



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

**Case Reference** : **LON/00BG/LSC/2019/0071**

**Property** : **Apartment 147, 1 Prescott Street,  
London E1 8RL**

**Applicant** : **Prescot Management Co Ltd**

**Representative** : **Colman Coyle Ltd  
Mr Robert Brown, counsel**

**Respondent** : **Rini Laskar**

**Type of Application** : **Liability to pay service charges**

**Tribunal** : **Judge Nicol  
Mr K Ridgeway MRICS  
Mr ON Miller**

**Date of Decision** : **20<sup>th</sup> September 2019**

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**DECISION ON COSTS APPLICATION**

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**The Tribunal orders the Respondent to pay the Applicant's costs in the sum of £18,500** under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 against the Respondent for the reasons set out below.

**Background**

1. By a decision dated 12<sup>th</sup> August 2019, the Tribunal determined that the sums claimed by the Applicant were payable but adjourned on directions consideration of the Applicant's application for the Respondent to pay costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

2. The Respondent failed to comply with the directions. The Tribunal chased her by letter dated 3<sup>rd</sup> September 2019 which prompted her to apply by letter of the same date for an extension of time. The Tribunal refused to extend time in a decision dated 10<sup>th</sup> September 2019.
3. The Respondent also applied for permission to appeal but the Tribunal refused by a decision dated 11<sup>th</sup> September 2019.
4. The directions said the Tribunal would determine the costs application in the light of the parties' written submissions, without a hearing, as soon as possible after 16<sup>th</sup> September 2019. The Applicant's submissions on this issue were set out at paragraphs 32 to 45 of their original statement of case. Their Statement of Costs dated 26<sup>th</sup> July 2019 totalled £36,568.80. By letter dated 2<sup>nd</sup> September 2019, as well as protesting the Respondent's failure to comply with the directions, the Applicant's solicitors sought a further £322 plus VAT in respect of this costs application. The Respondent has made no submissions on the costs application, in or out of time.

### **The relevant law**

5. The relevant parts of rule 13 state:
  - (1) The Tribunal may make an order in respect of costs only—
    - (a) ...
    - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
      - (iii) a leasehold case; ...
6. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... 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. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.
7. The Upper Tribunal in *Willow Court* went on to say:
  24. ... 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. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. “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?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...

### **The Tribunal’s reasoning**

8. The first issue is to identify the ways in which it is alleged that the Respondent has acted unreasonably in the sense described above.
9. On 20<sup>th</sup> February 2019 the Tribunal issued directions, the first of which required the Applicant to send relevant documentation to the Respondent by 6<sup>th</sup> March 2019. This they did by letter dated 4<sup>th</sup> March 2019, specifically referring to the directions. It was also sent by email. The Respondent has never claimed that this letter was not received.
10. The next direction was for the Respondent to send relevant documents supporting her case to the Applicant by 20<sup>th</sup> March 2019. When she failed to do so, the Applicant’s solicitors wrote to both her and the Tribunal protesting her failure. Again, the Respondent has never claimed that these letters were not received.
11. By letter dated 25<sup>th</sup> March 2019 the Tribunal required the Respondent to send a letter explaining her non-compliance. The Respondent replied by phone and email on 2<sup>nd</sup> April 2019 claiming to have only just received the letter of 25<sup>th</sup> March 2019 and not to have received the directions at all.
12. By letter dated 8<sup>th</sup> April 2019 the Applicant’s solicitors pointed out that they had told the Respondent about the directions in two letters dated 4<sup>th</sup> and 21<sup>st</sup> March 2019. The Respondent replied by letter dated 9<sup>th</sup> April 2019 making two points:
  - (a) She said she was “on leave” during February and March. The only reasonable interpretation of this statement would have been that she

was away from the premises and so unable to address correspondence from the Tribunal or the Applicant. When the Applicant pointed out in a letter dated 11<sup>th</sup> April 2019 that she had been seen frequently on CCTV and so could not have been away from the premises, the Respondent replied by letter of the same date that she was not away but “on leave”. This could only mean that she was not at work but at home which would actually allow her to be *better* able to address the said correspondence. This assertion of being on leave, rather than being an excuse, makes the Respondent’s failure to comply with the directions worse.

- (b) The Respondent stated, “the Landlord controls mail within my building, and as I will submit under oath has interfered with my services within the building.” This is an example of a pattern repeated consistently by the Respondent and discussed further below, namely of making serious allegations of criminal behaviour by the Applicant without a shred of evidence, particulars or follow-through. As noted in the Tribunal’s decision of 12<sup>th</sup> August 2019, rather than attend the Tribunal to speak to her witness statements and subject herself to cross-examination, she failed, without any explanation, to come to the hearing.
13. By letter dated 15<sup>th</sup> April 2019 Tribunal Judge Martynski varied the dates by which each direction had to be complied with.
  14. There then entered what became the single most important substantive issue in this case. By letter dated 7<sup>th</sup> May 2019 the Respondent protested that the Applicant had failed to comply with the Tribunal’s first direction by failing to produce copies of the certificates required under clause 3(b) of the Sixth Schedule to the lease.
  15. As explained in the Tribunal’s decision of 12<sup>th</sup> August 2019, this follows from a fundamental misunderstanding by the Respondent of the terms of her lease – she wrongly thought her lease required the production of a certificate from an independent accountant prior to any demand for payment of service charges. In fact, she was seeking a document which not only had never existed but which, contrary to her understanding, the lease did not require. The Applicant pointed out the Respondent’s misunderstanding in a letter dated 8<sup>th</sup> May 2019 but she continued to press her point, causing further delay in compliance with the directions.
  16. The Respondent’s misunderstanding is unfortunate and probably could have been dispelled if she had taken proper legal advice. Her principal ground of challenge against the service charges claimed in the application was always misconceived. However, the Tribunal has no doubt that the Respondent genuinely believed otherwise. In the Tribunal’s opinion, her pursuit of this ground of challenge does not constitute unreasonable behaviour on her part within the meaning of rule 13.

17. The Applicant has objected to the Respondent's repeated allegations of which it listed the following examples:
  - (a) Letter of 9<sup>th</sup> May 2019: "you are trying to mislead the tribunal. As an officer of the court, you should be ashamed."
  - (b) Letter of 14<sup>th</sup> May 2019: "Annex 1 Previous Solicitors of the Applicant and Reasons for their Demise: ... PM Legal Services Removed ostensibly for perjury – as alleged by Respondent; incontrovertibly provable, through documentation."
  - (c) Letter of 17<sup>th</sup> May 2019: "Threats, intimidation and physical abuse from the Applicant's thugs are the common hallmark of these meetings and the police are frequently present."
  - (d) The Respondent's witness statement dated 9<sup>th</sup> May 2019, paragraph 2, alleged "fourteen years of trustee and corporate maleficence".
  - (e) Paragraph 4 of the same witness statement alleged that "the Applicant is completely incompetent."
  - (f) Paragraph 7 alleged, "The directors are incompetent ... They frequently act unlawfully."
  - (g) Paragraph 13 alleged, "the Applicant company has ... committed perjury; that is, they have lied under oath and in sworn testimony. This materially affects subsequent service charge years of 2018 and 2019."
18. Apart from the allegations of incompetence, these are all examples of the pattern of the Respondent's behaviour referred to above, namely making serious allegations of criminal behaviour by the Applicant without a shred of evidence, particulars or follow-through. Even at the hearing, the Respondent's representative, Mr Khan, continued to seek to rely on similar vague allegations (see paragraph 5 of the Tribunal's decision of 12<sup>th</sup> August 2019). Given the complete lack of evidence or details, despite more than ample time to produce any, the Tribunal can only conclude that this behaviour was solely designed to harass the Applicant rather than advance the resolution of the case. The Respondent's conduct does not permit of a reasonable explanation. A reasonable person would not have acted in this way.
19. The Tribunal concludes that the Respondent acted unreasonably and should pay the Applicant's reasonable legal costs in accordance with rule 13.
20. The Applicant sought to rely on the Respondent's behaviour in other previous proceedings (see paragraphs 3 and 4 of the Tribunal's decision of 12<sup>th</sup> August 2019) but the unreasonable actions to be considered under rule 13 are only those in the current proceedings. Therefore, the Tribunal has not taken this into account in reaching its conclusion.

21. The amount of the costs may be determined by summary assessment by the Tribunal under rule 13(7)(a).
22. The Tribunal has no problem with the hourly rates claimed. Further, the Respondent has unnecessarily lengthened proceedings with her misconceived objections to the Applicant's disclosure. Additional costs have also been incurred responding to the Respondent's allegations.
23. Having said that, the application was fairly simple. There were two years' estimated charges with only two substantive objections. As serious as the other allegations were in principle, the lack of evidence or detail meant that there was not much to respond to. In this light, a bill of £36,568.80 is disproportionately high.
24. Since this process is summary, the Tribunal can only take an approximate approach to the assessment of the Applicant's costs. Doing the best it can with the material available and in the light of its own experience, the Tribunal assesses the Applicant's costs in the sum of £18,500.

**Name:** NK Nicol

**Date:** 20<sup>th</sup> September 2019