



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

Case references : **MAN/32UC/LSC/2025/0700**

Property : **Flat 3, 58 South Parade, Skegness,
Lincolnshire, PE25 3HP**

Applicants : **Towncentral Residents Management Ltd**

Representative : **Mr Seth Kitson (counsel) instructed by
Wilkin Chapman LLP Solicitors**

Respondents : **Mr Sunday Olatinwo and Ms Marita
Taunbenberg**

Representative : **None**

Type of application : **Determination of service charges under
s27A Landlord and Tenant Act 1985**

Tribunal member : **Judge J Hadley**

Date of hearing : **13 July 2026
Paper determination**

PAPER DETERMINATION OF PRELIMINARY ISSUE

DECISION

1. **The inclusion of the counterclaims is not an abuse of process. However, those are not claims which the Tribunal can or should determine. Rather, they will be transferred back to the County Court once the service charge dispute has been determined pursuant to Rule 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

REASONS

Background

2. On 10 June 2026, the Tribunal conducted a video case management hearing (“VCMC”) of this case. The Applicant was represented by Mr Seth Kitson, of counsel. The Respondents were represented by the first respondent, Mr Olatinwo.
3. The case concerns liability to pay service charges arising from a lease dated 13 December 1988 and made between Mr Michael Emmitt and Beryl Bronwen Russel. The Applicant is a party to that lease as “manager”.
4. 58 South Parade in Skegness contains four flats. The Tribunal’s understanding is that three are let to Mr & Mrs Spence, and the fourth is let to the Respondents. The leases are long leases let at a ground rent of £50pa, for a premium. The lease does provide for the Applicant to manage the property and levy a service charge to defray the costs it incurs.
5. It is also the Tribunals understanding that the Applicant is a lessee owned company, but that Mr & Mrs Spence effectively have control of it because they hold the majority of voting rights.
6. It appears to be common ground that whatever the leases say, until sometime shortly prior to 2022, the Applicant did not manage the property or levy service charges. Instead, the lessees managed the expenses of maintaining the property themselves. That arrangement (“the Informal Arrangement”) though came to an end, the Applicants say, following what was effectively a breakdown in the relationship between Mr & Mrs Spence and the Respondents. The Respondents dispute that the Informal Arrangement was capable of being ended.
7. For 2022 and 2023, the Applicant appointed a managing agent which sought payment from the Respondents of service charges and ground rent in the sum of £8,711.79. As that was not paid, county court proceedings were commenced. Particulars of claim, a Defence and Counterclaim, and a Reply to the Defence and Counterclaim were filed.

8. On 7 August 2025, Deputy District Judge Wright ordered that the County Court case be transferred to this Tribunal for a Tribunal Judge, exercising the powers of a County Court Judge, to determine the matters raised in the County Court Claim.
9. The hearing on 10 June 2026 was to make directions for the determination of the case.

Preliminary matter – is the counterclaim an abuse of process

10. Mr Kitson sought to persuade the Tribunal to strike out the Counterclaim as it was an abuse of process, and to invite the Respondents to elect and clarify their position. The Defence alleges that there is an estoppel which prevents the Applicant from exercising its rights under the lease (paragraph 5.1 and 5.4 of the Defence). But the Counterclaim seeks damages from the **Applicant** for breach of its repairing obligations in the lease (see paragraph 15 of the Defence and Counterclaim).
11. The alleged abuse of process is that the Respondent cannot both allege that the Applicant is estopped from exercising its rights under the lease **and** claim damages because of the failure to exercise of those rights.
12. As such, the Tribunal directed that there should be a paper determination by the Tribunal as a preliminary issue as to:

“Whether the Respondents can both deny the Applicant's right to manage the Building as a defence to the money claim, and bring restitution and breach of contract claims in their Counterclaim which are contingent on the existence of those same rights.”

Applicant’s submissions

13. The Applicant states in its Reply to Defence and Counterclaim that the Respondents’ counterclaim is an abuse of the court’s process because it is *“predicated on the basis that the [Applicant’s] right (and obligation) to manage / repair the building pursuant to the lease has been extinguished via an estoppel...but then bring a claim in restitution (Paragraph 14 [of the Counterclaim]) and breach of contract (Paragraph 15) contingent upon the existence of those same rights”*. In the Applicant’s skeleton argument for the VCMC, the Applicant went on to argue *“they cannot have it both ways”*.

Respondents’ submissions

14. In the Respondents’ written submissions on the preliminary issue, they say

“The Respondents were legally represented up until after the filing of the directions’ questionnaire, the Defence and Counterclaim were prepared by a counsel whom the Respondents believed would have been aware of

the arguments being made by the Claimant's counsel and the question set by the Tribunal.

The response here...will be a narrative of the explanations given to the Respondents by the counsel when they raised similar concerns with their counsel...

Ideally, the counterclaim should be brought against Mr and Mrs Spence in persons, which would require another court claim.

...submissions would be made for the court to take on the counterclaim as it pleases to avoid the need for the Respondents initiating another claim...

There are exceptional circumstances in which both arguments in this instance could run concurrently...

As to the specific question of "if the Tribunal considers that it is a matter for the Respondents to elect which option...", the option the Respondents will elect is as pleaded in the defence that the Claimant is estopped from exercising its rights under the lease, having voluntarily made itself dormant and its members agreed to deal directly with themselves as leaseholders.

The Applicants would plead that in consideration of the facts stated above and the facts that the issue the counterclaim intends to resolve would remain live except that it has to be litigated against Mr and Mrs Spence, the counterclaim should be allowed to proceed to trial. Should the Tribunal think otherwise, the Applicants would be willing to withdraw the counterclaim."

Consideration and determination

15. The Tribunal has considered the Respondents' Counterclaim. It contains two components:
 - a. The first counterclaim - A counterclaim against Mr and Mrs Spence in the sum of £1,575 in respect of work done by the Respondents which the Respondents' say they are entitled to reimbursement for from Mr and Mrs Spence under the Informal Agreement; and
 - b. The second counterclaim - A counterclaim against the Applicant which is expressly stated to be "*without prejudice to the [Respondents'] contention that the management of the Building has been delegated to the leaseholders*" for damages in respect of alleged breach of repairing obligations which the Respondents quantify as £4,500 plus general damages for loss of amenity.

16. The Tribunal notes that the Respondents were not legally represented when they made their written submissions in respect of this preliminary issue, however, a barrister prepared their Counterclaim for them, and they have previously obtained legal advice on this very question and seem to understand the issue.

The first counterclaim

17. There can be no question that the inclusion of the counterclaim in the sum of £1,575 is an abuse of process because it does not contradict the main thrust of the Respondents' argument; it is consistent with the Respondents' argument that the Informal Agreement remains intact and the Applicant is not entitled to recover a service charge under the Lease.
18. However, as appreciated by the Respondents, the counterclaim in the sum of £1,575 should be brought against Mr and Mrs Spence. Whilst the Tribunal understands the rationale for including that counterclaim in the court proceedings (to try to avoid the need for a separate claim), the Tribunal has jurisdiction to deal with the service charge dispute and that does not extend to a claim against a third party.
19. Therefore, whilst the Tribunal does not consider the first counterclaim to be an abuse of process, it is not an issue which the Tribunal can or should determine. Rather, once the Tribunal has determined the substantive service charge case, the Respondents will need to refer to the County Court to determine that issue.

The second counterclaim

20. In relation to the counterclaim against the Applicant for damages in respect of alleged breach of repairing obligations, clearly there is a contradiction in that the main thrust of the Respondents' case is that the Applicant is no longer under a duty to repair under the Lease. However, it is not unusual for a party to take an alternative position in litigation, and the Counterclaim expressly states that it is made "without prejudice" to the first position. Therefore, the Respondents have not made an open admission that the Applicant is under a repairing obligation. Further, the Respondents are not seeking to assert different facts; rather the facts (that is, the existence and termination of the Informal Agreement) are open to different legal interpretation.
21. In those circumstances, the Tribunal considers it legitimate to plead in the alternative such that the inclusion of the second counterclaim does not amount to an abuse of process.

22. That said, it appears to the Tribunal that it is not appropriate for the Tribunal to deal with this counterclaim as part of the service charge dispute because:
- a. There is no close nexus between the disputed service charges and the second counterclaim. The inclusion of the counterclaim would require significant additional evidence in relation to the cause of the leak, the alleged damage caused and the cost of repair. Further, the potential value of the counterclaim is similar to the value of the service charge dispute. The inclusion of the counterclaim in these proceedings is likely to be disproportionate and could double the length of the final hearing; and
 - b. If the Respondents are successful in their argument that the Applicants are not entitled to recover the service charge, this would potentially become a counterclaim against Mr and Mrs Spence, who are not party to these proceedings.
23. Considering the above, whilst the Tribunal does not consider that the second element of the counterclaim is an abuse of process, it is not an issue which the Tribunal can or should determine. Rather, once the Tribunal has determined the substantive service charge case, the Respondents will need to refer to the County Court to determine that issue.

Summary and next steps

24. The Tribunal determines that the inclusion of the counterclaims is not an abuse of process. However, those are not claims which the Tribunal can or should determine.
25. The Tribunal will proceed to determine the service charge dispute. For the avoidance of doubt, that will include the question of whether the service charges are payable by the Respondents to the Applicant under the Lease (such question to include the estoppel argument raised by the Respondents).
26. The parties should comply with the Directions set by Judge C Goodall on 10 June 2026.
27. Once the Tribunal has determined whether the service charges are payable by the Respondents to the Applicant and, if so, the amount of service charge payable, the Tribunal will transfer the case back to the County Court to determine any outstanding issues including in relation to the counterclaims and the alleged ground rent arrears pursuant to Rule 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. That said, the Tribunal notes that the Respondents seem to acknowledge that any subsequent claim may need to be pursued against Mr and Mrs Spence separately (depending upon the outcome of this case).

28. For the avoidance of doubt, the Tribunal does not have jurisdiction to make a determination in relation to ground rent.

Judge J Hadley

First-tier Tribunal (Property Chamber)

13 July 2026