



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

Case reference : **LON/00AQ/LBC/2018/0091**

Property : **Flat 8 Maison Alfort Harrow HA3 5EL**

Applicant : **Buttercup Buildings Limited**

Representative : **Mr Kamlesh Anand**

Respondent : **Mr Premji Halai(1)
Ms Savitaben Halai (2)**

Representative : **David John Moore of Rodgers & Burton
Solicitors**

Type of application : **Determination of costs under Rule 13**

Tribunal members : **Judge Carr**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **December 16th 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines not to make an order for costs under Rule 13 of the Tribunal procedural rules.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The Respondent seeks a determination under Rule 13 of the Tribunal Rules on the basis that the Applicant acted unreasonably in bringing and/or pursuing proceedings after 8th January 2019.
2. The matter is determined by the Tribunal on the basis of the submissions provided by the Respondent.

The Respondent's argument.

3. The Respondent argues that the application was unreasonable on the following grounds:
4. First he argues that the Applicant was unreasonable in bringing and pursuing proceedings in the name of Buttercup Building Limited when the proceedings should properly have been brought in the name of Buttercup Buildings Limited. The Respondent argues that the error seems to have been sheer slapdash on the part of the applicant and that any costs relating to the amendment were therefore unreasonably incurred.
5. The Respondent also argues that none of the three complaints raised by Mr Anand were reasonable.
6. The first complaint was that there was a subletting contrary to the user clause in the lease which required the premises not to be used otherwise than as a private dwelling. The Respondent argues that it was unreasonable for the Applicant to pursue this complaint as at the directions hearing in this matter the Judge suggested to the Applicant that merely subletting a property was not breach of a covenant not to use the property otherwise than as a private dwelling. Nonetheless the Applicant disagreed and persisted in his application.
7. The Applicant then changed his complaint to suggest that he was concerned about multiple sublettings. The Respondent argues that this argument was untenable as there was no proof of multiple sublets.

8. The second complaint was that the Respondent had not given notice of the subletting. The Respondent admitted this on 8th January 2019 and his representatives gave notice by a letter dated 25th January 2019 to the Applicant of the subletting.
9. The Respondent argues that as the Applicant told the hearing that the failure of the Respondent to give notice was remediable and would not lead to forfeiture then the proceedings were not a preliminary to proceedings under s. 146 of the Law of Property Act 1925 and therefore were an abuse of process simply to impose an unreasonable burden on the Respondent.
10. The Respondent further argues that, as the admission by the Respondent on 8th January 2019 effectively ousted the jurisdiction of the Tribunal to make a determination, it was completely unreasonable for Mr Anand to continue to pursue the issue.
11. The third issue was only raised by application on 15th January 2019 (Judge Martynski having given permission to raise the issue at the directions hearing). This was based upon the alleged failure of the Respondent to give access to the Applicant contrary to the terms of the lease. However access had been given but the Applicant declined to accept it because he demanded that the Respondent attend any inspection. The Respondent argues that the Applicant had no justification or such a demand and the lease did not provide for it. The Respondent argues that this was a further attempt to increase the burden on the Respondent.
12. In summary the Respondent argues that it is unreasonable to bring applications of this type without a degree of due diligence on the part of the Applicant. The Respondents have been put to some expense. The Respondent accepts that reasonableness is a high bar but it must be measure in part by the effect it has on the Respondents.

The tribunal's decision

13. The tribunal determines not to make an order under Rule 13.

Reasons for the tribunal's decision

14. The starting point for a decision of the Tribunal has to be the Upper Tribunal decision in the well known decision of Willow Court reported at [2016] UKUT 0290 (LC). It was made clear in that case that there was a very high threshold to the issue of unreasonable behaviour. In particular the Upper Tribunal noted that for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's

case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.

15. Whilst the Tribunal accepts that the Applicant was resistant to suggestions from the Tribunal and was persistent before the Tribunal it considers in this case it was because he was unable to appreciate the weaknesses of his own case and this led him to pursue the matter when perhaps someone properly advised would not have done so.
16. The Tribunal considers that the Applicant's behaviour was very close to the threshold of reasonableness but did not on this occasion cross the threshold. It may be however that if the Applicant brings future proceedings and behaves in a similar manner the Respondent should bring this decision to the attention of any future Tribunal.

Name: Judge Carr

Date: 16th December 2019

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

