



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

**Case reference** : **CAM/00ME/LSC/2025/0620**

**Property** : **3 Waylands  
Wraysbury  
Staines-upon-Thames  
Berkshire TW19 5DZ**

**Applicant** : **Lindi Date**

**Respondent** : **A2Dominion South Limited**

**Representative** : **Christopher Last**

**Type of application** : **Liability for service charges**

**Tribunal member** : **Judge David Wyatt**

**Date of decision** : **10 June 2025**

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**NOTICE OF DECISION**

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**Decision**

1. These proceedings are hereby struck out under rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the “**Rules**”).
2. Unless by **25 June 2025** the Respondent complies with paragraph 16 below, the Respondent must pay £110 to the Applicant to reimburse the tribunal application fee paid by them.

**Reasons**

3. The Applicant tenant of the Property (a house) applied to the tribunal under section 27A of the Landlord and Tenant Act 1985 (the “**Act**”) for determination of liability to pay service charges for 2020 to 2025, alleging that relevant services were not being provided.

4. The tenancy agreement was made between the parties, commencing in May 2020 and creating a contractual monthly periodic tenancy. The total monthly payment was £608.54 (clause 1(1)(i)), composed of a “*Net Rent*” (then £579.02) and a “*Fixed Service Charge*” (then £29.52). In the tenancy agreement, “rent” means the “...*net rent fixed service charge and other charges set out above or as varied from time to time in accordance with this agreement*” (1(1)(iii)).
5. The Respondent landlord (the “*Association*” in the tenancy agreement) is described as a registered provider of social housing. Clause 1(2)(i) provides that the Respondent may increase the net rent by giving not less than one month’s written notice specifying the revised rent.
6. In relation to the service charge, in clause 1(3):
  - “(i) *the Association will provide you with the services as set out in the attached schedule for which you will pay a fixed service charge as part of the rent.*
  - (ii) *the Association will review service charges once a year at the same time as any review of the net rent. Any change in the service charge will be notified to you in the same notice as the notice telling you of a change in the net rent...*”
7. On 16 May 2025, the tribunal gave the case management directions which are reproduced in the Schedule to this decision. These directions explained that the tribunal may not have jurisdiction and invited representations.
8. The Applicant responded with a large number of e-mails with photographs and copy documents. These focussed on her complaints about failures to provide services and it seems were not copied to the Respondent. The Applicant did produce a copy rent review notice, which states (perhaps wrongly) that it is proposing a new rent under section 13 of the Housing Act 1988 (rather than what seems to be a contractual rent review provision in the tenancy agreement). The notice sets a new monthly rent from 1 April 2024 of £750.39 with other charges “*included and separately identified*” in that rent, including a “*Fixed Service Charge*” of £45.34. The documents confirm that the £750.39 is the total sum being charged. The notes accompanying the notice include guidance:
  - a) stating that the proposed new rent could (before the 1 April 2024 starting date) be referred to the tribunal (again, that may be wrong, since only rent increases proposed under section 13 of the 1988 Act can be referred to the tribunal); and
  - b) required when demanding variable service charges. This guidance states that it sets out “*your rights*” in relation to “*variable service charges*”, indicating that “*You have the right to ask the First-tier Tribunal to determine whether you are liable to pay service charges...*”.

9. On 30 May 2025, the Respondent submitted that the tribunal did not have jurisdiction to decide this case. They said that the amount of service charge payable “does not or may not” vary according to the relevant costs, as required by section 18 of the Act. They pointed out clause 1(1) of the tenancy agreement, saying this clearly describes a fixed service charge. They said that the mechanism for varying the service charge is set out at clause 3(ii) of the tenancy agreement and allows a variation to another fixed amount, only once for a year. This seems to be a reference to clause 1(3)(ii), noted above.

## **Review**

10. The tribunal does not have general jurisdiction (legal power) to deal with every type of case. The tribunal can only deal with a case if the law specifically gives it jurisdiction to deal with that type of case. Here, the application was made under section 27A of the Act, which gives the tribunal jurisdiction to determine payability of “*service charges*”, as defined in section 18 of the Act. One of the conditions for a charge to be such a service charge is that the whole or part of the charge “...*varies or may vary according to the relevant costs*”.
11. I am bound by the decision in Home Group Limited v Lewis (LRX/176/2006), as followed in Chand v Calmore Area Housing Association Limited (LRX/170/2007), to find that these are not service charges which may vary “*according to the relevant costs*”. The charge may vary from year to year, but under the terms of this tenancy agreement the charge for a given year is fixed before the start of that year. As in Home Group, there is “...*no direct relationship between the amount of the costs as a cause and the amount of the service charge as a consequence. Interposed between the amount of the costs and the amount of the service charge is the independent decision of the landlord...*” [21].
12. I see nothing in the documents provided by the Applicant, and the Applicant has not pointed me to anything in the tenancy agreement, which might distinguish these authorities, such as the balancing/reconciliation provisions or the effect of the policy expressed in the tenancy agreements in Re Southern Housing Group Ltd [2010] UKUT 237 (LC). Nothing has been provided to indicate that the (apparently erroneous) guidance notes used in 2024 might have varied the terms of the tenancy agreement.
13. Accordingly, I accept the Respondent’s submission that the tribunal does not have jurisdiction in relation to these proceedings. Since the tribunal does not have jurisdiction in relation to these proceedings, I must strike them out under rule 9(2).

## **Tribunal fees**

14. Rule 13(2) gives the tribunal discretion to order a party to reimburse the whole or part of the amount of any fee paid by them to the tribunal. In her application form, the Applicant asked to be compensated for

such fee(s). Because the case has been struck out on the papers, she has paid only the application fee of £110.

15. On the information provided to me it appears the Respondent should reimburse this fee, subject to any submissions they wish to make in accordance with the following paragraph of this decision. The guidance given by the Respondent appears to have been entirely wrong in relation to the service charge (and perhaps the net rent), misinforming the Applicant that she had the right to apply to the tribunal when she did not. The tribunal cannot advise, but the Respondent may wish to take independent legal advice and review their documents to ensure that correct guidance is now being given to their tenants. The case officer has been asked to send to the Respondent a copy of the notice and guidance notes provided by the Applicant, to ensure the Respondent has these for ease of reference when they receive this decision.
16. If the Respondent consider that they should not be ordered to reimburse the tribunal application fee, they must by **25 June 2025** send to the tribunal and the Applicant all representations they wish to make (in a single document, attaching in a single PDF bundle a copy of any documents they wish to rely upon). The covering e-mail/letter should clearly request at the top that it be referred to Judge Wyatt.

### **Comments**

17. The Applicant is not prevented by this decision from (for example) making a complaint to the Housing Ombudsman Service, if she has any right to do so, or seeking a declaration in the County Court about whether specific charges are payable. Similarly, this decision does not prevent the Applicant from making a new application to the tribunal under the potential new provisions in the Leasehold and Freehold Reform Act 2024 (not yet brought into force) which may in future give the tribunal jurisdiction in relation to some fixed service charges. The tribunal cannot advise about any of these matters or otherwise; the Applicant may wish to refer to the sources of advice identified in the case management directions (copy attached).

**Judge David Wyatt**

**10 June 2025**

### **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).

## **Schedule**

*Copy of directions given on 16 May 2025*

*The tribunal received this case in December 2024. It has been in a backlog awaiting sufficient officers to process cases, but has now been referred to the judiciary for directions which are given below.*

*This case seeks to apply to the tribunal under section 27A of the Landlord and Tenant Act 1985 to determine payability of a variable “service charge”. This type of service charge is defined in section 18 of the 1985 Act; one of the requirements is that the whole or part of the service charge: “...**varies or may vary according to the relevant costs**”.*

*Unfortunately, it appears that (under the current law) the tribunal does not have jurisdiction (legal power) to deal with this case because the service charge is described in the tenancy agreement as a fixed service charge, with provision in the agreement for the landlord to simply review service charges and notify any change in the service charge at the same time as any change in the rent (clause 3(ii)). The tribunal may therefore be bound to follow Home Group Limited v Lewis (LRX/176/2006), which decided this was not a service charge which may vary “**according to the relevant costs**”; in the absence of such a link the tribunal had no jurisdiction. This was again followed in similar circumstances in Chand v Calmore Area Housing Association Limited (LRX/170/2007). I see nothing in the documents provided to distinguish these authorities, such as the balancing provisions in Re Southern Housing Group Ltd [2010] UKUT 237 (LC).*

*Accordingly, subject to any representations as provided for below, it appears that I must strike out these proceedings under rule 9(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.*

## **Directions**

1. By **30 May 2025** the applicant tenant must (and the respondent landlord may) provide written submissions (sent to the tribunal and copied to the other party in a single e-mail/attachment, asking clearly at the top of the e-mail that this be referred to the Judge, with copies of any evidence relied upon) as to why they say the tribunal would have jurisdiction to deal with this case under section 27A of the 1985 Act. **If the applicant fails to do so, these proceedings will be struck out automatically under rule 9(1).**

2. If any such submissions are made, the tribunal would then consider on paper, without a hearing, whether to strike out these proceedings under rule 9(2) for lack of jurisdiction or give further directions.

## **General**

*The tribunal is impartial and cannot advise. I have written at some length above only to explain why I am minded to strike out in terms which may help the parties to take independent legal advice.*

*Even if the tribunal does not have jurisdiction, the applicant might for example be able to pursue the complaint they describe with the Housing Ombudsman Service and/or pursue any claim in the County Court. Again, the tribunal cannot advise and the parties may wish to take independent legal advice. Some potential sources are noted below, including some free sources of advice such as Shelter:*

Local law centres  
Citizens Advice  
The Leasehold Advisory Service.  
Advice Now  
LawWorks  
Shelter  
Solicitors  
Barristers

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)  
[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk)  
[www.lease-advice.org](http://www.lease-advice.org)  
[www.advicenow.org.uk](http://www.advicenow.org.uk)  
[www.LawWorks.org.uk](http://www.LawWorks.org.uk)  
[www.shelter.org.uk](http://www.shelter.org.uk)  
[www.lawsociety.org.uk](http://www.lawsociety.org.uk)  
[www.directaccessportal.co.uk](http://www.directaccessportal.co.uk)

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