FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CZ/LSC/2022/0053 and MAN/00CZ/LSC/2023/0074**
Property	:	**9A Thornhill Road, Huddersfield, HD3 3DD**
Applicant in Case 0053	:	**Ms Donna Gregory**
Respondents in Case 0053	:	**Mr John Longbottom and Mrs Florence Deniel**
Applicant in Case 0074	:	**Mr John Longbottom**
Respondent in Case 0074	:	**Ms Donna Gregory**
Tribunal Members	:	**Judge K Southby** **Mr H Thomas BSc FRICS FCABE**
Date and venue of Hearing	:	**12 December 2023** **Manchester Tribunal Hearing Centre**
Date of Decision	:	**3 January 2024**

DECISION

DECISION

A. There is no sum payable by Ms Gregory to Mr Longbottom and Mrs Deniel in respect of the replacement windows to the Upper flat (claim 0053).

B. There is no sum currently payable by Ms Gregory to Mr Longbottom in respect of Roof Repairs for 2021(claim 0074).

C. There is no sum payable by Ms Gregory to Mr Longbottom in respect of the Buildings Insurance Policy for the years 2019-2021 inclusive (claim 0074).

Summary of the decisions made by the County Court in claim number H60YJ653.

1. BY CONSENT Court Orders that the ground rent claimed by the Applicant under this claim is payable by the Respondent. The sum of £6.50 is payable by the Defendant Ms Gregory to the Applicant Mr Longbottom.

2. There is no order for costs

REASONS

Preliminary and background

1. The Building at 9 Thornhill Road, Huddersfield HD3 3DD, known as 'Ingledene' ("the Building") is a detached house divided horizontally into two flats. Ms Gregory lives in the lower flat (9A) and Mr Longbottom and Mrs Deniel live in the upper flat.

2. There are two applications before the Tribunal.

3. The first application numbered 0053 is brought by Ms Gregory who made an application to the Tribunal dated 19th May 2022 under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of liability to pay, and reasonableness of the of the service charges in relation to the installation of windows in the upper flat of 9 Thornhill Road Huddersfield HD3 3DD. The application related to the service charge year 2022 and was made by Ms Gregory as the long term leaseholder of 9A Thornhill Road Huddersfield HD3 3DD ("the Property").

4. The second application numbered 0074 originated in the County Court as a claim dated 17 November 2021 brought by Mr Longbottom against Ms Gregory for a proportion of the Buildings Insurance, 50% of exterior maintenance costs, and ground rent for the years 2019 to 2021.

5. The second application was transferred to the Tribunal by the County Court by DDJ Cooper by Order dated 11 July 2022. It is clear that there has been unfortunate ambiguity in correspondence from both the Tribunal and the County Court regarding the transfer of this matter and whether or not the Tribunal considers itself to have jurisdiction to determine these issues. The Tribunal is satisfied that the matter has been properly transferred. The Tribunal considers the jurisdiction point below.

6. Directions were issued by the Tribunal on 27 September 2022 requesting each party to clarify.

   a. Whether the Tribunal has jurisdiction to make a determination in this case; and
   b. The statutory basis if this is stated to be the case.

7. No Order or definitive finding was made and issued by the Tribunal in respect of jurisdiction although further directions were issued by the Tribunal on 31 January 2023 in both cases by Legal Officer Elena Dudley.

8. On 31 May 2023 the matter was again before the County Court and District Judge Rana made an Order that the Tribunal was seized of the matter and that all County Court proceedings in the matter be stayed until 31 May 2024 after which the County Court proceedings be struck out in the absence of an application to extend the stay. [page 109 bundle 0074]

9. The matter was again before the County Court on 24 July 2023 following an application by Mr Longbottom to have the previous Order set aside, before District Judge Uppal who declined to overturn the previous Order of District Judge Rana [page 119 bundle 0074].

10. Further directions were issued on 17 August 2023 by Judge Bennett in respect of case 0074 which superseded previous directions and the matters were listed to be heard together for a face-to-face hearing. No inspection of the property was considered necessary.

The Hearing

11. The hearing was originally listed for 31 October 2023 at Manchester Tribunal Centre. Both parties had indicated their intention to attend [correspondence dated 30/9/2023 from Mr Longbottom]. Regrettably due to personal circumstances of the Panel the hearing date had to be rescheduled and was relisted for 12 December 2023 at the same venue. The same correspondence informing parties of the date, time and venue were sent, and the parties invited to confirm their attendance and any representatives or witnesses who would also be attending.

12. A hearing took place on 12 December 2023 at Manchester Tribunal Centre. Ms Gregory attended and was represented by Mr Pickering of Counsel. Mr Hanson of Oates Hanson Solicitors, acting as instructing solicitors for Ms Gregory also attended. There were no witnesses although Mr Woodward attended as an observer.

13. There was no attendance from Mr Longbottom or Mrs Deniel.

14. The Tribunal was mindful of correspondence from Mr Longbottom and Mrs Deniel dated 9 November 2023 stating '*Further to your Email of 7/11/2023 in regards to what appears to be a form of invitation, please put these details into a formal summons so that we can respond accordingly. We cannot respond to an informal Court appearance invitation…If the Court wishes to invite us to a Hearing on Tues 12/12/2023 at 10am we respectfully request a formal summons to be issued.*'

15. Mr Longbottom and Mrs Deniel also wrote on 15 November 2023 stating '*In response to your communication dated 15/11/2023. It is regrettable that we have not received a formal invitation from the Tribunal as requested. As such the informal invitation (if that is what it is) is* **returned rejected***…Regarding communications issues by yourself on 15/11/2023 which we can again only describe as a form of informal invitation, NOT a formal summons, as previously requested, we must re-issue our correspondence of 9/11/2023 so that the Tribunal is able to issue documents in accordance with civil procedure rules and invitations that we can give consideration to.*

16. Mr Longbottom and Mrs Deniel also wrote to the Tribunal dated 10 December 2023 restating their position that in their view the Tribunal does not have jurisdiction and also stating "*That we are not in receipt of any formal invitation to a hearing scheduled at FTT Man which contains the proper instructions and consequences regarding attendance in line with FTT procedure rules. It is presumed that such document has not been produced and issued due to the Man FTT not holding jurisdiction on this matter… That our attendance may have been confirmed had we been in receipt of full disclosure and a proper invitation. However, we are obligated by the Transfer documentation to maintain the integrity and the terms of the contract for future incumbents. We cannot knowingly perform any action that may alter the contract. Hence, we cannot risk volunteering jurisdiction by attendance at the hearing of 12/12/23 whereat the terms of contract may be altered…. From our research (prompted by the courts' actions) it is our understanding that a Court may have a claim to jurisdiction simply by an individual's attendance at said Court, even if jurisdiction was not there held prior. We cannot, in good faith, enter the Tribunal under such circumstances and without full disclosure - as previously expressed. Such action may cause us injury and harm.*"

17. The Tribunal satisfied itself that correspondence had been properly sent to Mr Longbottom and Mrs Deniel informing them of the hearing. Indeed, it is clear from all three pieces of correspondence that they were aware of the hearing which was due to take place. It was not open to the Tribunal to issue a court summons, and the form of invitation sent to Mr Longbottom and Mrs Deniel was entirely proper and in accordance with Tribunal Practice and Procedure – and indeed in accordance with that sent for the

previously listed hearing on 31 October 2023 to which they had indicated their attendance.

18. The Tribunal notes that the correspondence from the Tribunal dated 15 November 2023 to which Mr Longbottom and Mrs Deniel refer states.

"Further to earlier correspondence, I am now writing to advise you that a face-to-face hearing has been arranged in respect of the above application to the Tribunal at 10:00am on 12 December 2023 at 1st Floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH…

If a party does not appear at a hearing either in person or through a representative, the Tribunal, if satisfied that adequate notice of the hearing has been given, may proceed to deal with the application. If you nevertheless do not intend to appear or be represented at the hearings, please let me know".

19. The Tribunal is therefore satisfied that not only were Mr Longbottom and Mrs Deniel aware of the hearing, but they were also aware of the consequences of not attending and that the matter may proceed to deal with the application in their absence. Notwithstanding this, the Tribunal contacted Mr Longbottom by telephone on the morning of the hearing to establish if he was intending to attend, in case he had been delayed en route. Mr Longbottom confirmed to the Tribunal Clerk that he and Mrs Deniel would not be attending for the reasons set out in their most recent correspondence of 10 December 2023.

20. The Tribunal considered the overriding objective and noted that this matter has been ongoing for a prolonged period of time, that Mr Longbottom and Mrs Deniel were choosing not to attend despite being aware of the consequences of not doing so, and the Tribunal concluded that it was in the interests of justice and in accordance with the need to deal with matters fairly and in a timely manner for the matter to proceed in their absence.

21. The Tribunal considered the documents with which it had been provided by the parties. We note that we are in receipt of a Tribunal bundle from Ms Gregory in respect of both matter 0053 and matter 0074. No bundle has been provided by Mr Longbottom and Mrs Deniel in respect of 0053 or by Mr Longbottom in respect of matter 0074, despite directions requiring this to be produced. We note that the directions in both matters state.

- **(b) If the Applicant fails to comply with these directions the Tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").**

- **(c) If the Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**

22. The Tribunal therefore considered whether it was appropriate and in the interests of justice to either strike out all or part of the case of Mr Longbottom and Mrs Deniel to bar them from taking any further part in all or part of these proceedings. We are mindful that Mr Longbottom and MRs Deniel are not represented, and therefore may not have had the benefit of legal advice to assist them in the preparation of either of these matters. We are also mindful that whilst we do not have a bundle prepared in accordance with the directions, we are in possession of the original County Court bundle in respect of matter 0074 and are also in receipt of a significant quantity of correspondence from Mr Longbottom and Mrs Deniel in respect of both matters. This leads us to conclude that not only is there relevant information put forward by Mr Longbottom and MRs Deniel of which the Tribunal should have appropriate regard, but also that they clearly wish to actively put forward their position in respect of both matters and their position is clearly set out in written submissions. We therefore concluded that it would not be appropriate to bar them or strike out any or all of their case, but instead for the Tribunal to consider the issues and for Mr Longbottom and Mrs Deniel to participate through consideration of their written submissions.

Jurisdictional Issues

23. The Tribunal has already satisfied itself that the County Court has transferred the matter to the Tribunal. The County Court has confirmed this to be the case on several occasions. However, it is important to be mindful that the County Court cannot transfer a case/issue to the Tribunal unless the Tribunal has jurisdiction to determine it. For example, a dispute concerning the payability of ground rent cannot be transferred as the Tribunal does not have jurisdiction to make a determination in respect of ground rent.

24. However, what the County Court can do – and has done here – is to transfer the administration of a case from the County Court to the Tribunal with a view to the Tribunal determining those issues which are within its jurisdiction.

25. Mr Longbottom and Mrs Deniel argue that the underlease which is the subject matter of this dispute does not contain Service Charge provisions and therefore is outside the jurisdiction of the Tribunal.

26. The Tribunal notes that this issue of jurisdiction as relates to the presence or absence of Service Charge provisions was already considered previously by the Tribunal at a preliminary case management hearing conducted by Judge Bennett, although the parties appear to consider that different findings were made, with Mr Longbottom and Mrs Deniel being of the view that the Tribunal concluded that it did not have jurisdiction and Ms Gregory, through her representatives being of the view that the Tribunal had concluded that it did have jurisdiction and that the Underlease contains service charge provisions.

27. For the avoidance of doubt. the Tribunal has considered the matter of jurisdiction afresh as there appears to be ambiguity between the parties as to the Tribunal's position and no definitive determination has previously been issued on the point.

28. The parties' positions are as follows - Mr Longbottom argues [various correspondence including dated 3/8/2023 and 2/9/23] that there is no Service Charge in this case and therefore the Tribunal does not have jurisdiction to determine this matter. He describes the Underlease as a contract between the parties and states that a previous County Court finding in respect of the terms of the Underlease in case 075MC219 is binding on future interpretation of the Underlease. He also states that the matter has been wrongly transferred from the County Court and that the Tribunal should refer it back to the County Court as being the correct jurisdiction.

29. Ms Gregory argues that Clause 12 of the Third Schedule of the Underlease constitutes a relevant service charge provision.

The Leases and the service charge machinery

30. There are two leases pertaining to the Building – the Headlease and the Underlease. It is the terms of the Underlease with which the Tribunal is particularly concerned. The Tribunal was provided with a copy of the Underlease for the Property.

31. It is not disputed that Mr Longbottom and Mrs Deniel hold the Headlease to the Building which was originally granted on 8 February 1909. The relevant agreement in this case is an Underlease dated 25th February 1976 made between Keith Mellor Dyson and John and Nora Affleck at the point in time when the ground floor flat, now occupied by Ms Gregory was created as a separate dwelling. Mr Longbottom and Mrs Deniel jointly own the head leasehold interest in the Building. Ms Gregory owns the lower flat 9A under the terms of the Underlease.

32. The relevant part of Clause 12 of the Underlease is sub-paragraph 12(1)(a) which provides a covenant on the part of Ms Gregory as follows:

"At all times hereafter to contribute and pay:
(1) *One half part of the expenses of maintaining and repairing or renewing*
    a. *The roof, main walls, footings and foundations of the house and the gutters, pipes and other things for conveying rain water from the house…"*
(2)

33. Clause 11 of the Fourth Schedule to the Underlease imposes on Mr Longbottom and Mrs Deniel in relation to buildings insurance, the following obligation:
"*At all times to insure and keep insured the house and all buildings now or to be erected in connection therewith including (but without prejudice to the generality of the foregoing) liability for injury to persons visiting the house in the joint names of the Landlords and the Tenants in an insurance office of repute to the full replacement value thereof including architect's fees as certified by the Landlord's architect or insurance assessors and to make all payments necessary for the above-mentioned purpose4s within 14 days after the same shall respectively become payable and to produce to the Tenants not more often than once in every year on demand the policy or policies of such insurance and the receipt for every such payment.*"

Law

34. Section 27A(1) of the 1985 Act provides:

> *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-*
> *(a) the person by whom it is payable,*
> *(b) the person to whom it is payable,*
> *(c) the amount which is payable,*
> *(d) the date at or by which it is payable, and*
> *(e) the manner in which it is payable.*

35. The Tribunal is "the appropriate tribunal" for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

36. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It means:

> *… an amount payable by a tenant of a dwelling as part of or in addition to the rent–*
> *(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and*
> *(b) the whole or part of which varies or may vary according to the relevant costs.*

37. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

> *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly.*

38. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

> *the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

39. Applications may be made to the Tribunal by any person and there are no specified time limits for doing so. Additionally, by section 176A of the Commonhold and Leasehold Reform Act 2002, courts may transfer issues relating to service charges to the Tribunal for determination.

The Tribunal's findings on Jurisdiction

40. Mr Longbottom argues [page 67 bundle 0053 and at various points in his correspondence] that the underlease predates the Landlord and Tenant Act 1985 and therefore there is in his view no Landlord and Tenant relationship conferred, and the terms contained within it cannot be a service charge, but rather are a binding arrangement between two parties. They state that the Underlease makes no provision for commercial gain by the "Landlord". Mr Longbottom and Mrs Deniel assert that the Tribunal can have no have jurisdiction to make a determination under s27A of the Landlord and Tenant Act 1985 by reason of the above.

41. We disagree, and we find Mr Longbottom and Mrs Deniel's arguments unpersuasive. The Underlease which we have considered here very clearly has a landlord and tenant relationship set out within it and uses precisely that terminology. For leases (including an underlease such as the one under consideration here) of dwellings, statutory regulation was first introduced in 1972. Subsequent Acts added to the provisions which were eventually consolidated in sections 18 to 30 of the Landlord and Tenant Act 1985 and added to by the Landlord and Tenant Act 1987. In summary the main provisions in these Acts are:
(a) The general requirement of reasonableness (1985 Act s.19);
(b) The consultation requirements and dispensation provisions (1985 Act ss.20 and 20ZA);
(c) Restriction on recovery of costs of proceedings as service charges (1985 Act s.20C)
(d) Time limits on making demands (1985 Act s.20B);
(e) Content of service charge demands (1987 Act Part VI);
(f) Service charges to be held on trust (1987 Act s.42);
(g) Rights of tenants to information as to relevant costs (1985 ss.21-23);
(h) Rights of tenants in relation to insurance (1985 Act s.30A);
(i) Rights of tenants in relation to managing agents (1985 Act s.30B)

42. Having concluded that Mr Longbottom and Mrs Deniel are incorrect in their assertion that the Underlease is not governed by the Landlord and tenant Act 1985, the next fundamental point which the Tribunal is being asked to consider here in respect of jurisdiction is one of interpretation of the terms of the Underlease – i.e. are Clause 12 of the Third Schedule and Clause 11 of the Fourth Schedule of the underlease Service Charge provisions? Mr Longbottom and Mrs Deniel state that they are not [correspondence 4/11/2022]

43. The starting point for an exercise of this kind is that ordinary rules of contractual interpretation apply to the relevant provision of the Underlease – i.e. identifying what the parties meant through the eyes of a reasonable reader. The more unreasonable a particular interpretation the less likely the parties can have intended it and if they do intend it them more necessary it is that they shall make that intention abundantly clear.

44. We carefully considered the wording of Clause 12(1)(a) of the Third Schedule and Clause 11 of the Fourth Schedule to the Underlease and we find that they both fall within the statutory definition of a service charge at s18(1) of the Landlord and Tenant Act 1985 in that it is an amount payable by Ms Gregory as the tenant to Mr Longbottom and Mrs Deniel and the Landlord which is 'directly or indirectly for maintenance, improvement or insurance" and "the whole or part of which varies or may vary according to the relevant costs"

45. We note that this is a matter which appears to have been before the Tribunal previously at a preliminary hearing in front of Judge Bennett, where the parties appear to have arrived at different conclusions as to Judge Bennett's findings on the matter. For the avoidance of doubt there is no previous Order or determination of the Tribunal by which we are bound. We note that Mr Longbottom and Mrs Deniel have repeatedly stated in correspondence that Judge Bennett accepted their assertion that they do not levy Service Charges. However, no such finding is recorded by Judge Bennett and as the final Panel in this matter the decision rests with us. Simply asserting repeatedly that something is so, does not make it so. We disagree with the assertion of Mr Longbottom and Mrs Deniel for the reasons set out above and we find that the Clauses referred to above are service charge clauses.

46. Seeking payment from Ms Gregory for windows, roof and/or insurance therefore engages a service charge clause, whether or not Mr Longbottom and Mrs Deniel choose to refer to the charges in that way.

47. For this reason we consider that the Tribunal has jurisdiction to determine the reasonableness and payability of the following:

    a. service charges in relation to the installation of windows in the upper flat of 9 Thornhill Road Huddersfield HD3 3DD as per matter 0053

    b. Buildings Insurance and exterior maintenance costs as per matter 0074

48. We note that matter 0074 also refers to a claim for ground rent. As stated above, that is not a service charge, and the Tribunal does not have jurisdiction over this element of the claim. However, it is possible for a Tribunal Judge sitting separately as a County Court judge to determine any residual issues. This is considered separately below.

Evidence and Decision and Reasons of the Tribunal

49. It follows therefore that there are three issues of reasonableness and payability of service charges for the Tribunal to determine from the two matters:
a. Windows (0053)
b. Insurance (0074)
c. Roof and external maintenance (0074)

Windows

50. In respect of the windows Mr Longbottom and Mrs Deniel provide an affidavit dated 11 December 2023 stating that there had been a previous request from Ms Gregory to remove an obligation to share window maintenance but that this request was never actioned, and no changes were made to the contract.

51. Mr Longbottom states [page 66 bundle 0053] that the Underlease is silent as to who should organise maintenance and repairs to the Building but that the long-established practice was for the owners of Number 9 (i.e. Mr Longbottom and Mrs Deniel) to take overall responsibility for organising maintenance work. It is clear that Mr Longbottom and Mrs Deniel informed Ms Gregory of their intention to carry out replacement works to the windows of their flat. Mr Longbottom and Mrs Deniel also provide correspondence which they states sets out a course of conduct of non-compliance with the obligations under the underlease. Included within this correspondence are replies form Ms Gregory's solicitors stating that in their view Ms Gregory has no obligation to contribute to payment for the windows of the upstairs flat.

52. Mr Longbottom and Mrs Deniel argue [page 69 bundle 0053] that Ms Gregory is liable to contribute towards the cost of the windows in their flat and cite clause 12(1)(a) of the Third Schedule. They argue that the windows form part of the structure of the Building and the structure must necessarily include the main walls and footings.

53. We disagree. Ms Gregory's obligation is to contribute and pay one half of the expenses maintaining and repairing or renewing the roof, main walls footings, foundations and gutters and other rainwater goods. Clause 12(1)(a) specifically names items for which Ms Gregory as tenant of the underlease is to contribute and it does not mention windows. We find no evidence that this property is anything other than a standard Victorian style construction with windows set into main walls with lintels supporting the structural weight. Even if the windows were structural (which we do not find them to be) then in any event the obligation to maintain the structure of the upper flat would fall upon Mr Longbottom and Mrs Deniel as per clause 12 of the Fourth Schedule, and not on Ms Gregory.

54. We find the lease to be clear and unambiguous on this point and Mr Longbottom and Mrs Deniel's arguments in this respect to be misconceived and ill-founded and we reject them entirely.

55. As a consequence, we find that there is no sum payable by Ms Gregory to Mr Longbottom and Mrs Deniel in respect of the replacement windows to the Upper flat as per the claim 0053.

Roof Repairs

56. In respect of the Roof repairs – the Tribunal heard representations from Mr Pickering on behalf of Ms Gregory which match those set out in Ms Gregory's statement of case, namely that the charge for costs of roof repairs is a service charge within the meaning of s18(1) Landlord and tenant Act 1985 and is therefore subject to the provisions of section 21B of the Landlord and tenant Act 1985 which provides that any demand for service charge must be accompanied by a summary of the leaseholder's rights and obligations in prescribed form.

57. The Tribunal heard oral evidence from Ms Gregory that no such summary of rights and obligations had ever been provided to her.

58. The Tribunal considered Section 21B Landlord and Tenant Act 1985 – the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007

59. Section 21B of the 1985 Act requires that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges and gives the Secretary of state the power to prescribe the form and content of such a summary. This is contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 which applies to demands made on or after 1st October 2007. In Amourgam v Valepark Properties Limited [2011] UKUT 261 LC, LRX/110/2010 HHJ Huskinson decided that Section 21B applies to all demands for service charges made after the commencement of section 21B even if the costs were incurred prior to that date.

60. Where no summary is provided with a demand for a service charge then a tenant may withhold payment and any provisions of the lease (or in this case, underlease) relating to non-payment or late payment do not have effect (s.21B(3) and (4)).

61. We note that it is not disputed by Ms Gregory that roof repairs fall under clause 12 of the Third Schedule of the underlease. It follows therefore that 50% of the cost of roof repairs is recoverable from Ms Gregory under the terms of the Underlease, in so far as any such charges are reasonable and reasonably incurred. We are not asked to consider reasonableness, but only the omission of relevant documentation.

62. We carefully considered the documentation provided to us by Mr Longbottom and Mrs Deniel and we note that no statement of rights and obligations is included within any of the paperwork provided to us. We found the oral evidence of Ms Gregory to be persuasive and we find that no such statement of rights and obligations has been served. Accordingly, Ms Gregory is entitled to withhold payment until this defect is rectified, and no provisions in relation to late payment have effect – i.e. no interest for late payment accrues during the period when no statement of rights and obligations has been provided. We specifically make no other finding here in respect of the reasonableness and payability of these amounts as we are not asked to do so. Our finding is that no amount is currently payable by Ms Gregory to Mr Longbottom in respect of Roof Repairs.

Insurance

63. There is an obligation under Clause 11 of the Fourth Schedule of the underlease for Mr Longbottom and Mrs Deniel and the Landlords of the underlease to insure the house and buildings in the joint names of the Landlords and Tenants.

64. Ms Gregory's position is that no such insurance policy has been taken out by Mr Longbottom and Mrs Deniel. Instead, Ms Gregory gave oral evidence that a policy in Mr Longbottom and Mrs Deniel's names only, bearing a note of Ms Gregory's interest, has been taken out instead. She stated that she was unable to claim under this policy as it was not in her name and has taken out her own policy in addition. She provided a copy of the policy for 2022, stating she was unable to provide a copy for the year in question. The Tribunal note that this policy is in the name of Mr Longbottom with Mrs Deniel as joint policyholder and has Ms Gregory's interest noted at page 6.

65. Mr Longbottom argues [correspondence to Court Manager dated 5 April 2022] that his broker has stated that the wording within the Underlease – namely that the policy should be in joint names) "*could no longer pertain to modern policies in that the named client is the entity commissioning the policy and to whom the policy refers. The Defendant's interest therefore has to be noted as an endorsement within the policy rather than the policy being in joint names. This endorsement appears on page 5 of the policy, and the endorsement satisfies the requisite term, a point agreed by the judge in the 2020 action.*"

66. It is clear from the evidence of both parties that the Insurance Policy taken out by Mr Longbottom and Mrs Deniel is not in joint names with Ms Gregory. As such it is not in compliance with the terms of the Underlease. If Mr Longbottom is correct that such a product as envisaged by this clause is not available on the market currently then either the terms of the underlease need to be varied to reflect this, or the parties need to separately insure, However, the current Insurance policy arrangement whereby Ms Gregory is not a joint policyholder is not in compliance with the terms of the lease and therefore Ms Gregory is not obliged to pay a share of the cost of a non-compliant policy.

67. We note that Mr Longbottom makes reference to the previous findings in a prior claim in the County Court. We are not bound by the findings in that matter. We make this finding on the basis of the information before us, and our analysis of the terms of the underlease.

Costs

68. Mr Pickering on behalf of Ms Gregory made an application for costs in the sum of £2500 plus VAT in respect of his brief fee which he states was at least in part incurred as a consequence of Mr Longbottom and Mrs Deniel's refusal to accept the status of Mr Hanson as Ms Gregory's solicitor and their accusations of misconduct against Mr Hanson. He makes the application, pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

69. The Residential Property Tribunal is primarily a non costs shifting jurisdiction. The Rule under which the costs application is brought only permits the Tribunal to make such an Order if person has acted unreasonably in bringing, defending or conducting proceedings. The Tribunal should adopt a 3-stage process in determining whether the Applicants had acted unreasonably, as follows:

    a. Was their conduct objectively unreasonable?

    b. Was it appropriate, in all the circumstances, for the Tribunal to make a costs order?

    c. The quantum of any costs award was at the Tribunal's discretion.

70. Mr Pickering suggests that the conduct of Mr Longbottom and Mrs Deniel was unreasonable in the way they have behaved towards Mr Hanson, and that their conduct towards Ms Gregory outside the Tribunal has been in his words appalling. We make no findings on either of these matters on which we have very limited information, and which go beyond matters about which the Tribunal is directly concerned. Mr Pickering suggests that non-compliance with directions and non-attendance at the hearing is disrespectful towards the Tribunal. The Tribunal is of the view that it is entirely a matter for Mr Longbottom and Mrs Deniel whether or not they choose to attend or comply with directions, the consequences of their actions or inaction having been made clear to them. There is no punitive costs sanction which can or should attach to such conduct. Mr Longbottom and Mrs Deniel are entitled to bring their claim, and to respond to the claim brought by Ms Gregory. Being wrong in their interpretation of the law and the terms of the underlease is not of itself unreasonable conduct. The application for Costs is dismissed.

The Court's Determinations by Judge Southby sitting alone.

71. The only issues which were to be determined by the Court are the Claimant, Mr Longbottom's remaining claim in respect of ground rent (all other matters having been disposed of by the Tribunal) and any applications concerning costs.

72. Mr Pickering on behalf of Ms Gregory the Defendant confirmed during the course of the hearing that it was accepted that ground rent was due in accordance with the terms of the Lease and therefore this aspect of the claim was conceded by the Defendant. Indeed, it was apparent from the documentation provided to the Court that Ms Gregory had previously conceded that this sum was due and had attempted to make the payment to the Claimant through her solicitors but the payment had been rejected. It was clearly in the interests of justice for this agreement to be dealt with efficiently and in a timely manner by Judge sitting alone in her capacity as a District Judge of the County Court.

73. Accordingly, by consent it is agreed that the yearly ground rent of £6.50 for the period 1 January 2021 to 31 December 2021 is payable by the Defendant to the Claimant in respect of 9A Thornhill Road.

74. There is no order as to costs in respect of the Court's determinations as this is a matter which would have been allocated to the small claims track and in my view no costs award is appropriate.

Rights of appeal

Appeals in respect of decisions made by the FTT.

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 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 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 with either the Tribunal Judge or proceeding directly to the County Court.