



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

Case Reference : **CHI/40UD/LIS/2018/0053**

Property : **1B North Street, Martock, Somerset
TA12 6DH**

Applicant : **Charlotte C Clark**

Applicant's Lawyers : **Solicitors: Amicus Law (SW) LLP
Counsel: Philip Smith**

Respondent : **Franklin James Ingram**

Type of Application : **Determination of liability to pay and
reasonableness of service charges
under Section 27A of the Landlord
and Tenant Act 1985**

Tribunal Members : **Judge Professor David Clarke
Jan Reichel MRICS**

Dated : **18 June 2019**

DETERMINATION ON COSTS AND STATEMENT OF REASONS

DETERMINATION ON COSTS

The Tribunal determines that the Respondent is liable to pay to the Applicant the sum of £5,610.48 in respect of the costs incurred by the Applicant in this matter on the basis that he acted unreasonably in defending the proceedings and further acted unreasonably in failing either to attend the proceedings or to provide any written submissions to the Tribunal. The Tribunal further determines that the Respondent must reimburse to the Applicant the fees of £300 paid by her on submission of her application.

STATEMENT OF REASONS

1. At the full hearing of this matter, the Tribunal determined that the Respondent was liable to pay the total sum of £5,673.30 by way of service charge due for the years 2012-2017, this being the total of insurance, management charges and repairs to the roof during the six years in question; and it further determined that, within that total, the sums of £125.00 for emergency roof repairs and for Land Registration fees of £4.50 were reasonably incurred; and it further determined that the charge for the roof overhaul incurred in 2017 and amounting to £3,886.20 was reasonable and properly incurred.

2. At the conclusion of the hearing. Mr Smith on behalf of the Applicant, made an application for costs, submitting to the Tribunal a schedule of costs and fees incurred amounting to £5,910.48, including VAT.

3. Under the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, rule 13, the Tribunal may make an order for costs only if a person has acted unreasonably in bringing, defending or conducting proceedings (rule 13(1)(b)(ii)). Mr Smith made an application under this section.

4. The grounds of the application were as follows:

(i) The Respondent has never paid anything in respect of his service charge obligations.

(ii) The Respondent does not respond to letters from the landlord or engage meaningfully on any issue relating to his obligation to pay a service charge.

(iii) The Respondent, though aware of the proceedings before the Tribunal (he participated by telephone in the Directions hearing), did not attend or give reasons for his non-appearance before the Tribunal. He did not respond to the offer of mediation even though the Applicant was prepared to mediate.

(iv) The Respondent has never given any reasons for his non-payment of rent and of service charge nor put forward any reason at all that would justify such non-payment.

5. Mr Smith stressed to the Tribunal when submitting his case for a costs order that the Respondent had chosen not to act and decided not to respond. He had not put forward any suggestion of financial difficulties. In not making a case, he was acting 'quintessentially unreasonably'. This was not a case where there was a genuine grievance

and a party wanted to have a day in the court to air that grievance. The Applicant had had no alternative, if she was to take action to recover the sums due, to take these proceedings.

6. Rule 13(6) does not permit the Tribunal to make an order for costs against the person paying without giving that person the opportunity to make representations.

7. Therefore, in respect of the Applicant's claim for costs, and in view of the fact that the Respondent did not appear and was not represented, the Tribunal adjourned the case on the question of costs. The Respondent was required, within a period of 28 days (from the date that the Respondent would have received in normal course of post a copy of the determination sent to him by the Tribunal, together with a copy of the summary of the Applicant's costs presented to the Tribunal at the hearing) submit to the Tribunal his comments on the application for costs and his reasons why the Tribunal should not make an order for costs in this case. The Tribunal stated that, unless good reason is given for there to be a further hearing in this matter, the Tribunal would then proceed to determine the issue of costs without a further hearing.

8. No response has been received from the Respondent and no submission has been made by him on the issue of costs. The Tribunal has therefore proceeded to consider and determine the Applicant's submission for a costs order.

9. The Tribunal determines that the Respondent has indeed acted unreasonably for the reasons submitted by Mr Smith on behalf of the Applicant. A leaseholder who chooses to pay no rent or service charge at all for a considerable period of time notwithstanding his obligations in the Lease and while enjoying the benefit of possessing the Property is behaving unreasonably. When he also chooses to question and thereby delay essential roof repairs, refuse an offer of mediation to enable any of his concerns to be addressed and finally offer no arguments to justify a defence to these proceedings or appear to put his case, the unreasonableness becomes very substantial indeed.

10. The schedule of costs submitted by the Applicant and sent to the Respondent for comment consists of legal fees and disbursements of £5,610.48 including VAT, and it further included a request for a refund of the issue fee of £200 and the hearing fee of £100 paid to HMCTS in respect of this application and hearing, making a request of £5,910.48 in total. After careful examination of each element of this submission, the Tribunal determines that the amounts are reasonable in the circumstances and determines that the amount should be paid by the Respondent in full.

11. In particular, in respect of the detailed items in the legal costs:

(i) The Tribunal considers that Counsel's fees of £750 plus £150 VAT is an entirely reasonable sum.

(ii) The Tribunal determines that the legal costs of Mr Richard Kemp, of Amicus Law, amounting to £3874.70 (plus VAT), though on the face of it on high side, are also reasonable. His hourly charge of £175 is reasonable and the 20 hours 40 minutes of work, with a considerable amount of correspondence and telephone calls in addition, appear to the Tribunal to be justified. The Tribunal considers that, in total, the amount reflects the

amount of time that was needed to be devoted to this case. The Tribunal notes in this context that Mr Kemp did not make a further charge for attending the hearing.

(iii) The bundle of papers for the hearing was of high quality and the copying charge of £140.70 plus VAT is eminently reasonable.

12. Under rule 13(2), the Tribunal is empowered to 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. For the same reasons as outlined above in respects of the costs incurred, the Tribunal orders the Respondent to reimburse to the Applicant the fees paid to HMCTS amounting to £300 in total.

Right of Appeal

13. 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.

14. 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.

15. 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.

16. 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 that the party who is making the application for permission to appeal is seeking.

Judge Professor David Clarke
18 June 2019