

Application to First-tier Tribunal (Property Chamber)

Application for a determination as to liability to pay an administration charge or for the variation of a fixed administration charge

APPLICATION

Application for a determination as to liability to pay an administration charge or for the variation of a fixed administration charge

THE TRIBUNAL

Each Tribunal usually consists of three members.

There are five Tribunal offices
London, Northern, Midland, Eastern and Southern.

There are procedural rules to be followed¹

APPLICATION AND HEARING FEES

Most applications to the Tribunal are subject to a payment of a fee.

Where an application fee is paid and the matter proceeds to a hearing, this will be subject to the payment of a further fee of £200.²

THE OVERRIDING OBJECTIVE

The objective is to enable the Tribunal to deal with cases fairly and justly. This includes:-

1. Dealing with case in ways proportionate to its importance, complexity, anticipated costs and the resources.
2. Avoiding unnecessary formality and seeking flexibility in the proceedings.
3. Ensuring, so far as practicable, the parties are able to take part fully in the proceedings.
4. Using the specialist expertise of the Tribunal effectively.
5. Avoiding delay so far as is compatible.

Tribunal Proceedings are open to the public.

¹The relevant procedural rules are set out in the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (SI 2013 No.1169)

² Full details of the fees are set out in the Civil Proceedings, First-tier Tribunal, Upper Tribunal and Employment Tribunal Fees (Amendment) Order 2016

Other Costs

The Tribunal may award costs:-

- Where a person has acted unreasonably in bringing, defending or conducting proceedings;
- Wasted costs – a legal or other representative may have their costs disallowed where a party owing to improper, unreasonable acts or as a result of negligent acts or omissions.

Costs may be dealt with in three ways – summary assessment, agreement between the parties or a detailed assessment, or if the Tribunal directs an application to the County Court.

Liability to pay Service Charges – Section 27A Landlord and Tenant Act 1985

Service charges in Leases can include such things as maintenance, repair or other works to the building, improvements, management, cleaning, portage or insurance and other costs incurred by the Landlord and recharged to the Leaseholders, such as legal and/or professional fees.

Either the Leaseholder or the Landlord may apply for a determination on:

- The person(s) by whom the service charges is payable;
- The person(s) to whom it is payable;
- The amount which is payable;
- The date on or by which it is payable; and/or
- The manner in which it is payable.

No application may be made where the issue has been:

- Agreed or admitted by the Leaseholder;
- Determined by a Court;
- Referred to arbitration; or
- (has been) the subject of determination by arbitration.

Payment of the service charge or any part of it, does not necessarily amount to an agreement or admission by the Leaseholder.

Landlords proposing to carry out works can ask the Tribunal for a determination that their proposals are reasonable and that the service charge is payable before they start spending.

The Leaseholder or the Landlord may apply to the Tribunal for a determination and the Tribunal can interpret the terms of the Lease to resolve disputes or uncertainties as to whether the Leaseholder is liable to pay a service charge.

Applications should be based on firm grounds, not subjective opinion. In some cases evidence may have to be presented to the Tribunal by an expert witness.

The Application form to be used is Application for a Determination of Liability to Pay and Reasonableness of Service Charges.

Definition of Reasonable

There is no simple definition of “reasonable”. It is for the Tribunal to determine the issue. In determining reasonableness, some questions that might be addressed are:-

- Are or were the works or services necessary?
- Was, or is the original specification for the works or service adequate?
- What were the Landlord’s procedures for costing the works or services?

- What are the Landlord’s arrangements for controlling costs?
- Was or is the standard of the works or services appropriate?
- What are the Landlord’s arrangements for monitoring service delivery?
- What amount is reasonable for a leaseholder to pay as an interim charge?

Limitation of Service Charges: Landlord’s costs – Section 20C of Landlord and Tenant Act 1985

It is common in residential leases for the Landlord’s legal costs in managing the property to be rechargeable to the service charge. These costs can include the costs of Court or Tribunal actions.

Section 20C of the Landlord and Tenant Act 1985 enables a leaseholder to make an application for an order that all or part of the costs incurred by the Landlord arising from the proceedings are not to be included in the service charge.

Where an application under Section 20C is made at the time as the principal application, the 20C application will be dealt with by the Tribunal hearing the principal matter.

The Application Form to be used is Application for an Order Under Section 20C of the Landlord and Tenant Act 1985.

Arrears of Service Charges

If a Landlord wishes to take forfeiture action because of the leaseholder’s failure to pay service charges he may not serve the Section 146 notice unless the leaseholder has admitted or agreed the breach or the matter has been finally determined by (or on appeal from) the Tribunal. “Finally determined” means determined by the Tribunal and not appealed against

within 14 days, or where the Tribunal’s decision is appealed and is not set aside as a consequence of that appeal.

The Application Form to be used is Application for an Order that a Breach of Covenant or a condition in the Lease has occurred.

Limitation of Administration Charges: Landlord's costs

Section 131 of the Housing and Planning Act 2016.

Leases often include a specific obligation for the leaseholder to pay the Landlord's legal or professional costs incurred in connection with recovering or trying to recover service charge arrears or in connection with a breach of covenant by the Leaseholder.

Another familiar provision in a Lease is an obligation to pay Landlord's costs of or incidental to a notice under Section 146 of the Law of Property Act 1925 or in contemplation of proceedings under Section 146. Such a clause may mean that the professional fees (Solicitor's costs) incurred in proceedings before the Tribunal in relation to the unpaid service charges or other breaches of covenant may be recoverable directly from the leaseholder under this clause.

Such legal and other professional costs will be an administration charge. As such these are payable

by the Leaseholder to the extent that they are reasonable.

SECTION 131 ENABLES A LEASEHOLDER TO MAKE AN APPLICATION TO THE TRIBUNAL FOR AN ORDER REDUCING OR EXTINGUISHING THEIR LIABILITY TO PAY AN ADMINISTRATION CHARGE IN RESPECT OF "COSTS INCURRED, OR TO BE INCURRED, BY THE LANDLORD IN CONNECTION WITH PROCEEDINGS AT THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBERS)" ("LITIGATION COSTS").

SUCH AN APPLICATION UNDER SECTION 131 CANNOT BE MADE IN RELATION TO LITIGATION COSTS INCURRED, OR TO BE INCURRED, IN CONNECTION WITH PROCEEDINGS BEGUN BEFORE 6TH APRIL 2016.

The Application Form to be used is Application for an order under paragraph 5A to schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Application to the Tribunal

The Procedure

The Tribunal has to consider the argument and evidence from both sides.

The Tribunal considers the evidence put before it. Where there is a hearing, members of the Tribunal panel may ask questions, but their function is to make a decision on what is before them, not find the evidence for themselves.

A party can request the Tribunal to issue directions requiring among other matters the production of information relevant to the issues and a witness summons may be issued by the Tribunal.

Notice of Application Forms

The Notice of Application may be made on the correct form where one is provided. The Tribunal produces model notice application forms and these are available in printed form from the Tribunal building or can be downloaded from the Ministry of Justice website.

Receipt of applications

On receiving a notice of application, the Tribunal must provide a copy of it and any accompanying documents to whoever is named as the respondent.

On receipt of an application dealing with service charges, administration charges or estate charges, the Tribunal must provide notice of the application to the secretary of any recognised tenants' association and to any person such as other Leaseholders whose name and address is known to the

Tribunal and it considers is likely to be significantly affected by the application.

The Tribunal may give notice of the application to any other person it considers appropriate.

Directions

The Tribunal may of its own initiative issue directions governing the exchange of evidence and conduct of the case.

One of the parties may apply for a direction, either by writing to the Tribunal or orally during the course of a hearing.

An application for a direction must include the reason for making that application.

Save where the application is made by consent, a copy of the proposed application should be sent to every other party before it is made and they in turn have the chance to object.

Non-compliance

If you do not comply with the directions or the Rules, then the Tribunal have various powers, including waiving the requirement, requiring the failure to be remedied, striking out a party's case or barring or restricting a party's participation in the proceedings.

Witness summons and orders to answer questions or produce documents

The Tribunal can issue a witness summons.

The Tribunal can issue a summons on its own initiative.

Where a person is not party to the proceedings, the summons should provide for the person's necessary expenses of attending the hearing.

The Tribunal may order any person to answer any questions or produce any documents relevant to any issue in the proceedings.

Failure to comply with the Summons may be treated as contempt of Court.

Striking out application

The Tribunal has the power to strike out applications.

The Tribunal must strike out if it has no jurisdiction, or if there has been failure to comply with the directions stating that non-compliance by a stated date would lead to the application or part of it being struck out.

The Tribunal may choose to strike out in the following circumstances:

1. If applicants fail to comply with directions stating that failure to comply could lead to striking out.
2. The applicant has failed to cooperate with the Tribunal so the matter cannot be dealt with in a fair and just way.
3. The proceedings are between the same parties and arise out of facts similar or substantially the same as those contained in proceedings already decided by the Tribunal.

4. Tribunal considers the proceedings or the manner in which they are being conducted to be frivolous or vexatious.

5. The Tribunal considers there is no reasonable prospect of the applicant's case succeeding.

A decision to strike out cannot be made unless the parties have given an opportunity to make representations, unless there is the party's failure to comply with the direction.

Applicants can make applications to the Tribunal to have the matter reinstated. Applications need to be lodged within 28 days after the date of striking out.

Withdrawal

The party may give notice of withdrawal of proceedings but this does not take effect unless the Tribunal consents.

The party withdrawing may apply to reinstate.

The Tribunal must notify each party in writing of a withdrawal.

Determination without a hearing

The Tribunal is only entitled to reach a decision once an oral hearing has taken place, unless all parties to the application have agreed that a decision can be reached without a hearing.

The Hearing

The Tribunal must give parties not less than 14 days notice, unless:-

1. The parties consent to a shorter notice period
2. There are urgent or exceptional circumstances

The hearing may be preceded or followed by an inspection of the property.

Hearings are presumed to be held in public. The hearing is relatively informal but will follow procedures set by the Tribunal. Members of the Tribunal panel may ask questions.

Consent Orders

Where the parties reach agreement on how their dispute can be resolved, the Tribunal can issue a Consent Order.

Decisions and Enforcement

The Tribunal may give a decision orally at a hearing and must provide to each party as reasonably practicable after making a final decision:

- A decision notice stating the decision
- Written reasons for the decision
- Notification of right to appeal

Case Management Powers

The Tribunal may regulate its own procedure:

- Extend or shorten time to comply with a Rule

- Permit or require a party to provide or produce documents

- Require a party to state whether they intend to attend or be represented or call witnesses
- Hold a hearing, decide its form and adjourn or postpone

- Stay proceedings

- Transfer to another Court or Tribunal

- Suspect of effect of a decision pending an Appeal

Expert evidence

The Tribunal is usually assisted by expert evidence from a valuer or experienced property manager.

It is the duty of the expert to help the Tribunal on matters within their expertise and this duty overrides any obligation to whoever instructs or pays the expert.

Expert evidence cannot be introduced without the Tribunal's consent.

Unless the Tribunal otherwise directs, the expert evidence must be served in the form of a written report provided to the Tribunal and each other party at least 7 days before the date of the hearing.

There is scope in the rules for the Tribunal to direct that the parties jointly instruct the expert.

Appeals

Before considering an Appeal, a number of options are available to unsuccessful parties:-

- Corrections: The Tribunal may correct a clerical mistake, accidental slip or omission
- Setting aside the decision: Where the Tribunal has reached a decision which brought the case to an end, they have the power to set aside the decision and remake it, if it is in the interests of justice to do so or other conditions are satisfied.

Appealing the Decision

Where a party decides to appeal to the Upper Tribunal (Lands Chamber), an application for permission must be made to the Tribunal in the first instance. Application for permission to be lodged within 28 days. The Tribunal sends to the person pursuing the appeal:-

1. Written reasons for the decision
2. Notification of amended reasons or correction of the decision following a review, or
3. Notification that an application for the decision to be set aside has been unsuccessful.

Next step

Our team of residential property specialists advise business customers on the full range of issues you are likely to face in respect of property you own or manage. From disputes over legal responsibility for maintaining parts of the building, to re-negotiating service charges, to dealing with a Residents Management Company, our lawyers take the strain of day-to-day property and people issues.

We're quick to respond and give you clear advice on what to do and how to do it. Pragmatic and commercially minded, we offer solutions which are not only legally sound but which work in the real world – and in the context of your relationship with your leaseholder. That's important. Because there is more than one way of resolving an issue, and it pays to get it right.

We offer a fixed price review of a lease to look at service charge recovery.

If you would like us to review your leases, contact Debbie Phillips for a no obligation quote.

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