



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

**Case reference** : **LON/00AR/LSC/2019/0400**  
**HMCTS code** : **V: CVPREMOTE**  
**(video)**  
**Property** : **Flat 9, York House, Western Road,  
Romford, Essex RM1 3LP**  
**Applicant** : **Alan Reece**  
**Representative** : **In person**  
**Respondent** : **Mr A M Wallis & Mrs N Wallis**  
**Representative** : **Mr Richard Sandler, Solicitor**  
**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  
Ms S Coughlin MCIEH**  
**In the County Court** : **Judge Tagliavini sitting as a District  
Judge of the County Court**  
**Venue/Date** : **10 Alfred Place, London WC1E 7LR  
CVP: Remote  
28 October 2020**  
**Date of decision** : **30 November 2020**

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**DECISION**

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## **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**

- (1) No valid demands for arrears of service charges or ground rent incurred in 2017/18 and 2018/19 have been made by the applicant and therefore the sums claimed by the applicant are not payable.
- (2) The tribunal's decisions of the reasonableness and payability of individual heads of service charges are recorded below.
- (3) The tribunal makes an order under section 20C Landlord and Tenant Act 1985 determining that the costs of this application are not to be added to the respondents' service charges.

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

- (i) No valid demands for arrears of service charges or ground rent have been made by the claimant and the claim for payment is dismissed.
- (ii) The claim for interest and costs is dismissed.

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## **The applications**

1. The County Court proceedings were originally issued in the Northampton County Court under Claim No. F86YJ727. The claim was subsequently transferred to the Watford County Court and then in turn transferred to this tribunal, by order of District Judge Moses on 16 September 2019. The order transferring issues to the First Tier Tribunal (Property Chamber) tribunal stated its purpose is 'to resolve all matters falling within the jurisdiction of the Tribunal' and that the tribunal Judge sitting as a County Court Judge 'can determine any aspects of the claim outside of the Tribunal's jurisdiction.' Subsequently by an order dated 15 October 2019 of Judge Tildesley sitting in the County Court at Havant, the claim was transferred from the Southern Residential Property Tribunal to the tribunal's Eastern Region.

2. 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.
3. Accordingly, the parties were informed in the tribunal's Directions dated 23 October 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.
4. Therefore, this decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

### **The issues (FTT)**

- (i) The payability of service charges in the service charge years 2018/19 due to a challenge to the standing of the applicant to collect such sums.
- (ii) Technical legal challenges to the validity of the demands for payment sent by the applicant to the respondents.
- (iii) The reasonableness of certain heads of service charge.

### **The issues (in the County Court):**

- (iv) Arrears of ground rent, costs and interest.

### **The hearing**

5. The hearing was held by video. The applicant appeared in person and the respondents were represented by Mr Sandler.

### **The background**

6. In a lease dated 8 January 2016 made between (1) Allan Reece and (2) Reece Homes Limited of the ground and first floor premises at York House, Western Road, Romford, Essex RM1 3LP, a term of 125 years from and including 8 January 2016 was granted. By a sub-lease lease dated 31 March 2016 between (1) Reece Homes Limited and (2) Andrew Mark Wallis and Nicole Wallis a term of 125 years was granted with effect from 8 January 2016 less three days at a ground rent of £150 per annum doubling in every twenty-fifth anniversary of the Term. The service charges runs from 1 April of each year to 31<sup>st</sup> March of the following year.

7. In a Deed of Variation dated 15 September 2016 made between (1) Allan Reece and (2) Reece Homes Limited of the Ground and First Floor of York House the immediate reversion to the lease was vested in the landlord and the unexpired residue of the Term is vested in the Tenant for a sum of £300K. Subsequently, the Reece Homes Limited was dissolved and its assets (York House) were disclaimed by the Crown on 14 May 2019 under the provisions of the Companies Act 2006.
8. In a Deed of Rectification dated 30 August 2017 between the applicant Allan Reece and Andrew Mark Wallis and Nicole Wallis in respect of Plot 7, Flat 9 York House the immediate reversion in the lease dated 31 March 2016 vested in the Landlord (applicant).
9. Consequently, the initial argument raised by the respondents that Allan Reece did not have the legal standing to pursue a claim against them for arrears of service charge and ground rent was conceded by Mr. Sandler at the outset of the hearing to be ill-founded. Mr Sandler made it clear to the tribunal that he no longer sought to pursue this argument and accepted that the applicant (Allan Reece) had become the respondents' landlord.
10. In accordance with the clause 9 of the subject lease the service charge year is computed from 24 December of every year payable in advance by four equal instalments and calculated as as a 'fair proportion of the cost and expenses whatsoever incurred by the Landlord in performing the Services.'

### **The applicant's case**

11. In the county court claim Mr Reece sought payment of the sum £981.69 for arrears of service charges and ground rent plus interest of £61.39 and a court fee of £70. Subsequently, the respondents paid £207.80 in respect of the outstanding ground rent and the debt said to be owing was reduced to £843.89 comprising arrears of service charges, interest and court fee.
12. In the Particulars of Claim the claimant (applicant) asserted that service charge arrears in the sum of £920.30 had accrued from 01/07/18 to 30/06/19 and that interest under clause 20 of the lease was payable at a rate of 8.75% amounting to £61.39 and increasing at the rate of £0.21 per day. Costs were also payable by the respondents under clause 19 of the lease.
13. In the applicant's Response dated 23 September 2020 to the respondent's Reply Mr Reece Stated that Mr Wallis was a shareholder of the York House Flat Management 2015 Limited (formed for the collection of service charges) and that it acted on behalf of the landlord when making demands for payment of ground rent and service charges. The work/cost involved of seeking to reformulate and increase the service charges for flats 1 to 7 was disproportionate to the sums involved. Mr Reece asserted that the heads of service charge challenged by the respondent had been reasonably incurred and

produced the invoices that supported them to the tribunal together with the demands for payment sent to the respondents.

14. In the Statement dated 6 March 2020 Mr Reece stated that the service charges for 2017/18 were, not in dispute as they had been paid in full by the respondents. The applicant also stated that flats 2 to 7 York House are responsible 35% of the Service Charges incurred in any service charge year. Flats 8 to 18 are responsible for 65% of the service charge and that it is incorrect to divide the service charges equally between the 18 flats. Further, the applicant asserted that the current percentage payable for service charges was fair and reasonable and that any difference between 5% and 5.91% for the 2018/19 service charges was minimal and that to vary the service charges expressed in the leases would be disproportionately time consuming and costly.

### **The respondents' case**

15. In a Defence dated 29 July 2019 the respondents asserted that service charges of £761.30 have been incorrectly calculated as the total sum for service charges should be equally divided by the 18 flats in the building and therefore the 2017/18 service charges were £1,204 not the £1,280.70 claimed and the 2018/19 service charges were £624.22 and not the £663.95 claimed by the applicant.
16. The respondents also asserted that as the name of the landlord Allan Reece had not been included on the demands for payment but only that of York House Flat Management 2015 Ltd the demands were invalid and therefore the sums claimed were not due. An example of the form of the demand used by the applicant was demonstrated by the 'eighth reminder' dated 11 April 2019 on which it was stated that demand was made on behalf of the landlord York House Flat Management 2015 Limited.' A tenth reminder for ground rent dated 1 October 2019 asserted that the sums were payable on behalf of the landlord to 'Allan Reece Associates'. This pattern of demands for payment of services charges by the landlord York House Flat Management 2015 Limited and ground rent by Allan Reece Associates was repeated.
17. In addition, the respondents asserted that the sums claimed for gardening; a fire inspection and a firebox key safe are excessive; the sum claimed for Rentokill requires justification and the bank charges and the CCTV and BT line charges are not provided for in the lease. Neither the accounts for 2017/18 and 2018/19 had been certified in accordance with the terms of the lease.
18. In a Reply dated 10 August 2020 to the applicant's Statement of Case the respondents asserted that the applicant had formed York House Flat Management 2015 Limited for the purpose of collecting service charges instead of collecting service charges in the name of the Head Lessor. Further, the respondents claimed that they were being charge 5.91% of the service charges instead of 5% and therefore is 'not fair and reasonable' as it does not appropriately include any percentage paid by the new flats.

19. The tribunal was also provided with a written statement from Mr Andrew Wallis dated 16 September 2020 in which he asserted that the applicant had failed to follow a consultation process in respect of the installation of the CCTV and that invalid demands for payment are continuing to be sent by the applicant. Further, in oral evidence to the tribunal the respondents challenged the reasonableness and payability of a larger number of heads of service charges which the tribunal dealt with in the course of the hearing.

### **The tribunal's decisions**

20. The tribunal finds that the landlord's demand for payment of service charges includes the service charge years 2017/18 and 2018/19. The tribunal finds that the fact of the respondents having paid the service charges in full for 2017/18 does not preclude them for disputing their payability. The tribunal finds the various demands for payment of service charge and ground rent for the service charge years 2017/18 and 2018/19 do not correctly identify the landlord to whom the sums are payable and do not provide the name and address of the land as required by section 47 of the Landlord and Tenant Act 1987. Therefore, the tribunal finds the sums said to be due for service charges accrued in 2017/18 and 2018/19 are not due or payable under section 48 of the 1987 Act until such time a valid notice is served.
21. However, for the purposes of clarity and certainty the tribunal makes the following findings of the reasonableness of the heads of service charges disputed by the respondents for the service charge years 2017/18 and 2018/19 and which have arisen during the period 1 April 2018 to 10 March 2019).

### **Gardening**

- (a) The tribunal finds that this sum is reasonable and is payable in full.

### **Roof leak**

- (b) The tribunal finds that the sum of £590 is reasonable and payable. The tribunal does not accept that work carried out by the same company on two consecutive days is likely to have been invoiced separately. Therefore, the tribunal finds that there is a degree of duplication in the presentation of two similar bills for similar roof repairs and therefore allows only the larger of the two amounts.

### **Broken window**

- (c) The tribunal finds that this cost is reasonable and payable. Although the cause of the broken window was attributed to the gardeners the tribunal finds that the actual cause has not been able to be ascertained. However, the tribunal finds that it is a common and not unexpected occurrence for which the landlord is required to carry out repairs.

### **Handrail**

- (d) The tribunal finds this sum is reasonable and payable.

### **Entrance door**

- (e) The tribunal finds that this sum is reasonable and payable.

### **Fire inspection**

- (f) The tribunal disallows this sum as it finds it has not been satisfactorily proved by the applicant to have been reasonably incurred as the report has not been disclosed by the applicant.

### **BT line**

- (g) The tribunal allows this sum in full as it finds the cost has been reasonably incurred.

### **Bank charges**

- (h) The tribunal finds these sums have not been reasonably incurred and disallows them in full. The tribunal finds that the applicant unnecessarily and unreasonably decided to arrange a larger overdraft facility than was required.

### **Accountancy fees**

- (i) The tribunal disallows this sum as it finds they have not been reasonably incurred as part of the service charges. The tribunal finds that these were fees for accounts required to be filed with Companies House by York House Flat Management 2015 Limited and therefore did not form part of the service charges for which the respondents are liable to pay.

### **Proportion of service charges**

- (j) The tribunal was not provided with any detailed information about the size of the other flats in the building or the proportion of service charges specified in their leases. Therefore, the tribunal determines on the evidence presented in respect of the service charges for the years 2017/18 and 2018/19 that the calculated proportion is reasonable.

### **Section 20C**

22. The tribunal makes an order under section 20C Landlord and Tenant Act 1985 determining that the costs of this application are not to be added to the respondents' service charges.

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

**Ground rent**

- (l) The tribunal has been informed that the ground rent has been paid and therefore is no longer required to make a finding on this issue.

**Costs and interest**

- (m) The Judge Tagliavini finds that as no sums of either service charges or ground rent have been found to be payable no interest is due and therefore the costs claimed by the claimant (applicant) are not payable by the defendants (respondents).
23. 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:** 30 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.