



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

**Case Reference** : **CHI/29UK/LIS/2022/0007**

**Property** : **Flat 3, 73a & 73b High Street,  
Sevenoaks, Kent, TN13 1LD**

**Applicant** : **The Gravesend and District  
Real estate Company Ltd**

**Respondent** : **Emma Nash**

**Type of Application** : **Rule 13 Costs**

**Tribunal Member** : **Judge Dovar**

**Date of Decision** : **8<sup>th</sup> June 2023**

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**DECISION**

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1. This an application for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 after the Applicant's substantive application under s.27A of the Landlord and Tenant Act 1985 was struck out by the Tribunal on 13<sup>th</sup> September 2022. The Respondent seeks her costs in the sum of £15,249.60.
2. The Applicant brought a claim in early 2022 for the determination of the payability of service charges for the years 2017 to 2022 in the sum of £14,715.33. On 6<sup>th</sup> May 2022 directions had been given, including directions for disclosure by the Applicant of invoices by 25<sup>th</sup> May 2022; there being years in dispute for which no vouchers had been disclosed or provided. Not only did the Applicant fail to comply with those directions in that it only provided partial disclosure, but it did not provide a statement of case, which they had been directed to do by 3<sup>rd</sup> August 2023. When the Tribunal gave notice of its intention to strike out the application due to the Applicant's default, the Applicant was two days late in submitting a response to that notice. The Applicant said its default was due to a change in personnel. The Tribunal was not impressed with that late, thin response and struck out the application. There has been no appeal from that. Instead the Respondent now seeks her costs.
3. In the Residential Property Tribunal costs do not follow the event, rule 13 (1) (b) provides that they are only payable by one party if they have acted unreasonably in bringing, defending or conducting proceedings. The Upper Tribunal have given guidance on the approach to take to claims for costs under rule 13 in *Willow Court Management v Alexander*

[2016] UKUT 0290 (LC) to which I have had regard and have structured this decision in accordance with the three criteria identified in that case.

*Unreasonable behaviour*

4. A significant issue for the Respondent has been the lack of disclosure by the Applicant both before and during the proceedings. She has been seeking the underlying vouchers for many years, but to little avail. Indeed, that was a significant factor in the application being struck out.
5. In response to the application for costs, the Applicant states that it is *'denied that requests for documents were ignored or that delays in answering correspondence were solely on the part of the Applicant...'* However, no further detail is given, nor why the documents were not provided.
6. The correspondence relied on by the Applicant sets out the following chronology:
  - a. There had been historical correspondence regarding the service charge; of which I have not been provided copies. The first I have received is dated 6<sup>th</sup> August 2020 when the Applicant demanded £11,758.42;
  - b. The response on 7<sup>th</sup> September 2020 was to point out the previous correspondence and that *'our client has been trying to obtain information from your client for several years...'* That had included requests for copies of invoices for the charges between 2014 and 2018, certificates and certified accounts;

- c. On 25<sup>th</sup> October 2021, the Applicant provided some documents for cleaning;
  - d. on 16<sup>th</sup> November 2021, the Respondent queried what *'the issue is with regards to providing the underlying information. Given the amount of time this matter has been on going and the repeated requests for the accounts, receipts and documents which support the service charge summary which have not been met ... All she [the Respondent] is requesting is information which to she is legally entitled, and a without prejudice meeting once that information is received, in an attempt to finally draw a line under this for the benefit of both parties.'*
  - e. Rather than address that, the Applicant issued these proceedings.
  - f. The next piece of correspondence was from the Respondent on 26<sup>th</sup> April 2022, after being served with the application. Off the bat, a further offer of mediation was made.
7. It appears therefore that contrary to the Applicant's assertion, requests for documents were ignored and rather than address the disclosure of those documents (an issue which ultimately led to the application begin struck out), the Applicant decided to issue proceedings. That was also in the face of a without prejudice offer and an offer to mediate. Even after the proceedings were issued the Respondent was keen to mediate, but the Applicant did not engage.

8. The Applicant has not given any satisfactory explanation as to why disclosure was not provided either before or after proceedings were issued, nor why they failed to serve a statement of case. There is some reference to the Applicant not being able to locate any more documents, but I have not seen that particular statement or evidence. Indeed in a case where the Respondent had been asking for that relevant documentation prior to proceedings, it is remarkable that the Applicant considered they could press ahead with the application without having them to hand; or simply getting their case in order.
9. In my view, to bring proceedings in the absence of supporting documentation, and in the face of requests for the same is not reasonable conduct. To continue the proceedings through to a case management hearing and then resist an application to strike out when the Applicant either knew or should have known that they were ultimately unable to establish their case is unreasonable conduct. In my view it cannot be explained on the basis that the Applicant was simply being optimistic about the outcome of litigation.
10. An additional argument in response by the Applicant is more evidence of their unreasonable conduct. They blame the Respondent for not paying her service charge; the very service charge in respect of which they failed to get a determination of payability. They seek to blame her for not providing any reasons for withholding payment. Rather than demonstrate any basis for justifying the Applicant's conduct it demonstrates a worrying lack of insight into the process. Throughout the Respondent had sought the underlying vouchers so she could see if

the sums demanded were payable. She never received them. Further the Applicant appears not to have appreciated that their claim has been struck out. Repeated complaints are made that the Respondent has not paid her service charge and it is denied that the claim is baseless. However, the Applicant has failed to address how it would have established the costs that it had incurred.

11. I also consider the refusal to mediate another aspect of unreasonable conduct. The Applicant says there was no point as negotiation had not succeeded in the past. However, that may well have been because the documents were not provided. I do note that despite the failure to provide the documents, the Respondent had made without prejudice offers to pay; an indication that mediation might have borne some fruit.

*Discretion*

12. In my view it is reasonable to make a costs order. I recognise that unreasonable conduct on its own does not necessarily justify making a costs order, but when in this case the complaint about the Applicant's poor conduct and failure to disclose evidence was one that pre-dated proceedings and ultimately led to the claim being struck out, I consider that that is a good reason for making an award of costs.
13. I also do not see why, in those circumstances, the Respondent should not recover some if not all of the expenditure incurred by her on a costly outing to the Tribunal, where both parties were represented and which was struck out for reasons she had pointed out prior to the application being made.

*Amount of order*

14. The Applicant challenges the amount claimed as counterproductive given the sums in dispute. However, in my view it is demonstrative of the fact that the Respondent was left with no choice but to defend the claim and incur legal costs. Without the evidence from the Applicant, she had no other choice. Taken to its logical conclusion the Applicant's position appears to have been that rather than spend money on legal costs, the Respondent should have paid the service charge notwithstanding the lack of accountability and transparency.
15. The costs claimed by the Respondent being only part of those incurred by her are reasonable. Very limited work was undertaken by the main Grade A fee earner. The hourly rates for those involved is within the acceptable range for this type of work. I take into account that scrutiny of the application form and disclosure would have taken some time and then additional time was needed to draft the successful strike out application and to instruct counsel to attend the case management hearing.
16. Accordingly I make an order that the Applicant shall pay the Respondent the sum of £15,429.60 within 28 days of receipt of this decision.

Judge Dovar

## **Appeals**

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) .

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.