FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AJ/LBC/2020/0026 (P)**
Property	**:**	**Flat 6 Elton Lodge, Florence Road, London W5 3TX**
Applicant	**:**	**Elton Lodge (Ealing) Management Company**
Representative	**:**	**Mr Maury Horwich**
Respondent	**:**	**Ms Jeanne Spinks**
Representative	**:**	**In person**
Type of application	**:**	**Application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002**
Tribunal members	**:**	**Judge Professor Robert M Abbey**
Venue of Hearing and date	**:**	**10 Alfred Place, London WC1E 7LR; 2nd October 2020**
Date of Costs Decision	**:**	**09 November 2020**

COSTS DECISION

Application for costs

1. An application was made by the respondent under Rule 13 of the Tribunal Rules in respect of the respondent's costs. The Tribunal subsequently received a schedule of costs totalling £1740. This is the amount listed by the respondent. The details of the provisions of Rule 13 are set out in the appendix to this decision and rights of appeal made available to parties to this dispute are set out in an Annex.

2. Before a costs decision can be made, the tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the tribunal to consider whether, in the light of unreasonable conduct (if the tribunal has found it to have been demonstrated), it ought to make an order for costs or not. It is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

3. The respondent filed with the tribunal the respondent's written costs application along with costs details and expenses arising from the dispute.

4. It now falls to this Tribunal to consider the costs application in the light of the written submissions before it. We do this but in the context of the circumstances of the original decision.

DECISION

1. The tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008,* (where he followed the definition of unreasonableness *in Ridehalgh v Horsefield* [1994] Ch 205 CA), the tribunal was not satisfied that there had been unreasonable conduct so as to prompt a possible order for costs.

2. The tribunal was also mindful of a recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. At paragraph 24 of the decision the Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore, following the views expressed in this recent case at a first stage the tribunal needs to be satisfied that there has been unreasonableness.

3. At a second stage it is essential for the tribunal to consider whether, in the light of any unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it

should make an order that a third stage is reached when the question is what the terms of that order should be.

4. In *Ridehalgh* it was said that “"Unreasonable" also 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.

5. The *Willow Court* decision is of paramount importance in deciding what conduct might be unreasonable. I have mentioned the approach of the Upper Tribunal in this decision but I think it appropriate to quote the relevant section of the decision in full: -

> “*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…..“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?”*

6. It seems to Tribunal that therefore the bar to unreasonableness is set quite high in that what amounts to unreasonableness must be quite significant and of serious consequence. This being so the Tribunal must now consider the conduct of the parties in this dispute given the nature of the judicial guidance outlined above.

7. The respondent maintains that the applicant was unreasonable in the conduct of the dispute. The basis for the respondent’s claim is as a consequence of the “extreme obduracy of the Applicant in pursuing this application, despite the clear evidence that it was going to be unarguable, [that] places it well outside of the range of proper and typical applications, and a costs order in my favour is, in my submission, a proper and reasonable response.”

8. The Respondent asserts that “The Applicant accepted that the downpipe was not part of the let property and also accepted that I had never interfered with the downpipe. On that basis I should bear no responsibility for the repair of either.” However, the Tribunal was not satisfied that there was enough information or detail to persuade it that there had been unreasonable conduct on the part of the applicant. The Tribunal was of the

view that in the context of the complex circumstances of this case and the law that is relevant to the application, the making of such an application about the pipe repairing issue should not be considered to be unreasonable conduct. There was an arguable case that the applicant could advance and as such the application was not unreasonable and was conducted in the light of this position.

9. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal cannot find evidence to match the high bar of unreasonable conduct set out above. The tribunal was therefore not satisfied that stage one of the process had been fulfilled in that it found there has been no unreasonableness for the purposes of a costs decision under Rule 13 on the part of the applicant. The conduct may have been mistaken but it was not vexatious or such that following the legal tests the tribunal might consider such conduct unreasonable.

10. In the circumstances the tribunal determines that there be no order for costs pursuant to Rule 13.

Name:	Professor Robert M Abbey	**Date:**	09 November 2020

Appendix

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

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.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(**a**), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(**b**) and the County Court (Interest on

Judgment Debts) Order 1991(**c**) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

ANNEX - RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.