



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at
Willesden County Court sitting at
Havant Justice Centre, Elmleigh
Road, Havant, PO9 2AL**

Tribunal reference : **CHI/29UN/LIS/2021/0009**

Court claim number : **Claim Number G37YJ381**

Property : **Basement Flat 1, Lausanne Terrace,
St Johns Road, Margate, CT9 1LX**

Applicant/Claimant : **Mrs Jasmine V Kenny**

Respondent/Defendant : **Mrs Hannah Bingham**

Type of Proceedings : **Transferred Proceedings in
relation to service charges
Court proceedings: Ground Rent
and Counter Claim**

Tribunal members : **Judge Tildesley OBE
Miss C Barton MRICS
Mr D Ashby FRICS**

In the county court : **Judge Tildesley OBE**

Date of hearing : **29 March 2021 by means of Video
hearing Service**

Date of Decision : **Decision at the hearing
Written reasons 6 April 2021**

DECISION

Summary of the decisions made by the FTT

- i. The Respondent is not liable to pay a contribution of £182.08 for insurance and the lessor's management fee of £336.
- ii. No order for reimbursement of the Tribunal hearing fee of £230.

Summary of the decisions made by the County Court

- iii. The Defendant is not liable to pay the Ground rent of £50.
- iv. The Claim in the sum of £807.57 which includes the costs incurred is dismissed.
- v. The Counter claim in the sum of £6,313.15 including costs is dismissed.

Background

1. The Applicant seeks and following a transfer from the County Court the Tribunal is required to make, a determination under section 27A of the Landlord and Tenant Act 1985 and the Commonhold and Leasehold Reform Act 2002 in respect of service charges and administration charges. These are matters within the jurisdiction of the Tribunal.
2. The original proceedings were issued in the County Court under Claim No. G37YJ381 and were transferred to the Tribunal by District Judge Griffiths by order dated 18 January 2021. The file was originally sent to the London Tribunal and was forwarded on 4 February 2021 to the Tribunal Office at Havant which is responsible for properties in Kent.
3. The Applicant has also claimed ground rent, interest and costs. The Respondent has submitted a counter claim. These are matters within the jurisdiction of the Court.
4. As a result of amendments made to the County Courts Act 1984, First-tier Tribunal judges are now also judges of the County Court. This means that, in a suitable case, the Tribunal Judge sitting as a County Court Judge can decide the issues that would otherwise have to be separately decided in the County Court.
5. In this case, it was directed that the Tribunal Judge shall determine all matters arising from the claim. Therefore, in determining these proceedings, the Tribunal Judge will also decide those issues falling outside the Tribunal's jurisdiction sitting as a County Court Judge after concluding the matters heard by the Tribunal. This means that the dispute can be dealt with at one hearing.
6. For the purposes of the County Court issues, the proceedings have been allocated to the Small Claims Track.
7. The Respondent has filed a Defence and Counter-Claim in the court proceedings.

8. On 22 February 2021 the Tribunal directed that the Application would be heard on the 29 March 2021 by video hearing for one day. The Tribunal indicated that it would not inspect the property. The Applicant was given permission to file and serve a response to the counter claim together with any witness statement by 8 March 2021. The Respondent was likewise given permission to file and serve a witness statement dealing with the response to the Counter Claim by 15 March 2021. The Applicant was directed to provide electronically a hearing bundle by 15 March 2021.
9. The Applicant on receipt of the directions applied to the Tribunal stating that

“I am the Claimant in the proceedings Court Reference number G37YJ381.

My original claim to Money Claim Court for unpaid amounts of Ground Rent, Portion of Building Insurance and Lessor’s fee for year 2020.

As this matter has now been transferred to a Property Tribunal Court and as this matter arose from the Defendant’s breach of the Lease with reference to a structural alteration of the property below basement level without any Building Controls in place, I would like to extend my Claim to take into the consideration the cost of a full structural survey to be carried out in the property of 1 Lausanne Terrace, St John’s Road, Margate.

I would also like to seek an Order from the Tribunal for the Defendant to obtain all building application from the local Council for several building structural alterations done in the basement flat.

Please advise if

- I need to amend my Particulars of Claim;
- I need to obtain a quote for a full structural building survey and add this amount to the cost;
- Seek the Tribunal to have the cost awarded
- Can I send my documents and exhibits to the Court and the Defendant by postal recorded delivery?”

10. The Tribunal responded the same day

“Judge Tildesley advises that he has given permission to you to file a response and witness statements to the Counter Claim.

Judge Tildesley has directed that all communications with the Tribunal and the parties are by email. This is in response to the current public health emergency.

Judge Tildesley advises that if you wish to change or add to your particulars of Claim you must make application on the prescribed Court Form N244 and pay the appropriate fee which is £255. Judge Tildesley will then decide whether to restrict the determination to

those matters within the Tribunal's jurisdiction or deal with the whole matter in his capacity as a County Court Judge.

Judge Tildesley asks that you copy all correspondence with the Tribunal to the other party.

Finally Judge Tildesley suggests that you may wish to take independent advice because he cannot give advice to the parties as to the appropriate course for them to adopt.”

11. The Applicant did not respond to the Tribunal’s reply.

12. On 5 March 2021 the Applicant emailed the Tribunal

“I am the Claimant in the Court proceedings number G37YJ381. This is a claim for non payment of Ground Rent, Building Insurance and Lessor's fees for year 2020, as per Terms and Conditions of the Defendant's Lease with interest and costs incurred.

I have sent this morning 14 e-mails to the following recipients with track and trace delivery of the e-mails:

- rp@southern@justice.gov.uk
- mudlarkandco@gmail.com
- Nicola.Peterson@Justice.gov.uk
- jvkenny3@ntlworld.com

In so far, I confirm the receipt of the acceptance to the files sent on 14 e-mail of 05/03/2021 with reference to case Number G37YJ381, re: property - flat 1 Lausanne Terrace, St John's Road, Margate CT9 1LX, **only from** rp@southern@justice.gov.uk.

I have been accustomed in the past, that the Defendant claims of no receipts of the items sent, even there is a track and trace delivery either via e-mail or recorded delivery post.

The e-mails sent this morning are with reference to my Claim G37YJ381 and my (the Claimant/Applicant's) response to the Counterclaim Statement issued by the Defendant/Respondent. The files sent were too large to be sent in one e-mail.

The following Claimant/Applicant's documents have been sent in today's in 14 e-mails, as per Court direction:

1. the Claimant’s response to the Defendant’s Counterclaim;
2. Updated schedule of Losses;
3. 2 x copies of the receipts of payment for £230.00 for the Tribunal Trial to take place on 29/03/2021;
4. Court Directions;
5. Exhibits 1, 2, 3 , 7 -24 (the exhibits 4, 5, 6 are part of the Parties evidence bundle and will be forwarded with the Court Bundle before 15/03/2021 as per Court Directions)”.

13. The Tribunal responded the same day advising the Applicant that the emails have been received but the hearing ‘bundle’ could not be

accepted in this format. The Applicant was referred to the guidance that the documents must be in one bundle.

14. The Applicant replied she had no facility to send the documents in one file and requested that she be permitted to send a bundle by post.
15. Judge Tildesley responded stating that

“Judge Tildesley advises that the Tribunal cannot accept your evidence by way of 15 emails. Judge Tildesley reminds the parties that it is their responsibility to ensure that they comply with the Tribunal directions regarding their presentation of the evidence.

Judge Tildesley has decided to take an exceptional step. The Applicant is no longer required to file her response to the Counter Claim on the Tribunal provided it is sent to the Respondent by 8 March 2021.

The Applicant, however, will be required to provide the Tribunal with three hard copies of the hearing bundle which can be posted and must be received by the Tribunal by 22 March 2021. The Applicant will also be required to post a copy to the Respondent”.
16. On 11 March 2021 the Applicant sent the Tribunal an electronic bundle with the documents in one bundle.
17. On 15 March 2021 the Respondent supplied her witness statement in accordance with the directions.
18. The parties attended in person at the hearing on 29 March 2021. Judge Tildesley explained that he would be sitting first with Miss Barton and Mr Ashby as a Tribunal to hear those matters that fell within the Tribunal’s jurisdiction. Judge Tildesley would then sit alone to hear the evidence regarding the Claim for ground rent and the counter claim. Judge Tildesley gave the decision of the Tribunal and the judgment of the Court at the end of the hearing.
19. The parties were given the opportunity to ask each other questions on their evidence, and each made a closing statement at the end of their evidence.
20. The Tribunal was unable to retire during the hearing because of a fault with the video hearing service. This meant that the Tribunal had to ask the parties to sign out of the hearing at the end of the evidence to enable the Tribunal to discuss the case in private.

The Issues and Decisions (First-tier Tribunal)

Service Charges

References in [] are pages of the Applicant's bundle

21. The building had been converted around 2000 into two self-contained flats. The subject property was situated on the ground and lower floors. The property was accessed down steps from the street level which led to a short passage way off which a door opened into the lower ground level. The area at the end of the passageway was reserved for the storage of bins.
22. The Applicant and Michael Anthony Matthew Kenny hold the freehold title of the building under title number K382195, and own the leasehold of the upper flat in the building.
23. The Applicant claimed the sums of £182.08 for buildings insurance, and £336 for the Landlord's management fee as service charges for the year 2020.
24. The Applicant produced a copy of "House Insurance Statement of Fact" published by Arthur J Gallagher Insurance Brokers Limited dated 16 January 2020 which stated that a policy of insurance had been taken out in the name of the Applicant for the period 18 January 2020 to 17 January 2021. The Statement named Flat 1, 24 Princess Crescent Margate and Flat 2, 1 Lausanne Terrace, St Johns Road Margate as the risk addresses. The statement confirmed that payment of £364.16 had been received from the lessor [135].
25. The Applicant contended that she was entitled to recover 50 per cent of the cost of the insurance from the Defendant in accordance with the terms of the lease, and that there had been no increase in the premium from the previous year which was £364.59.
26. The Applicant supplied no breakdown of how the management fee of £336 was calculated. The document bundle at [85] exhibited an email from the Applicant to the Respondent dated 3 February 2018 which indicated that the management fee was for the Applicant's time spent on correspondence to the lessee with alleged breaches of the lease, demands for payments and providing a credit facility.
27. The Applicant sent recorded delivery a payment demand dated 18 January 2020 addressed to the Respondent [133]. The demand was in the form of a letter, and stated that in year 2020 the Respondent was liable for one half of the insurance costs, ground rent of £50, and lessor's management fee of £336. The letter then said that "Please ensure that payment of £568.08 is made promptly and in accordance with the terms and conditions of your lease for the basement flat". Details of a nominated bank account was given. The letter was signed by Mr and Mrs Kenny as the lessors of Flat 1.

28. The letter did not contain a formal statement of the name and address of the landlord. The Applicant asserted that the requirement had been met by the signature of Mr and Mrs Kenny named as the Lessor of Flat 1. The Applicant accepted that the “Summary of Tenant’s Rights and Obligations” had not been enclosed with the letter.
29. On 18 February 2020 the Applicant sent a pre-action protocol letter to the Respondent stating that if payment of £568.08 was not made to the lessor’s nominated bank account within 10 working days a money payment claim through the County Court would be issued [139].
30. The Applicant supplied a copy of the Account for the year 2020 [175]. The account was entitled “Reserve Fund” and showed an opening balance of £2,352.40, entries for B & Q materials in the sum of £105.11, “Tool Station” materials in the sum of £55.57, quotation for labour costs and materials for various repairs to the bay window (£1,750) leaving a balance of £441.72. Against the entry for the quotations was the word “committed”. The Tribunal enquired of the Applicant what was meant by the word “committed”. The Applicant responded that she intended to obtain a second quotation before going ahead with works. The Applicant, however, had not provided the Respondent with a notice of intention to carry out the works or given her an opportunity to consult on the proposed works. A copy of the 2019 Reserve fund account was exhibited at [191].
31. The Respondent stated in her defence that she had been willing to pay since the first Court case but had been provided with the wrong bank details. The Respondent said that she had been contributing £40 month towards the service charge which included the ground rent and £60 per month in instalments in respect of the previous Court order. The Respondent maintained that she had requested copies of the accounts since 2017 but the first time that she had seen any accounts was at the previous court hearing. The Respondent asserted that the Applicant was not entitled to claim management charges in accordance with the lease especially when the Applicant has failed to comply with the terms of the lease. The Respondent contended that the insurance premium had increased, and in her view it should be less because of the works done to the property. The Respondent submitted that the Applicant had refused mediation and that her first course of action was to take the Respondent to court. The Respondent said she would be willing to contribute to the costs of a managing agent even at an increased cost because it would give her assurance that everything was above board.

Consideration

32. The Tribunal’s determination on liability to pay service charges encompasses two stages of consideration. The first stage is whether the charges are payable under the lease which will involve examining the clauses defining what costs can be recovered as service charges, and those clauses dealing with the machinery for collection of those

charges. The second stage is looking at the statutory protections given to leaseholders in respect of the reasonableness of the charges, consultation and the information provided to leaseholders when charges are demanded.

33. It is incumbent upon the Applicant to establish on the balance of probabilities the Respondent's liability to pay the disputed charges. The Applicant contended that the claim was in accordance with the lease. At the hearing the Tribunal asked the Applicant to justify her contention.
34. The lease in question is dated 14 July 2000, and made between Elizabeth Anne Sylvia Stephens and Ruth Walder. The Respondent holds the lease for a term of 99 years from 14 July 2000 in return for payment of yearly rent of £50 for the first 33 years, £100 for the next 33 years and £150 for the remainder of the term by two equal half yearly instalments in advance on 24 June and 25 December in each year. In addition, the Respondent is required to pay a sum being half of the exact cost expenses fees and outgoings incurred by the Lessor in complying with covenants contained in Clause 4 and to be payable in accordance with the provisions contained in the Second Schedule.
35. Under Clause 4 the lessor covenants with the lessee that s/he will
 - (1) From time to time as necessary or desirable decorate maintain repair and renew:-
 - (a) The main structure of the Building and in particular the roof and supporting timbers foundations gutters and rainwater pipes spouts drainpipes fall pipes and all conduits and ducts of in or serving the Building and any other part thereof not comprised in either flat;
 - (b) The water tanks and gas pipes drains sewers electric wires and cables in under and upon and serving the property enjoyed or used by the Lessee in common with the Lessees of the other flats and
 - (c) The stairs and accessway leading from St. Johns Road, Lausanne Terrace to the dustbin shown and coloured brown on the said plan annexed hereto.
 - (2) As often as reasonably required decorate the exterior of the Building and in particular will paint the exterior parts of the Building (including the window frames) usually so painted with two coats of good quality paint once in every three years.
 - (3) Insure and keep insured the property in the joint names of the Lessor and the Lessee against loss or damage by fire storm subsidence flood tempest and any other risk normal in a comprehensive policy including three years loss of rent and also the usual professional fees and also including public liability of the Lessee in respect of any damages suffered through any defect in the demised premises or any part thereof or any chattel or

thing thereon through the neglect or default or misconduct of the lessor or contractor agent or servant of the Lessor ("the insured risks") in the full reinstatement value and if so required to produce to the Lessee such insurance policy and the receipt for the last premium provided that the Lessor will not be liable to the lessee for insurance or reinstatement of the Building after loss from an insured risk if such insurance shall have been invalidated by any act or default on the part of the Lessee.

36. The Second Schedule of the lease sets out the machinery for the collection of service charges
 1. The Lessor shall keep proper books of accounts of all costs charges and expenses incurred by him in carrying out his obligations under Clause 4 of this Lease (and which may include the cost of employing agents to supervise the property management of the property at a commission not exceeding ten per centum of the annual amount of the total costs to the Lessor of the performance of the Lessors covenants and obligations hereunder) (hereinafter called "the Lessors expenses") and so on thereafter as shall be practicable an account (hereinafter called the account) taken as at the 24th day of June 1988 and as at the 24th day of June in every subsequent year during the continuance of this demise and at the termination of this demise of the amount of the Lessors expenses incurred since the date of the last preceding account.
 2. The Lessor may and if so required by the Lessee shall procure the account which shall be prepared and audited by a Chartered Accountant who shall certify the total amount of the Lessors expenses (including the audit fee of the said Accountant) for the period to which the account relates.
 3. The Lessor shall within fourteen days of the preparation of the account serve a copy thereof on the lessee.
 4. The Lessee shall within twenty one days after the service by the Lessor on the Lessee of the copy of the accounts pay to the lessor the balance (if any) by which the amount due from the Lessee in that accounting period exceeds the total sums paid by the lessee to the Lessor under Clause 5 of this Schedule during the said period
 5. (1) The Lessee shall with the rent due hereunder on the 24th day of June in every year pay to the Lessor a sum (hereinafter called the advance payment) on account of his share of the lessors expenses to be incurred in the then current year of account

(2) The amount of the advance payment shall be such as the Lessor shall estimate to be the liability of the Lessee in respect of the known or likely expenditure during that period of account.

(3) Provided always that if at any time or time during the period of account it shall become apparent that the advance payment will not be adequate to fund the Lessor's expenses then the Lessee shall on demand pay to the Lessor such further sum or sums by way of advance payment as the Lessor shall require.

(4) All sums so paid to the Lessor by way of advance payment shall be credited to a deposit account maintained exclusively for the purpose and the interest arising therefrom (after allowing any liability to tax) shall be credited to the maintenance account.

37. This a typical repair and insurance lease more characteristic of older leases rather than ones executed in 2000. The lease imposes the basic obligations on the Lessor with the option of appointing a managing agent. In the Tribunal's view, the lease reflects the particular features of the property being a converted house with two flats and the intentions of the parties at the time of execution of the lease that the involvement of the Lessor would be light touch with an emphasis of working together with the two leaseholders.
38. The Tribunal finds that there is no provision in the lease which enables the Applicant to charge a fee for managing the property. Paragraph (1) of the Second Schedule allows the Applicant to employ an agent to manage the property and recover the agent's fee as a service charge but it does not permit the Applicant to charge for her time and recover her expenses in managing the property. The Tribunal also considers significant that the management fee was directed solely at the Respondent and not split 50:50 in accordance with the terms of the lease. Equally the lease gives no authority to the lessor to levy administration charges for managing the property.
39. It appeared to the Tribunal that the Applicant was relying on sub-clause 2.10 of the lease as the authority to charge a management fee. Sub-clause 2.10 deals with the costs incurred by the Lessor in or in contemplation of any proceedings under section 146 and 147 of the Law of Property Act 1925. The Applicant demanded the management fee in advance and was for a fixed amount. The fee demanded did not have the characteristic of "costs incurred" and had no relationship to proceedings under either section 146 or 147 of the 1925 Act.
40. Under sub-clause 4(3) the Applicant is entitled to recover 50 per cent of the costs for insuring the property from the Respondent. However, sub-clause 4(3) requires the insurance to be in the joint names of the Lessor and the Lessee. The Applicant accepted that the policy was in her sole name, although it identified the two flats as the risk addresses. The Tribunal is satisfied that the policy taken out by the Applicant did not comply with the terms of the lease.

41. The machinery for the collection of services as described in the Second Schedule is a common arrangement for many leases. Paragraph 5 to Second Schedule allows the Lessor to demand payments in advance of the service charge at the beginning of the accounting year which starts on 24 June. The advance payment is an estimate of the known or likely expenditure. At the end of the accounting year (23 June) the Lessor is required to produce an account of the expenses incurred during that year and give a copy to the Lessee. If the expenditure exceeds the payments in advance the Lessee is required to make a balancing payment within 21 days from the date of the receipt of the account. The Second Schedule does not permit the Lessor to carry forward overpayments which means that credits due to the Lessee must be returned at the end of the accounting period. There is no requirement for the accounts to be certified and audited unless the Lessee requires it. This arrangement is yet another indication of the light touch nature of the lease, and the expectation of the collaborative arrangements envisaged in the lease for managing the property.
42. The Tribunal is satisfied that the Applicant has failed to adhere to the requirements of the lease for the demanding and accounting of service charges. The Applicant described the letter of the 18 January 2020 as a demand for charges on account for 2020. The Tribunal finds that the lease required payment in advance to be demanded on 24 June of each year for the accounting year ending 23 June.
43. The Applicant asserted that she had provided accounts of the service charge. The accounts were described as “the Reserve Fund”, and the one for 2020 detailed costs of various purchases of materials by the Applicant and the costs of committed repairs. The Tribunal does not consider the accounts exhibited by the Applicant in her bundle compliant with the terms of the lease because:
- The account did not provide a statement of expenditure and payments received in an accounting period as specified by the lease.
 - The account did not supply a balance of the amount due or owed to the Respondent.
 - The account did not identify the amounts due in respect of insurance and or management charges.
 - The account comprised an assortment of costs for the purchase of materials and for commitments made with contractors. In the Tribunal’s view there was no clear connection between the costs of the building materials and the Lessor’s obligations under the lease. The commitments made with contractors disregarded the

statutory requirements to consult with the lessee before entering into binding commitments with contractors.

44. The Tribunal would also point out that the lease does not provide for the creation of a reserve fund. The Tribunal understands that the Respondent has been contributing to this Reserve Fund but no record of those payments appeared on the account.
45. The Tribunal now turns to the statutory requirements governing the relationship of Lessor and Lessee under a long leasehold. The principal requirements are found in the Landlord and Tenant Act 1985. Section 19 requires the costs incurred or about to be incurred by the Lessor to be reasonable. In this case the Tribunal is considering costs on account, and the test is whether the relevant costs are no greater amount than is reasonable.
46. The Applicant adduced no evidence on the breakdown of management fees and what they were for. The Applicant supplied a receipt for the insurance paid but gave no indication whether the market had been tested in respect of the insurance charges. The Applicant's assertion that this was a "professional landlord's insurance" was of no assistance on the question of reasonableness. Further the Accounts supplied for 2018 and 2019 [185 & 189] provided no insight on past expenditure for management fee and insurance. The Tribunal concludes that the Applicant has provided no evidence to substantiate the reasonableness of the charges.
47. Although it is not an issue in relation to the management and insurance charges, the Tribunal highlights its concerns with the Applicant's understanding of the Lessor's duty to consult with lessees on major works under section 20 of the 1985 Act.
48. Section 47 of the Landlord and Tenant Act 1987 requires any sums due to the landlord of a dwelling must state the name and address of the landlord. If the landlord fails to comply with section 47 the tenant is not liable to pay the service charge or administration charge until such time as the Landlord does. Under section 21B of the 1985 Act a demand for payment of a service charge/administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges and administration charges. If a landlord fails to comply with section 21B of the 1985 Act the tenants are not liable to pay service charges.
49. The Tribunal finds that
 - The letter of 8 January 2020 demanding the charges did not contain a statement giving the name and address of the landlord.
 - The Applicant admitted that she did not send the summary of the tenant's rights and obligations with the demand.

The Tribunal Decision

50. The Tribunal finds that in relation to the contribution of £182.08 for insurance and the lessor's management fee of £336:
- (a) The lease does not authorise the Applicant to charge a management fee unless it is the fee for a managing agent either as a service charge or as an administration charge.
 - (b) The insurance policy taken out by the Applicant did not comply with the terms of the lease.
 - (c) The demand for the management fee and insurance did not comply with the terms of the lease.
 - (d) The management fee and the insurance costs were not reasonable within the meaning of section 19(2) of the 1985 Act.
 - (e) The demand did not state the name and address of the landlord.
 - (f) The demand was not accompanied by summary of tenants' rights and obligations.
51. The Tribunal decides that the Respondent is not liable to pay a contribution of £182.08 for insurance and the lessor's management fee of £336.
52. The Applicant applied for reimbursement of the Tribunal hearing fee of £230. The Tribunal decides not to exercise its discretion to order reimbursement because the Applicant has not been successful.

The issues & decisions (County Court)

Ground rent

53. Judge Tildesley sitting alone as a judge of the County Court finds that
- The Claimant did not demand the ground rent of £50 in accordance with the terms of the lease, namely by half yearly payments in advance on 24 June and 25 December in each year.
 - The Claimant did not notify the Defendant of the rent due in accordance with section 166 of the Commonhold and Leasehold Reform Act 2002, in particular the letter of the 8 January 2020 did not contain the requisite information and was not in the prescribed form as required by section 166(5).

54. Judge Tildesley decides that the Defendant is not liable make the payment of £50 ground rent for 2020.

Interest and Costs

55. The Claimant claimed contractual interest of £22.62, court fees of £70, administrative costs of £55, and costs of £100 for legal advice.
56. Judge Tildesley sitting alone as a judge of the County Court finds that the Claimant has been unsuccessful with her claim and, therefore, makes no order for interest and costs.
57. Given that the Tribunal found that the Respondent is not liable to pay the management fee and the insurance charges, Judge Tildesley dismisses the claim.

Counter Claim

58. The Defendant made a Counter claim in the sum of £6,313.15 comprising 50 per cent of the following costs
- Thanet council planning dept invoice for regularisation = £535.00
 - Damp course - sub level tanking to 1 Lausanne £8950.00
 - Replacement windows £2314.30
 - Repairing crack to ground level £250
 - Painting side left window ground level £50
 - Replacement glass due to being poorly maintained £500
59. The Defendant contended that she had incurred these costs due to the Claimant's lack of general maintenance of the property, and her failure to comply with the Lessor's repairing obligations under the lease. The Defendant said that the property had suffered from damp which arose from the room in which the water meters for both flats were located. The Defendant said that the Claimant had refused to relocate the water meters. The Defendant stated that the windows were in a poor state of repair when she purchased the property, and that she had replaced them. The Defendant insisted that no structural alterations had been carried out on the property.
60. The Defendant said that the Council's Building Control had been involved from the beginning and had approved the works to the property. The Defendant had also allowed the Claimant to view the windows prior to fitting and the architect's plans. According to the Defendant, the Claimant was not satisfied and required her to obtain retrospective planning approval despite the Council stating initially that planning was not required. The Defendant sought 50 per cent of the fee paid for planning approval from the Claimant. Judge Tildesley understands that the Claimant is still disputing the issue of whether the Defendant has sign off from building control. The Defendant has arranged for a Building Control Officer to visit the property next week.

61. The Claimant argued that she was not liable to pay 50 per cent of the costs of the works. The Claimant said that the Defendant was aware of the state of the property when she bought it. The Claimant said that the Defendant had carried out structural alterations to the property and had installed a bathroom in one of the cellar rooms. The Claimant asserted that the Defendant had enlarged the windows and was not liable to contribute to improvements. The Claimant also said that the glass in the windows was not her responsibility. The Claimant denied there were cracks in the property. According to the Claimant, the crack in the canopy of the projecting bay window wall showed in one of the photographs was in fact a cable from the Defendant's property.
62. Judge Tildesley established from the Defendant that she had not sent a notice to the Claimant identifying the alleged breaches of repairing covenant, and giving the Claimant an opportunity to disagree and or put matters right. Judge Tildesley explained to the Defendant that this step had to be taken before making a claim. Judge Tildesley also finds that the Defendant adduced no persuasive evidence that the various defects in the property were due to the Claimant's disrepair. Judge Tildesley, therefore, dismissed the Counter claim for these reasons and made no order for costs in favour of the Defendant.
63. A separate County Court order, reflecting the decision on the Claim and Counter Claim is attached.
64. During the evidence the Claimant stated that she had not received the Defendant's witness statement on the counter claim which the Defendant had submitted in accordance with the directions. Judge Tildesley said that he had thought it had been sent to the Claimant by the Tribunal Office. Judge Tildesley was, however, unable to pause the hearing because of a technical problem with the video hearing service, and to check the position. Judge Tildesley in the face of repeated questions from the Claimant decided to disregard the Defendant's witness statement because it added nothing new to the Defendant's claim. After the hearing Judge Tildesley found that the witness statement had not been sent to the Claimant by either the Office or the Defendant. Judge Tildesley comments that the Claimant has not been prejudiced because of Judge Tildesley's decision during the hearing to disregard it. Judge Tildesley also points out that the Counter claim has been dismissed.

Other Matters

65. Judge Tildesley understands that the Claimant has submitted a new Claim relating to management fees, insurance costs and ground rent for 2021. Judge Tildesley is of the view that the Claimant does not understand the legal requirements associated with demands for ground rent, service charges and administration charges, and suggests that she takes legal advice on the legal responsibilities of landlords before embarking on further action before the courts.
66. The Defendant informed Judge Tildesley that she had engaged a solicitor to handle her dealings with the Claimant. Judge Tildesley advised the Defendant to submit her defence to the new claim and seek

the assistance of her solicitor. Judge Tildesley also suggests that the Defendant take advice on whether the previous judgment for ground rent, insurance and management fees together with the associated charging order can be challenged in view of this decision.

Rights of appeal

Appeals in respect of decisions made by the Tribunal

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 must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk.

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 his/her capacity as a Judge of the County Court

An application for permission to appeal may be made to an appeal judge in the County Court since no application was made to the Judge at the hearing.

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 his/her 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 by proceeding directly to the County Court.