



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

Case reference : **LON/00AU/LSC/2023/0481**

Property : **3 Dolphin Court, 42 Carleton Road,
London, N7 0ER**

Applicant : **Ms T Hill**

Representative : **In person**

Respondent : **El-Gamal and Co Limited**

Representative : **Aldermartin, Baines & Cuthbert – Ms R
Hughes appearing at the hearing**

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 : **Mr O Dowty MRICS
Ms F Macleod MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **7 August 2024**

DECISION

Decisions of the tribunal

- (1) The Tribunal does not have jurisdiction to determine this application. Accordingly, it must be struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, because the Tribunal does not have jurisdiction in relation to the proceedings or case or that part of them.
- (2) The Tribunal makes no orders under Section 20C of the Landlord and Tenant Act 1985, nor under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
2. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Applicant in respect of the 2020 service charge year.
3. In addition, the applicant seeks that the Tribunal makes orders under Section 20C of the Landlord and Tenant Act 1985 and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 to prevent the respondent from recovering their costs in relation to this application through the service charge and extinguish the tenant’s liability to pay any administration charge in respect of associated litigation costs respectively.

The hearing

4. The Tribunal held a face-to-face hearing on 24 June 2024. The applicant appeared in person at the hearing and the Respondent was represented by Ms Hughes, a member of staff of the respondent’s property managers Aldermartin, Baines & Cuthbert.
5. At the hearing, as had been foreshadowed by the respondent’s written submissions, the respondent raised as a preliminary issue the jurisdiction of the Tribunal to determine this matter.

The Tribunal’s Jurisdiction

6. The dispute between the parties which is the subject of this application concerns the service charges payable for the 2020 service charge year.

It was an agreed fact between the parties that the 2020 service charge costs had already been the subject of County Court proceedings, in which a decision had been made following a full day's trial.

7. The purpose of the application was to have the Tribunal make a decision regarding those matters which the County Court had already considered. This was because, the applicant averred, the County Court proceedings had not been handled correctly, and the applicant spoke in detail to how they felt that the hearing they received at the County Court was not fairly conducted.
8. As the Tribunal explained at the hearing, the Tribunal is not an appellate body for the County Court. Instead, the Tribunal is an entirely separate body, and one whose powers are set out in statute. The respondent had raised in their written submissions the general principle of Res Judicata (essentially meaning in this case that the Tribunal would not be able to rule on something which had already been ruled upon elsewhere), as well as the content of Section 27A(4)(c) of the 1985 Act; but in fact the content of that section is sufficient of itself to establish the Tribunal lacks jurisdiction in this matter.
9. The application is made under Section 27A of the 1985 Act – and in particular subsection 1 of that section provides that:

(1) 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.*

10. Subsection 4 of Section 27A of the 1985 Act provides that:

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,*
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

11. It is an agreed fact between the parties that the dispute which gives rise to the application has already been the subject of a County Court determination. Accordingly, the Tribunal does not have jurisdiction in relation to the application as a result of section 27A(4)(c) of the 1985 Act quoted above.
12. It follows that the application must be struck out under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, because the Tribunal does not have jurisdiction in relation to the proceedings or case or that part of them.
13. The Tribunal notes for completeness that the applicant spoke to their having been advised to make the present application, including by the County Court judge after the conclusion of the trial. The respondent does not appear to agree with the latter statement, however this has no bearing on the Tribunal's consideration of its jurisdiction. The applicant confirmed that it was not the intention of that judge to transfer the matter to this Tribunal, and the copy of the associated County Court Order in the bundle, dated 12 January 2024 with an order date of 6 October 2023, made no mention of this Tribunal, nor the tenant's being able to challenge the matter further, at all.

Form of Decision & Applications for Orders

14. As the Tribunal's jurisdiction was raised as a preliminary matter, the outcome of which made the remainder of the hearing redundant, the Tribunal gave its decision concerning its jurisdiction orally at the hearing – with these present written reasons to follow.
15. However, the applicant averred that they still wished to make applications for orders under Section 20C of the 1985 Act and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. Accordingly, the Tribunal allowed for a brief adjournment of the hearing so that the parties might consider what submissions they wished to make – and indicated that it would reserve judgement regarding those applications until the publication of this written decision.
16. On the resumption of the hearing, the parties made oral submissions concerning whether the Tribunal should make those orders. The applicant averred that they would not have to attend at Tribunal if the lease was stuck to and the building was properly maintained. Prior to the current landlord arriving on the scene, there had not been these problems.

17. For their part, the respondent said that it was clear to all concerned that the Tribunal did not have jurisdiction, and the application had caused costs in terms of both time and money for the respondent. It would not be fair, they averred, that the respondent should suffer those costs.
18. The Tribunal considered that it would not be just nor equitable to make orders under either Section 20C of the 1985 Act or under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in this case. Making such orders would not be fair in the context of the application, in which the respondent had to defend itself against an application that simply shouldn't have been made - the Tribunal not having jurisdiction in relation to it as it was a matter that had already been determined by the County Court.

Name: Mr O Dowty MRICS

Date: 7 August 2024

Rights of appeal

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

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

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

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

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

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