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

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| **Case reference** | **:** | **LON/00BG/LSC/2019/0275** |
| **Property** | **:** | **16 Tresilian Avenue, London N21 1TJ** |
| **Applicant** | **:** | **Mr William Martin** |
| **Respondent** | **:** | **Metropolitan Thames Valley** |
| **Type of application** | **:** | **Service charges** |
| **Tribunal** | **:** | **Judge Daley**<br>**Ms Coughlin** |
| **Date and venue of hearing** | **:** | **11 September 2019 at 10 Alfred Place, London WC1E 7LR** |
| **Date of decision** | **:** | **26 September 2019** |

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**DECISION**

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## Decisions of the Tribunal

(1) The Tribunal determines that it has no jurisdiction in relation to this matter.

(2) The case is referred back to the county court for disposal.

## Reasons

1. On 11 September the Tribunal held a preliminary hearing to determine whether the Tribunal had jurisdiction to determine this matter. The Tribunal held an oral hearing which was attended by Mr William Martin the Applicant (a litigant in person) and Mr John Beresford Counsel instructed on behalf of Metropolitan Thames Valley (the

Respondent). Also in attendance was Ms Begum the Respondent's service charge manager.

The Background to this matter is set out as follows-:

2. On 29 April 2019 the Applicant issued a claim against the Respondent in the County Court Business Centre in the sum of £5086.28, on the grounds that the Applicant asserted that –"… the defendant owes money for non compliance of consent order E4QZ974Z and the lack of maintenance carried out on [the] resident block dating back to 2009 to current date… we have paid a total of £49,255.20 of long term maintenance fees with no long term maintenance carried out…"

3. On 21 May 2019, District Judge Johns ordered that, the claim was to be transferred to the Clerkenwell & Shoreditch County Court. Following the transfer, on 17 July 2019, an order was made by District Judge Manners that the matter should be sent to the First Tier Property Tribunal as "…they are better placed to decide whether any maintenance has been done and the Court can then make appropriate findings about a breach of the consent order."

4. The Tribunal informed the parties of the transfer by letter dated 29 July 2019. On 1 August 2019 the Tribunal sent a second letter in which it advised the parties that a preliminary hearing had been arranged for the 11 September 2019. In the letter, the Tribunal informed the parties that it would treat the claim as an application from Mr Martin for the determination of the reasonableness and payability of service charges, however the Tribunal was not satisfied that it had the jurisdiction to deal with the mater as the issues raised in the claim had already been the subject of a judicial decision.

5. At the hearing the Tribunal heard that the Applicant was the leaseholder by way of a share ownership lease agreement of the premises, known as 16 Tresilian Avenue N21 1TJ.

6. The Respondent (Metropolitan Thames Valley) had issued in the county court claim no A5Qz120G (undated), a claim for non payment of service charges, in the sum of £1,873.85.

7. The Applicant, (Mr Martin), filed a Defence dated 16 March 2018. His Defence alleged that the Respondent had failed to maintain the property; in particular he relied upon the condition of the windows and the failure of the Respondent to maintain the grounds, the communal areas and to attend to the lighting at the premises. Mr Martin stated that "… In living here for 14 years the window frames and the communal areas have been painted once…"

8. On 21 August 2018 Deputy District Judge Zimmells made the following order-:"Upon the Claimant agreeing to consider painting the block and to attend the Defendant's Property to inspect the windows within the financial year 2018-2019 and upon the parties reaching settlement. It is ordered by Consent that 1.2. Judgement for the Claimant for the amount of £1707.00, that being the level of arrears at 20th August 2018 minus the amount agreed towards the counterclaim detailed at Paragraph 3. The Claimant shall credit the amount of £600.00 in full and final settlement of the counterclaim to the Defendant's service charge account within 21 days of this agreement.4.5…"

9. Counsel Mr Beresford submitted that although he could see from a pragmatic and practical basis why the matter had been transferred, and that he made no criticism of the judge, the only jurisdiction of the Tribunal was that conferred by section 27A of the Landlord and Tenant Act 1985 and in this case S27 (a) (4) applied to remove jurisdiction from the Tribunal. Section 27A (4) states that -: "No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

10. Mr Beresford submitted that the Tribunal had no jurisdiction because the tenant in this case had agreed to a Consent Order and sub-paragraphs

11. (a) and (c) applied.

12. Mr Beresford was not able to confirm the period covered by the order, however, the Tribunal decided that it did not need to consider whether the matter was Res Judicata (that is previously decided by the court) as Mr Martin was alleging that the order had been breached and the question of the scope of the order was a matter for the county court.

13. Mr Martin set out that he had brought his claim as although he had paid the arrears, and his windows had been replaced, one of them was failing, and the premises had not been maintained although he was paying for maintenance as part of his service charges. Mr Martin accepted that the sums paid to him for compensation was in respect of the windows for the periods 2007 to 2017. Accordingly it appeared to

the Tribunal that Mr Martin accepted that the previous service charges demanded had been the subject of the agreement.

14. The Tribunal accepts the submission of Mr Beresford.

15. The Tribunal is a creature of statute which means its jurisdiction is limited to that set out in relevant Acts of Parliament. Under section 27A of the Landlord and Tenant Act 1985 the Tribunal has the power to determine whether a "service charge" is payable. Under section 18(1), a "service charge" means an amount payable by a tenant.

16. Although the Applicant may have a claim for service charges accruing after 21 August 2018, his complaint is that the terms of the order have not been complied with, by the Respondent. Any issues of breach of the order must be a matter for the county court.

17. Nothing in the order prevents the Applicant in seeking a determination of the reasonableness and payability of the service charges going forward after 21 August 2018; however this is not what the Applicant has done. He has alleged that the terms of the agreed order have not been complied with and this is a matter for the county court to decide.

18. This matter must now go back to the Clerkenwell County Court for determination. It is unfortunate that the court transferred the case here without hearing from the Applicant since that might have avoided the mistaken transfer and the resulting delay. It would have been better if the delay could have been avoided but the Tribunal has no choice in this situation.

Judge Daley 26 September 2019

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).