



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

**Case reference** : **LON/00AH/LSC/2020/0196**

**HMCTS code (paper, video, audio)** : **P: PAPER REMOTE**

**Property** : **Flat 1, 12 Luna Road, Thornton Heath, London, CR7 8NY**

**Applicant** : **Yvonne Confue**

**Representative** : **In person**

**Respondent** : **Croydon (Unique) Limited**

**Representative** : **Reality Law**

**Type of application** : **Costs – Rule 13(1)(b)**

**Tribunal members** : **Judge Robert Latham**

**Date and Venue of Hearing** : **3 March 2021 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **3 March 2021**

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**DECISION**

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**DECISION**

The Tribunal makes an Order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Applicant pays the sum of **£2,313** including VAT to the Respondent in respect of costs incurred by it relating to the determination of this application. The said sum is to be paid within 28 days.

## **Covid-19 pandemic: description of hearing**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The tribunal has had regard to the documents specified in paragraph 3 of this decision.

### **The Background**

1. On 13 March 2020, Reality Law, solicitors acting on behalf of the Respondent landlord, sent a pre-action letter to the Applicant demanding payment of service charge arrears of £4,740.68. This included £1,273.34 which became due on 1 April 2017; £1,512.67 which became due on 1 April 2018 and £1,562.67 which became due on 1 April 2019. It also included claims for administration charges and legal costs.
2. On 4 May 2020, the Applicant issued an application challenging the reasonableness and payability of these service charges. She also alleged that she had an equitable set-off in respect of sums which she had expended on repairs which had been the liability of the landlord. She does not occupy her flat, but rather lives in Milton Keynes.
3. On 14 September 2020, Reality Law sent a further demand for payment. The arrears had increased to £6,636.68. A further sum of £1,458 had become due on 1 April 2020.
4. On 18 September 2020, the Tribunal gave Directions and set the matter down for a video hearing on 17 December. Pursuant to these Directions, the Respondent disclosed a number of documents to enable the Applicant to formulate her claim.
5. By 23 October 2020, the Applicant was directed to serve her Statement of Case. She failed to do so.
6. On 24 September 2020, the Tribunal required the Applicant to pay a hearing fee of £200. She failed to do so.
7. On 28 October 2020, the Tribunal made an order notifying the Applicant that it was minded to strike out her application for failing to comply with the Directions. She was required to make representations by 12 November as to why her application should not be struck out. The Applicant failed to respond. On the same day, the Respondent notified the Tribunal that it was applying for a penal costs order against the Applicant under Rule 13(i)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”).

8. On 2 December 2020, the Tribunal again wrote to the Applicant requiring her to pay the hearing fee. She failed to respond.
9. On 15 December 2020, the Tribunal made an Order deeming that the application was withdrawn for non-payment of the hearing fee.
10. On 22 December 2020, the Respondent renewed their application for a penal costs order against the Applicant. On 5 January 2021, the Tribunal gave Directions. On 20 January, the Respondent filed a Statement of Case and a Bundle of Documents in support of their application.
11. By 5 February 2021, the Applicant was directed to file her response to the application. She failed to respond. On 17 February 2021, the Tribunal asked the Applicant to explain why she had failed to respond. She has failed to respond.

### **The Law**

12. Rule 13 of the Tribunal Rules provides in so far as is relevant to this application (emphasis added):

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

(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;

13. Rule 3 sets out the overriding objectives and the parties' obligation to co-operate with the Tribunal. The overriding objective is to enable the Tribunal to deal with cases fairly and justly. This includes dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of both the parties and the Tribunal. The parties are under a duty to help the Tribunal to further these overriding objectives.

14. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC)), the Upper Tribunal ("UT") gave guidance on how First-tier Tribunals ("FTTs") should apply Rule 13. The UT for the case consisted of the Deputy President of the UT and the President of the FTT. The UT set out a three-stage test:

(i) Has the person acted unreasonably applying an objective standard?

(ii) If unreasonable conduct is found, should an order for costs be made or not?

(iii) If so, what should the terms of the order be?

15. The UT gave detailed guidance on what constitutes unreasonable behaviour. For the purpose of this application we highlight the following passage from the judgment of the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205, per Sir Thomas Bingham MR at p.232C (emphasis added):

“‘Unreasonable’ also means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment, but it is not unreasonable.”

### **The Tribunal’s Determination**

16. The Tribunal is required to address three issues:

(i) Has the Applicant acted unreasonably applying an objective standard? The Tribunal is satisfied that she has. She has failed to pay her service charges for some four years. It seems that she has let out her flat. She should therefore have had the resources to pay the service charges. Her response to a pre-action letter was to issue an application to this tribunal. She was entitled to do so. However, having issued the application, she was obliged prosecute it by formulating her case. The Respondent contend that the application was merely a device to buy time and to delay the payment of the sums due. This Tribunal agrees. Such conduct not acceptable and is manifestly unreasonable.

(ii) If unreasonable conduct is found, should an order for costs be made or not? The Tribunal is satisfied that it should. This application was an abuse and was issued for an improper motive.

(iii) If so, what should the terms of the order be? The Tribunal is satisfied that the Applicant should not have issued this application. She should therefore pay the costs occasioned by her conduct. The Respondent has incurred legal costs of £2,313. The Applicant should pay these costs.

17. The Respondent argues that they would be entitled to their costs pursuant to the terms of the lease in any event. This is not the basis of their current application and is not relevant to this application for penal costs.
18. In an email dated 15 February 2021, the Respondent asks the Tribunal to make a determination that the service charges in dispute are payable and reasonable. This Tribunal has no jurisdiction to do so on this application for penal costs. However, it is a matter of record that the Applicant has sought unsuccessfully to challenge these service charges. It would be open to the landlord to proceed to enforce the payment of the sums due in the County Court.

**Judge Robert Latham**  
**3 March 2021**

#### **ANNEX - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.