



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

**Case Reference** : LON/00BK/LSC/2017/0447

**Property** : Flat 1, 229 Sussex Gardens, London W2 2RL

**Applicant** : 231 Sussex Gardens RTM Ltd

**Representative** : JB Leitch Solicitors  
Ms K Mather of Counsel

**Respondent** : Ms S R Sinclair

**Representative** : Mr A Swirsky of Counsel

**Type of Application** : Costs - Rule 13(1)(b) of the Tribunal Procedure  
(First-tier Tribunal) (Property Chamber) Rules  
2013

**Tribunal Members** : Judge F J Silverman Dip Fr LLM  
Mr M Taylor FRICS  
Mr L Packer

**Date and venue of Hearing** : 10 Alfred Place, London WC1E 7LR  
24 September 2019

**Date of Decision** : 03 October 2019

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## **DECISION**

- 1 The Tribunal orders the Respondent to pay to the Applicant the sum of £9,373.41 including VAT by way of costs under Rule 13 of the Tribunal Rules of Procedure.
- 2 The sum payable under this Order must be paid by 15 November 2019.

## **REASONS**

- 1 This Decision is supplemental to and is to be read in conjunction with the Decision previously issued relating to this case on 13 September 2018 ('the 2018 decision') and relates solely to the costs application made by the Applicant following the hearing which led to the 2018 decision.
- 2 The Applicant is the RTM company responsible for performing the landlord's covenants under a lease dated 12 June 2010 of the property known as Flat 1, 229 Sussex Gardens London W2 2RL ('the property') of which the Respondent is the tenant and leaseholder.
- 3 The current application dated 10 October 2018 seeks an order for costs against the Respondent under Rule 13 of the Tribunal Rules of Procedure. Directions were issued on 19 October 2018, 15 November 2018 and 8 May 2019.
- 4 The hearing of the costs application took place before a Tribunal sitting in London on 24 September 2019 at which the Applicant was represented by Ms K Mather of Counsel and the Respondent by Mr A Swirsky of Counsel. The Tribunal considered the bundle of documents submitted by the Applicant together with oral and written submissions from both counsel. A previous hearing in May 2019 was suspended when the Respondent objected to the presence of one of the then appointed members of the Tribunal.
- 5 To succeed in an application under Rule 13, the Tribunal must be satisfied that the conduct of the party against whom the order is sought passes the threshold set out in *Willow Court Management Ltd v Alexander* [2016] UKUT 290.
- 6 The bar of 'unreasonable conduct' is set high, as might be expected in a jurisdiction where costs do not normally form part of an award made to a successful claimant and where litigants frequently appear in person without legal representation. Thus, the Tribunal is required by *Willow Court* to make

- an objective assessment of the (in this case) Respondent's conduct of the proceedings.
- 7 The Applicant asserts that the Respondent's conduct throughout lengthy proceedings, which originally commenced in 2014 and culminated in the 2018 decision, has at all times been vexatious and obstructive. As one example of her conduct they cite the Respondent's failure to engage in pre-action correspondence which led to the instigation of the current proceedings (pages 31-38) or to mediation (pages 87-89, 91-92, 94, 101-102). Prior to the substantive hearing, the Tribunal then spent more than three hours of case management time in order to assist her to narrow the issues relating to her challenge to the Applicant's case.
  - 8 Despite this assistance from the Tribunal she failed to do so and attempted instead to widen the scope of the issues, choosing not to bring her own application in respect of those matters although she had been invited to do so by the Tribunal in a previous decision issued in 2015.
  - 9 She persisted in pursuing issues which were irrelevant to the matters before the Tribunal (which had concerned only her liability to pay legal costs as part of her service charge) including insisting on the inclusion of a large number of extraneous documents in the hearing bundle. The bundle comprised over 1000 pages of which all but 133 had been included at the request of the Respondent, and few of which were referred to during the course of the substantive hearing.
  - 10 One of the issues which the Respondent pursued unnecessarily to the substantive hearing was her insistence that she had not been served with service charge demands. This was conceded by her only during the course of that hearing when she was shown the relevant demands which were included in the hearing bundle.
  - 11 Further, the Respondent refused to withdraw her allegation about the use of the reserve fund despite the fact that these issues had been litigated on a prior occasion and formed no part of the substantive proceedings. The Tribunal considers that the Respondent had adequate experience of litigation to understand when she was being told that she could not reopen a matter about which a judicial decision had already been made, and had sufficient access to legal advice (viz her choice of Counsel to represent her at the hearings) to have been able to seek clarification or assistance if required.
  - 12 The Tribunal takes the view that the Applicant's costs would also have been increased by the additional work required to deal with the Respondent's demands for duplicate documents, a matter against which she had been previously cautioned by the Tribunal in relation to costs. This feature of the Respondent's conduct has been repeated in relation to the costs hearing and its hearing bundle (pages 132-7).
  - 13 The Applicant's assertion that the Respondent had repeatedly demanded breakdowns of the Applicant's solicitors' costs, despite the fact that she was not entitled to them because she was not their client, was not contested in the

current proceedings, neither was the Applicant's statement that the Respondent had made an unsuccessful complaint to the Solicitors Regulation Authority about the Applicant's solicitors' conduct. Both of these actions would have increased the time spent, and consequently costs incurred by the Applicant and were in the Tribunal's view totally unnecessary and potentially vexatious conduct for a Respondent to pursue during the course of proceedings which related only to the costs recoverable against her as a result of previous litigation.

- 14 On the Respondent's behalf it was submitted that she should be treated as a litigant in person, and while the Tribunal accepts that the Respondent is not a qualified lawyer and had chosen to represent herself throughout the proceedings except for advocacy at the substantive hearings, it is evident that over recent years she has had considerable engagement with litigation both in the County Court and First Tier and Upper Tribunals, as noted in the following words by the Upper Tribunal in its decision refusing her application to appeal the 2018 decision: *'The applicant has some experience of tribunal procedures and is plainly an intelligent and articulate individual'*. The Tribunal therefore assesses her conduct by reference to a person who, while not possessing a legal training, is nevertheless familiar with Tribunal procedures.
- 15 The Tribunal rejects the Respondent's representative's assertions that the issues before the Tribunal at the substantive hearing must have been complex because no decision was given at the end of the oral hearing, and that a costs application should have been dealt with as part of that hearing. With due respect to the Respondent's counsel, both assertions demonstrate a lack of familiarity by him with this Tribunal's procedure, where it is almost universal practice to reserve the decision at the end of the oral hearing and to deal with most costs applications separately from the main issue. The latter assertion also runs contrary to the statement at paragraph 43 of Willow Court that costs applications are *'better framed in the light of the Tribunal's decision'*. Additional costs would have been incurred in this case because the Respondent insisted on an oral costs hearing (pp 121-131) in place of the paper consideration suggested by the Tribunal.
- 16 While the Respondent's representative's argued that the time and money, totalling some £18,000, which the Applicant claimed to have spent was disproportionate to the £5,871.43 of service charges being pursued, the Tribunal recognised the argument put for the Applicant that all leaseholders in the property had to understand that service charges had to be paid and would be pursued as necessary, otherwise the property would become unmanageable, and rejected the Respondent's argument of disproportionality.
- 17 In the light of the above examples, the Tribunal finds that the conduct of the Respondent passes the bar of the unreasonableness test.
- 18 The second stage of the Willow Court analysis is to ask whether a costs order should be made and thirdly, if so, on what terms.

- 19 In the present case, all the costs sought have been incurred by the Applicant through its solicitors in the course of the current proceedings. None of those costs would have been necessary or incurred had the Applicant not been placed in a position of having had to issue proceedings because of the Respondent's refusal to pay the service charges which she owed. Although a costs order is not generally made in this type of application the Tribunal has no doubt that in the present case it is both desirable and necessary.
- 20 The Tribunal is not required to conduct a detailed analysis of the costs schedules submitted by the Applicant's solicitors but must be satisfied that the costs claimed were necessarily incurred in the course of the present proceedings and are reasonable in amount.
- 21 Starting with the schedule submitted by the Applicant's solicitors (pages 56-65), the Tribunal agrees that the hourly rates applied (£250 per hour for a partner and £192 per hour for a Grade B solicitor, £161 for Grade C fee earners and £118 for Grade D) are consistent with current rates being charged by medium sized firms in provincial cities and thus are allowable. The Respondent contended that £217 was a proper rate for a Grade A fee earner, this figure taken from government guidelines has not been updated since 2010 and in the Tribunal's experience does not reflect current private practice charging rates.
- 22 Although the Respondent's counsel suggested that costs in this case should be subject to a detailed assessment no formal application was made and the Tribunal proceeds to make a summary assessment having regard to the costs schedule referred to (pages 56-65).
- 23 On a summary assessment the Tribunal is entitled to take a broad brush approach and is not required to analyse and dissect each item on the schedule. The items claimed by the Applicant are consistent with the type and of work normally carried out in such a case although the quantity of work claimed for is greater than might normally be expected in a case of this type. In this case the Tribunal asked itself what proportion of the costs claimed might have been incurred or increased solely or principally through the Respondent's unreasonable conduct.
- 24 Having considered both the schedules and the manner in which the Respondent conducted the proceedings the Tribunal is of the opinion that had the proceedings been conducted in a regular fashion the Respondent would have modified her defence or withdrawn some of her objections prior to the substantive hearing and that much of the time and correspondence devoted to the compilation and preparation of an overlarge hearing bundle would not have been necessary. Similarly, a costs application and hearing would not have been required.

- 25 On balance the Tribunal considers that 50% of the costs incurred would have been saved and on that basis the Tribunal orders the Respondent to pay 50% of the total costs claimed by the Applicant as set out below.
- 26 The total sum claimed by the Applicant is £18,746.82 including VAT which is made up of £16,143.32 attributable to the substantive hearing, and £2,603.50 (including Counsel's brief fee) to the costs hearing. One half (50%) of that total figure is £9,373.41 including VAT which the Tribunal orders the Respondent to pay to the Applicant by 15 November 2019.

27 The Law

### **Orders for costs, reimbursement of fees and interest on costs**

#### **Rule 13. Tribunal Rules of Procedure**

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.

Judge F J Silverman as Chairman

**Date 03 October 2019**

#### **Note:**

#### **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.