



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

**Case reference** : **LON/00BK/LSC/2019/0078**

**Property** : **First Floor 22 Three Kings Yard,  
London W1K 4JT**

**Applicant** : **Ms Samantha Hill**

**Representative** : **In person**

**Respondent** : **Three Kings Yard Residents Limited**

**Representative** : **Mr Harniman (Director of Respondent's  
managing agent)**

**Type of application** : **For the determination of the liability to  
pay a service charge**

**Tribunal member(s)** : **Judge Hansen, Mr Barlow FRICS and  
Mrs Dalal**

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

**Date of hearing** : **15 & 16 July 2019**

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**COSTS DECISION**

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## **The Tribunal's Determinations**

- (1) Pursuant to paragraph 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal orders that the Respondent shall, by 4pm on 23 December 2019, reimburse the Applicant in the sum of £300 in respect of the tribunal fees which she has paid.
- (2) Pursuant to paragraph 13(1)(b)(ii) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 the Tribunal orders the Respondent to pay the Applicant's costs summarily assessed in the sum of £669.64 by 4pm on 23 December 2019.

## **Decision**

1. We refer to our substantive decision in this matter sent to the parties on 19 August 2019 for the background. Suffice it to say, the Tribunal substantially upheld the Applicant's challenges to a large number of significant service charge items, in many cases on the basis that the sums that had been claimed (principally professional fees and management charges) were simply not payable under the terms of the relevant underlease dated 16.1.86. We were also invited to make a section 20C order and did so.
2. By an application dated 15 September 2019 the Applicant now seeks an order pursuant to paragraph 13(2) of the 2013 Tribunal Procedure Rules for reimbursement of the application and hearing fees she has paid to the Tribunal and a punitive costs order under paragraph 13(1)(b)(ii) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the basis that the Respondent has acted unreasonably in defending and/or conducting the proceedings.
3. The relevant Rule provides as follows:

**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.*

*(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.*

4. Under paragraph 13(2), the Tribunal has a broad discretion to be exercised in accordance with the overriding objective, whereas in reaching our conclusion on the application under paragraph 13(1)(b), we must apply the case of *Willow Court Management Co (1985) Ltd v Alexander* [2016] L & TR 34.
5. In that case the tribunal set out its sequential three-stage test for Rule 13(1)(b) costs orders as follows:
  - (i) Has the person acted unreasonably, applying an objective standard?
  - (ii) If unreasonable conduct is found, should an order for costs be made or not?
  - (iii) If so, what should the terms of the order be?
6. It is important, and we bear in mind, that there is no general rule in the tribunal that the unsuccessful party should be ordered to pay the successful party's costs. 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 is not to be set at an unrealistic level. Unreasonable conduct includes conduct that is vexatious and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct led to an unsuccessful outcome. The test can be expressed in different ways by asking whether a reasonable person would have conducted themselves in the manner complained of, or whether there was a reasonable explanation for the conduct complained of.
7. The tribunal at the second and third stages has to have regard to all the circumstances. The nature, seriousness and effect of the unreasonable conduct are important factors. In general, Rule 13(1)(b) should be reserved for the clearest cases

and it is for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct had been unreasonable.

8. The Applicant in her application relies in particular on the Respondent's repeated failures to comply with the procedural directions and/or the Respondent's late and/or partial compliance which created substantial extra work for the Applicant and made case preparation much more difficult than it otherwise should have been. We commented in our substantive decision on the lack of cooperation between the parties but having carefully considered the Applicant's statement dated 27 June 2019, in particular at pp.1-17 thereof, and the tribunal's correspondence with the parties and the variations to the original directions, we have concluded that, applying an objective standard, the Respondent has acted unreasonably in defending/conducting these proceedings and that it is appropriate to make an order for costs against the Respondent requiring it to pay the sum claimed by the Applicant which we consider to be reasonable.
  
9. The starting point is the original directions of Judge Rahman dated 14.3.19. The Respondent did not comply or fully comply with the disclosure order at paragraph 1 of those Directions as directed. There were also difficulties and delay in relation to compliance with paragraph 3 of those directions. This resulted in repeated correspondence back and forth with the Tribunal. In a letter dated 18 April 2019 sent at the direction of Judge Powell the tribunal observed that "*the apparent reluctance of the Respondent to disclose full accounts for 2015 is generating too much correspondence between the parties and with the Tribunal. As a service charge payer the Applicant has a clear interest in ensuring financial probity for all the relevant service charge years and therefore in the interests of transparency and to stop further involvement of the tribunal, the respondent is directed to serve, at once, a full set of accounts ... There really should be no issue about giving disclosure and providing such transparency, and the respondent's apparent obstruction in this regard seems inexplicable*".
  
10. That letter also reiterated the importance of ongoing compliance with the other directions. Notwithstanding that letter, the correspondence from the Applicant continued, complaining of procedural default by the Respondent, and on 2 May 2019 Judge Vance issued a notice to the effect that it was minded to make a debarring order against the Respondent for failing to comply with directions and failing to

cooperate with the tribunal. The ongoing delays by the Respondent in complying with directions then resulted, on 30 May 2019, in an order varying the timetable to take account of the Respondent's delays and allow the parties more time to complete the other required steps. On 3 June 2019 the Respondent was reprimanded by the tribunal for failing to copy to the Applicant relevant representations that it had sent to the tribunal. On 6 June 2019 Judge Powell had cause to write again and directed that any outstanding issues relating to disclosure would be dealt with at the hearing. Still the correspondence and complaints continued and were still continuing when the matter came on for trial in July. By this time substantial disclosure had been provided and the Tribunal were able to conduct a fair trial of the issues, but we agree with the Applicant that it was unreasonable on the part of the Respondent to drip-feed her the relevant documents and that overall the Respondent's conduct of the proceedings was unreasonable.

11. In its response to this application dated 18 November 2019, the Respondent has contended that it was the Applicant who was guilty of unreasonable conduct and made the point that "*it was only after the hearing had been concluded that it became aware that such fees were not provided for in the lease*". On this basis the Respondent invited the Tribunal to refuse the application. The submissions did not address the issue of its non-compliance with the Tribunal's directions and did not comment on the quantum of costs claimed.
  
12. Having carefully considered all the circumstances of the case, we are satisfied that no reasonable person in the position of the Respondent would have conducted this litigation in the manner that the Respondent has and can detect no reasonable explanation for the conduct complained of. In our judgment, it has conducted the proceedings unreasonably by reason of its unsatisfactory response to the Tribunal's procedural directions. Further, it seems to the Tribunal that the Respondent has sought to defend the indefensible, as the terms of the Underlease clearly precluded charging for the majority of the substantial items of service charge claimed. We are therefore satisfied that the Respondent has conducted the proceedings unreasonably (Stage 1), and that, having regard to all the circumstances, it is right to make an order for costs against the Respondent (Stage 2). In considering whether to make an order (Stage 2) and what order to make (Stage 3), we have had regard to the overriding objective in Rule 3 of the 2013 Procedure Rules, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case "*in ways which*

*are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.”*

13. In light of the foregoing, and having considered all the circumstances of the case, we have concluded that it is right to make the orders sought under paragraphs 13(1)(b) and 13(2) of the 2013 Tribunal Procedure Rules. The Applicant seeks the reimbursement of her application fee (£100) and hearing fee (£200) pursuant to paragraph 13(2) and under paragraph 13(1)(b) she seeks out of pocket expenses relating to printing, postage, stationery and fuel costs in the sum of £669.64 (supported by a number of receipts) pursuant to paragraph 13(1)(b). We consider the sums claimed for out-of-pocket expenses to be reasonable and assess costs accordingly. We therefore order the Respondent to reimburse the Applicant the fees she has paid in the sum of £300 pursuant to paragraph 13(2) of the 2013 Tribunal Procedure Rules and we order the Respondent to pay the Applicant’s costs pursuant to paragraph 13(1)(b) of the 2013 Tribunal Procedure Rules summarily assessed in the sum of £669.64. The total figure is therefore £969.64.

**Name:** Judge W Hansen

**Date:** 25 November 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).