



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) AND IN
THE COUNTY COURT AT ROMFORD
SITTING AT 10 ALFRED PLACE, WC1E
7LR**

Case reference : **LON/00AB/LSC/2019/0437**
HMCTS code : **V: CVPREMOTE**
(video)
Property : **16 Maydeb Court, Whalebone Lane
South, Chadwell Heath, Essex RM6 6HR**
Applicant : **Southern Land Securities Limited**
Representative : **Mr Brendan Millward**
Respondent : **Mrs Abiodun Falobi**
Representative : **In person**
Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985**
Tribunal members : **Judge Tagliavini
Mr A Harris LLM FRICS FCI Arb**
In the county court : **Judge Tagliavini sitting as a District
Judge of the County Court**
:
Venue : **10 Alfred Place, London WC1E 7LR CVP:
Remote**
Date of decision : **20 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in a bundle of 344 pages, the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (i) Annual charges for 2018/2019 in the sum of £1,401.20 are reasonable and payable by Mrs Falobi.
- (iii) Service charges (including major works) in the sum of £6,653.43 for the service charge year 2019/2020 are reasonable and payable by Mrs Falobi.
- (iv) Administration fees in the sum of £891.00 and £516.47 are not payable by Mrs Falobi.
- (v) The tribunal finds that the respondent has failed to establish a claim against the applicant in respect of the water leaks from the roof or evidence of any consequent losses and therefore makes no award to Mrs Falobi.
- (vi) As the applicant conceded that the cost of this application would not be added to the service charges, the tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge

Summary of the decisions made by Judge Tagliavini sitting as a judge of the County Court

- (i) Ground rent: Arrears of £7.50 to be paid by Mrs Falobi.
- (ii) Further arrears of ground rent in the sum of £22.50 is payable by Mrs Falobi.
- (iii) The court fee of £205 to be paid by the Mrs Falobi
- (iv) Interest on the total sum of £8,084.63 (service charges and ground rent) due from Mr Falobi is payable from the date of judgement at the statutory rate of 8% equalling £1.77 per day thereafter.

The applications

1. The claim against the respondent in the County Court comprised of arrears of service charges, ground rent and other charges amounting to £4,024.44 and claimed in addition legal costs and court fees and interest. In a subsequent statement to the tribunal, the Mr Milward for the applicant attributed the sums claimed for the service charge year were due to:

(i)	End of year Balancing Charge 7 April 17 to 6 April 18	£35.56
(ii)	Half yearly s/c in advance 7 Oct 18 to 6 April 19	£473.41
(iii)	Half yearly s/c in advance 7 April 19 to October 19.	£2,609.47
(iv)	End of year Balancing Charge 7 April 18 to 6 April 19	£621.68

Total: £3,739.92

2. However, in the tribunal's Directions dated 10 December 2019 the sum claimed by the applicant in the County Court that had been issued in or around May or June 2019 of £4,024.44 was said to comprise: arrears of ground rent (£7.50); arrears of half-yearly advance service charges amounting to £2,609.47 for April 19 to October 19; other charges totalling £891.00 and £516.47 in administration charges that had accrued together with interest of £23.54 accruing at a rate of £.88 per day. Of the sum claimed, the respondent (defendant) admitted the sum of £401.00 but asserted that the applicant had failed to manage the property properly and had failed to carry out repairs effectively. No counterclaim was pleaded by Mrs Falobi in the County Court proceedings.
3. The County Court proceedings were originally issued in the Northampton County Court under Claim No. F73YJ810. The claim was subsequently transferred to the Romford County Court (from the Dartford County court) and then in turn transferred to this tribunal, by order of Deputy District Judge Oldham on 30 October 2019. The order transferring issues to the First Tier Tribunal (Property Chamber) tribunal stated it 'shall determine the liability and reasonableness of any charges, services, works and all other matters within its jurisdiction.
4. All First-tier Tribunal ('FTT') judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.
5. Accordingly, the parties were informed in the tribunal's Directions dated 10 December 2019 that all the issues in the County Court proceedings

would be decided by a combination of the FTT and the Tribunal Judge of the FTT sitting as a Judge of the County Court. Accordingly, Judge Tagliavini presided over both parts of the hearing, which has resolved all matters before both the tribunal and the County Court.

6. Therefore, this decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.
7. On 10 January 2020 a further application was made to the tribunal in which the applicant sought a determination of the payability of service charges of £5,218.94 incurred in the service charge year 2019/20. At the start of the video hearing, the tribunal clarified the scope of the applications before it and it was agreed with the parties that the tribunal should determine the issues arising from both the County Court claim and the application made to the tribunal. The tribunal finds that the issues to be determined are:

The issues (FTT)

- (i) The payability and/or reasonableness of service charges payable in advance and administration fees for the year 2018/19;
- (ii) The payability and/or reasonableness of service charges and administration fees for the year 2019/20.
- (iii) Whether the respondent has a claim against the applicant in respect of the water leaks from the roof.

The issues (in the County Court):

- (iii) The arrears of ground rent, costs and interest. .

The hearing

8. The hearing was held by video. The Applicant was represented by Mr B Millward a legal clerk from the applicant company at the hearing and the Respondent appeared in person.

The background

9. The property which is the subject of this application is a two bedroom flat on the second and third floors of a 1960's purpose built four storey block of flats. The respondent is a long lessee of the subject premises under a lease dated 27 November 1962 made between (1) Marrable Bros Limited and (2) John Tyrell Davis. of which the respondent is the current leaseholder. The lease of the property requires the landlord to provide services and the tenant to contribute towards their costs by way of a

variable service charge. Clause 2(1 and 2(2) in the lease provides that service charges are payable in advance on the 6th of April of each year and on 29th September of each year together with any balancing payment due.

10. Mrs Falobi did not raise any (formalised) counterclaim in the County Court proceedings although in her statements made to the tribunal complained about the damage done by the water ingress into her flat due to the collapse of her bathroom ceiling in July 2019 and the tribunal made provision for a consideration of whether the respondent has a claim against the applicant in respect of the water leaks from the roof.

The applicant's case

11. In the applicant's Statement of Case signed by Mr B Milward and dated 13 March 2020, it was asserted that the respondent had failed to pay ground rent of £15 per annum (payable half-yearly) for 2018/19 and 2019/20 totalling £30 for the two service charge years; an end of year balancing charge for 2018/19 of £621.68 and annual service charges (payable half yearly in advance) for 2019/20 totalling £6,314.03. These charges were said to include sums for regular annual services and expenditure as well as for major works that were carried out during the service charge year of 2019/2020 for which the respondent was liable to pay a 6.25% share.
12. The tribunal was provided with the service charge accounts for the service charge year 2018/19. These stated that the figure due from Mrs Falobi in respect of this service charge year is £1,568.50.
13. The tribunal was also provided with the service charge accounts for 2019/20 in which the figure said to be due from Mrs. Falobi is £7,235.56 and not the figure of £5,218.94 claimed in the application made to the tribunal.
14. The applicant also asserted that legal and court fees totalling £1,396.00 were payable by the respondent and were recoverable under clause 2(6) of the lease for the subject property. The applicant asserted that the respondent had failed to make payments of ground rent and service charges since 2012 with her mortgage company having made several payments on her behalf and had resulted from county court orders being made.
15. The applicant also asserted that there had been no complaints received in respect of water ingress until 2019 and that the planned major works incorporated the repairs necessary to resolve this issue. Copies of email exchanges between the applicant and Mrs Falobi were provided by the applicant in support of this assertion in addition to the witness statement of Ms Young.

16. The tribunal was provided with a signed witness statement dated 1 October 2020 from Karen Young, the Operations Manager at Together Property Management who acted as the managing agent for the subject property. In this she stated that the respondent had made her first complaint about water ingress in April 2019 and that the ceiling collapse was reported in July 2019 when Mrs Falobi reported the collapse of her bathroom ceiling. Ms Young stated that as major works had already been planned to start in March/April 2019 that incorporated this area, a temporary tarpaulin was erected until works were carried out and completed on 27/11/19. Difficulties with access to the rear of the building also prevented interim works to the flat roof from being completed earlier. The defects period for these major works had expired on 27/05/20 and that decorative works to the interior of Mrs Falobi were being progressed. Ms Young also stated that the major works had been delayed by various interventions by the leaseholders and that had the works been carried out as originally contemplated the collapse of the roof in July 2019 would have been avoided.
17. Ms Young disputed the respondent's claims and those of her witnesses as to the poor management of the building, saying that there been few complaints received previously and that they had managed this property since 2008. Where complaints of water leaks had been received, works had been carried out to resolve these.

The respondent's case

18. In her oral evidence to the tribunal, Mrs. Falobi told the tribunal that she was confused as to the sums paid by her mortgage provider Halifax and the further sums now being demanded from her by the applicant. Mrs Falobi asserted that there was no communal cleaning and that the lessees carry out the cleaning themselves; no gardening takes place as there is no garden and the small piece of land in front of the block is treated for weeds by the lessees. Ms Falobi told the tribunal that a homeless person had not been sleeping in the store cupboard as described by the applicant and that this was the son of another lessee in the building.
19. Mrs Falobi told the tribunal that she believed the electricity costs were too high; the light outside by the bin area did not work properly as it blinked on and off; that the entry phone system had been installed by the previous managing agents; that the entrance gates were heavy and did not operate properly; that there should have been a claim on the insurance for the damage done to her flat and in any event it was too expensive. Miss Falobi agreed that the fees charged in respect of the asbestos survey were reasonable but asserted that the managing agent's fees were too high.
20. Mrs Falobi accepted that she had first reported water leaks to her flat in April 2019 (not 2018 as previously asserted). Mrs Falobi told the tribunal that the damage caused by the collapse of the ceiling had

traumatised her young son so that he was scared to sleep in the flat. Mrs Falobi accepted that she did not have contents insurance, did not seek compensation for loss of any of her personal belongings but felt she should be compensated for the anxiety and distress caused by the ceiling collapse and water ingress. When asked by the tribunal what sort of figure she was seeking in compensation Mrs Falobi orally suggested the sum of £20,000 as being suitable compensation. Mrs Falobi accepted that she was liable to pay for the major works but disputed their cost and the standard of works in respect of the painting of the wall.

21. In an undated written statement provided the respondent asserted that the sums now sought by the applicant in the County Court had already been paid by her mortgage provider in October 2018. Mrs Falobi asserted that she reported water ingress in 2018 to the applicant but nothing was done for six months. In March/April 2019 the respondent stated that there was a massive water leak to her property and that her home was flooded and that nothing was done until August/October 2019. Mrs Falobi was highly critical of the lack of service provided by the managing agent both on this occasion and overall.
22. In support of the respondent's claims the tribunal was also provided with statements from Mr Richard Ladipo (undated) in which he expressed his dissatisfaction of the management provided by Together Property Management. A statement was also provided by Mr Nasiru Adedayo Adewumi dated 28 August 2020 in which he referred to the water ingress into the respondent's flat from 2018 and the collapse of the bathroom ceiling on 28 May 2019 causing destruction to most of the respondent's personal belongings and emotional and physiological trauma to his niece, the respondent. A letter from Mr and Mrs Pereira (undated) of 12 Maydeb Court was also provided to the tribunal which recorded the difficulties with the flat roof that covered part of their property and the lack of cleaning services provided to the building. A statement from Mr. Francis Nortey of Flat 5 Maydeb Court dated 3 August 2020 complained about the lack of services provided by the management company and the poor state of the respondent's flat after the ceiling collapse.

The tribunal's decisions

23. Having heard evidence and submissions from the parties and considered all of the documents provided by the parties. The tribunal makes the following finding and determinations on the issues in dispute as follows based on the parties completed Scott Schedule.

Service charges - 2018/19

(a) Accountancy

Accountancy fees are payable by the respondent. However, the tribunal allows these in the sum of £247.20 as originally claimed by the applicant in place of the £433.00 now sought.

Therefore, Mrs Falobi is entitled to a £11.61 credit representing her 6.25% share of the difference of £185.80.

(b) Cleaning

The tribunal finds that cleaning has been carried out to the block the charge for which is supported by the appropriate invoices. Therefore, the tribunal finds the sum of £1,676.88 is payable.

(c) Irregular cleaning

The tribunal accepts is reasonable and payable and that the sum of £150 claimed is supported by the applicant's invoices.

(d) Electricity

The tribunal finds the sum of £683.74 is the annual charge for the communal parts and services for the whole building and finds this is a sum that is reasonable and payable.

(e) Entry phone/gates

The tribunal finds that the sum of £696.00 has been reasonably incurred for these services. The tribunal does not accept that either have been out of use or otherwise unusable.

(f) Gardening

The tribunal accepts that there is in fact no garden at the subject property and the alleged cost of £309.60 is excessive. Therefore, the tribunal finds this cost is not payable.

Therefore, Mrs Falobi is entitled to a credit of £19.35 representing her 6.25% share.

(g) Insurance

The tribunal finds the cost of £6,383.64 is reasonable and payable. The tribunal also finds that it is common for insurance policies to include clauses referring to the risks created by acts of terrorism.

(h) Rubbish removal

The tribunal finds that the cost of £168.00 was reasonably incurred and is payable.

(i) Surveyor's professional fees

The respondent conceded that the costs claimed of £120.00 were reasonable and payable.

(j) Management fees

The tribunal finds that the need for repairs to the building and in particular to the flat roof over part of Mrs Falobi's flat were not properly monitored or ascertained. Therefore, the tribunal reduces these management fees of £3,814.16 by 25%.

Therefore, Mrs Falobi should be credited with the sum of £60 representing her 6.25% share of the lower amount.

Repairs - 2018/2019

24. The tribunal finds that the respondent's contribution to the costs of repairs in the sum of £3,221.40 are payable to the extent detailed below.

(h) Management sign to block

The tribunal finds the sum of £67.34 was reasonably incurred by the applicant and is payable by the respondent.

(i) Removal of person from communal meter cupboard and cleaning

The tribunal finds the cost of £260.86 reasonably incurred by the applicant and payable by the respondent.

(k) New management sign

The tribunal disallows the sum of £150.00 claimed for this item as it finds it unsupported by the evidence provided by the applicant.

Therefore, Mrs Falobi should be credited with £9.37 representing her 6.25% share.

(l) Electrical wiring

The tribunal accepts the sum of £151.20 was properly incurred by the applicant and finds that this sum is payable.

(m) Light by the bin

The tribunal finds that the sum claimed of £489.60 is unsupported by the documentary evidence and disallows this sum in full.

Therefore, Mrs Falobi should be credited with the sum of £30.60 representing her 6.25% share.

(n) January 2019 roof leak/repair

The tribunal finds the sum of £102.00 claimed by the applicant is unsupported by the documentary evidence and disallows this sum in full.

Therefore, Mrs Falobi should be credited with the sum of £6.37 representing her 6.26% share.

(o) February 2019 roof leak/repair

The tribunal finds the sum of £480.00 claimed by the applicant is unsupported by the documentary evidence and disallows this sum in full.

Therefore, Mrs Falobi should be credited with the sum of £30.00 representing her 6.25% share.

(p) Stage 1, 2 and 3 (major) works

The tribunal finds the respondent's 6.25% percentage share of £2,400, £2603.74 and £2051.87 respectively as claimed by the applicant and totalling £7,055.61 has been reasonably incurred and is payable. Therefore, the sum claimed of £440.978 is payable by Mrs Falobi.

24. In the absence of any information to the contrary, the tribunal does not accept that these sums were previously paid by Mrs Falobi's mortgage provider in October 2018. The tribunal finds that the sums claimed by the applicant for service charges in 2018/2019 represent further sums that have again fallen due from the respondent in her 6.25% share less the £473.41 previously paid by Mrs Falobi. The tribunal finds that the total amount to be credited to Mrs Falobi's service charge account for 2018/19 is £166.91

25. Therefore, the annual service charges for 2018/19 of £1,568.50 should be reduced by £167.30 providing a sum payable by Mrs Falobi of £1,401.20.

26. Although, the service charges for the service charge year 2017/2018 were not considered in detail, the tribunal finds that the balancing charge of

£35.56 is not payable by Mrs Falobi in light of the deductions made for the gardening costs and managing agent fees.

Service charges - 2019/2020:

27. Similar heads of annual service charges as claimed in 2018/19 are repeated for this service charge in the Scott Schedule prepared by the applicant although in slightly varying amounts. The tribunal finds that all of the costs for these services as claimed by the applicant are reasonable and payable except the gardening costs of £309.60 which are disallowed in full due to the lack of a garden area that would support such costs. Further, the tribunal reduces the managing agent's fees of £4004.88 by 25% for the reason previously given.
28. The tribunal finds the costs of the repairs totalling £4,348.20 to have been reasonably incurred by the applicant and supported by invoices and therefore payable by the respondent in her allotted share of 6.25%.
29. Therefore, the tribunal finds that Mrs Falobi's annual service charge account for the year 2019/2020 should be credited with the total sum of £81.93 which is made up of the sums of £19.35 (gardening) and £62.58 (managing agents fees).

Major works totalling £97,514.26

30. The tribunal finds that these works were necessary and in the absence of any evidence to the contrary were carried out to an appropriate standard. However, the tribunal finds that the costs of the flat roof works over the respondent's flat were unreasonably inflated due to the applicant's failure to monitor the condition of the flat roof and carry out repair/replacement works at any earlier date as evidenced by the fungal decay that was reported on inspection. Therefore, the tribunal determines that the cost of these roof works should be reduced by £8,000 to reflect the otherwise avoidable increase in costs. Therefore, Mrs Falobi should be credited with the sum of £500 representing her 6.25% share of the £8,000 deducted from the sum claimed by the applicant.
31. Therefore, the tribunal finds that total credits of £581.93 should be made to Mrs Falobi's service charge account for the service charge year of 2019/20. Therefore, the tribunal finds that service charges for the service charge year 2019/20 (including major works) are payable by Mrs Falobi in the sum of £6,653.43 (£7,235.36 - £581.93).

Administration costs

32. The applicant seeks 'credit control fees' in the sum of £168.00 and legal fees in the sum of £723.00. In seeking payment of these fees, the

applicant relied on clause 2(6) of the lease dealing expressly with the issue of forfeiture and proceedings under sections 146 and 147 of the Law of Property Act 1925. The tribunal finds that this is not a claim for forfeiture nor can it properly be classified as having been brought in contemplation of forfeiture proceedings. Therefore, in the absence of any reliance on any other clauses in the lease that allows for the recovery of these administrative costs, the tribunal finds that the fees of £168 and £723 are not payable by the respondent.

Claim against the applicant in respect of the water leaks from the roof

33. Although the tribunal finds that the collapse of the bathroom ceiling and the ingress of water in July 2019 was distressing to Mrs Falobi, the tribunal finds that the respondent has failed to establish any liability or losses arising from this either to her personal possessions (not pursued) or to her health. The tribunal does not accept the evidence of the respondent or of her witnesses that water leakage was reported to the applicant in 2018 or that the ceiling collapse occurred earlier than July 2019. Therefore, the tribunal makes no award in respect of this issue.

Application under s.20C and refund of fees

34. At the hearing, the applicant indicated that no costs would be passed through the service charge and therefore the tribunal does not make a determination on this issue.

County court matters – ground rent, costs and interest – decision by the tribunal judge sitting as a judge of the County Court

35. In the absence of any evidence establishing that the arrears of ground rent of £7.50 sought in the County Court proceedings has been paid, Judge Tagliavini finds this sum is due and owing.
36. In respect of the other claims for arrears of ground rent that did not form part of the County Court proceedings, Judge Tagliavini finds that these are due and payable in the sum of £22.50.
37. Judge Tagliavini concluded that this clause 2(6) of the lease does not provide the landlord with a contractual entitlement to its costs in taking proceedings to recover service charges and ground rent.
38. This case was allocated to the small claims track under the CPR and therefore costs should be assessed in accordance with that allocation.
39. On the claim form the applicant has claimed a court fee of £205 and solicitor's costs in the sum of £80. However, the claim was issued by the applicant's in-house legal department and no outside solicitor's costs

were incurred. Therefore, the applicant is awarded the issue fee sum of £205 only.

40. Given that the FTT has made a decision regarding the service charges incurred in 2018/2019 the applicant is entitled to a judgement in the sum of £1401.20.
41. A separate County Court order, reflecting the decisions of the tribunal and of Judge Tagliavini as a Judge of the County Court is attached.

Name: Judge Tagliavini

Date: 20 November 2020

Rights of appeal from the decision of the tribunal

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).

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court

Appeals in respect of decisions made by the Tribunal Judge in his/her capacity as a Judge of the County Court An application for permission to appeal may be made to the Tribunal Judge who dealt with your case or to an appeal judge in the County Court.

Please note: you must in any event lodge your appeal notice within 21 days of the date of the decision against which you wish to appeal. Further information can be found at the County Court offices (not the tribunal offices) or on-line.

Appeals in respect of decisions made by the Tribunal Judge in the capacity as a Judge of the County Court and in respect the decisions made by the FTT. You must follow both routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues with either the Tribunal Judge or proceeding directly to the County Court.

General Form of Judgment or Order

In the County Court at Romford	
Sitting at: 10 Alfred Place, London WC1E 7LR	
Claim Number:	F73YJ810
Date	17 Nov 2020
Southern Land Securities Limited	1st Claimant Ref
	2nd Claimant Ref
Mrs Abiodun Falobi	1st Defendant Ref
	2nd Defendant Ref

BEFORE Tribunal Judge Tagliavini sitting as a Judge of the County Court (District Judge)

UPON:

- (a) The County Court having transferred to the First-tier Tribunal the matters within the Tribunal's jurisdiction
- (b) The Tribunal Judge (sitting as a Judge of the County Court) having exercised County Court jurisdiction on any matters falling outside the Tribunal's jurisdiction

AND UPON hearing Mr Millward for the Claimant and the Defendant in person

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

1. The Defendant shall pay to the Claimant within 35 days of the date of this judgment the sum of £8,084.63 being the sum found due

and payable in respect of service charges and ground rent for the service charge years 2018/2019 and 2019/2020.

2. The Defendant shall pay interest on the sum of £8,084.63 from the date of this judgment at the statutory rate of 8% equalling £1.77 per day.
3. The Defendant shall pay to the Claimant within 35 days of the date of this judgment the sum of £202 in respect of the claimant's summarily assessed costs;
4. No other costs are payable by the Defendant either directly or through her service charge account.
5. The reasons for making of this Order are set out in the combined decision of the Court and the First-tier Tribunal (Property Chamber) dated 17 November 2020 under case reference LON/00AB/LSC/2019/0437.

Dated: 20 November 2020