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Residential
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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985**

LON/00AG/LSC/2010/0068

Premises: Flat 11,
162-164 North Gower Street
London NW1 2ND

Applicant: Ms J Batui

Respondent: Paddington Churches Housing Association Ltd

Represented by: Ms E Gibbons of counsel

Tribunal: Mr NK Nicol
Mr A Ring

Date of Hearing: 27/08/10

Date of Decision: 27/08/10

REASONS FOR DETERMINATION

1. The Tribunal previously heard this application on 8th July 2010 but decided to adjourn on directions. The adjourned hearing was held on 27th August 2010. In summary, the information provided by the parties since the last hearing has only confirmed the Tribunal's preliminary view and the Tribunal is obliged to dismiss the application for lack of jurisdiction. The following reasons repeat much of what was said in the written decision issued on 8th July 2010.
2. The Applicant has been an assured tenant of the Respondent since 16th March 1992. In 2007 the Respondent sought to vary her tenancy agreement by replacing the fixed service charge with a variable service charge and a new list of services for which the charges were payable. The Applicant objected that the consultation on the variation was not "proper" in accordance with clause 1(6)(a) of her tenancy agreement in that the result was pre-determined and no genuine consideration was given to her representations. She also objected that some services had been removed, some charges added and some services denied. Therefore, she sought a determination as to whether these charges were payable under s.27A of the Landlord and Tenant Act 1985.
3. By a determination dated 10th March 2010 the Tribunal indicated that, if the service charge was fixed, the Tribunal had no jurisdiction to hear the case. On 6th April 2010 the Tribunal gave further directions for a determination at a hearing on 8th July 2010 as to whether the tenancy variation was valid and, if it was, the reasonableness of the current service charges.
4. However, at the hearing on 8th July 2010, the Tribunal identified and put to the Respondent apparent problems with the consultation process which led to the tenancy variation. The Respondent has now conceded that these criticisms were correct in the Applicant's case:-
 - (a) The Applicant had produced a letter dated 13th August 2007, addressed to her from the Respondent, which purported to consult her about the proposed variation. However, the letter referred to there having been a previous variation in 2004 when the service charge was changed from variable to fixed and stated, "If we did not write to you in April 2004 about the change

to your tenancy, you can ignore this letter altogether and any subsequent notice of variation we send out.” The Applicant has had the same tenancy agreement from the start in 1992, with a fixed service charge. Therefore, her tenancy would not have been varied in 2004 because she already had a fixed service charge. She wouldn’t have been written to in April 2004 and so she was directed by the letter of 13th August 2007 to ignore it. The Respondent has now clarified that they had six versions of the letter to send out for six different categories of tenant. The Applicant was simply sent the wrong letter but the Respondent has now accepted that that is sufficient to invalidate their consultation with the Applicant and, therefore, any purported changes to her tenancy.

- (b) Further, the letter of 13th August 2007 did not contain the actual proposed changes. The Respondent had pointed to a letter dated 26th February 2008 in which they asserted that the proposals were attached to the consultation letter. However, the author of that letter was referring to a consultation letter from which he quoted extensively. That consultation letter was different from the one of 13th August 2007 received by the Applicant – in particular, it was addressed to those whose tenancies commenced after 2004 and it made express reference to proposals being attached. The letter would appear to have quoted from another of the six variations but again quoted the wrong one. Therefore, it is likely that the Applicant did not receive a copy of the proposals about which she was supposedly being consulted.
 - (c) Even if the Applicant did receive a copy of the actual proposed variations in her tenancy agreement, the Tribunal identified a problem with them. The proposals included the deletion of the existing clause 1(3) which set out the services provided to the Applicant and the insertion of a new Schedule 3 where the new services would be listed. However, in the copy of the proposals shown to the Tribunal, Schedule 3 had been left blank. This would mean that the proposals were incomplete and the Applicant would not have known the details of what she was supposedly being consulted about.
5. Quite apart from the Applicant’s own separate objections to the consultation process, the consequence of these problems is that the consultation had not been “proper” in accordance with clause 1(6)(a). That means that the variation was

invalid and the Applicant is still subject to her original, unvaried tenancy agreement. In turn, this means her service charge is fixed and the Tribunal has no jurisdiction to consider the rest of her arguments because s.18 of the Landlord and Tenant Act 1985 limits that jurisdiction to variable service charges.

6. The Applicant had no representations to make to try to persuade the Tribunal to reach a different conclusion. She maintained her objections to the purported variations to her tenancy agreement and indicated that she intended to pursue her remedies elsewhere, possibly in conjunction with some neighbours she thought to be in a similar position. The Tribunal indicated that the Respondent has an opportunity to reconsider the Applicant's objections and it is hoped that the opportunity will be taken with a view to settling the dispute without further litigation.
7. In the circumstances, the Tribunal is obliged to dismiss the application for lack of jurisdiction.

Chairman.....*N.K. Nicol*.....

Date 27th August 2010