



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

Case Reference : CHI/00MS/LBC/2022/0020

Property : 134 Radcliffe Road, (Ashcombe House)
Southampton, SO14 0PR

Applicant : Avon Ground Rents Limited

Representative : Scott Cohen Solicitors

Respondent : Fortitudo (103) Limited

Representative :

Type of Application : Breach of Covenant S168(4) Commonhold
and Leasehold Reform Act 2002

Tribunal Members : Regional Judge Whitney
Mr P Smith FRICS
Ms T Wong

Date of Decision : 14 June 2024

DECISION

Background

1. The Applicant sought an Order under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent had breached covenants in their lease outlined in part 5 of the application form. The application was received on 8 August 2022.
2. At a hearing on 18th April 2024 following a tortious procedural history the Respondent admitted various breaches of lease. Counsel for the Applicant Mr Piers Harrison made submissions seeking an Order for costs against the Respondent due to their unreasonable behaviour.
3. A short decision was issued on 18th April 2024 including directions to enable the determination of the costs application.
4. The Applicant's solicitors have filed and served a costs schedule seeking costs totalling £19,950 inclusive of vat and disbursements. Further they seek a sum of £2000 plus vat for the attendance of the director of the Applicant and also in respect of management fees. No breakdown of these later sums has been provided.
5. No submissions have been received from the Respondent.

Decision

6. As we indicated in our decision dated 18th April 2024 we were minded of our own motion to make an Order that the Respondent should pay costs to the Applicant pursuant to Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Rules").
7. We have had regards to the submissions of Mr Harrison and take account of the procedural history set out in our earlier decision. It appears only upon Mr Carr as a director of the Respondent company being witness summonsed by the Tribunal that the Respondent took any active part in these proceedings. When it did so it admitted the breaches claimed and produced copies of the disputed leases.
8. We have considered the Upper Tribunal judgment in the case of Willow Court Management (1985) Ltd v Alexander [2016] 0290 UKUT (LC). We are satisfied that the conduct of the litigation by the Respondent was unreasonable. They choose not to comply with directions issued including as to the provision of documents. It is clear that they had control of such documents and could have supplied these. We are satisfied the failure to comply with directions was a deliberate course of conduct.

9. We are satisfied a failure to comply with directions over a considerable period of time amounts to unreasonable conduct.
10. We are satisfied that such conduct is of a character which should lead to our making an order that the Respondent should pay the Applicants costs thrown away by this conduct. Such conduct is in our judgement wholly unreasonable and has led to costs being wasted. It is conduct of this type which should be reflected in an Order pursuant to Rule 13(1)(b) of the Rules.
11. We must next consider what sums we should award. Simply because we find conduct has been unreasonable does not mean all of the costs should be paid by the Respondent. It is only those we are satisfied have been wasted by such conduct.
12. For the sake of completeness we are satisfied that we can and should summarily assess the costs on the basis of the information supplied by the Applicant. In so doing we make no comment or finding as to whether or not any costs which we do not allow may or may not be recoverable under the terms of the leases from the Respondent as contractual costs.
13. We address firstly the sum of £2000 plus vat claimed for the director's attendance and that of managing agents. We accept a director attended the hearing on 18th April 2024. His attendance was quite properly required given he had given evidence and until the hearing began no concession had been made by the Respondent and the Applicant was required to prepare on the basis the claim for breach of lease was denied. We have however seen no breakdown of the sum or of the managing agents' costs. No evidence was given by the managing agents. Doing the best we can we assess that the directors costs of attending the hearing should be allowed in the total sum of £100. We do not allow any costs for the managing agent as it is unclear what costs they have incurred which have been wasted. The litigation was conducted by solicitors and whilst the agents may have had involvement prior to the issue of this claim we are not satisfied that those costs are wasted costs within the context of this application for costs.
14. Turning now to the solicitors costs we remind ourselves that it is those costs which are wasted that are recoverable. The issuing of the application itself was in our judgment necessary. An allowance will need to be made. However at that point the Respondents could and should have engaged and further costs would not have been wasted. We are satisfied the hourly rates claimed are reasonable. Two hearings have taken place. Counsel instructed for each had to prepare on the basis the claim was disputed. It is on this basis we have reviewed and assessed the costs.
15. We have considered the costs schedule and we summarily assess the sum which has been wasted as £16,000.

16. We find that an Order of costs should be made requiring the Respondent to reimburse to the Applicant pursuant to Rule 13(1)(b) of the Rules a sum inclusive of vat and disbursements £16,100.

RIGHTS OF APPEAL

1. 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
2. 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.
3. 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.