FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AP/LBC/2018/0054 and LON/00AP/LSC/2018/0303**
Property	**:**	**35 Granville Road Wood Green London N22 5LP**
Applicant	**:**	**High Cross Estates Limited**
Representative	**:**	**Ms Alexa Beale; Solicitor**
Respondent	**:**	**Mr Giampiero Corrias**
Representative	**:**	**In person (non-attendance)**
Type of application	**:**	**Application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002 and For the determination of the liability to pay and reasonableness of service charges (s.27A Landlord and Tenant Act 1985) – Rule 13 Costs application**
Tribunal members	**:**	**Judge Professor Robert M Abbey**
Venue of Paper Based Hearing and date	**:**	**22 July 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Costs Decision	**:**	**22 July 2019**

COSTS DECISION

Application for costs

1. An application was made by the Applicant under Rule 13 of the Tribunal Rules in respect of the Applicant's costs. The Tribunal subsequently received a schedule of costs totalling £8409.18. This is the amount listed by the Applicant and consists of legal costs, Tribunal fees, disbursements and VAT. The details of the provisions of Rule 13 are set out in the appendix to these Directions and rights of appeal made available to parties to this dispute are set out in an Annex.

2. Before a costs decision can be made, the Tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the Tribunal to consider whether, in the light of unreasonable conduct (if the Tribunal has found it to have been demonstrated), it ought to make an order for costs or not. It is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

3. The Applicant filed with the Tribunal the Applicant's written costs application dated 1 February 2019 and comments/observations thereon were requested of the Respondent and these were received by the Tribunal in June 2019, after an appeal by the Respondent had been refused in the Upper Tribunal.

4. It now falls to me to consider the costs application in the light of the written submissions before us. We do this but in the context of the circumstances of the original decision.

DECISION

1. The Tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008,* (where he followed the definition of unreasonableness *in Ridehalgh v Horsefield* [1994] Ch 205 CA), the Tribunal was not satisfied that there had been unreasonable conduct so as to prompt a possible order for costs.

2. The Tribunal was also mindful of a recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. At paragraph 24 of the decision the Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore following the views expressed in this recent case at a first stage the Tribunal needs to be satisfied that there has been unreasonableness.

3. At a second stage it is essential for the Tribunal to consider whether, in the light of any unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

4. In *Ridehalgh* it was said that ""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.

5. The *Willow Court* decision is of paramount importance in deciding what conduct might be unreasonable. I have mentioned the approach of the Upper Tribunal in this decision but I think it appropriate to quote the relevant section of the decision in full:-

> "*An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level…..“Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham’s “acid test”: is there a reasonable explanation for the conduct complained of?”*

6. It seems to Tribunal that therefore the bar to unreasonableness is set quite high in that what amounts to unreasonableness must be quite significant and of serious consequence. This being so the Tribunal must now consider the conduct of the parties in this dispute given the nature of the judicial guidance outlined above.

7. The Applicant maintains that the Respondent was unreasonable in the conduct of the dispute. Consequently, the Applicant invited the Tribunal to make a finding of unreasonableness on the part of the Respondent. The Applicant says that the Respondent was unreasonable in failing to pay ground rent and insurance for many years and for allowing substantial arrears to build up. Furthermore the Applicant also asserted that it was unreasonable of the Respondent to fail to engage with the process arising from the claim. In particular the Applicant reminded the Tribunal that the Respondent agreed to mediation organised by the Tribunal but subsequently failed to attend. Similarly the Respondent failed to attend the oral hearing in January 2019. These two non-attendances were all the

more unreasonable when it was noted that that the Respondent was in detailed correspondence with the Tribunal at the times of the mediation and hearing.

8. The Respondent has been giving time to respond in detail to the costs claim on more than one occasion. Regrettably he has failed to do so. He has made counterclaims arising from another dispute relating to a possible enfranchisement claim. However, this has nothing to do with the costs claim arising out of this dispute and must therefore be discounted. He has also mentioned the cost of repairs he has carried out to the property. Again these expenses have nothing to do with the costs claim made by the Applicant and cannot therefore be taken into account in this regard.

9. In the absence of any relevant submissions on the costs claim from the Respondent the Tribunal considered the paperwork from the original decision and also the Applicant's comments. In these circumstances, the Tribunal was satisfied that there was enough information or detail to persuade it that there had been unreasonable conduct on the part of the Respondent. Despite adequate notice of both the hearing and the mediation session having been given to the Respondent, the Respondent failed to attend without it would seem any mitigating reasons not to do so. This in itself allows the Tribunal to make this determination. Furthermore the sustained nature of the unreasonable conduct is sufficient for the Tribunal to decide to exercise its discretion to make a costs order thus addressing stage two of the process described in the *Willow* decision mentioned above.

10. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal can find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore satisfied that stage one of the process had been fulfilled in that it found there has been unreasonableness for the purposes of a costs decision under Rule 13 on the part of the Applicant.

11. In the circumstances the Tribunal determines that there be an order for costs pursuant to Rule 13. The Tribunal has carefully considered the costs schedule prepared by the solicitors for the Applicant and is of the view that it is reasonable and proportionate given the nature of the claim and the work required to progress the matter through this claim process. The majority of work was carried out by a partner (Grade A fee earner) who has assisted the Applicant on matters relating to the property since 2012 and his firm has acted for the landlord company for at least 25 years. Work to prepare the applications and submit them to the Tribunal was dealt with by a junior fee earner (Grade C) and Counsel was not instructed. This all seems entire appropriate and proportionate.

12. The Tribunal fees claimed are accurate and therefore approved. The disbursements, (courier fees), appear proportionate and are also therefore approved. This therefore means that the claim is approved as drawn in the

sum of £8409.18 and is payable by the Respondent to the Applicant on or before 28 days from the date of this decision.

13. In the circumstances the Tribunal determines that there be an order for costs payable by the Respondent to the Applicant in the above terms pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8).

Name: Professor Robert M Abbey **Date:** 22 July 2019

Appendix

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

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 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.

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.