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

Case Reference : **LON/OOAE/LSC/2013/0204**

Property : **221 Harlesden Road, Willesden,
London NW10 3SD**

Applicant : **Richard Thompson**

Representative : **none**

Respondent : **Salvation Army Housing
Association (SAHA)**

Representative : **none**

Type of Application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal Members : **Mr Andrew Dutton – Tribunal
Judge
Mr Ian Thompson BSc FRICS**

**Date and venue of
Determination** : **12th August 2103 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **12th August 2013**

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that it does not have jurisdiction to determine this application for the reasons set out below

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") in respect of services charges for the years 2011, 2012, 2013 and 2014. The application in fact only specifically refers to 2013 – 2014.
2. The Application also includes a request for an order under s20C of the Act.

The hearing

3. The matter was dealt with as a paper determination following directions issued on 18th June 2013. The directions required us to consider whether we had jurisdiction to determine the application it being alleged by the respondent that the "service charge" was a fixed sum, not variable and that it did not therefore fall within the provisions of s18 the Act.

The background

4. The property which is the subject of this application comprises a bed sitting room, kitchen, bathroom and storage cupboard on the first floor of the building 221 Harlesden Road, London NW10 3SD. The Applicant appears to occupy under the terms of a tenancy agreement dated 9th March 1992 made with the Willesden Free Church Housing Association. In 2010 the landlord was SAHA. Until this time no service charge had been levied. The tenancy agreement indicates that no services are provided by the landlord. The weekly payments refer to rent only although the term "rent" refers to the sum of the net rent and service charges as set out above or varied from time to time in accordance with the Agreement.

The issues and decision

5. As we have indicated the sole issue for us to determine is whether the service charge is fixed or variable. Having considered the submissions from the parties and considered all of the documents provided, we determine that we do not have jurisdiction to consider this application.

Reasons for the tribunal's decision

6. There is nothing in the agreement that indicates that any altered rent is to be calculated in a particular manner nor linking an alteration in rent to change in the service charge costs. The landlord may well take into account the estimated costs for the forthcoming year when fixing the weekly rental payable for the year but it cannot be said that the rent, which includes the service charge, is a sum which may vary in accordance with the relevant costs as set out in s18 of the Act. It is fixed for the year. There is no balancing act at the end of the year. There is a long line of Upper Tribunal authorities which have considered this point, see for example Home Group Limited v Lewis Marsden and Easton LRX/176/2006.
7. It seems to us that if the Applicant wished to challenge the rent he pays the correct jurisdiction is the Housing Act 1988.

Application under s.20C and refund of fees

- 8 No order is made under s20C. It does not seem that there is any provision for the landlord to recover the costs of these proceedings in any event.

Name: Andrew Dutton Tribunal
Judge

Date: 12th August 2103

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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 a superior landlord, in connection with the matters for which the service charge is payable.

- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.