



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

**Case reference** : **LON/00AG/LAM2021/0021**

**HMCTS code (paper, video, audio)** : **V: FVH Video Remote**

**Property** : **Atlantic House, 128 Albert Street,  
London NW1 7NE**

**Applicants** : **Helen Cizain and others**

**Representative** : **Mr Edward Blakeney of Counsel  
instructed by Collins Benson Goldhill  
LLP**

**Respondent** : **Threadneedle Pensions Limited**

**Representative** : **Mr Piers Harrison of Counsel instructed  
by Addleshaw Goddard LLP**

**Type of application** : **Preliminary issue hearing**

**Tribunal members** : **Judge N Hawkes  
Mr T Sennett FCIEH**

**Dates of remote hearing** : **24 January 2022**

**Date of decision** : **8 February 2022**

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**DECISION**

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**Covid-19 pandemic: VIDEO HEARING**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: FVH REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be

determined at a remote hearing. The documents that the Tribunal was referred to, are in a bundle of 993 pages, including index. The order made is described below.

## **Decisions of the Tribunal**

The Applicants' application for the appointment of a manager dated 24 August 2021 is dismissed.

### **The application**

1. This is an application made by the Respondent in proceedings brought by the Applicants for an order appointing a Manager in respect of Atlantic House, 128 Albert Street, London NW1 7NE ("the Property") under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").
2. The Respondent seeks an order dismissing the application on the grounds that no valid notice pursuant to section 22 of the 1987 Act has been served on the Respondent by the Applicants.
3. On 19 January 2022, the Tribunal directed that this application would be determined as a preliminary issue on 24 January 2022, the date on which the final hearing had originally been listed.

### **The hearing**

4. A video hearing took place on 24 January 2022. The Applicants were represented by Mr Edward Blakeney of Counsel, instructed by Collins Benson Goldhill LLP, and the Respondent was represented by Mr Piers Harrison of Counsel, instructed by Addleshaw Goddard LLP.
5. Due to technical issues, Mr Harrison initially attended by telephone, having indicated that he was content to proceed on this basis. He later attended by video. All other participants attended by video throughout.

## **The Tribunal's determination**

### ***The background***

6. The Respondent is the freehold owner of the Property.
7. By a headlease dated 6th October 1998, Linklane Developments Ltd granted a term of 999 years from 25th March 1998 of parts of the Property to Berkeley Homes (North London) Ltd ("the Headlease").

8. The registered proprietor of the Headlease is Atlantic House London Limited (“AHL”). The Tribunal was informed that a number of the Applicants are directors of AHL. It is common ground that the structural parts of the Property do not fall within AHL’s demise.
9. The Applicants have under-leases of flats at the Property and the Tribunal was referred to a specimen flat lease (“the Flat Lease”).
10. The demised premises are defined at the First Schedule 1 Part I of the Flat Lease and comprise the flat but exclude the “Main Structure”.
11. “Main Structure” is defined at clause 1 as “the main structural parts of the Buildings including . . . the roof . . .[and] walls”.
12. In the Second Schedule, the landlord grants rights to the tenant which include a right of support and protection of the Demised Premises from other part of the Property and such rights as are granted under the Headlease.
13. Under the Flat Lease, the landlord covenants to procure the provision of services set out in the Fourth Schedule (clause 7).
14. At paragraph 2 of the Fourth Schedule, the landlord covenants to repair the “Maintained Property”.
15. “Maintained Property” has an ambulatory meaning. It is defined at Part II of the First Schedule and it includes the Main Structure but only until such time as the Superior Landlord accepts responsibility for the same. It is common ground that the Respondent has accepted responsibility for the roof and for the Main Structure of the Property.
16. The landlord also covenants to procure the observance by the Superior Landlord of the covenants set out in clause 4 of the Headlease. Those covenants include an obligation to keep the Main Structure and roof of the Property in repair.
17. A notice pursuant to section 22 of the 1987 Act dated 22 November 2020 has been served on behalf of certain of the lessees of flats at the Property on the Respondent (“the section 22 notice”).
18. The section 22 notice was prepared by professional managing agents, it is addressed to no party other than the Respondent, and the Applicants do not contend that it was served on AHL.
19. Schedule 2 of the section 22 notice sets out issues said by the Applicants to require redress which include:

- (i) Water penetration through the roof of the Property;
- (ii) Management by the Respondent of other (commercial) tenants in the Property;
- (iii) Management by the Respondent of the Property generally; and
- (iv) Fire safety of the Property.

***Statutory provisions***

20. By section 22(1) of the 1987 Act, before an application for an order under section 24 is made in respect of any premises to which the 1987 Act applies by a tenant of a flat contained in those premises, a section 22 notice must (subject to subsection (3) which is not applicable in the present case) be served by the tenant on:
- a) the landlord, and
  - b) any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy.
21. Pursuant to section 59(1) of the 1987 Act, a lease includes a sub-lease and, pursuant to section 59(2) of the 1987 Act, the expression “landlord” and “tenant” are to be construed accordingly.
22. By section 60(1) of the 1987 Act, “landlord” for the purposes of Part II of the 1987 Act means the immediate landlord or, in relation to a statutory tenant, the person who, apart from the statutory tenancy, would be entitled to possession of the premises subject to the tenancy. These proceedings do not concern any statutory tenancy.
23. By section 23 of the 1987 Act, no application may be made for an order under section 24 unless:
- a) A section 22 notice has been served and the reasonable period for remedy of a breach has expired without the landlord or relevant person having taken the required steps, or the breach was not capable of remedy; or
  - b) Service of the section 22 notice has been dispensed with and any directions made by the tribunal as to further steps or notices have been complied with.

24. It is not contended that the service of a section 22 notice can be dispensed with in the circumstances of the present case.

***Reasons for the Tribunal's determination***

25. The Tribunal accepts the Respondent's case that:
- a) Each flat lessee is a tenant for the purposes of the 1987 Act and the landlord of each flat lessee is AHL.
  - b) The section 22 notice served by the flat lessees on the Respondent is of no effect because the Respondent is neither "the landlord" of the flat lessees nor a person "by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy" in relation to the flat lessees.

Whether the Respondent is the landlord of the Flat Leases

26. The landlord and tenant are defined in the 1987 Act and we do not consider these terms to be ambiguous. The Tribunal accepts the following submissions made by Mr Harrison:

*"... the question of who is 'the landlord' vis a vis each Flat Lessee is answered by the basic principles of landlord and tenant. The following principles are applicable:*

- a) *A 'tenant' both by derivation and usage is someone who holds land of another (Woodfall 1.001).*
- b) *It is essential for the establishment of the relationship of landlord and tenant that there should be a demise (Woodfall 1.002).*
- c) *A 'demise' or 'lease' is the grant of a right to the exclusive possession of land for a determinate term less than that which the grantor has himself in the land (Woodfall 1.003).*
- d) *The party to whom the lease is granted is called the 'lessee' or 'tenant', and the party by whom the lease is granted is called the 'lessor' or 'landlord'. The person in whom a lease is for the time being vested is also known as a 'leaseholder', and the person entitled for the time being to the reversion thereon as a 'reversioner' (Woodfall 1.004).*
- e) *Other persons beside the landlord and the tenant may be party to a lease. It is common in long leases of residential flats for a management company to be party to the lease for the purpose of covenanting to perform certain functions and services, and to collect a service or maintenance charge, or for a trustee to be a party to a lease*

*for the purpose of applying funds collected from the lessees towards the maintenance and repair of property (Woodfall 1.005).*

*f) In every case there must be reserved to the landlord a reversion upon the lease, for without a reversion there can be no demise and the relationship of landlord and tenant does not come into existence. The reversion may be defined as that estate in the land which remains vested in the landlord during the continuance of the term granted to the tenant. The reversion upon a lease may be either freehold or leasehold; a lease derived out of a leasehold interest being known as an underlease or sub-lease (Woodfall 1.005).*

*29. From these first principles, one may make the following statements in respect of each Flat Lease:*

*a) The parties to the lease were the lessor and lessee.*

*b) There was no third party.*

*c) The person in whom the lease is now vested is 'the tenant'.*

*d) The person in whom the reversion is now vested is 'the landlord'.*

*e) The reversion was the estate in land which remained vested in the landlord at the date of grant.*

*f) The estate which was vested in the landlord at the date of grant is the same estate as is now vested in AHL.*

*g) Therefore AHL is 'the landlord' in respect of each Flat Lease."*

27. We do not accept Mr Blakeney's submission that the Respondent is the only party who can be the immediate landlord of the flat lessees in respect of the roof of the Property and other areas which fall outside AHL's demise.

28. There is no evidence before the Tribunal that the reversion in respect of the flat leases has been severed and it must therefore remain with AHL. There is no direct relationship between the flat lessees and the Respondent but rather it is for AHL to procure the observance by the Respondent of the covenants set out at clause 4 of the Headlease.

29. Mr Blakeney referred us to *Lupin Limited v 7-11 Princes Gate Limited* [2020] P.L.S.C.S., a decision of the County Court in which there was the severance of a reversion. The facts and circumstances of that case are so different from the facts before us that we did not find that authority of assistance in the present case.

30. We accept Mr Harrison’s submission that, subject to certain exceptions which do not apply in the present case, between head landlord and sub-tenant there is neither privity of contract nor privity of estate (“Enforceability of Landlord and Tenant Covenants” 3rd edition, T. M. Fancourt, 8-01). The flat lessees cannot enforce the repairing covenants in the flat leases against the Respondent. Further, in any event, the section 22 notice complains of alleged breaches of the Headlease rather than breaches of the flat leases.

Whether the Respondent is a person “by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy”

31. As stated above, pursuant to section 22(1) of the 1987 Act, a section 22 notice must be served both on “the landlord” (section 22(1) (i) of the 1987 Act) and “any person (other than the landlord) by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy” (section 22 (1) (ii) of the 1987 Act).
32. The wording section 22 (1)(ii) of the 1987 Act derives from an amendment made by Commonhold and Leasehold Reform Act 2002, section 160. Previously, the requirement was that the notice be served “on the landlord by the tenant”. The purpose of the new wording is explained as follows in the explanatory notes:

*273. Section 160 corrects a defect in the appointment of a manager procedures under Part 2 of the 1987 Act. By virtue of the amendments made by this section leaseholders will be able to apply to a LVT for the appointment of a new manager where a lease provides for management functions to be carried out by a third party manager rather than the landlord. At present, leaseholders with such leases do not have the same rights as other leaseholders to apply for a new manager where the existing one is failing to manage the building properly. The grounds for appointment are extended by this section to cover acts or omissions by a third party manager as well as a landlord.*

33. The Tribunal accepts the Respondent’s case that to fall within section 22(1)(ii) of the 1987 Act, the obligation in this case must:
- (i) Relate to management of the premises or any part of them; and
  - (ii) Be owed to the Flat Lessee under the Flat Lease.
34. The Respondent is not a party to the Flat Leases and owes no obligations under them. Its only obligations are to AHL and derive from the

Headlease. Accordingly, the Respondent is not a person “by whom obligations relating to the management of the premises or any part of them are owed to the tenant under his tenancy” within the meaning of the subsection.

35. Having concluded that the Respondent was not the correct party for the Applicants to have served, it is not necessary for the Tribunal to consider whether AHL should have been served by the Applicants in addition to the Respondent.
36. No valid section 22 notice having been served on the Respondent by the Applicants, the Tribunal has no option but to dismiss the application. There has been some suggestion that the Tribunal might give guidance to the Applicants as to how to proceed. However, it is now common ground that it is not the function of the Tribunal to give a party guidance or advice.

**Name:** Judge N Hawkes

**Date:** 8 February 2022

### **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).