FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BB/0CE/2020/0151**
HMCTS code		**P: PAPERREMOTE**
Property	**:**	**30 Holt Road, London E16 2DX**
Applicant	**:**	**Salma Begum**
Representative	**:**	**Nigel Broadhead Mynar Solicitors**
Respondent	**:**	**G & O Properties (London) Limited**
Representative	**:**	**GSL Administration**
Type of application	**:**	**Respondent's application for Costs (Rule 13)**
Tribunal member	**:**	**Judge Tagliavini**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**22 November 2021**

DECISION

Covid-19 pandemic: description of hearing: PAPERREMOTE

This has been a remote hearing on the papers which has not been objected to by the parties. The form of remote hearing was P: PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper. The documents that the tribunal were referred to are in a bundle of 96 pages, together with a separate submission from the

applicant and a further respondent's reply, the contents of all of which have been considered.

The tribunal's summary decision

(1.) The tribunal finds that the respondent has failed to demonstrate that, on the balance of probabilities, the applicant has acted unreasonably in bringing, defending, or conducting proceedings. Therefore, the tribunal dismisses the respondent's application for costs under Rule 13 of The Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013.

The application

1. This is an application by the respondent under rule 13(1)(b) of The Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013 seeking a determination of the tribunal that it is entitled to an award of costs totalling £13,294.00, arising from the applicant's unreasonable behaviour in bringing, defending or conducting proceedings in the claim for enfranchisement of property situate at 30 Holt Road, London E16 2DX ('the premises').

2. The costs sought by the respondent were said to have been incurred since 19 July 2021, for works of preparation including the hearing bundle; the valuer's report fee and attendance at hearing, barrister's fees for the anticipated two-day hearing and the £200 paid for the hearing fee.

Background

3. On 24 September 2020, the applicant made an application to the tribunal seeking a determination as to the premium payable for the freehold of the subject premises. Although both parties instructed expert valuers to prepare a report, agreement could not be reached as to the premium payable and the application subsequently proceeded on the tribunal's directions dated 7 April 2021.

4. Although the hearing fee was not paid by the applicant, the respondent decided to pay this fee and the application continued before the tribunal until 13 August 2021, when it was formally withdrawn by the applicant with the consent of the tribunal before the hearing date fixed for 17 and 18 August 2021.

The respondent's evidence

5. As well as its Statement of Case dated 25 August 2021, the respondent relied upon its Reply dated 12 October 2021 in answer to the applicant's Response, as well as a 96-page bundle of documents which included the respondent valuation report and a number of previous tribunal decisions relating to other valuations.

6. The respondent asserted that the applicant had made the application seeking enfranchisement in bad faith, knowing that she did not intend to pursue it, as she had neither provided the respondent with any valuation evidence nor paid the hearing fee and therefore the respondent had been required to pay the fee and prepare a bundle for the hearing of the substantive enfranchisement application.

7. Further, the respondent asserted that the applicant's withdrawal of the application came only days before the date fixed the final hearing, when an earlier withdrawal could have avoided unnecessary preparation costs and barrister's fees. The respondent submitted that the three stage test set out in *Willow Court Management (1985) Ltd v Alexander [2016] 0290 UKUT (LC)* was satisfied and therefore costs should be awarded.

The applicant's case

8. The applicant relied upon submissions in Reply dated 7 October 2021. In these, it was asserted that the applicant had made the substantive application in good faith, but on receiving expert valuation advice it had become clear to her that the premium was unaffordable. Consequently, the applicant intended the application to be 'deemed withdrawn' by the non-payment of the hearing fee and had not expected the respondent to unilaterally decide to pay it.

9. The applicant also took issue with the amount of the costs claimed and put the respondent to proof that it had incurred the costs now claimed, particularly in respect of the barrister's fees when the hearing had not been held.

The tribunal's decision and reasons

10. The tribunal determines that the respondent has failed to demonstrate that the applicant has acted unreasonably in bringing, defending, or conducting proceedings concerned with the enfranchisement of the subject property.

11. The tribunal finds that the decision to make an application to the tribunal after the service of a counter notice by the respondent, is expected. The tribunal finds the applicant's continuing with her application in the hope that a settlement might be reached, cannot be regarded as unreasonable or vexatious conduct, and finds that the

respondent has failed to show that the applicant made or proceeded with the application in bad faith.

12. The tribunal finds the unagreed and unilateral action of the respondent in paying the hearing fee, caused the application to continue, against the wishes of the applicant, even though she had not expressly stated her wish to withdraw at that time. The tribunal finds that, in any event, the application having been withdrawn several days before the allocated hearing date, would have avoided barrister's fees being incurred and does not, in any event accept the respondent's claim for this sum.

12. Further, the tribunal finds the decision of the respondent to make an application for rule 13 costs in these circumstances, rather than an application under section 33 of the Leasehold Reform, Housing and Urban Development Act 1993, which makes provision for the costs of an application for enfranchisement, to be unusual and without merit.

13. In conclusion, the tribunal finds that the respondent fails to meet the required test for an award to be made of rule 13 costs, and therefore dismisses the application.

Name: Judge Tagliavini Dated: 22 November 2021

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.