FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AZ/LBC/2020/0014**
Property	**:**	**136 Boundfield Road, SE6 1PD**
Applicant	**:**	**Phoenix Community Housing Association (Bellingham and Downham) Limited**
Representative	**:**	**Tiernan Fitzgibbon instructed by Clarke Wilmott**
Respondent	**:**	**Oluwaseyi Modupeola Sogbesan**
Representative	**:**	**None**
Type of application	**:**	**Determination of an alleged breach of covenant s168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal member(s)	**:**	**Judge Hargreaves** **Evelyn Flint DMS FRICS**
Venue	**:**	**CVPREMOTE**
Date of hearing	**:**	**24th September 2020**

DECISION ON COSTS

The Respondent must pay the Applicant's costs assessed in the sum of £3,800 plus VAT amounting to £4560 in total by 5pm 22nd December 2020.

REASONS

1. For the decision on the merits, see the judgment dated 25th September. This costs decision arises out of that and directions issued about costs. Those have been complied with by the Applicant but nothing has been received by the Respondent. She did not attend the hearing or file any evidence.

2. To recap, the lack of involvement by the Respondent in this case is notable. This is what we said in the decision: "…. she has been absent from any form of participation, written or oral in this application, though she would have received the first directions issued by Judge Hamilton-Farey on 13th March 2020 and later directions varied on 14th July (Judge Martynski) so must have been aware of what was involved and required of her, having also received all correspondence from the Applicant and the Tribunal. Having established that the Applicant has used her email throughout, that the Tribunal has done the same, that no last minute email or contact was received from the Respondent, that no emails were "bounced back" to the Tribunal, we have concluded for the purposes of Tribunal Rule 34(a), taking all the evidence of contact into account, that we are satisfied that the Respondent has been notified of the hearing or alternatively, that reasonable steps were taken to notify her of the same. Moving on to Rule 34(b) we are satisfied that it is also in the interests of justice to proceed with the hearing because the evidence produced by the Applicant is cogent, the case is well prepared, there has been no request for an adjournment and above all, not one single challenge to the Applicant's case from or on behalf of the Respondent has been received. In these circumstances we were entitled to proceed with the hearing and to determine the application in the absence of the Respondent. In effect she has put the Applicant to proof of its case and it has surmounted that hurdle."

3. In order to obtain a costs order the Applicant has to demonstrate that the Respondent acted unreasonably in defending or conducting these proceedings: see Tribunal Rule 13(1)(b). Whilst it might be said that it is not unreasonable to put a landlord to proof in a breach of covenant case, it was, in our judgment unreasonable to either (i) not to accept the breaches or (ii) fail to defend them from the date on which the evidence was served on her, which was the end of July. That evidence was well-prepared, cogent, and detailed. It was simply unreasonable of the Respondent to force the Applicant to proceed to the expense of a hearing from that point if she was not going to oppose it. The Applicant's case was such that it justified either of the two responses outlined above and the Respondent's failure to engage, in the circumstances of the alleged breaches and the weight of evidence, unreasonable. Not all breaches of a litigant's

duty to co-operate in litigation will amount to unreasonable conduct, but in this case, we are satisfied that it does amount to unreasonable litigation conduct. We do not need to do more than refer to the judgment to emphasise the overwhelming impact of the Applicant's evidence.

4. So the approach we take when it comes to assessment is a broad one: the Respondent is liable for costs from the end of July. This is a summary assessment on a standard basis and there is sufficient information in the Applicant's N260 to allow for this approach to be implemented.

5. The hourly rates of £190 (Grade A), £140 (Grade B) and £90 (Grade D) are reasonable and appropriate.

6. Counsel's fees are reasonable and appropriate at £1500 and are allowed in full: he had to prepare in full (including a very useful skeleton argument) as the Respondent's level of contact with the Applicant and the Tribunal had been non-existent.

7. As for attendance on the Applicant and on others, it seems to us appropriate that if we are assessing costs from the end of July a reasonable approach (considering the costs would be top-loaded for the period prior to that), to allow 2 hours or so attendance on each of the Applicant and others (witnesses, Tribunal etc) at Grade B rates is reasonable and appropriate and that amount is assessed at a round figure of £600.

8. Adopting the same approach for work on documents, and discounting around £1000 for work presumably done prior to the end of July (discounting items 1 and 2) the remaining total of £1700 is reasonable and proportionate and is allowed.

9. Those three headline figures produce £3800 plus VAT and that is the figure which the Respondent must pay for the reasons we have given. To stress, her failure to engage in the litigation itself was reflected in her continuing failure to make any submissions on the costs application despite having been given an extension of time to do so.

Judge Hargreaves

Evelyn Flint DMS FRICS IRRV

4th December 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).