

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

FOR

THE LONDON RENT ASSESSMENT PANEL

S.27A LANDLORD & TENANT ACT 1985

Ref: LON/00AY/LSC/2005/0309.

Premises: **81 SOMERLEYTON ROAD, LONDON SW9 8QR.**

Applicant: **METROPOLITAN HOUSING TRUST**

Respondent: **MRS M. BARTLEY**

Date of Application:

1st November 2005

Date of Determination:

26th January 2006

Tribunal:

Miss A Hamilton-Farey FRICS, FCI Arb.

Decision:

The Tribunal has decided that it does not have jurisdiction to determine liability of the Respondent to pay 'service charge' and that this matter should be remitted back to the County Court.

Reasons for the Decision:**1.0 Background:**

- 1.1 By Order of District Judge Jacey, dated 12 July 2004, the Tribunal received an application under S.27A of the Landlord & Tenant Act 1985 for a determination of the liability of the tenant to pay service charges. The transferred application was received on 1st November 2005.
- 1.2 A pre-trial review of the application was held on 21st December 2005 at which the Respondent, Mrs Bartley appeared, there was no attendance on behalf of the landlord.
- 1.3 At the pre-trial review, the Respondent informed the Tribunal that she was a freehold owner of the premises and that she disputed the 'service charges' for her property which comprised an estate charge, charges for gas and management fee. At the time of issue of Court Proceedings, the amount outstanding was alleged to be £2,414.89.
- 1.4 Following the pre-trial review the Tribunal wrote to both parties to inform them that having considered the papers, it did not appear that it had jurisdiction to hear this matter as the Respondent appeared to be a freeholder and not a leaseholder, and that as such it did not appear that the Respondent would be liable for service charge as defined in S.18 of the Landlord & Tenant Act 1985. Representations were requested from the parties by 13th January 2005. The tribunal also informed the parties that this matter would be dealt with by way of written representations. No further representations were received from the Respondent, the Applicant provided a copy of the up to date statement of arrears and also a statement of case and Office Copy entries.

2.0 The Evidence:

2.1 The Applicant submitted that *'Mrs Bartley's property, although described as a freehold property, sits on the edge of Moorland Estate which allows it to benefit from such estate services as gas supply, cleaning and grounds maintenance/tree works, pest control, estate lighting including the use of estate roads. That the property benefits from these services forms the basis of the monthly estate service charge decision by Metropolitan Home Ownership.'*

'Mrs Bartley has been well advised of these chargeable items in the past and copy letters corroborating the notification are enclosed for ease of reference of the Tribunal.'

'The enclosed statement of account reflects that Mrs Bartley has made payments in the past by cheques to the Association. This weakens her position considerably that because the property is freehold she is not liable for estate service charge. The issue of who has ownership of the freehold is not contested, what is contested is that she is not liable for estate service charge.... A person cannot have the benefit of an easement and other essential services without giving consideration in return. Mrs Bartley is liable for the outstanding charge and will be afforded an objectively reasonable period to spread payment if she requests this. That liability is on-going as long as Mrs Bartley lives in the property.'

2.2 Whist Mrs. Bartley did not make any additional response to the Tribunal, in the papers filed in Court she disputed that she was responsible for the charge on the basis that services had not been provided either at all or not to a reasonable standard. As part of those proceedings Mrs. Bartley had produced letters of complaint sent to the Applicant and various replies received.

3. The Law:

3.1 S. 18 of the Landlord & Tenant Act 1985 (as amended) states

18(1) "...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. The Decision:

4.1 The Tribunal has been provided with Office Copy Entries of the title to the subject premises (Title TGL140557) which states on the Proprietorship Register that the Title Absolute is vested in Gresham Bartley and Muriel Bartley of 31 Carrara Walk, London SW9 8QL.

4.2 There is no dispute between the parties that Mrs. Bartley occupies the property on a freehold basis and is not a lessee.

4.3 Whilst the landlord has made application to the County Court in respect of a leasehold interest in the property this is not correct and there is in fact no lease between the Applicant and Respondent. This is admitted by the parties.

4.4 Whilst the Applicant has stated that the issue of ownership is not contested, what is contested is the liability for estate service charge.

4.5 The Tribunal finds as a matter of fact that the Respondent occupies the subject premises as a freehold owner and not as a tenant.

4.6 The Tribunal therefore finds that it does not have jurisdiction to determine this matter as its jurisdiction follows from the definition of service charge in S.18 of the 1985 Act, and that as the Respondent is not a tenant, it does not have jurisdiction to determine liability to pay.

4.7 The Tribunal makes no decision therefore as to the liability to pay, nor whether the costs are reasonable. The Tribunal has not seen a copy of the transfer of freehold title which would enable the Applicant to recover these costs.

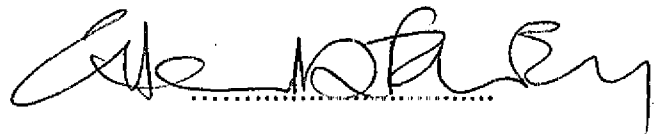
4.8 The matter is therefore remitted back to the County Court for a determination of liability to pay under the terms of the freehold transfer.

5. Costs:

5.1 No application for limitation of costs under S.20c of the Landlord & Tenant Act 1985 has been made in respect of these proceedings. However the Tribunal determines that the Landlord may not recover the costs of the proceedings at the Tribunal as part of the 'service charge' for the premises.

5.2 The Tribunal makes no award of costs in these proceedings.

Tribunal
A.Hamilton-Farey FRICS, FCI Arb



Date:

26th January, 2006