



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

Case reference : **LON/00BJ/LSC/2024/0095**

Property : **Sendall Court, Winstanley Estate SW11
2HE**

Applicants : **Various Leaseholders of Sendall Court**

Lead Applicant : **Mr John Marshall**

Respondent : **The London Borough of Wandsworth**

Representative : **Mr Ryan Anderson (Counsel)**

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 N O'Brien, Tribunal Member Mr
S Mason FRICS**

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

Date of decision : **5 September 2024**

DECISION

Decisions of the tribunal

- (1) The application is struck out.
- (2) The respondent's application for costs pursuant to Rule 13(b) is dismissed.

The Background

1. This decision is provided to the parties pursuant to Rule 36(2) of the Tribunal Rules 2013. This rule requires the tribunal to provide the parties with written reasons for a decision which finally disposes of the proceedings.
2. This matter concerns an application sent to the Tribunal on 4 March 2024 for a determination of the applicants' liability to pay service charges in respect of repairs to 2 lifts in Sendall Court, which a residential block on the Winstanley Estate owned by the Respondent. The applicants named on the application notice were John Marshall, Marlon Tombison, Mario Ritovski and Simon Kinsley. The application was initially unsigned by any of the named applicants but a copy signed by Mr Marshall only was later filed at the tribunal. Mr Marshall indicated in an email dated 8 March 2024 that he was the lead applicant in respect of the application. At some point Raquel Wright and Otto Luz were included in the proceedings as joint 5th applicants.
3. On 5th April 2024 directions in standard form were issued to the parties by the tribunal. The matter was listed for a face-to-face hearing on 2 September 2024 with a time estimate of one day. The directions were amended on 12 July 2024 to include a provision permitting the respondent to file a further response to the tenant's reply. The matter remained listed for a face-to-face hearing on 2 September 2024. Paragraph 21 of both sets of directions included a provision which stated that if the applicants failed to comply with the directions the tribunal may strike out all or part of their case pursuant to rule 3(9)a of the Tribunal Procedure Rules 2013.

The hearing

4. None of the applicants named in the application notice have attended the hearing. The respondent has attended through counsel. In addition the Respondent's solicitor and witness Mr Griffiths have also attended the hearing. In light of the non-attendance by any representative of the applicants, we asked the case officer to contact Mr Marshall by email and by telephone to ascertain his whereabouts, and delayed the start of the hearing to see if any response was received. No response was received.

5. At the start of the hearing counsel for the Respondent Mr Anderson sought a direction striking out the application under Rule 9(3)a (failure to comply with a direction of the tribunal) and/or 9(3)e (strike out where an application has no reasonable prospects of success). He submitted that the matter was listed for a face-to-face hearing by the directions of this tribunal of 5th April 2024 and by the amended directions dated 12 July 2024. Mr Anderson submits that by not attending the hearing the applicants are in breach of both directions.
6. We noted that in addition to the directions set out above, in the course of an email exchange between Mr Marshall and the case officer on 21 August 2024 regarding a costs schedule that had been served on him by the respondent, the case officer informed Mr Marshall that the issue of costs would be dealt with at this hearing. There can be no doubt therefore that Mr Marshall was aware of the hearing listed today.

The background

7. We considered first whether we should proceed with the hearing in the absence of the applicant pursuant to Rule 34 of the Tribunal Rules. We considered that it would be unfair to the respondent to simply adjourn the proceedings in the absence of any explanation from the applicants as to why there were not present. The respondent had instructed counsel to attend today. In addition Mr Griffiths attended to give evidence. Therefore if we were to adjourn the hearing the costs of the respondent's attendance would be thrown away. We further considered that it would not be fair to simply consider the application and the evidence in support filed by the applicants in their absence, as none have attended the hearing to present their case and/or answer any questions which the respondent undoubtedly wishes to put to them. We consider that in failing to attend the hearing without any explanation, the applicants are in breach of the directions which listed their application for an in-person hearing today.
8. As this order has been made under Rule 9(3)a of the tribunal rules, the applicants may apply to the tribunal to have the proceedings reinstated within 28 days of being notified of the order striking out the application. If applicants had a good reason for not attending the hearing, then they may have grounds to have the application re-instated.

Final Matters

9. At the end of the hearing the respondent made an application for costs pursuant to Rule 13(b) of the Tribunal Rules. This gives the tribunal the power to order a party to pay the other side's costs if that party has behaved unreasonably. We note that the burden of establishing unreasonable conduct falls on the party who alleges it, and at present we do not know why the applicants, and in particular the lead applicant, have not attended. We considered the guidelines provided by the Upper

Tribunal in Willow Court Management Co Ltd v Alexander [2016] ULUT 290 (LC). We do not consider that unexplained non-attendance in these circumstances amounts to vexatious conduct or conduct designed to harass the other side which is generally required before a tribunal would consider making a costs order under Rule 13(b) and we dismissed the application.

10. We note that at present the only applicant who has directly confirmed their consent to be joined to these proceedings is the lead applicant Mr Marshall. Additionally there is some ambiguity whether the 4th applicant is a Mr Stuart Kinsley or a limited company. There is a letter included in the bundle from Mr Tombison which appears to be a request to inspect invoices. None of the other named applicants have played any active part in these proceedings and the 5th named applicant is in fact 2 people. In the circumstances we direct that if any of the persons named on the application notice, or any other leaseholder in Sendall Court, wishes to be joined as an applicant to these proceedings in addition to Mr Marshall, their signed written consent to be joined must be sent to the Tribunal with 7 days of receipt of this decision.

Name: Judge O'Brien

Date: 5 September 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).