



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

**Case reference** : **LON/00BK/LAM/2019/0004**

**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** : **Application for reimbursement of fees  
and punitive costs**

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

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

**Date of substantive  
hearing** : **15 January 2020**

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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 11 September 2020 reimburse the Applicant in the sum of £100 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 £407.39 by 4pm on 11 September 2020.

## **Decision**

1. We refer to our substantive decision in this matter sent to the parties on 22 May 2020. Suffice it to say, the Tribunal appointed a manager on the Applicant's application. We were also invited to make a section 20C order and did so.
2. That application had initially been staunchly opposed by the Respondent but its initial opposition was characterised by an unacceptable failure to comply with the Tribunal's directions, in particular its directions dated 17 July 2019. The Applicant raised the matter with the Tribunal and the Tribunal wrote to the Respondent's representative, Mr Harniman, on 21 October 2019 and again on 30 October 2019, but received no response. As a result, on 17 November 2019, Tribunal Judge Vance made an unless order debarring the Respondent from taking further part in the proceedings unless it served its statement of case by 2 December 2019. The Respondent did not serve a statement of case but emailed the Tribunal at 16.47 on 2 December 2019 to indicate its position that it would not now be opposing the appointment of a manager.
3. Thus, following the unless order, the Respondent did not ultimately oppose the making of an order but the whole process would have been much simpler and less time consuming and costly if the Respondent had engaged with the Tribunal's directions properly and made clear its position much earlier. We are satisfied that the Respondent's conduct of this case has been unreasonable.

4. The Applicant now seeks an order pursuant to paragraph 13(2) of the 2013 Tribunal Procedure Rules for reimbursement of the 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.
5. 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.*

6. 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.
7. 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?
8. 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.

9. 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.
10. Having carefully considered all the circumstances of the case, we have no hesitation in concluding 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. The Applicant's criticisms of the Respondent's conduct are borne out by the unless order which Judge Vance ultimately felt constrained to make in the face of the Respondent's repeated non-compliance. In our judgment, the Respondent has conducted the proceedings unreasonably by reason of its unsatisfactory response to the Tribunal's procedural directions.
11. 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.*"

12. 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 fee (£100) 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 £407.39 (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 £100 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 £407.39. The total figure is therefore £507.39.

**Name:** Judge W Hansen

**Date:** 13 August 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).