



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

Case Reference	:	LON/00AM/2017/0052
Property	:	Flats 1 and 2 Lorne House, 126/128 Lower Clapton Road, London E5 oQR
Applicants	:	Dr P. Came (Flat 1, No 126) Ms K Rudland (Flat 2, No 126) Mr W. Smith (Flat 4, No 126) Mr A. Payter (Flat 5, No 126) Westmil 75 Limited (Flat 6, No 126) Mr S. Mongan (Flat 2, No 128) Mr T. Keating (Flat 3, No 128) Ms A. Mason (Flat 4, No 128)
Representative	:	Ms Rudland and Dr Came
Respondents	:	Mr Y. Schiner
Representative	:	Moreland Estates Limited (managing agents)
Type of Application	:	Unreasonable Costs (Rule 13)
Tribunal	:	Judge Lancelot Robson
Date of original Decision	:	15th August 2017 (Reviewed 2nd October 2017)
Date of Rule 13 Decision	:	16th February 2018

RULE 13 (Costs) DECISION

DECISION OF THE TRIBUNAL

1. The Tribunal made an order against the Respondent under Rule 13(1)b of the Tribunal Procedure (First-tier Tribunal (Property Chamber) Rules 2013) in favour of the two first named Applicants jointly in the sum of £3,268 for time costs and £406.66 for disbursements (totalling £3,674.66) to be paid by the Respondent within 28 days of this decision.
2. The Tribunal made the other decisions noted below.

Preliminary

3. The Applicants applied under Section 27A for a determination of the estimated services charges payable to the Respondent in the service charges years commencing on 1st January 2014, and 2015, and the actual service charges in the years commencing 1st January 2016 and 2017 (the 2017 year ended on 10th April 2017, when a new Manager took over), pursuant to a (specimen) lease (the Lease) dated 14th July 2015. The Tribunal made two decisions dated 4th May 2017 and 15th August 2017 dealing with these matters. Section 20C orders were made in both cases. The decision dated 15th August 2017 was reviewed at the request of the Applicants on 2nd October 2017.
4. The Respondent, as noted in the substantive decision dated 15th August 2017, took almost no part in the proceedings and failed to comply with any Directions. This inaction continued during the Rule 13 application. However the Tribunal is satisfied from the correspondence in the bundles and in its own file, that both matters came to the attention of the Respondent's manager, Mr L. Freilich of Moreland Estate Management, at times when he was acting as the Respondent's agent. Thus the Respondent is deemed to have been aware of the proceedings.

APPLICANTS' CASE

5. The Applicants submitted that the Respondent and his agent had acted unreasonably in these applications. The Respondent had failed to engage at all with the Applicants at since 15th September 2015, despite letters being sent to him, apart from demanding and receiving various sums from the Applicants in respect of advance service charges on completion of their respective leases. There had been no management at all prior to 26th January 2016, when Mr Freilich was appointed. Some unsatisfactory management had been done by Mr Freilich, but he often failed to answer correspondence, or supplied contradictory information over a long period. He had not accounted to the new manager for monies he held, despite repeated requests. Neither the Respondent nor Mr Freilich as his agent had complied with any Directions. The Applicants had had to incur further expense in putting

is "whether the conduct permits of a reasonable explanation". The Upper Tribunal in Willow Court (at para 24) also expressed the test as "... conduct which is vexatious, and designed to harass the other side rather than advance the case. It is not enough that the conduct leads to an unsuccessful outcome. ... Would a reasonable person in the position of the party have conducted themselves in the manner complained of?"

c) Referring to the standard to be applied to unrepresented parties the Tribunal in Willow Court made the following observations;

(i) (Para 25) "... but for a lay person to be unfamiliar with the substantive law or with Tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable"

(ii) (Para 32) "The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice"

(iii) (Para 33) "When exercising the discretion conferred by Rule 13 (1)(b) the tribunal should have regard to all the facts known to it, including any mitigating circumstances, but without either "excessive indulgence" or allowing the absence of representation to become an excuse for unreasonable conduct".

d) (Para. 35) "... Rule 13(1)(a) and (b) should both be reserved for the clearest cases, and that in every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable".

e) Dealing with procedural issues, the Upper Tribunal recommended that;

(i) The party applying under Rule 13 must send a copy to the Tribunal and the other party unless the application is made orally at a hearing and may also send a schedule of the costs claimed

(ii) The other party must be given an opportunity to comment

(iii) (Para. 43) "Claims ... should not be allowed to become major disputes in their own right. They should be determined summarily, preferably without the need for further hearing, and after the parties have had the opportunity to make submissions ... applications made at interim stages or before the decision is available should not be encouraged".

9. The Tribunal decided that in this case the principles to be applied following the case of Willow Court were;

Stage 1 test;

A. Would a reasonable person in the position of the party have conducted themselves in the manner complained of?

B. the tribunal should have regard to all the facts known to it, including any mitigating circumstances, but without either "excessive indulgence" or allowing the absence of representation to become an excuse for unreasonable conduct

C. Was this the clearest of cases and have the Respondents satisfactorily proved it?

10. The Tribunal decided that the Respondent (but not Mr Freilich) had been unreasonable within the terms of Rule 13(1)(b). The Respondent had ignored the Tribunal's Directions on three occasions, except for making an open offer directly to the Applicants through his agent the day prior to the first hearing. Apart from the obvious discourtesy to the Tribunal and the Applicants, the Tribunal decided to infer that this conduct was intended to delay and obstruct the application and the hearing, and needlessly increase the Applicant's costs. The late offer was effectively an ambush to put pressure on the Applicants. The offer was also stated to be withdrawn if the Applicants proceeded with the hearing. A reasonable person would not have delayed and breached the Tribunal's Directions, but would have engaged with the application, and made any offer considered appropriate via a statement of case.
11. The Tribunal noted that the Respondent had a manager and advice, thus there could be no reasonable excuse for his conduct. This was the clearest of cases.
12. The Tribunal decided that it could not make an order against Mr Freilich. He was the Respondent's agent, not the principal, and was also not a party to the application. There was no evidence before the Tribunal to suggest that he was acting beyond his instructions, and did not appear to belong to any trade or professional body which might be concerned.

Stage 2 Test (In the light of the unreasonable conduct identified, should the Tribunal make an order for costs or not?)

13. The Tribunal decided it should make an order. There was an evidenced history of delay and confusion prior to the application, which had clearly lead to much delay and expense to the Applicants. The Applicants had had to arrange for the appointment of a new manager and put him in funds. The Respondent had taken money on account of the management and not accounted for it. The Applicants had no alternative but to make the application, and incur the expense of preparing to put their case at two hearings

Stage 3 Test-- The terms of the Order

14. The Tribunal considered the Applicants' costs schedule. The Respondent had not challenged it. The Tribunal decided that all the costs incurred in connection with the application were directly caused by the Respondent's failure to engage in any meaningful form of dialogue. However there were some items which were incorrectly dealt with;

a) The item for general correspondence from September 2015 to date (7.5 hours) was inappropriate. These appeared to be mainly costs prior to making the application. Only costs directly relating to the application are admissible. The Tribunal decide to allow only 1.5 hours for that item.

b) The 4 days charged at £600 per day for attending the two hearings was not properly evidenced. While the Tribunal accepted that the Applicants could command such a daily rate while self-employed in their professional capacity (and indeed their conduct of this application was exemplary), it was not demonstrated that they had suffered any professional loss by each taking two days' annual leave. They were employed, and entitled to holiday pay. The Tribunal applied the rate for litigants in person, usually applied by the County Court, of £19 per hour (or £152 per day) to that element.

15. The Tribunal considered that the disbursements (£406.66)(for which there was reliable evidence) were properly expended.

16. The Tribunal considered that the time costs requested were perhaps more generous than it might have expected, but they were unchallenged, and within the bounds of reasonableness. Applying the deductions noted above, the Tribunal's calculation was:

Time costs

21.5 days at £152 per day - £3,268.

Tribunal Judge: Lancelot Robson 16th February 2018

Appendix of relevant legislation

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

Rules 13(1) - (3)

- 13.-(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 application or on its own initiative.
