against the Defendant/Respondent are in fact "estate rent charges" payable by a freehold owner of the Property. Such charges are not "service charges" within the meaning of section 18 of the Landlord and Tenant Act 1985 because the Defendant/Respondent is not a "tenant" within the meaning of that section. Accordingly, the Tribunal does not have jurisdiction to determine the payability and reasonableness of the charges under section 27A of the 1985 Act.
11. The Tribunal can entertain an application to determine the reasonableness of "estate charges" paid by a freehold owner, but only in very limited circumstances, where they arise under an estate management scheme, pursuant to section 159 of the Commonhold and Leasehold Reform Act 2002. Section 159 only extends to estate charges arising from schemes that have been approved by the High Court under section 19 of the Leasehold Reform Act 1967, or approved by this Tribunal under Chapter 4 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (see section 69 of that Act) or under

section 94(6) of the 1993 Act. None of those provisions appear to apply in the present case.

12. Accordingly, the Tribunal has no jurisdiction to determine the payability or the reasonableness of the estate charges sought by the Claimant/Applicant and must decline to accept the transfer from the County Court.
13. This matter should now be returned to the Bow County Court for further directions and for the claim to be determined.

Name: Judge Lesley Smith

Date: 5 March 2015