



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

Case reference : **LON/OOAL/HPO/2015/0011**

Property : **Flat 1, 137 Greenwich South Street,
London SE10 8PP**

Applicant : **Royal Borough of Greenwich**

Representative : **M Bashir of Counsel**

Respondent : **James Owen**

Representative : **In person**

Type of application : **Costs under Rule 13 Tribunal
Procedure (First-tier tribunal)
(Property Chamber) Rules 2013**

Tribunal members : **Judge S O’Sullivan**

**Date and venue of
hearing** : **10 Alfred Place, London WC1E 7LR**

Date of decision : **28 January 2016**

DECISION

Decisions of the tribunal

I hereby order that the Respondent pay the sum of £155 to the Applicant within 14 days of the date of this decision pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013.

The application

1. On 30 October 2015 the tribunal received an application from the Respondent for a determination of costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Directions were made dated 27 October 2015 further to which the parties lodged submissions. The application was considered by way of a paper determination on 28 January 2016. Neither party requested an oral hearing.
2. The costs in issue are those said to be incurred in relation to an earlier application to the tribunal under the same reference LON/OOAH/HPO/2015/0019 (the “Substantive Application”).
3. The appeal and the application for costs under Rule 13 were made by Mr Owen.

The background

4. The Substantive Application related to an appeal made by the Applicant against a Prohibition Order served by the Respondent, the Royal Borough of Greenwich dated 30 July 2015 (the “Prohibition Order”) made under section 20 of the Housing Act 2004 which was effective on 21 August 2015. The Prohibition Order was made in respect of the property known as Flat 1, 137 Greenwich South Street SE10 8PP. The order was revoked on 22 October 2015.
5. As a preliminary point the tribunal would mention that the relationship between the various entities and the property has not been made clear. Mr Owen appears to be the property manager for Excel Management Solutions. The landlord appears to be Bickley Investments although this is unclear. The tenancy agreements state the landlord to be Candy Homes. In addition SAS Management has also incurred costs although it is unclear why two management companies are acting. The majority of the costs claimed appear to have been incurred by Excel Management Solutions. It would have been useful if the inter relationship between the various entities had been clarified.
6. The tribunal does not set out all of the evidence but rather a summary of the most relevant its decision is set out below.

The Applicant's case

7. The Applicant set out his case in a statement of case and relied on a bundle of documents. In addition the tribunal also had sight of various emails subsequently sent to the tribunal, in particular emails dated 19 and 25 January 2016.
8. The tribunal is asked to note that the tenant did not initiate any complaint and the concerns were said to have been identified by Mr Johnson, an Environmental Officer in the employ of the Respondent. He says that the Prohibition Order and appeal should have been avoided as the Respondent went to great lengths unnecessarily to gain access to the property which it is said had been visited on several occasions over the past years. The Applicant says that the Respondent should have contacted the Applicant to communicate its concerns and that the Applicant would have worked proactively to ensure the property met the standards in relation to light, noise and ventilation. It is said this approach would have avoided the invasion of the tenants' privacy which culminated in them terminating their tenancies and resulted in significant loss of rent and financial hardship.
9. It is confirmed that remedial works are now being carried out although a further Prohibition Order dated 7 November 2015 has since been served and remains in force. This is also the subject of an appeal. The Applicant confirms that an application for Building Regulation approval has now been made and remedial works are ongoing. A Building Regulations Notice was served on 17 August 2015 confirming the intention to carry out the works in accordance with the requirements of the Prohibition Order.
10. The Applicant also says that neighbouring properties with the same hazards have not been served with Prohibition Orders.
11. The Applicant says he has suffered financial loss as a direct consequence as follows;
 - i) £1,560 inclusive legal costs said to be incurred when seeking advice on the receipt of the Prohibition Order;
 - ii) £4,000- said to be incurred in the review of the case, preparing a report and taking a witness statement;
 - iii) £3,000 in respect of the costs of preparing bundles, postage and courier charges;

- iv) Loss of rent in respect of Flat 1 – 4 months at £1,000 pcm making a total of £4,400;
- v) Loss of rent Flat 2 – 4 months at £1150 pcm making a total of £4600;
- vi) Loss of rent Flat 5 – 4 months at £1300 pcm making a total of £5200;
- vii) £200 in respect of the emergency replacement of new locks and key for the Flat 2 tenant following the change of locks by the Respondent;
- viii) £3200 in respect of M & E Report – this was said to be necessary to prove that the hazards could be remedied;
- ix) £3,000 in relation to inconvenience and suffering;
- x) £22,350 in relation to builders’ fees to mitigate the hazards identified by the Respondent. It is said that premium rates had to be paid to undertake the works quickly;
- xi) Counsel’s fees. The Applicant says he is willing to forego these if the Respondent deals with the application quickly. No invoice is provided;
- xii) £155 in respect of appeal costs application, £155 in respect of the second appeal costs; and
- xiii) £2500 in respect of the building inspectors final invoice fee that is to be issued when all the works are signed off in January 2016-01-13 £5000 – the economic goodwill that has been sustained in not being able to continue the long standing relationship with building insurers and property letting and sales agents due to Mr Johnson’s complaints with them

12. The Applicant therefore says that the Respondent’s conduct in serving the Prohibition Order and defending the appeal proceedings was completely unreasonable and has caused the Applicant to incur a significant amount of unnecessary costs.

The Respondent’s case

13. The Respondent relied on a skeleton argument dated 1 December 2015 and further submissions dated 27 December 2015. The tribunal has also taken into account a subsequent exchange of email correspondence.

14. By way of background the Respondent says that the property was converted in 2011 without planning permission. It is said that electric meters have been tampered with by the Applicant or its agents. Unauthorised meters have been removed and the electricity supply has been illegally and improperly reconnected. On entry in July 2015 the inspectors are said to have noted Category 1 Hazards relating to lighting, noise and excessive heat and that the location of the property made any scheme to improve unviable. It is further submitted that the decision to withdraw the Prohibition Order was made due to a Procedural Defect in the order.
15. The Respondent says that the tribunal should not award costs against as it entered into the property as a result of a report that electrical meters had been tampered with, the Applicant had bypassed the electricity supply, it made no attempt to engage with the Respondent and that the Applicant is not the registered owner or agent of any party connected to the lease. It is submitted that the Applicant is far from transparent and that his actions are a cause of his own misfortune. Post the service of the Prohibition Order it is said that the Applicant provided a scheme which contained insufficient detail and could not be used as a basis for negotiation.
16. The Respondent submits that the Applicant has not addressed how the Respondent's actions were said to be "unreasonable" given that as at 15 October 2015 some of the category 1 hazards remain outstanding. The issue of the prohibition Order was said to be a reasonable step. Although it is conceded that there was a defect in the notice itself, it is said this did nothing to detract from the fact that the Applicant did nothing to engage with the Respondent with a view to agreeing the details of a scheme to mitigate the hazards.
17. Further it is said that there is no evidence to justify the costs incurred in that there is no correspondence from the instructing solicitors, no invoices and no evidence of any inconvenience. It is also submitted that there is no evidence as to how the sums are calculated. The claims for "loss of rent" "builders fees" and "suffering" are not legal costs and not properly recoverable under rule 13. In particular it is said that;
 - (a) In relation to the legal costs the sum relates to work purportedly carried out after June 2015, no formal notice of acting was sent to the Respondent and no correspondence was sent to the Respondent up to the date of withdrawal. It is also said that it is inconceivable that that any bundles were properly prepared by the Applicant but rather were prepared by the Respondent. Any bundles prepared by the Applicant are said to fall well short of a bundle at a cost of £3000.
 - (b) In relation to the building report and other building costs it is said that these costs were not incurred for the purpose of the proceedings. The Respondent points out that there are ongoing concerns and that the

works would have been conducted in any event to comply with regulations. The sum of £22,350 is said to be a quotation and unreasonably incurred. The “Assent” invoice is said to be work which would have been necessary to comply with building regulations in any event. The “Consolux” invoice appears to have arisen after the order was revoked and therefore cannot be said to be an expense of the proceedings. As far as the damage to the locks was concerned it is submitted that the damage arose as a result of the need to enforce the original notice.

(c) As far as the claim for loss of rent is concerned it is submitted that the loss of 4 months of rent cannot flow from proceedings 8 weeks in length. In any event given the condition of the property it is said that it is unlikely anyone would have been able to occupy the properties during the proceedings.

18. The Respondent also points out that there was only a period of some 8 weeks between the issue and revocation of the Prohibition Order.
19. In conclusion the Respondent says that the claim for costs is misconceived in its entirety and wholly unreasonable.

The tribunal’s decision

20. The tribunal orders that the Respondent pay to the Applicant the sum of £155 in respect of the fee paid to the tribunal in relation to the appeal pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 (the “Procedure Rules”).

Reasons for the tribunal’s decision

21. The tribunal’s power to award costs is contained in Rule 13 (1)(b)(ii) of the Procedure Rules which states that;

“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-

(I) a residential property case ...”

22. The power to award costs pursuant to Rule 13 is discretionary and the wording of the provision makes it clear that the tribunal may only make such an order if a person’s conduct of the proceedings is unreasonable rather than his behaviour generally.

23. The power to award costs pursuant to Rule 13 should only be made where a party has clearly acted unreasonably in bringing, defending or conducting the proceedings. This is because the tribunal is essentially a costs free jurisdiction where parties should not be deterred from bringing or defending proceedings for fear of having to pay substantial costs if unsuccessful. In addition there should be no expectation that a party will recover its costs if successful. The award of costs should therefore in our view be made where on an objective assessment a party has behaved so unreasonably that it is fair that the other party is compensated to some extent by having some or all of their legal costs paid.
24. Having considered the facts of this case overall I consider that it is appropriate that an order is made under Rule 13 in respect of the application fee to the tribunal of £155 in respect of the Prohibition Order as it was subsequently withdrawn.
25. The tribunal took into account the overall context of this matter, in particular noting that the Prohibition Order was withdrawn due to an administrative error and a second prohibition order now having been served in respect of the same issues. Overall the tribunal does not consider the Respondent's conduct to have been unreasonable given the hazards which are said to exist at the property. It is noted that the landlord is now in the process of carrying out the required works.
26. The tribunal would make a general point that of the costs claimed to have been incurred only the fee paid to the tribunal appears to have been incurred by the Applicant. All of the other costs appear to have been incurred by Excel Management and/or Candy Homes which are not a party to these proceedings. Rule 13 applies to costs incurred by parties to the proceedings and does not envisage the recovery of costs by a third party. In addition Rule 13 is relevant to legal costs only rather than costs incurred in a wider sense.
27. The tribunal would comment as follows on the costs claimed;
 - i. £1,560 inclusive legal costs said to be incurred when seeking advice on the receipt of the Prohibition Order; - in relation to these costs the tribunal has an email from Blake Morgan in which reference is made to the outstanding sum of £1300 plus Vat advising in relation to the property. The email was addressed to Sajaid. The costs do not appear to have been incurred by the Applicant. It is unclear if an invoice was ever rendered and if so for what amount. In addition it is unclear if the time spent related solely to the Prohibition Order or to other matters. On that basis the costs are disallowed.
 - ii. £4,000- said to be incurred in the review of the case, preparing a report and taking a witness statement; - these costs were not

incurred by the Applicant and appear to have been incurred by SAS Management acting for Excel Managed Solutions. In any event they are excessive, no real breakdown is provided and they are disallowed in full.

- iii. £3,000 in respect of the costs of preparing bundles, postage and courier charges; - again these costs were not incurred by the Applicant and are disallowed on the same basis as (i) above.
- iv. Loss of rent in respect of Flat 1 – 4 months at £1,000 pcm making a total of £4,400; - the landlord of Flat 1 appears to be Candy Homes Ltd, the tribunal is unclear what the relationship between the Applicant and Candy Homes is. However the costs do not appear to have been incurred by the Applicant. Further the amount claimed appears excessive given the lifespan of the Prohibition Order. In any event the costs are not legal costs and do not fall under Rule 13. The sum is disallowed.
- v. Loss of rent Flat 2 – 4 months at £1150 pcm making a total of £4600; - the landlord of Flat 1 appears to be Candy Homes Ltd, the tribunal is unclear what the relationship between the Applicant and Candy Homes is. However the costs do not appear to have been incurred by the Applicant. Further the amount claimed appears excessive given the lifespan of the Prohibition Order. In any event the costs are not legal costs and do not fall within Rule 13. The sum is disallowed.
- vi. Loss of rent Flat 5 – 4 months at £1300 pcm making a total of £5200; - disallowed on the same basis as above
- vii. £200 in respect of the emergency replacement of new locks and key for the Flat 2 tenant following the change of locks by the Respondent; The tribunal considers that it was reasonable for the Respondent to enter the property given its concerns. This sum is disallowed.
- viii. £3200 in respect of M & E Report – this was said to be necessary to prove that the hazards could be remedied; Again this invoice appears to have been incurred by Excel Solutions rather than the Applicant. Further the tribunal considers that this is a cost which would have been likely to be incurred in any event given the circumstances of a property converted without consent. In any event the costs are not legal costs within Rule 13. The sum is disallowed.
- ix. £3,000 in relation to inconvenience and suffering; these are not costs which are within the tribunal's jurisdiction to award under rule 13.

- x. £22,350 in relation to builders' fees to mitigate the hazards identified by the Respondent. It is said that premium rates had to be paid to undertake the works quickly; again these are not costs incurred by the Applicant. In any event it appears to the tribunal that the cost of the works would have been necessary in any event to mitigate hazards, especially in the light of the second Prohibition Order which has been served and remains in force. In any event these costs are not legal costs falling under Rule 13.
- xi. Counsel's fees. The Applicant says he is willing to forego these if the Respondent deals with the application quickly; The tribunal notes the Applicant's position but in any event considers these costs unrecoverable as they were not incurred by the Applicant. In any event no invoice has been provided.
- xii. £155 in respect of appeal costs application, £155 in respect of the second appeal costs; the costs of the first appeal are allowed. The costs of the second appeal are not relevant to this application and may be the subject of a further application in that case.
- xiii. £2500 in respect of the building inspectors final invoice fee that is to be issued when all the works are signed off in January 2016. – These costs were not incurred by the Applicant and are not in fact relevant to the application. The tribunal considers the works would have been required and would have required a building inspector's fee in any event. In any event these are not costs which fall within Rule 13.
- xiv. £5000 – the economic goodwill that has been sustained in not being able to continue the long standing relationship with building insurers and property letting and sales agents due to Mr Johnson's complaints with them. – These are not matters within the tribunal's jurisdiction to award under rule 13.

Name: S O'Sullivan

Date: 28 January 2016