



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

**IN THE COUNTY COURT at CROYDON
sitting at 10 Alfred Place, London
WC1E 7LR**

Tribunal reference : **LON/0AH/LSC/2021/0333**

Court claim number : **216MC070**

Property : **34b Broad Green Avenue, Croydon
CR0 2ST**

Applicant/Claimant : **Susan Dougan**

Representative : **In person**

Respondent/Defendant : **Elaine Jackson**

Representative : **Mr Theo Lester, counsel**

Tribunal members : **Judge Tagliavini
Mr. R Waterhouse**

In the county court : **Judge Tagliavini**

Date of hearing : **13 June 2022**
Date of decision : **22 June 2022**

DECISION

This decision takes effect and is 'handed down' from the date it is sent to the parties by the tribunal office:

Summary of the decisions made by the Tribunal

- (i) Arrears of service charges and insurance costs are not payable by the respondent to the applicant.
- (ii) The previous freeholder (now deceased) was in breach of the repairing covenants under the lease. The applicant in her capacity

as the 'new' freeholder is required to repair and maintain the effects identified in the expert report.

Summary of the decisions made by the Court

- (i) The claim is dismissed with no order for costs.
 - (ii) The counterclaim for damages is dismissed with no order for costs.
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The proceedings

1. Proceedings were originally issued against the respondent on 25 May 2021 in the County Court under claim number 216MC070. The respondent filed a Defence and Counterclaim dated 1 June 2021. The proceedings were then transferred to this tribunal by the order of District Judge Bishop on 29 July 2021 in an order stating 'Matter be transferred to the First Tier Property Tribunal.'
2. Directions were issued and the matter eventually came to hearing on 13 June 2022 after having been adjourned by the tribunal on 21 March 2022 and further directions were given in order to assist the parties ready the proceedings for determination and recommended that both seek legal advice and consider mediation.

The hearing

3. The applicant freeholder appeared in person and was accompanied her sister Ms Tracy Dougan. The respondent leaseholder Mrs Elaine Jackson was represented by Mr Theo Lester of counsel and accompanied by her husband Mr Alan Jackson BSc MRICS C Build E MCABE.

The background

4. The subject property located at 34 Broad Green Avenue, Croydon CR0 2ST ('the Property') is an end of terrace house converted into three flats of which the respondent is the long leaseholder of the middle flat ('the Flat'). The freeholder of the subject property was held by Ms Chanda Dougan until her death on 29 October 2020. The applicant is the sister, executor and the sole beneficiary of the deceased's estate. However, a copy of the will or grant of probate to the applicant was not provided to the tribunal. The respondent is the long lessee of the middle flat (Flat B) under a lease dated 29 May 1975 granting a term of ninety-nine years with effect from 24 June 1974.
5. The tribunal was informed by the applicant that an application had been made in around March 2022 to the Land Registry to transfer the subject property into the name of the respondent as the sole beneficiary of the

deceased's estate. As at the date of the hearing the registration remained pending.

6. The claimant/applicant made a claim for unpaid building insurance and service charges in the sum of £8,682.31 for the period 06/2014 – 05/2021 and a claim fee of £455.
7. In a Defence and Counterclaim dated 1 June 2021 the defendant/respondent denied the payability of the arrears of service charges and insurance on the grounds that the demands had not contained the statement of tenant's rights and obligations pursuant to s.21B of the Landlord and Tenant Act 1985. A counterclaim representing a loss of rental income was made in the sum of £54,700 and continuing to the date of hearing at the monthly rate of £950 per calendar month, alleging the applicant's failure to maintain the subject property and allowing water damage to occur to the respondent's flat.
8. Neither party requested an inspection of the property; nor did the tribunal consider that one was necessary, or that one would have been proportionate to the issues in dispute.

The county court issues

9. After the proceedings were sent to the tribunal offices, the tribunal decided to administer the whole claim so that the Tribunal Judge at the final hearing performed the role of both Tribunal Judge and Judge of the County Court (District Judge). No party objected to this.

The issues for the tribunal and for the county court

10. The sums claimed by the Applicant were as follows:
 - (i) Service charges and insurance arrears in the sum of £8,682.31 for the period 06/2014- 05/2021.
 - (ii) Issue fee of £455
 - (iii) Whether the applicant had complied with the repairing obligations under the terms of the lease?
 - (iv) The quantum of damages payable by the applicant/defendant to the respondent/claimant.
11. At the start of the hearing the tribunal identified a number of issues which required clarification from the parties:

The correct parties? – A factual background

12. In a Statement of Case (undated) the claimant/applicant stated, *'As part of the probate process, I am required to chase any outstanding debts*

owed to the estate.' Although it appeared Ms Dougan intended to make the claim as executor of her sister's estate this was not reflected in the Statement of Claim and the claim was made in the applicant's personal capacity.

13. The applicant told the tribunal that she had brought the claim as part of the probate process but made no application to amend the name of the claimant to reflect this, even when invited to do so and indicated her wish to continue the claim in her personal capacity.
14. Similarly, the defendant/respondent made no application to amend the identity/name of the defendant to the counterclaim although it was accepted that the former freeholder had died in October 2020. A letter before claim dated 14 April 2021 was addressed to Ms C Dougan from the respondent's solicitors alleging a breach of the implied covenant to quiet enjoyment.
15. Notwithstanding, Mr Lester submitted that the rights and duties under the lease vested in the applicant and that as the personal representative she became liable for the deceased's alleged breaches in her personal capacity, although a clear explanation as to why personal liability attached in this instance to the applicant for alleged losses occurring during the period of her sister's freehold interest rather than as executor of her sister's estate was not forthcoming.
16. In the absence of any amendments the claim and counterclaim continued in the parties' personal capacity as freeholder and lessee.

The issues

17. The parties identified the relevant issues for a decision as follows:
 - (i) Were the service charges properly demanded? This was directed to the content of the demands and whether they complied with the statutory requirements;
 - (ii) Was the applicant in breach of the repairing obligations under the terms of the lease?
 - (iii) If 'yes' what is the quantum of damages to which the respondent/defendant is entitled.

The hearing

The applicant's case

18. The tribunal was provided with copies of the demands sent by Ms Chanda Dougan to the respondent during the relevant period of 6/2014 to her date of death. On 9 March 2021, a demand for the outstanding ground rent and services charges was sent to respondent and her husband and signed by the applicant.
19. The applicant accepted that the county court claim had not included any arrears of ground rent and the demands for payment did not contain a statement of the Tenant's Rights and Obligations. The applicant also accepted that no managing agent had been appointed by her sister as freeholder or by herself either as executor of her sister's estate or as the new freeholder.

20. The applicant in her written and oral evidence stated she was unable to comment upon the period 2014 to the date of her sister's death as she had not been responsible for the property or its upkeep. The applicant asserted that the lessee had contributed to her losses by failing to communicate with her and her sister for long periods of time and that by Mr Jackson, acting for his wife had been too busy to deal with the Flat.

The respondent's case

21. The respondent referred the tribunal to the lack of the statutorily required information accompanying the demands for payment and asserted that the demands were therefore invalid and not payable.
22. The tribunal was referred to the terms of the lease which required the landlord at clause 4(1) to:
-maintain repair redecorate and renew (a) the structure and in particular the main walls drains roofs foundations chimney stacks gutters and rainwater pipes of the Building...*
23. In support of the lessee's assertion that the applicant/defendant had breached the terms of the lease the tribunal was referred to correspondence informing Ms Chanda Dougan of the water ingress to the subject Flat. The respondent/claimant also relied upon the report of the joint agreed expert Mr James Flynn dated 1 June 2022 and addendum dated 7 June 2022.
24. Mr Flynn concluded that the main cause of the water ingress and damage to front and rear left room was caused by water ingress through the bay and flat roof at the front of the building with water damage to the kitchen area largely caused by leakage from the bathroom above and contributed to by leakage from the roof located towards the rear of the bathroom above.
25. The respondent asserted that the Flat had been uninhabited since 4 February 2014 due to the damage caused by the ingress of water causing a ceiling to collapse and the tenant to vacate the property since when it had been uninhabitable.
26. In support of the claim for damages and their quantum the respondent relied upon the tenancy agreement dated 12 March 2013 showing a rent payable of £680 per calendar month. The lessee claimed that from the date of the counterclaim the rent recoverable was £950 per calendar month although no reductions for void periods were made and no account was made of any reduced outgoings despite evidence of the property having been removed at the lessee's request from the council tax valuation list as of 25 March 2015. A subsequent request for the removal of the subject Flat from 4 February 2014 appears not to have been acted upon by the Valuation Office Agency.

27. The lessee did not provide any objective independent evidence in respect of the alleged loss of rent and relied on Mr Jackson's representations to that effect and a letter dated 3 March 2015 to the deceased freeholder setting out what he believed to be the quantifiable loss of rent having spoken to a lettings agent.

The tribunal's decisions and reasons

28. The tribunal finds that neither party had given any proper consideration as to whether the claimant was the correctly named party, both to the claim and as the defendant to the counterclaim, for the whole of the period in dispute. The tribunal does not have jurisdiction to determine whether the applicant had failed in her duties as executor of her sister's estate and had consequently become personally liable for any losses alleged to have been suffered by the respondent.
29. The tribunal does have the jurisdiction to determine whether the applicant has capacity to sue for arrears of service charges as freeholder and be sued for breaches of the lease during the period in dispute.
30. In respect of the claim for arrears of service charges accruing in the period 6/2014 to 5/2021 and the counterclaim for damages in this period, the tribunal finds the following:
- (i) For the period 6/2014 – 29/10/2020 Ms Chandra Dougan was entitled as the freeholder to demand the payment of service charges and insurance payments under the terms of the lease.
 - (ii) The demands made in the period 6/2014 – 29/10/2020 for payment of service charges and insurance payments did not comply with s.21B of the Landlord and Tenant Act 1985 and were therefore invalid and not payable by the respondent.
 - (iii) For the period 6/2014 – 29/10/2020 Ms Chandra Dougan as freeholder was obliged to repair and maintain the roof and structure of the Property. The tribunal finds that Ms Chandra Dougan failed to maintain and repair the roof and structure of the Property and was liable for losses caused to the respondent lessee as a result of a failure to carry out her obligations.
 - (iv) For the period 22/10/2020 to the date of the issue of the claim on 25 May 2021, the applicant acted as the executor of her sister's estate.
 - (v) A claim for arrears of service charges and insurance payments after 22 October 2020 were required to be brought in the name of the applicant as the executor of the deceased's estate.

- (vi) A claim for losses caused by the freeholder's breach of the lease during the period 6/2014 to 25 May 2021 were the liability of the deceased's estate. The respondent has failed to demonstrate why the applicant is now personally liable for the alleged losses during this period.
 - (vii) As the freeholder of the said Property after 25 May 2021 the applicant was entitled to demand the payment of future service charges and was obliged to comply with the terms of the lease.
 - (viii) The applicant failed to identify the works required to the roof and structure of the Property and to have them remedied.
 - (ix) The applicant is liable for the alleged losses caused to the respondent as a result of these breaches for the period 25 May 2021 to the date of hearing (as claimed in the counterclaim).
31. Further, and in order to assist the parties, the tribunal finds that no managing agent was appointed by the deceased or current freeholder and that no managing agents' fees are reasonable or payable. Although not specifically addressed by the parties, the tribunal finds that no consultation under s.20 Landlord and Tenant Act 1985 took place and therefore, any sums for major works over £250 per leaseholder is not payable unless dispensation for consultation is granted by the tribunal.

The decisions of Judge Tagliavini sitting as deputy district judge of the county court

Quantum of damages

32. In the absence of any amendment to the capacity in which the current freeholder is being held liable for breach of the terms of the lease, I find that the only period for which the current freeholder Ms Susan Dougan is personally liable for the losses caused to the defendant is from 25 May 2021 and continuing to the date of the hearing as pleaded.
33. Although the defendant has made a counterclaim for the loss of rental income due to the uninhabitable state of repair of the subject Flat, I find that no allowance has been made in respect of the reduced outgoings, including the removal of the property from the council tax valuation list with effect from 25 March 2015.
34. I find that the defendant has made no significant attempt to mitigate her losses at an early date by taking the court action that was previously threatened in order gain access to the roof area and have the necessary repairs carried although she has the continuous benefit of her husband's professional experience., I find that for reasons that were not fully explained, the lessee was content to let her husband manage the Flat who repeatedly claimed he that was too busy to deal with this matter. Consequently, the defendant allowed the Flat to remain unoccupied from 2014 to date.

35. I find that the defendant has failed to adequately quantify her loss of rental income by providing independent objective evidence of the rental market from 25 May 2021 for a similar flat.
36. By reason of the above findings, I make no award of damages.

Costs and interest

37. The claimant made only a claim for the court issue fee of £455. I do not award this or any other sum in light of the unsuccessful claim.
38. Therefore, the Order I make to reflect both the findings of the First-tier Tribunal and the county court is:
39. The defendant and counterclaimant made no application for costs and therefore I make no award.
40. An Order for Judgment is attached to this decision to reflect the decisions of the tribunal and the county court.

Name: Judge Tagliavini

Date: 22 June 2022

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-daytime 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.

4. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against the County Court decision

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.
2. The date that the judgment is sent to the parties is the hand-down date.
3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.
4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.
6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the appropriate County Court (not Tribunal) office within 14 days after the date the refusal of permission decision is sent to the parties.
7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the County Court

In this case, both the above routes should be followed.