



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

Case Reference : CHI/24UJ/OLR/2019/0026

Property : 14 Hotspur Close, Hythe, SO45 6DP

Applicant : Wendy Patricia Tustian and Nicholas Roland Tustian as Executors of Patricia Peggy Bull deceased

Representative : Paris Smith LLP Solicitors

Respondent : Ziva Newman

Representative : Bindman & Co

Type of Application : Determination of Costs Payable, Lease Extension and Application for Costs Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013

Tribunal Members : Judge N P Jutton

Date of Directions : 9 August 2019

DIRECTIONS

- 1 On 11 January 2019 the Applicants made an application to the Tribunal to determine the amount of premium to be paid by the Respondent for a Statutory Lease Extension and as to the form of the proposed new lease. The application form also sought a determination as to the amount of costs that would be payable to the Respondent by the Applicant pursuant to Section 60 of the Leasehold Reform Housing and Urban Development Act 1993 (the 1993 Act) *'if not subsequently agreed between the parties'*.
- 2 Directions were made by the Tribunal and the matter came before the Tribunal for determination on the papers (without a hearing) on 26 July 2019.
3. The bundle of documents filed by the Applicants contained a statement at page 76 headed "*Summary of Issues in Dispute to be Determined by the Tribunal*". Two issues were listed. Firstly the premium to be paid for the new lease and secondly the form of the new lease. There was no reference to costs arising under Section 60 of the 1993 Act. The assumption was therefore that the parties had agreed the Section 60 costs.
- 4 The Applicants' solicitors wrote to the Tribunal office on 14 May 2019 purporting to make an application pursuant to Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules), for costs albeit as at that date there had been no decision made by the Tribunal. Rule 13(5) allows an application for costs to be made pursuant to that rule at any time during the proceedings or within 28 days of the date when the Tribunal sends a decision notice recording its decision which finally disposes of all of the issues in the proceedings.
- 5 The Applicants' solicitors have now written to the Tribunal asking if an order could be made in relation to costs by reference to the said letter of 14 May 2019. Enclosed with that letter is a form of Statement for Costs. Section 60(5) of the 1993 Act provides that a tenant will not be liable for costs under that section which were incurred in connection with proceedings before the Tribunal. Rule 13 of the 2013 Procedural Rules allows a party to make an application for costs against another party if that other party has acted unreasonably in bringing,

defending or conducting proceedings before the Tribunal. Neither the said letter or the statement of costs differentiate between the costs which the Applicants say are payable pursuant to Section 60 of the 1993 Act and the costs which the Applicants seek to recover pursuant to Rule 13 of the Rules. It is unclear whether the Applicants seek just an order for costs pursuant to Rule 13 or also a determination of the costs payable by the Respondent pursuant to section 60 of the 1993 Act.

6. During the course of the proceedings before the Tribunal Directions were made on 29 March 2019 that provided that if the Respondent failed to comply with previous Directions made by the Tribunal on 14 April 2019 that she would be automatically debarred from further participation. The Respondent did fail to comply with the Directions of 14 April 2019. However the Tribunal bears in mind that it is told by the Applicants' solicitors that the Respondent is now represented. Further the Directions made by the Tribunal pre-date the Applicants' application for costs pursuant to Rule 13. In all the circumstances and in the interests of justice it would not be appropriate for the Tribunal to make an order in relation to costs payable either pursuant to Section 60 of the 1993 Act or pursuant to Rule 13 without first giving the Respondent the opportunity to make representations. In any event Rule 13(6) requires the Tribunal to grant the Respondent to such an application the opportunity to make representations.
7. The Tribunal therefore **Directs** as follows:
 1. The Applicants shall by **4.00pm on 27 August 2019** file and serve:
 - i) A statement / breakdown of the costs that they seek to recover from the Respondent pursuant to Section 60 of the 1993 Act together with all supporting invoices/vouchers for disbursements and experts fees (if that application is being pursued).
 - ii) A Statement of Case in support of their application pursuant to Rule 13 of the 2013 Rules.
 - iii) A Statement of Costs in a form suitable for summary assessment of the costs that they seek pursuant to Rule 13 of the Rules.
 2. The Respondent shall by **4.00pm on 10 September 2019** serve and file a Response to both the Applicants application in respect of the costs sought under Section 60 of the 1993 Act (if that application is being pursued) and the Applicant's application for costs pursuant to Rule 13 of the Rules to include any observations

which the Respondent seeks to make in relation to the amount of costs claimed

3. After 10 September 2019 the Tribunal will make a determination in relation to both applications on paper without a hearing in accordance with Rule 31 of the Rules unless either party objects in writing to the Tribunal within 28 days of receipt of these Directions.

Dated this 9th day of July 2019

Judge N P Jutton