10604

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LSC/2014/0215**
Property	:	**35 Kelson House, Stewart Street, London E14 3JQ**
Applicant	:	**One Housing Group**
Respondent	:	**Mr P Hill**
Representative	:	**DH Law solicitors**
Type of application	:	**Costs – Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal members	:	**Judge Nicol** **Mr R Shaw FRICS**
Date of decision	:	**12th February 2015**

DECISION

Decision of the Tribunal

The Tribunal refuses to make any order for costs and dismisses the application.

The application

1. The Applicant issued proceedings in the Brentford County Court against the Respondent for unpaid service charges. When those proceedings were transferred to this Tribunal, the Respondent issued his own application against his sub-lessee, Spitalfields Housing Association (ref: LON/00BG/LSC/2014/0290), in respect of the same charges. It appears that the Applicant was well aware of Spitalfields's

position as they have not contradicted the Respondent's assertion that the Applicant negotiated solely with Spitalfields for payment of the service charges prior to the issue of proceedings.

2. Eventually, following an unsuccessful mediation, the three parties reached a joint settlement just before the case was due to be heard. They jointly asked the Tribunal to approve their settlement agreement in the form of a Tomlin Order whereby all proceedings were stayed save for carrying into effect the terms of settlement attached in a schedule. Those terms included the Respondent and the Third Party Respondent, as Spitalfields was designated, between them paying the full amount sought by the Applicant, plus interest, totalling £7,981.48. According to the Respondent, he contributed a nominal £1,000 while Spitalfields paid the rest.

3. The Applicant has now further applied for an order that the Respondent pay their legal costs under the following provision of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013:

> **13.**—(1) The Tribunal may make an order in respect of costs only—
>
> (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
>
> (ii) a residential property case ...

4. The Tribunal issued directions on 17th December 2014. In accordance with those directions, this application has been determined on the papers, without an oral hearing. Both parties provided written submissions in accordance with the directions.

5. The Applicant initially claimed that their costs amounted to £10,170, inclusive of £2,175 for costs incurred prior to issuing the county court claim. In their letter dated 16th January 2015 replying to the Respondent's submissions, they revised this down to £4,500, albeit without an apology or explanation for why they got it so wrong the first time. With all due respect to the effort the parties have put in to the consideration of quantum, the Tribunal has not considered that issue because it has concluded that there should be no order for costs at all for the reasons set out below.

6. The Tribunal is concerned that both parties have sought to rely in their written submissions on events which allegedly incurred in the mediation. This is wholly inappropriate. The mediation is confidential and what happened should not have been revealed outside the mediation, even to the Tribunal. The Tribunal has ignored those parts of both parties' submissions.

7. The Applicant's basic submission may be put simply, namely that they recovered every penny they were seeking and it should not have required this litigation to achieve this outcome. However, it is clear from both parties' written submissions that the only party who could arguably have behaved unreasonably to the extent required under rule 13(1)(b) is Spitalfields.

8. Prior to the issue of proceedings, the Applicant sought payment solely from Spitalfields. As the Applicant points out, though, they do not have a contractual relationship with Spitalfields and were obliged to sue the Respondent for what they were owed. Since the Respondent had not been privy to the pre-action negotiations, he quite reasonably reserved his position until after the Applicant's case had been fully set out, not only in their statement of case, but also in disclosure and brought Spitalfields into the proceedings by way of his own application. The proceedings were settled when Spitalfields agreed to pay by far the greater part of the sum claimed.

9. It is true that the Respondent would have been entitled to pay the Applicant the sum claimed and then chase Spitalfields for an indemnity but this is not realistic. Firstly, the Applicant has not suggested that this is what he should have done. Secondly, the Applicant was in sole control of the relevant information and documents which would establish the payability of the relevant charges. It was entirely reasonable for the Respondent to require the Applicant to put that evidence forward to him to be able to get Spitalfields to pay.

10. Unlike the courts, the Tribunal has no general costs jurisdiction and is not governed by the usual rule that the unsuccessful party should pay the costs of the successful party. The test for payment of costs under rule 13(1)(b) is that a party has behaved unreasonably, a high test analogous to frivolous or vexatious behaviour which has been referred to in other similar procedural rules. The Tribunal is satisfied that the Respondent has not behaved unreasonably, whether in this sense or at all. Therefore, there should be no order for costs and the application must be dismissed.

11. The Applicant relies heavily on the fact that they have no contractual relationship with Spitalfields but that is entirely irrelevant to rule 13. Rule 13 is not even limited to the parties to this particular application. There is no reason why the Applicant could not have made the same case under rule 13 against Spitalfields rather than the Respondent.

12. Having said that, the Tribunal is concerned with an issue which neither party has raised. The Tribunal has already concluded that no order for costs should be made for the reasons set out above so this further issue does not found this decision but it does merit the following comment.

13. The settlement agreement embodied in the proposed Tomlin order was clearly intended to constitute full and final settlement of the dispute between all three parties. The only express reservation was in relation to the recoverability of the Applicant's legal costs under the relevant lease, not under rule 13 or any other potential source or remedy. It seems to the Tribunal that this application under rule 13 was prohibited by the terms of the settlement. This may well prevent the Applicant pursuing Spitalfields for any costs as referred to above but that is not a matter for this Tribunal to decide in this application.

Name: N Nicol **Date:** 12th February 2015