FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at WILLESDEN, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/00AJ/LBC/2019/0072, LON/00AJ/LAC/2019/0021 and LON/00AJ/OLR/2019/1335**
Court claim number	**:**	**F01W1109**
Property	**:**	**2 Sandall Close, London W5 1JE**
Landlord	**:**	**Felix Samuel (Defendant in county court proceedings)**
Tenant	**:**	**Naveen Sagar (Claimant in county court proceedings)**
Tribunal members	**:**	**Judge P Korn & Mr M Taylor FRICS**
In the county court	**:**	**Judge P Korn, with Mr M Taylor FRICS as assessor**
Original hearing date	**:**	**12th December 2019**
Date of original decision	**:**	**11th February 2020**
Date of supplemental costs decision	**:**	**15th June 2020**

SUPPLEMENTAL COSTS DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be:

A. If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or;

B. If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

Description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was **P**. A face to face hearing was not held because no-one requested the same and all issues could be determined on paper.

Summary of the decisions made by the First-tier Tribunal ("the Tribunal")

1. In relation to the Tenant's application for his Tribunal costs under paragraph 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**Rule 13 application**"), this application is refused.

2. In relation to the Tenant's cost applications under section 20C of the Landlord and Tenant Act 1985 ("**Section 20C**") and under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("**Paragraph 5A**"), these are both granted. Accordingly, we make a Section 20C order that all of the costs incurred by the Landlord in connection with these proceedings and in connection with the proceedings relating to the Main Applications are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenant. We also make a Paragraph 5A order extinguishing the Tenant's liability (if any) to pay towards the costs incurred by the Landlord in connection with these proceedings and those relating to the Main Applications by way of an administration charge under the Tenant's lease.

Summary of the decisions made by the County Court ("the Court")

3. In relation to the Landlord's claim for interest on the premium and on the Section 60 costs, this claim is dismissed.

4. In relation to the Landlord's claim for his Court costs, this claim is dismissed.

5. In relation to the Tenant's claim for his Court costs, this claim is allowed in part. The Tenant is awarded costs of £3,000.00.

6. In relation to the Tenant's claim for wasted costs, this claim is dismissed.

Background and preliminary point

7. The following cost applications have been made to the Tribunal:-

    - A Rule 13 application by the Tenant
    - A Section 20C application by the Tenant
    - A Paragraph 5A application by the Tenant

    The following cost applications have been made to the Court:-

    - A claim for interest on the premium and on the Section 60 costs by the Landlord
    - A claim for Court costs by the Landlord
    - A claim for Court costs by the Tenant
    - A claim for wasted costs by the Tenant.

8. These applications and claims are supplemental to (a) an application for a determination as to alleged breaches of covenant under the Tenant's lease, (b) an application for a determination as to payability of administration charges and (c) an application for an order that the Tenant be granted a new extended lease (together the "**Main Applications**"). Decisions were made on the Main Applications on 11th February 2020. References in this decision to the "premium" are to the premium payable for the lease extension. References to "Section 60 costs" are to the costs paid to the Landlord by the Tenant pursuant to section 60 of the Leasehold Reform, Housing and Urban Development Act 1993 (the "**1993 Act**").

9. Both parties have made very detailed costs submissions to an extent that the Tribunal and Court do not consider proportionate to the issues or amounts involved. It is neither practical nor desirable to summarise all of the points made by the parties, and therefore this decision just includes a high-level summary of the parties' respective positions.

Applications to exclude evidence

10. The Tenant has applied for the Tribunal and the Court to exclude the Landlord's *"Second Response to the Tenant's Costs Submissions Dated 6 March 2020"* on the basis that the Tribunal's/Court's directions did not envisage the Landlord sending this further response. The Tenant

has also applied for the exclusion of certain elements of the Landlord's *"Response to the Tenant's Costs Application Submissions"* dated 4th March 2020, in particular the Landlord's comments at paragraphs 5.7, 14.7 and Exhibit 5, on the basis that the comments contained therein are irrelevant to the matter before the Tribunal/Court and are vexatious and intended to prejudice the Tenant's position.

11. Dealing first with the Landlord's *"Second Response to the Tenant's Costs Submissions Dated 6 March 2020"*, the Tribunal and the Court agree that it was not envisaged by the directions that the Landlord would make further submissions, he has not subsequently been asked by the Tribunal/Court to do so and nor is it considered that he has provided any proper justification for doing so. Accordingly, this submission is excluded under paragraph 18 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**") and Part 32 of the Civil Procedure Rules ("**CPR**").

12. Dealing second with the elements of the Landlord's *"Response to the Tenant's Costs Application Submissions"* dated 4th March 2020 objected to by the Tenant, under paragraph 18 of the Tribunal Rules and CPR 32 this is excluded in part. It is considered inappropriate to record the details of the offending passages in this determination, it being a document which will be placed in the public domain. However, whilst the specific details are not relevant to the merits of this cost application, the information provided by the Landlord is of relevance to any impression being given by the Tenant that he is simply an ordinary layperson.

Tribunal issues

Tenant's Rule 13 application

13. The Tenant has made a Rule 13 application.

14. The application is presumably intended to be made pursuant to paragraph 13(1)(b) of the Tribunal Rules on the basis that the Landlord *"has acted unreasonably in bringing … or conducting proceedings"*.

15. The Tribunal has considered the evidence of conduct presented by both parties. The case has been conducted in a bitter manner and there has been much correspondence in which the parties' legal representatives have traded accusations over a considerable period of time. Looking at the parties' conduct overall, our view is that the Tenant has generally behaved better in relation to these proceedings than has the Landlord but that neither party has behaved particularly well.

16. In *Ridehalgh v Horsfield (1994) 3 All ER 848*, Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a

cost application as being whether the conduct permits of a reasonable explanation. This formulation was adopted by the Upper Tribunal in the case of *Halliard Property Company Ltd v Belmont Hall and Elm Court RTM Company Ltd LRX 130 2007* and in the case of *Willow Court Management (1985) Ltd v Alexander (2016) UKUT 0290 (LC)* in the context of a cost application under paragraph 13(1) of the Tribunal Rules. One principle which emerges from these cases is that costs are not to be routinely awarded pursuant to a provision such as Rule 13 merely because there is some evidence of imperfect conduct at some stage of the proceedings.

17. Sir Thomas Bingham also said that unreasonable conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case, but that conduct could not be described as unreasonable simply because it led to an unsuccessful result. The Upper Tribunal in *Willow Court* added that for a lay person to be unfamiliar with the substantive law or with tribunal procedure or to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case should not be treated as unreasonable. Tribunals should also not be over-zealous in detecting unreasonable conduct after the event.

18. Having considered the facts of the present case in the light of the case law, we consider that the Landlord's conduct was not sufficiently unreasonable to open the gateway to a cost award under paragraph 13(1) of the Tribunal Rules. The Landlord's conduct was certainly poor at times, but there was antagonism on both sides and we are not persuaded that there is clear enough evidence that this conduct was bad enough to pass what is quite a high threshold. It should also be noted, to put this in its proper context, (a) that conduct prior to the bringing of proceedings is not directly relevant to a Rule 13 cost claim and (b) that, as noted above, the Tenant has not in our view behaved particularly well either.

19. Therefore, the Rule 13 cost application is refused by the Tribunal.

Tenant's Section 20c and Paragraph 5A applications

20. The Tenant has also made Section 20C and Paragraph 5A cost applications.

21. The relevant parts of Section 20C(1) read as follows:-

"A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before … the First-tier Tribunal … are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant …".

The relevant parts of Paragraph 5A read as follows:-

"A tenant of a dwelling in England may apply to the relevant … tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs".

22. A Section 20C application is therefore an application for an order that the whole or part of the costs incurred by the Landlord in connection with these proceedings cannot be added to the service charge. A Paragraph 5A application, in the context of what the Tenant is seeking in this case, is an application for an order that the whole or part of the costs incurred by the Landlord in connection with these proceedings cannot be charged direct to the Tenant as an administration charge under the Tenant's lease.

23. The test for making successful Section 20C and Paragraph 5A cost applications is easier to meet than that for a Rule 13 cost application, and the Tribunal has a large element of discretion.

24. In the present case, the Tenant has been significantly more successful than the Landlord in relation to the Main Applications. In addition, in our view, whilst the Landlord has not acted unreasonably enough to merit the awarding of costs under Rule 13, he has not conducted this case in the most constructive manner. Accordingly, it would not be appropriate for the Tenant to have to pay the litigation costs incurred by the Landlord and the Tribunal is satisfied that it would be just and equitable (a) to order that all of the costs incurred by the Landlord in connection with these proceedings and those relating to the Main Applications are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Tenant and (b) to make an order extinguishing the Tenant's liability (if any) to pay towards the costs incurred by the Landlord in connection with these proceedings and in connection with those relating to the Main Applications by way of an administration charge under the Tenant's lease.

Court issues

<u>Landlord's claim for interest on premium and on Section 60 costs</u>

25. The Landlord submits that interest should be payable at 2% per annum on the premium and on the Section 60 costs from 4th July 2019 until completion of the lease extension, 4th July 2019 being 21 days after the Landlord offered to complete. All that the Tenant had to do in order to complete was to tender the premium, the rent and the Section 60 costs or offer security for these costs. In the alternative, interest should be payable from at least 22nd August 2019, as this is the date after the

premium and Section 60 costs were ascertained and therefore the Tenant should then have tendered these amounts.

26. The Tenant submits that there is no basis in the 1993 Act for the Landlord claiming interest at 2% on the premium and Section 60 costs from 4th July 2019. If it were intended that interest be chargeable this would be specified in section 48(3) of the 1993 Act which anticipates a situation in which the terms have been agreed or determined but completion has not yet taken place. Furthermore, interest is not payable under section 56(3) of the 1993 Act either.

27. In any event, the Tenant submits that it is misleading for the Landlord to suggest that he sought completion but that his proposals were rejected by the Tenant. The Landlord was not actually ready or willing to complete, in that his solicitor specified a completion date which constituted unreasonably short notice and was a date on which the Tenant's solicitor did not work, no confirmation was given that the Landlord had signed the lease, the Section 60 costs were not agreed, and the Landlord was insisting on payment of disputed administration costs of £780 and withdrawal of the court application at no cost to the Landlord.

28. As for the alternative proposition that interest is payable from 22nd August 2019, the Tenant argues that there is no basis for this either. Although the Section 60 costs were determined on 21st August 2019 the Landlord created further confusion and delay by requesting an adjournment of the hearing on 4th September 2019 on the basis of a jurisdictional issue not previously raised or pleaded and incorrectly claiming non-receipt of the Tenant's bundle of documents. Completion was further delayed through the Landlord issuing proceedings against the Tenant in the Tribunal.

29. Having considered the submissions from both parties, the Court prefers the Tenant's submissions on this issue. The relevant provisions of the 1993 Act do not provide for interest to be payable, and the Landlord has not set out a persuasive case for arguing that interest should be payable in this case. Whilst the factual matrix is detailed and complicated and whilst the Tenant's own conduct has not been perfect, overall the Court considers that the delay in completing the lease has been more the fault of the Landlord than that of the Tenant and therefore that it would be inequitable for the Tenant to have to pay interest on the premium and on the Section 60 costs for any part of the period of that delay.

Landlord's claim for Court costs

30. The Landlord submits that the Tenant should pay the Landlord's costs in relation to the court claim as the final form of lease was only agreed the day before the hearing and the Tenant did not tender the premium or the section 60 costs or confirm that cleared funds were available.

Therefore, the Landlord was not required to grant the lease and the Tenant was not entitled to the order that he sought.

31. The Tenant argues that the Landlord acted unreasonably in refusing to provide or agree the Deed of Surrender and Re-Grant and therefore that the Tenant had to apply to court for a Part 8 Order under section 48(3) of the 1993 Act. As regards the agreement of the form of lease, it had been deemed agreed on 1st May 2019 and then on 18th June 2019 it was expressly agreed in correspondence, but the Landlord then reneged on that agreement on 27th June 2019. The Tenant denies that the need to bring the claim and the delay and costs were caused by him; on the contrary, the Tenant was obliged to make the claim due to the Landlord's delay in providing a Deed, the Landlord's persistent and unreasonable enquiries on unrelated matters and the strict statutory timeframe.

32. Having considered the submissions from both parties, again the Court prefers the Tenant's submissions on this issue. Once again, whilst the factual matrix is detailed and complicated and whilst the Tenant's own conduct has not been perfect, overall the Court considers that the delay in completing the lease has been more the fault of the Landlord than that of the Tenant and therefore that it would be inequitable for the Tenant to have to pay towards the Landlord's costs in relation to the court claim.

Tenant's claim for Court costs

33. The Tenant seeks an order for his costs under CPR 44 on the basis that (a) he was successful in his application for an order under section 48(3) of the 1993 Act to complete his lease extension, (b) it was unreasonable for the Landlord to oblige him to make that application and then to contest that application, (c) the Landlord unreasonably refused to agree to minor amendments to the Deed of Surrender and Re-Grant, (d) the Landlord acted unreasonably when negotiating the Section 60 costs, in proposing completion dates at unusually short notice, in relation to the adjournment of the court hearing on 4th September 2019, in applying to transfer the court proceedings to the Tribunal, and in serving a further statement of case two days before the Tribunal hearing on 12th December 2019.

34. The Tenant submits that since the Tribunal's determination of the terms of acquisition of the new lease on 12th February 2019 he has simply wanted to complete his lease extension and pay the premium and the Landlord's reasonable statutory costs. However, as a result of the Landlord's conduct the Tenant had to make an application to the court to protect his statutory right to a lease extension and incurred costs to obtain the necessary order so as to be able to complete the lease extension. Under CPR 42(2)(a), according to the Tenant, the general rule is that the unsuccessful party will be ordered to pay the costs of the

successful party, and it is clear in the Tenant's submission that he has been successful.

35. The Landlord disputes the Tenant's analysis. Contrary to the Tenant's assertions, the Landlord was willing to complete the lease extension on the basis that in relation to Section 60 costs either these were paid in advance or security for them was given. In addition, the Tenant sought to add minor but confusing changes into the previously agreed form of lease. The Landlord was in a position to complete at short notice. As regards the transfer of the court proceedings, the Tenant did not formally apply for a transfer; instead the transfer was made by a District Judge on his own initiative. The Landlord also disputes the Tenant's other submissions regarding alleged unreasonable behaviour.

36. First of all, the Tenant presumably meant to refer to CPR 44.2(2)(a) (rather than 42(2)(a)), but otherwise it is indeed the case that the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party, although CPR 44.2(2)(b) goes on to state that the court may make a different order. CPR 44.2(4) then states that in deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including (a) the conduct of all the parties; (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.

37. In relation to the Court proceedings in respect of which the Tenant is claiming costs, the Tenant has been successful in that he has obtained his lease extension. In addition, as noted above, the Court considers the Tenant's conduct to have been generally better than that of the Landlord. However, the Tenant's conduct itself has been far from perfect, and he has also given the false impression that he is an ordinary layman with no knowledge or understanding of legal practice or procedure, albeit that the relevance of this particular point should not be overstated as he has been represented by a solicitor. Nevertheless, the Court is satisfied that a cost award should be made, the issue then being how much should be awarded.

38. As regards the details of the costs being claimed by the Tenant, whilst the Landlord has made general submissions on the Tenant's claim he does not appear to have made any submissions on the recoverability or reasonableness of any specific cost items. At the same time, whilst the Tenant has offered a limited narrative in relation to some of the costs he has provided barely any narrative in relation to certain other costs.

39. Given the amount of the costs claimed and the overall circumstances the Court considers it appropriate and proportionate to make a summary assessment as to the amount of costs that should be awarded. The Tenant claims the amount of £7,610. This seems on the high side

for the amount of work done, and a more detailed and compelling narrative would be needed to justify this sum. Furthermore, although the Tenant has been successful he must, in my view, share some of the blame for the protracted nature of the litigation in this matter.

40. Using the Court's discretion and taking all of the circumstances into account it is considered that a cost award of £3,000.00 is appropriate.

Tenant's claim for 'wasted costs'

41. The Tenant also seeks an order *"that the Landlord pay the Tenant's wasted costs"* in relation to the adjourned hearing on 4th September 2019.

42. A claim for 'wasted costs' is generally understood to be a claim against a party's legal representative rather than against the party itself. Under section 51(6) of the Senior Courts Act 1981, *"in any proceedings mentioned in subsection (1) [which includes county court proceedings], the court may disallow, or (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with rules of court"*. Section 51(7) then defines wasted costs as *"any costs incurred by a party (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative; or (b) which, in the light of any such act or omission occurring after they were incurred, the court considers it is unreasonable to expect that party to pay"*.

41. The Tenant's claim therefore seems confused, as he appears to be making a claim against the Landlord but via a category of cost application which only enables a party, in appropriate circumstances, to recover costs from another party's legal or other representative. If the application was in fact intended to be against the Landlord's legal representative the Tenant has not pointed to any act(s) or omission(s) specifically on the part of the Landlord's legal representative which would justify a wasted cost order. If the application is against the Landlord himself the Tenant has failed to articulate the legal basis on which recovery of these costs is sought.

42. Accordingly, this claim is dismissed.

Name: Judge P Korn **Date:** 15th June 2020

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. 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 date this decision is sent to the parties.

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 state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.

6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.