FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	CHI/OOHE/PHI/2018/0232
Premises:	14 Valley View Park, Valley View Caravan Site, Dunmere, Bodmin, Cornwall PL31 2RA
Applicant:	Wyldecrest Parks (Management) Ltd
Representative:	Mr D Sunderland
Respondent:	Mr W RJ Dudley Ms MA Fletcher
Type of Application:	Costs Application
Tribunal Members:	Judge A Cresswell (Chairman) Mr W H Gater FRICS ACIArb
Date of Consideration:	20 March 2019
Date of Decision:	20 March 2019

DECISION

Costs

The Background

1. The Applicant has made an application for its costs in the proceedings and for reimbursement of fees paid by it for his application under Mobile Homes Act 1983. This Decision must be read in the light of and as following the Tribunal's earlier Decision of 11 January 2019 ("the substantive Decision"). The Tribunal has retained the same names for the parties in this Decision, i.e. the Respondents being Mr W R J Dudley and Ms M A Fletcher and the Applicant being Wyldecrest Parks (Management) Ltd.

The Law

2. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 reads, so far as is relevant, as follows:

> (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; or
>
> (iii) a leasehold 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(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) 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.

The Application and Response

3. The application by the Applicant for costs has been considered, accordingly, on the basis of whether the Applicant had acted **unreasonably,** in accordance with Rule 13(1)(b) above, **in bringing, defending or conducting proceedings**.
4. The Applicant's application was received by the Tribunal by letter of 12 February 2019. It was accompanied by documents to support the sums it claimed.
5. The Respondents were given an opportunity to respond to the application for costs and did so in a letter of 4 March 2019, received by the Tribunal on 6 March 2019, which was accompanied by documents to support the Respondents' arguments.
6. Both parties were invited to indicate whether they were willing for the Tribunal to make its Decision without a hearing and neither party requested a hearing.

The Applicant

7. The Applicant referred to Rule 13 and sought costs and a reimbursement of its fee.

8. The Applicant stated that this was the second Tribunal application, the first having been a dispute as to the date of review of the pitch fee. At that time, the Respondent had submitted that he had not disputed the pitch fee amount but simply the review date.
9. The Respondents raised a number of issues said to reduce the amenity of the site. He was successful in relation to none of those issues and the Applicant details the evidence in relation to those issues.
10. At the hearing, he accepted that display of an incorrect park licence could not have a bearing on the level of fee. It is unreasonable to force a party to issue an application, which is then immediately conceded or raise issues for which no evidence is produced.
11. The evidence of the Respondents was inconsistent about lighting and lack of maintenance. While he may have been confused, it is submitted that Mr Dudley was not entirely honest and unreasonably made false allegations based on his dislike of the Applicant to try to influence the Tribunal.
12. The onus was on the Respondents to make their case.
13. The Applicant has been put to wasted time, travel and expense.
14. Attempts by the Applicant to resolve the matter led to accusation of blackmail when trying to do so. The Respondents' response has been hostile and uncompromising.

The Respondents

15. The Respondents asserted that the Applicant had provided an incorrect site licence to the Tribunal as a deliberate and dishonest ploy.
16. It was the Applicant, not the Respondents, who acted unreasonably. It was its first pitch review form which started the problems.
17. The travel costs are an attempt to recover costs from the first Tribunal case.
18. The concerns about the wall and steps and the light above the steps were real. The Tribunal did not inspect properly. The Applicant was aware of the light problem.
19. Mr Sunderland was not truthful about receiving the site licence.
20. The site licence was held by a different company, Wyldecrest Parks (West) Ltd, at the time of the hearing.
21. There has been a history of non-repair of the lights. Mr Dudley has been misquoted about this.
22. Mr Dudley was not dishonest. The Applicant did not do due diligence when acquiring the site and started the problems by not using the correct review date and the correct documentation.
23. There is a problem with the trees.
24. The Respondents repeat their reasons for challenging the fee increase.
25. The correct site licence is still not displayed 4 years after the Applicant acquired the park.
26. Although Mr Hassall conceded that a failure to display the correct licence was not a factor capable of influencing the quantum of the review, it is a big issue.

Consideration by the Tribunal

27. The Tribunal considered the application by the Applicant for costs on the basis that the Respondents had acted unreasonably.
28. The Tribunal reminds itself that this jurisdiction is generally a "no costs" jurisdiction. By contrast with the County Court, residential property tribunals

are designed to be "a largely costs-free environment": **(1) Union Pension Trustees Ltd, (2) Mr Paul Bliss v Mrs Maureen Slavin [2015] UKUT 0103 (LC).**

29. In **Harris v Academies Enterprise Trust & Ors UKEAT/0097/14/KN, Mr J Langstaff:** *Even if the Employment Tribunal is not in the same position as the civil courts because there is no cost-shifting regime, it was designed as a cost-free forum in so far as party-and-party costs were concerned. That is true of most Tribunals; it is a particular feature of most Tribunals.*

30. In **Willow Court Management Company (1985) Limited v Alexander** (2016) UKUT 0290 (LC), the following advice was given:

"At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case.

If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed."

"At the second stage it is essential for the Tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not" "the nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account"

"The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which 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 the parties and of the Tribunal." but other circumstances will clearly also be relevant…"

When considering the order to make, there is no need to show that the unreasonable conduct caused any identifiable loss on the part of the innocent party: see paras 40-41. The order need not be confined to the costs: "attributable to the unreasonable conduct".

"…[Applications] should be determined summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. We consider that submissions are likely to be better framed in the light of the tribunal's decision, rather than in anticipation of it, and applications made at interim stages or before the decision is available should not be encouraged. The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation."

"A decision to dismiss such an application can be explained briefly. A decision to award costs need not be lengthy and the underlying dispute can be taken as read. The decision should identify the conduct which the tribunal has found to be unreasonable, list the factors which have been taken into account in deciding that it is appropriate to make an order, and record the

factors taken into account in deciding the form of the order and the sum to be paid."
"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. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings."
"When exercising the discretion conferred by rule 13(1)(b) the tribunal should have regard to all of the relevant 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."
In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal said: "*The point has been made time and again that the F-tT's residential property jurisdiction is essentially a no costs jurisdiction, or to put it another way, 'a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs' (see* ***Willow Court Management Co v Alexander*** *[2016] UKUT 290 (LC) at [62].) It is therefore understandable why the F-tT decided not to make a costs order against the tenants although the landlord had largely succeeded at first instance."*

31. In **Marcus J Staples v Danute Liuba Cranfield** [2018] UKUT 341 (LC), the Tribunal found as follows:

A "leasehold case" to which this power applies is any case in respect of which the FTT has jurisdiction under any of the enactments specified in section 176A(2) of the Commonhold and Leasehold Reform Act 2002.

If a tribunal makes an order and the party against whom it is made unreasonably fails or refuses to comply with that order, then in my view this act (namely the act of omission by failing to comply) can properly be described as an act done in defending or conducting proceedings.
If a party against whom an order was made subsequently, every time complaint was made that the party had failed to comply with the order, wrote back saying that they refused to comply with the order and thereby generated the need for a further application to be made for the purpose of enforcing the order, then such a party could properly be said to be acting unreasonably in defending or conducting proceedings.
If a party, instead of writing back setting out a refusal to comply, merely ignores the order and does nothing then equally such party could properly be said to be acting unreasonably in defending or conducting proceedings.

32. The Tribunal has had regard to the word *"unreasonably."* The test is whether the behaviour permits of reasonable explanation: HH Judge Huskinson in **Halliard Property Company Limited and Belmont Hall and Elm Court RTM Company Limited LRX/130/2007 LRA/85/2008**. In **Ridehalgh v Horsfield** (1994) 3 All ER 848, Bingham LJ said:
"*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 judgement, but it is not unreasonable".

33. The Tribunal commenced a two-stage approach. First to find whether the Respondents acted unreasonably and then, if it so found, to exercise its discretion whether to order costs having regard to all of the circumstances, including the Tribunal's overriding objective.
34. The Tribunal examined the submissions of the Applicant which it has detailed above. It concentrated only upon those assertions which could have relevance to the issue in the preceding paragraph.
35. The Respondents were entitled to challenge the pitch fee. The Respondents were entitled to ask the Tribunal to consider issues which could affect the quantum of the pitch fee; in the event, the Tribunal has determined that the pitch fee was properly demanded.
36. The Tribunal viewed the Respondents as not being lawyers, but rather legally unrepresented persons with very limited knowledge. Some of Mr Dudley's submissions added to the basis for this conclusion.
37. Whilst it is true that none of the issues raised by the Respondents led to a successful conclusion, they were entitled to make them.
38. The removal of the fire-fighting equipment by the Applicant was a serious issue worthy of consideration and the Tribunal found against the Applicant's submission that the issue could have no relevance to the pitch fee.
39. Mr Dudley was mostly polite, as was Mr Sunderland. These were not two old friends coming to detail a shared version of events and adverse comments were made by both sides.
40. Whilst Mr Dudley was not always factually correct to say as he did, the Tribunal did not conclude that he was telling deliberate untruths. Similarly, the Tribunal did not conclude that Mr Sunderland was being deliberately untruthful when describing the lower park boundary at the inspection.
41. A failure to provide evidence to support a contention must be seen as being in the opposing party's favour and, in the absence of obvious malice, cannot be seen as unreasonable.
42. The Tribunal finds that the Respondents have not acted unreasonably in bringing, defending or conducting proceedings.

Fees

43. In **Cannon v 38 Lambs Conduit LLP** (2016) UKUT371 (LC), the Upper Tribunal ordered the reimbursement of fees where *the tenants have succeeded on the principal substantive issue*.

"Reimbursement of fees does not require the applicant to prove unreasonable conduct on the part of an opponent. It is a matter for the tribunal to decide upon in the exercise of its discretion, and (as with costs orders) the tribunal may make such an order on an application being made or on its own initiative."

44. Whilst the test to be applied under Rule 13(2) requires no analysis of whether a person has acted unreasonably, when all that is recorded above is weighed in the balance, the Tribunal finds that it would be appropriate to order the Respondents to reimburse the Applicant with the fees paid by it. There appears to the Tribunal to have been no other viable option open to the Applicant to resolve the issues save by making its application to the Tribunal. The Respondents are ordered to pay the sum of £20 to the Applicant in reimbursement of fees.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

