



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

**Case Reference** : **LON/00AH/LSC/2020/0253**

**HMCTS Code (paper, video, audio)** : **V - Video**

**Property** : **First Floor Flat, 41, Selhurst Road, London. SE25 5QA**

**Applicants** : **Mountgreen Freeholds Ltd.**

**Representative** : **Fountayne Managing Ltd.**

**Respondent** : **Mr. Christopher J. Barclay**

**Representative** : **In Person**

**Type of Application** : **For the determination of the reasonableness of and the liability to pay service charges and/or administration charges**

**Tribunal Members** : **Tribunal Judge Stuart Walker (Chairman)  
Tribunal Member Susan Coughlin MCIEH  
Tribunal Member Fiona Macleod MCIEH**

**Date and venue of Hearing** : **14 January 2021 – video hearing**

**Date of Decision** : **14 January 2021**

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**DECISION**

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This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Tribunal's determination is set out below.

### **Decision of the Tribunal**

- (1) The Application is struck out pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

### **Reasons**

#### **The Application**

1. 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 Respondent in respect of the periods 1 July 2019 to 31 December 2019 and 1 January 2020 to 31 December 2020.
2. The application was made on 7 September 2020.
3. Directions were made on 8 October 2020. They required the Respondent to state their case and complete a schedule by 26 October 2020. The Applicant was required to respond by 9 November 2020. The Applicant was also directed to prepare a hearing bundle by 30 November 2020 which was to be e-mailed to the Tribunal. The hearing was fixed for 14 January 2021 and was to be by way of a video hearing. The directions clearly stated that if the Applicant failed to comply with them 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 Rules").
4. The Tribunal file shows that on 28 October 2020 correspondence had been received indicating that the Respondent had not complied with the directions. The Applicant was directed to identify which of the directions had not been complied with and the Respondent was directed to explain by 9 November 2020 why he had failed to do so and how he intended to rectify his failure.
5. Notice was sent to the parties on 10 November 2020 giving them instructions on how to attend the video hearing.
6. On 9 December 2020 an e-mail was received by the Tribunal from the Applicant's representative. This stated that the Respondent had complied with the first stage of the directions a few weeks ago and that the Applicant had not been able to comply with the next stage of the directions because their representative "*had been on some other matters at the time*". A 14-day delay was requested in order to comply with the directions.

7. On the same day Tribunal Judge Vance varied the directions by allowing the Applicant until 21 December 2020 to produce its case and extending the time for it to produce the hearing bundle until 8 January 2021. The hearing date of 14 January 2021 was preserved.
8. No hearing bundle was received by the Tribunal by 8 January as directed. A non-compliance letter was sent to the parties on 12 January 2021 but no response was received. No further correspondence was received by the Tribunal from the Applicant after the e-mail of 9 December 2021 referred to above.
9. By the date of the hearing the only documents provided to the Tribunal which related directly to the issues raised by the application were the application itself and a partial copy of a lease.

### **The Hearing**

10. The hearing was fixed for 10.00am. The Applicant did not attend the hearing and was not represented. Attempts to telephone the Applicant's representative were unsuccessful. By 10.15am there was still no attendance and the hearing commenced. The Respondent did not attend either. However, Mr. Gordon who said that he was the Respondent's sub-tenant did attend, albeit only by telephone. He said that he had informed both the Applicant and the Tribunal that he was representing the Respondent and that no objection had been made to this. He told the Tribunal that the Respondent was currently in Jamaica and was unwell. He thought it likely that he was in hospital. He told the Tribunal that the Respondent was aware of the hearing and also aware that Mr. Gordon would be attending on his behalf.
11. The Tribunal decided that it was appropriate to hear from Mr. Gordon on behalf of the Respondent. He was asked if the dispute between the parties had been settled, but he was not able to say. He informed the Tribunal that a schedule had been provided to the Applicant but that nothing further had been heard from the Applicant since December.
12. On behalf of the Respondent Mr. Gordon invited the Tribunal to strike out the application.

### **The Law**

13. Rule 9(3) of the Rules gives the Tribunal power to strike out the whole or part of proceedings in a number of circumstances. These include where the following applies;
  - “(a) *the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it.*”

### **The Tribunal's Decision**

14. It was clear to the Tribunal that the Respondent had in fact complied with the requirement to state his case, albeit late, as this was accepted to be so in the last

e-mail from the Applicant's representative on 9 December 2020. Since that date nothing at all has been heard by the Tribunal from the Applicant.

15. It appears from what Mr. Gordon said that the Applicant had not complied with direction 4 as nothing had been heard from them since the Respondent's schedule had been sent.
16. In any event, the wording of direction 7 is clear. It is primarily the responsibility of the Applicant to produce a hearing bundle. That simply has not been done. By the date of the hearing there was no bundle and no explanation for the failure to produce one. This was despite the Tribunal having previously extended the time for production of the bundle from 30 November 2020 to 8 January 2021. As the Applicant's representative accepted that the Respondent had complied with the direction to set out his case, there can be no question that this failure by the Applicant was in any way the responsibility of the Respondent.
17. The Tribunal was satisfied that the required warning about the possibility of their case being struck out had been given to the Applicant. It concluded that in the absence of any explanation for the Applicant's failure, which was a complete failure to provide what the Tribunal would need in order to determine the application, the proper course was to strike out the application in pursuance of rule 9(3)(a).

**Name:** Tribunal Judge  
S.J. Walker

**Date:** 14 January 2021

#### **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.
- Rule 9(5) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows for an applicant whose case has been struck out under rule 9(3)(a) to apply for the proceedings to be re-instated. Such an application must be made in writing and received by the Tribunal within 28 days after the date on which the Tribunal sent notification of the striking out to them.