



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

Case reference	:	CAM/00MD/LSC/2019/0034
Property	:	Flat 54 Ashbourne House, Slough SL1 2LB
Applicant	:	Mr Adil Iftakhar
Respondent	:	Slough Borough Council
Type of application	:	Costs - rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013
Tribunal member(s)	:	Judge Wayte
Date of decision	:	4 February 2020

DECISION

The tribunal determines that the Respondent should pay the Applicant £266 in respect of his costs of the proceedings within 28 days of the date of this decision.

Background

1. The original application in this case was dismissed as the respondent withdrew the charge in dispute. This was the second year running that a charge had been levied against the applicant in respect of a waking watch at the property and subsequently withdrawn by the council. The order confirming the dismissal of the application dated 12 September 2019 confirmed that “...*the charges should have never been levied as an interim service charge as the Respondent now admits and in that case no application would have been made in the first place.*” In those circumstances the respondent was ordered to refund the applicant’s issue fee of £100 within 28 days pursuant to Rule 13(2) of the Tribunal

Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).

2. Following the receipt of that order the applicant made an application for his costs of the proceedings under Rule 13(1)(b) of the 2013 Rules, on the basis that the respondent had acted unreasonably in defending or conducting the proceedings. Directions were given for written representations and the application to be decided without a hearing, in the absence of a request from either party. No such request was received and the matter was therefore considered on the papers on 4 February 2020.
3. The leading decision on Rule 13 costs is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. In paragraph 43 the Upper Tribunal made it clear that such applications should be determined summarily and the decision need not be lengthy, with the underlying dispute taken as read. There are three steps: I must first decide if the applicant acted unreasonably. If so, whether an award of costs should be made and, finally, what amount.
4. In deciding whether a party’s behaviour is unreasonable the Upper Tribunal in *Willow Court* cites with approval the judgment of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

““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?”.

The applicant’s case

5. The applicant’s grounds dated 9 October 2019 set out his initial case. In brief, he referred to *Willow Court* and stated that all three stages were met. He relied in particular on the fact that he had asked the council’s leasehold services on numerous occasions to withdraw the charge before he issued proceedings and as the tribunal’s decision stated, his costs were therefore incurred due to their failure to act reasonably at that stage.
6. His initial claim was for £1500, being 14 hours at £100 per hour plus the tribunal fee. In response to the tribunal’s directions which confirmed that in accordance with the Practice Direction to Part 46 of the Civil Procedure Rules, costs recoverable by a litigant in person are paid at £19 per hour, unless written evidence can be provided to support the claim of a loss of earnings and that an order had already

been made for the council to repay the application fee, the claim was reduced to £266.

The respondent's case

7. The council replied on 21 November 2019, denying they acted unreasonably as the charges were being discussed with the applicant. They stated that "*the Respondent thought it was disproportionate for the Respondent to defend the waking watch charge as the Applicant is the only resident left within the block*". This was an odd comment to make as the reason why the charge was withdrawn was actually that under the lease the council were only entitled to levy an interim charge of 50% of the previous year's charge. The respondent also stated that they thought £266 was an excessive amount.

The applicant's reply

8. In response, the applicant referred to his extensive email correspondent with the respondent and the final email dated 20 May 2019 which prompted his application. He stated he was yet to receive a refund and felt that as the only resident left in the block the council were hostile and unresponsive to him as they were trying to force him out. In the bundle prepared for this determination he increased his claim for costs to £475, adding an additional £209 in terms of the time taken to prepare the Rule 13 application.

Tribunal decision and reasons

9. Bearing in mind the history to this case and the fact that the council's own lease was clear that they had no ability to charge the waking watch as an interim charge, I do consider they have acted unreasonably in the *Willow Court* sense. In those circumstances I consider it is appropriate to make an order for costs in respect of the original application and that £266 is clearly a reasonable amount. Although I acknowledge that the applicant has spent more time in preparing for this application, I do not consider that it was unreasonable for the respondent to resist it and in the circumstances, I am not allowing the additional £209 claimed.
10. Any enforcement of this or the original order is through the County Court.

Judge Ruth Wayte

4 February 2020

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).