



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

Case Reference : LON/00AH/LAM/2014/0005

Property : Steep Hill, Croydon, CR0 5QS

Applicant as to costs : Steep Hill Freeholders Limited

Represented by Steep Hill Residents' Association Ltd.

Respondent as to costs : Ms. A. Iriarte

Represented by Mr. M. Folwell

Type of Application : Application for costs under Rule 13 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Tribunal : Mrs H.Bowers (Chairman)
Mrs F Silverman Dip Fr LLM

Date and venue of Determination : 10th June 2014
10, Alfred Place, London, WC1E 7LR

DECISION

For the following reasons the Tribunal finds that no costs are payable by the Respondent.

REASONS

Introduction:

1. The Tribunal received an application under Section 24 of the Landlord and Tenant Act 1987 for the appointment of a manager and an application for an order under Section 20C of the Landlord and Tenant Act 1985 dated 13th February 2014 and a further application under Section 27A and an application for a Section 20C order of the Landlord and Tenant Act 1985 dated 18th March 2014. All these applications (the original applications) were made by Ms. Iriarte, who is the Respondent in this matter.

2. In a decision dated 8th May 2014, the Tribunal gave notice that all the applications listed above had been struck out on 28th April 2014. The decision then provided for Further Directions to deal with the current Applicant's application for costs.

The Law:

3. The provisions relating to costs are set out in Rule 13 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013. This Rule is set out in the Appendix below.

The Hearing:

4. It was directed that the application should be dealt with by consideration of the papers submitted by both parties and therefore there was no hearing. Submissions were received from both the Applicant and the Respondent.

Representations:

Applicant's Case:

5. In an email dated 22nd May 2014 the Applicant sets out their account of the history of this matter. Included in the email is a schedule of costs which are summarised below:

i) Reimbursement of legal costs incurred over 9 Months (x4 invoices)	£7,000
ii) Stress/inconvenience/defamation – Directors	£10,000
iii) Stress/inconvenience/defamation – Leaseholders	£9,600
iv) No. days off work (6 days @£400/day)	£2,400
v) Ruined Holiday	£8,000
vi) Time spent in responding to the Respondent's requests	<u>£9,150</u>
Total	£46,150

6. In support of the claim for £46,150 the following explanation and documents were supplied.

7. Reimbursement of legal costs incurred over 9 Months (x4 invoices) - £7,000

The following invoices from Streeter Marshall Solicitors were provided, 17th September 2013, £1,320.00 for the period 15th August to 27th September 2013; 6th November 2013, £1,439.40 for the period 28th September to 31st October 2013 and 29th November 2013, £1,194.00 for the period 1st to 29th November 2013. A further invoice from Robin Simon dated 17th February 2014 for £3,301.20. This invoice appears to relate to legal advice in relation to a claim by

Martin Folwell for the period 17th September 2013 to 30th January 2014. The time sheet that accompanied the invoice indicated that the work related to an issue in the Small Claims Court, which is described elsewhere in the submissions as an “*action against Mr. Lowe in his personal capacity for something which Mr. Lowe had done in his capacity as a director of the RMC i.e., removing the notices which Mr. Folwell had placed on the Noticeboards*”.

8. Stress/inconvenience/defamation – Directors - £10,000

This is stated to be a notional figure to reflect the actions to ruin the professional standing of the Directors.

9. Stress/inconvenience/defamation – Leaseholders - £9,600

This item has been valued at a notional figure of £100 per leaseholder and for 96 leaseholders. This sum reflects the distress caused to the leaseholders from the behaviour of the Respondent and her associates.

10. No. days off work (6 days @£400/day) - £2,400

This item was claimed as a taking time off work to deal with matters and was charged at a rate of £50 per hour. A total of £1,600 was claimed for preparing of accounts for review, including ensuring documents did not contain personal details; £400 for attending the Small Claims Court and £800 for attending the Case Management Conference.

11. Ruined Holiday - £8,000

An invoice from Cunard showing a total price of £5,398 for a cruise. This was supplemented by an on board account from the Queen Victoria for a total sum of £4,833.45, of which £3,128.61 was claimed as £350.17 in respect of missed excursions resulting from severe back trauma experienced by Mr Lowe from stress related issues. Additionally a sum of £2,008.29 is claimed to reflect specialist therapies to relieve the back pain.

12. Time spent in responding to the Respondent’s requests - £9,150

This sum reflected a total of 183 hours at a rate of £50 per hour over a 9 month period in responding to requests for information and communications between the Respondent and the Applicant. It was expressed that this sum is a conservative amount and did not reflect the time investigating the claims made by the Respondent.

Respondent’s Case

13. Mr Folwell on behalf of the Respondent sets out her account of this matter. Overall it is stated that the Tribunal is aware of the reasons why the original applications were withdrawn. As such it is submitted that the Tribunal should not make any order for costs.

14. Reimbursement of legal costs incurred over 9 Months (x4 invoices) - £7,000

It is stated that the majority of these costs relate to incidents between Mr Folwell and Mr. Lowe and are not directly related to the original applications under consideration. The costs also relate to the election carried out by the directors of the Applicant company and to the use of solicitors to review the accounts. No breakdown of the costs are provided.

15. Stress/inconvenience/defamation –Directors - £10,000

It is stated that this is not an area of costs that the Tribunal has any jurisdiction to determine.

16. Stress/inconvenience/defamation – Leaseholders - £9,600

As above it is stated that this is not an area of costs that the Tribunal has any jurisdiction to determine.

17. No. days off work (6 days @£400/day) - £2,400

The four dates relating to the preparation of the accounts is not within the jurisdiction of the Tribunal. The costs relating to the Small Claims Court is again not relevant to the application for the appointment of manager and as such not within the jurisdiction of the Tribunal. The further two days that were claimed related to attendance at the Case Management Conference (CMC). It was explained that the CMC lasted less than an hour. It was also noted that the hourly rate being charged was excessive.

18. Ruined Holiday - £8,000

It is suggested that this is not within the jurisdiction of the Tribunal.

19. Time spent in responding to the Respondent's requests - £9,150

It is stated that the Applicant is seeking costs in relation to the commencement of the period of Mr. Fulwell's occupation. Only the costs occurring after the applications to the tribunal should be considered. No breakdown is provided and it is suggested that the costs are excessive.

Tribunal's Determination

Reimbursement of legal costs incurred over 9 Months (x4 invoices) - £7,000

Three of the invoices for this item of claim from Streeter Marshall predate the original applications and as such these are not costs incurred in relation to the applications and the Tribunal dismiss these costs. The fourth invoice from Robin Simon is dated 17th February 2014 and although after the date of the first application, the narrative explains that these are costs in relation to the Small Claims Court case. This is not a matter before this Tribunal and the costs do not relate to the original applications and accordingly these costs are dismissed.

Stress/inconvenience/defamation –Directors - £10,000

This is not a matter for the Tribunal and as such the Tribunal dismisses this item of claim.

Stress/inconvenience/defamation – Leaseholders - £9,600

This is not a matter for the Tribunal and as such the Tribunal dismisses this item of claim.

No. days off work (6 days @£400/day) - £2,400

Although Mr Lowe and Ms. Sheth have taken time to undertake the tasks described in the Applicant's application, there is no actual cost incurred by the Applicant and as such no award of costs can be made under this heading. It should be noted that some of the claim appears to pre-date the original


applications and that some of the claim relates to the Small Claims Court case, again not an aspect that relates to the original applications.

Ruined Holiday - £8,000

This is not a matter for the Tribunal and as such the Tribunal dismisses this item of claim.

Time spent in responding to the Respondent's requests - £9,150

Although Mr Lowe and Ms. Sheth have taken time to undertake the tasks described in the Applicant's application, there is no actual cost incurred by the Applicant and as such no award of costs can be made under this heading. It should also be noted that some of the claim appears to pre-date the original applications.

Chairman: .....

Dated:10/6/14.....

Helen C Bowers

APPENDIX

The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

Rule 13.— Orders for costs, reimbursement of fees and interest on costs

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

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

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

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(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) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings

in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.