



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

Case Reference : CHI/00ML/LDC/2013/0047

Property : Grand Avenue Mansions
Grand Avenue
Hove
East Sussex
BN3 2NA

Applicant : Grand Avenue Mansions Trustee Limited
["GAMT Ltd"]

Representatives : Pepper Fox Limited

Respondent : Mrs B Taylor (Flat 28)

Representative : Mr P Barnes ODT Solicitors LLP

Type of Application : Costs following the Decision of this Tribunal dated
27 September 2013 in respect of Section 20ZA
Landlord & Tenant Act 1985
Rule 13 Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013 and
Section 20C Landlord & Tenant Act 1985

Tribunal Members : Mr B H R Simms FRICS (Chairman)
Mr A O Mackay FRICS (Surveyor Member)

**Date of
Consideration** : 05 February 2014 - Documents only

Date of Decision : 12 March 2014

DECISION

DECISION

1. The Tribunal declines the application to make an order for costs.
2. The Tribunal makes an ORDER that all or any of the costs incurred or to be incurred by the landlord in connection with the proceedings before it, both for the substantive application and for these costs proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mrs Taylor, the Respondent.

REASONS

BACKGROUND

3. Following the Decision of the Tribunal given orally at the Hearing on 27 September 2013 its reasons were published on 8 November 2013. Solicitors for Mrs Taylor the lessee of flat 28, the Respondent, submitted on 15 November 2013 a claim for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 [“the Rules”]. The Tribunal wrote to all the parties to enquire whether any other costs applications were to be made in order that all applications could be heard at the same time. No further applications were received by the allotted date.
4. Solicitors for the Respondent made a further application dated 9 December 2013 for an order under Section 20C Landlord & Tenant Act 1985 [“the 1985 Act”].
5. On 16 December 2013 the Tribunal issued Directions for the conduct of proceedings to determine the issues of costs. These provided for each party to make representations and to comment on the other’s representations.
6. It was noted by the Tribunal at its meeting on 5 February 2014 that the submission and provision of some of the documents by one party to the other may not have been properly undertaken. The Tribunal wrote to the parties to allow either of them to correct any omissions in documentation, if any, before a final Decision was made. Pepper Fox Ltd on behalf of the Applicant made further Representations on 13 February 2014.
7. The Tribunal has taken account of all the Documents received in order to arrive at its Decision.

THE LAW

8. Rule 13 of the Rules gives the Tribunal various powers which are in summary:

(1) The Tribunal may make an order in respect of costs only –

(a) ...

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –

(i) ...

(ii) a residential property case, or

(iii) a leasehold case, or

(2) – (5) various rules regarding the form of application

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) – (9) ...

9. S.20C of the 1985 Act provides that the Tribunal may make an order that all or any of the costs incurred or to be incurred by the landlord in connection with proceedings before it are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. The order may be made if the Tribunal considers it just and equitable in the circumstances to do so

REPRESENTATIONS & CONSIDERATION

10. The Respondent which for clarity we also refer to as “the receiving party”, having been given extra time, made detailed representations. These set out her principal ground for seeking costs namely “...that the proceedings were unreasonably brought by the Applicant”.
11. Mr Barnes gave a detailed summary of the proceedings emphasising the shortcoming in the Applicant’s actions. He avers, amongst other things, that the Applicant failed to follow the September 2013 Directions by not submitting the required statements reports and documents putting the Respondent at a disadvantage; the Applicant’s representative did not attend the hearing without warning to the Tribunal or the Directors of the Applicant company; there was confusion regarding the Applicant’s legal right to bring the proceedings; an attempt was made by the Applicant to withdraw the application which later, at the hearing, was abandoned and the hearing proceeded; the application had no redeeming features;
12. The Applicant opposes the costs application. Although submitted under the cover of a letter from Pepper Fox dated 24 January 2014 the representations are made by the Applicant company itself and are unsigned but dated 23 January 2014. In essence the representations outline the actions that have been taken but do not offer any defence to the allegation that it has acted unreasonably.

13. The overriding objective set out in Rule 3 is quoted but it is unclear how this relates to the Applicant's actions. The thrust of the representations by the Applicant rebuts the Respondent's suggestion that it has incurred extra costs.
14. Having received the Applicant's submission the Respondent submitted detailed comments in defence of its application for costs. At the outset Mr Barnes suggests that "*The Respondent completely fails to understand how the overriding objective can be prayed in aid in this application.*" He then goes on to rehearse the detail of the actions and inactions of the Applicant.
15. The Applicant took the opportunity to make further representations following the Tribunal's invitation and these are in a letter dated 13 February 2014. Continuing allegations are made that letters or representations had not been received by the Applicant in spite of assurances by the Respondent that copies had been sent. The Applicant also addresses the quantum of the costs claimed.
16. At this stage the Tribunal considered the terms of Rule 13 and in particular the requirement that the Applicant must have "*...acted unreasonably in bringing, defending or conducting proceedings...*" before turning to the question of the quantum of costs. The Tribunal had a great deal of detail before it covering the parties actions before and during the hearing.
17. This is not a straightforward question of assessing who has "won" which might be the test in a court of law. The tribunal is a "no costs" jurisdiction and the "receiving party" has a high threshold to overcome in order to satisfy the test of unreasonable behaviour on the part of the "paying party".
18. There is no doubt that the Applicant has done little to assist its case. Its professional advisors misunderstood the procedure and failed to keep its client informed to the point of failing to turn up at the hearing without warning. GAMT Ltd found itself in a difficult position with repairs being required, apparently urgently, but then taking little action to rectify the problem. In order to proceed it realised that the s.20 procedure had not been followed and attempted, presumably under advice, to circumvent the procedure by getting the lessees to sign an agreement form. As this procedure failed it had no alternative but to proceed with a 20ZA application for dispensation if it wanted to proceed quickly with the repairs. At all times the Applicant was proceeding under advice from Pepper Fox.
19. Although there have been many shortcomings in the procedure the Tribunal is not satisfied that the necessary threshold of unreasonableness has been exceeded and declines the application to make an order for costs.
20. Having dismissed the application for an order for costs the Tribunal has no need to consider the arguments relating to the quantum of those costs.
21. The Respondent briefly supported her application under 20c the 1985 Act on the grounds that it would be unreasonable, unjust and inequitable for the landlord to recover its costs in light of the findings made by the Tribunal at the hearing.

22. In doing so Mr Barnes quotes the detailed findings of the Tribunal highlighting that: Nothing has been done by the landlord to progress works since it became aware of the external disrepair; the letter to the lessees regarding the consultation requirements was misleading; Pepper Fox failed to attend the hearing; and the landlord failed to comply with Directions.
23. The Applicant has not addressed the 20c issue at all.
24. The Tribunal is satisfied that the actions of the Applicant have been confusing and misguided. It is therefore just and equitable to order that its costs must not be recovered via the service charge.

Dated 12 March 2014

Brandon H R Simms FRICS
Chairman

PERMISSION TO APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.