



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

**Case reference** : **LON/00AT/LSC/2021/0080**

**HMCTS Code** : **V: PAPER REMOTE**

**Property** : **3 Grove Road, Brentford, Middlesex  
TW8 9NT**

**Applicant** : **Mr Ajay Kumar Anand**

**Representative** : **KLPA & Company**

**Respondents** : **Ms Diana Justine Tommons (Flat 1)  
Mr Ian Justin Spicer Smith (Flat 2)  
Mr Vatroslav Vlahovic (Flat 3)  
Mr Marin John Carr (Flat 4)**

**Representative** : **Setfords Solicitors (John Summers)**

**Type of application** : **Costs – Rule 13(1)(b)**

**Tribunal** : **Judge Robert Latham**

**Date of Determination** : **3 May 2022**

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**DECISION ON RULE 13(1)(b) COSTS APPLICATION**

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1. The Tribunal makes an Order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Applicant pays the sum of **£20,092** (including VAT) to the Respondents in respect of costs incurred by them relating to the determination of this application. The said sum is to be paid by 20 May 2022.

2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

## **Covid-19 pandemic: description of hearing**

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The tribunal has had regard to the Respondent's Statement of Case.

### **Introduction**

1. On 11 January 2021, Mr Ajay Kumar Amand ("the Applicant") issued this application in which he seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act") as the service charges payable for the calendar years 2009 to 2020 in respect of 3 Grove Road, Brentford, Middlesex TW8 9NT ("the Property"). The Applicant is the freeholder and landlord. The Property has been converted into four flats:
  - (i) Flat 1: A two bedroom flat on the lower and upper ground floors. Ms Diana Justine Tommons has been the lessee since 15 November 2007. Her lease is dated 27 March 1986.
  - (ii) Flat 2: A one bedroom flat on the lower and upper ground floors. Mr Ian Justin Spicer Smith has been the lessee since 31 October 2001. His lease is dated 14 April 1984.
  - (iii) Flat 3: A one bedroom flat on the first floor and roof space extension. Mr Vatroslav Vlahovic has been the lessee since 5 April 2016. His lease is dated 5 April 2016 and was granted as a result of a lease extension.
  - (iv) Flat 4: A two bedroom flat on the first floor and roof space extension. Mr Marin John Carr is the lessee.
2. On 18 August 2021, the Respondents applied to strike out this application on the grounds that the tribunal has no jurisdiction to determine the same. The Respondents argued that the Applicant was asking this tribunal to revisit issues which have been determined in the County Court and that it was an abuse of the process of this Tribunal to seek to do so. The Respondents also applied for costs pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules") on the ground that the Applicant has acted unreasonably in bringing these proceedings.
3. On 13 December 2021, this Tribunal allowed the Respondents' application and struck out the Applicant's application. The Respondents were represented by Counsel. The Applicant did not appear.
4. The Tribunal concluded that the manner in which the Applicant had conducted this application was not acceptable. It was manifestly unreasonable to relitigate matters which have been decided against him in

the County Court. He had provided no explanation for his reason for so doing, or for failing to mention these proceedings when he submitted his application. The Tribunal noted that the Applicant had stated that managing agents were employed to manage the property on his behalf. However, seemed that KLPA was no more than a trading name used by the Applicant and his father. It had been apparent from the extensive papers in the case that the Applicant has had access to legal advice. However, he had not heeded this.

5. Due to some administrative error, the tribunal did not send out the decision to the parties until 31 January 2022. The Tribunal apologises for this delay. On 31 January, the Applicant acknowledged receipt of the decision.
6. On 31 January, the tribunal also sent out Directions for the Respondents' Rule 13(1)(b) Costs application. These were amended on 24 February 2022 with a new timetable. On 10 March 2022, the Respondents filed their Statement of Case in support of this application. They emailed these to the tribunal and to the Applicant at [klpa@live.co.uk](mailto:klpa@live.co.uk), the email address to which the decision had been sent.
7. By 1 April, the Applicant was directed to email his Statement of Case in Response to both the tribunal and the Respondents. He has failed to do so. On 6 April, the Respondents notified the tribunal that they had not received any Statement of Case from the Applicant. They copied this email to the Applicant.
8. The Tribunal is satisfied that the Applicant has received (i) a copy of the Tribunal's decision, dated 13 December 2021; (ii) the Directions, dated 24 February 2022, and (iii) the Respondents' Statement of Case, dated 10 March 2022. The Tribunal is further satisfied that the Applicant has made an informed decision not to engage with this application.

### **The Law**

9. Rule 13 of the Tribunal Rules provides in so far as is relevant to this application (emphasis added):

13. Orders for costs, reimbursement of fees and interest on costs

(1) The Tribunal may make an order in respect of costs only:

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

.....

(ii) a residential property case;

10. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC), the Upper Tribunal ("UT") gave guidance on how First-

tier Tribunals (“FTTs”) should apply Rule 13. The UT for the case consisted of the Deputy President of the UT and the President of the FTT. The UT set out a three-stage test:

- (i) Has the person acted unreasonably applying an objective standard?
- (ii) If unreasonable conduct is found, should an order for costs be made or not?
- (iii) If so, what should the terms of the order be?

The UT gave detailed guidance on what constitutes unreasonable behaviour. For the purpose of this application we highlight the following passage from the judgment of the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205, per Sir Thomas Bingham MR at p.232C (emphasis added):

“‘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. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment, but it is not unreasonable.”

- 11. Rule 13(1)(b) provides that the amount of such costs may be assessed summarily by the Tribunal.

### **The Tribunal’s Determination**

#### **Stage 1: Has the Applicant Acted unreasonably?**

- 12. The Tribunal is satisfied that the Applicant has acted unreasonably. First, he has acted unreasonably in bringing this application. He is seeking to relitigate matters which have been decided against him in the County Court. He was refused permission to appeal that decision and did not seek to renew it. In Section 8 of the application form, he was required to specify whether he was aware of any other cases involving the property. He stated “no”. This was manifestly untrue.
- 13. The Tribunal is further satisfied that he acted unreasonably in the conduct of the proceedings. The manner in which the Applicant refused to communicate with the Respondents’ solicitor is set out at [19] to [29] of the Tribunal’s decision. He failed to attend the final hearing. The Tribunal is satisfied that he failed to do so as he knew that the application was bound to fail and had been brought dishonestly.

Stage 2: Should there be a Costs Order?

14. The Tribunal is satisfied that this unreasonable conduct by the Applicant calls for a costs order to be made. The Respondents have been obliged to instruct both solicitors and counsel. Unnecessary costs have been incurred as a result of the manner in which the Applicant has conducted this application.

Stage 3: If so, what order should be made?

15. The Tribunal is mindful that it has a discretion as to what order should be made (see *Willow Court* at [29]). The Respondents ask for costs to be awarded on an indemnity basis. The Tribunal is satisfied that this is one of those rare cases in which such an order should be made. The Applicant has inflated the cost of the litigation by his large number of lengthy emails. It has been necessary to obtain a transcript of the judgement in the County Court. The application bundle extended to 625 pages. Counsel was instructed for the hearing.
16. The Respondents have provided a N260 Statement of Costs dated 7 March 2022, and a schedule of the disbursements which have subsequently been incurred. The Statement of Case, drafted by Counsel, justifies the costs. Mr John Summers, who has had conduct of the case, is a Grade A fee earner based in Chancery Lane (London Band 2). The Respondents have provided: (i) the agreed terms of engagement; (ii) supporting invoices for the solicitor's fees and disbursements, and (iii) Counsel's fee notes. Fixed fees were agreed with Counsel. Counsel notes that the time actually expended exceeded the estimated times.
17. The sum claimed of £20,092 (including VAT) is substantial. However, the Tribunal is satisfied that these costs have been reasonably incurred in responding to this complex application. Any applicant who brings a case before this tribunal must have regard to the overriding objectives in Rule 3 of the Tribunal Rules. The Applicant has had no regard to these and must accept the consequences.

**Order Under Section 20C**

18. The Respondents also applies for an order under section 20C of the Landlord and Tenant Act 1985. The Tribunal is satisfied that it is just and equitable in the circumstances for an order to be made so that the Applicant may not pass any of his costs incurred in connection with the proceedings before the tribunal through the service charge. It would be quite inappropriate for him to do so, given his conduct in this matter.

**Judge Robert Latham**  
**3 May 2022**

## **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.