



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

**Case reference** : **CHI/00ML/LAC/2023/0016**

**Property** : **Flat 2 Girton House, 193 Kingsway,  
Hove, BN3 4FB**

**Applicant** : **Maxiwood Ltd.**

**Representative** : **Coole Bevis LLP**

**Respondent** : **Michael Charles Mcfadden**

**Representative** : **In Person**

**Type of application** : **For the determination of the liability to  
pay an administration charge.**

**Tribunal members** : **Valuer Chair R Waterhouse FRICS,  
Mr Bourne,  
Ms Wong.**

**Venue** : **Havant Justice Centre**

**Date of decision** : **19 June 2024**

---

**DECISION**

---

## **The Tribunal's summary decision**

(1) The Tribunal finds the Applicants' legal fees incurred in the period 2023 to 2024 for the sum of **£2125.00 plus VAT** and an Application fee of **£100.00**, as per demand letter of 14 June 2023 have been correctly incurred under the lease, are both reasonable and payable by the Respondent. Payment within 28 days of date of decision.

(2) The Tribunal finds the Applicant's interest, **£360.46**, as per demand letter of 14 June 2023, on the unpaid service charge has been correctly incurred under the lease, are both reasonable and payable by the Respondent. Payment within 28 days of the date of decision.

(3) The Tribunal does make an Order under Rule 13 for the payment of the Applicant's costs by the Respondent for a sum of **£4698.00 excluding VAT**, payable within 28 days of the decision.

## **Preliminary Decision.**

1. The Tribunal took place with remote access. The Tribunal members sat in the Havant Justice Centre, and by way of remote video connection the Applicant, Mr P Brotherton, Director of Maxiwood Ltd, and counsel for the Applicant Mr C Mclean.

2. The Respondent was not present. The Tribunal had not had communication from the Respondent on why they were absent. The Respondent had also failed to comply with the Directions and no submissions were received from them.

Rule 34 of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013 and Practice Directions says;

34. If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal-

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interests of justice to proceed with the hearing.

The Tribunal was satisfied on both grounds that the hearing should continue in the absence of the Respondent.

## **Background**

### **The Application**

3. From the Application form, the Applicant notes there was previously, an Application under section 27A Landlord and Tenant Act 1985 between the same parties under case number CHI/OOML/LIS/2023/0004 with decision

issued on 30 May 2023, a subsequent Application by the Respondent to appeal was refused. The Respondent had not paid the service charge determined as reasonable by the Tribunal, at date of this application, and it is the costs of that Application that are sought to be determined by this Application.

## **The Issues**

4. The Tribunal has identified the following issues to be determined:

- (i) The jurisdiction in relation to interest charges and administration charges
- (ii) If the Tribunal has jurisdiction, whether the Applicant has the power to levy under the lease these charges.
- (iii) If (i) and (ii) are met, then whether the charges are in themselves reasonable. Interest claimed is **£360.46** said to have accrued under the lease for unpaid service charge up to the date it was paid which was 8 February 2024. Administrative charges for legal costs demanded by Maxiwood Limited on behalf of the Respondent including the costs of preparing and serving the section 146 notice, total is **£2125,00 plus vat plus £100** for the application fee.

## **The Hearing**

5. The Application was determined through a hearing conducted with the parties remote on video. The Tribunal had a hearing bundle of 30 pages. Additionally, the Applicant submitted a skeleton argument, a bundle of authorities and a schedule of costs to support a Rule 13 Application. No submissions were received from the Respondent.

## **The Law**

### **Administration Charges**

Part 1 of Schedule 11 Commonhold and Leasehold Reform Act 2002 (the CLRA) defines administration charges. It provides at paragraph 1:

Meaning of “administration charge”

1(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither— (a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

### **The Tribunal’s reasons**

#### **The Jurisdiction of the Tribunal**

6. This Application was issued on a standard Application form by which the Tribunal is asked to make a determination as to liability to pay an administration charge or for the variation of a fixed administration charge. The jurisdiction to determine administration charges comes from paragraph 5(1) of Schedule 11 which provides that:

“an application made to the Tribunal for a determination whether an administration charge is payable and, if it is, as to: (a) the person by whom it is payable; (b) the person to whom it is payable; (c) the amount which is payable; (d) the date at or by which it is payable; and 4 (e) the manner in which it is payable”.

7. The Tribunal’s jurisdiction under s27A Landlord and Tenant Act 1985 has not been invoked although it is necessary to determine whether or not other than in connection with deciding whether or not the payment of service charges was overdue in order to decide whether an administration charge is payable.

### **Interest**

#### **Does the Freeholder have the power under the lease to levy interest on unpaid service charge?**

8. The clauses of the lease the Applicant relies upon are as follows:

Clause 7(6) of the lease contains the following covenant:

In the event of any of the payments due from the lessee under the three preceding sub clauses (ie those requiring the Lessee to pay service charge,

including advance and interim service charge) not being paid within fourteen days from its due date the same shall bear interest at 15% per annum or at 2% above Barclays Bank PLC base lending rate whichever is greater.

The interest has been formally claimed by virtue of demand dated 14 June 2023 an email from the Applicant solicitor to the Respondent with attachments which included the interest calculation.

**The Tribunal is satisfied that the Freeholder has the power under the lease to levy interest charges.**

### **Costs**

**Does the Applicant Landlord have the power to levy administration charges in respect of contemplation of forfeiture?**

9. The Tribunal next needed to consider whether the Applicant Landlord had the power under the lease to levy the administrative charges. The Applicant Landlord referred the Tribunal to extracts from the lease, namely;

Clause 4(8) of the lease contains the following lessee's covenant:

“To pay all costs charges and expenses (including Solicitors costs and Surveyor's fees) incurred by the Lessor for the purposes of and incidental to the preparation and service of a Notice under Section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.”

**The Tribunal is satisfied that the Applicant does have the power to levy administrative charges in contemplation of forfeiture proceedings.**

**Did an event or events occur that reasonably entitled the Applicant Landlord to levy administration charges in respect of forfeiture proceedings?**

**The Tribunal is satisfied that the administrative charges were made in pursuant with unpaid service charges, as evidenced by Tribunal decision CHI/00ML/LIS/2023/0004.**

**Did the Applicant Landlord contemplate forfeiture proceedings and if so from what date?**

10. By email dated 14 June 2023, the Applicant's solicitors Coole Bevis sent a demand for “contractual legal fees and interest, both being an administrative charge”.

11. By email letter dated 14 June 2023; “in relation to legal costs these are claimed from you pursuant clause 4(8) of the lease of the flat dated 19 April 1984, legal costs are £2125.00 plus vat, plus a Tribunal Application fee of £100. Together this totals £2650.00. In relation to interest this is claimed under clause 7(6) of the lease. To the date of this letter, interest stands at £360.46.

12.The Applicant submitted a Witness Statement of Philip Anthony Brotherton, who is company director of Maxiwood Ltd. The witness statement makes reference to an Exhibit PAB1 which is a letter dated 3 January 2023, which he was informed by Coole Bevis was sent to the Respondent.

The relevant extract states;

13.“This letter has been written as the first stage of a process that can ultimately lead to forfeiture of the lease. If we do not receive payment by the 20 January 2023, we are instructed by our client to issue, an application in the First-tier Tribunal for determination of service charge, legal costs and interest payable.

Obtaining a determination of the amounts payable is a precondition to service of notice in accordance with section 146 of the Law of Property Act 1925, (section 146 notice) Service of a section 146 Notice is itself a precondition to forfeiture of the lease of the flat. We are instructed that our client will, ultimately, proceed to forfeiture if the ground rent, legal costs and interest are not paid.”

**The Tribunal finds the letter dated 3 January 2024 from the Applicant’s solicitors to the Respondent clearly set out the consequences of continuing to fail to comply with terms of the lease. Consequently, the Tribunal finds the legal costs that followed as a result of the correspondence between the parties and with the respondent client were incurred in contemplation of forfeiture proceedings and are therefore recoverable under the terms of the lease.**

14. The sums demanded by the Applicant are itemised in the demand letter of the 14 June 2023 at p 13 from Coole Bevis to the Respondent Mr M Mcfadden, the letter notes that the total of interest and administrative charge amounts to £3010.46 made up from;

Legal costs £2125.00 plus VAT plus Application fee £100

Interest costs £360.46

Total                   £3010.46

15.The document at p 29-30 in the bundle, Applicants Statement of Costs shows all costs incurred by Mr Everett at a rate of £250 per hour in 2023 and £300 per hour.

16.The Tribunal finds that figure of **£3010.46** is both properly incurred and reasonable in level.

### **Rule 13 Application by Applicant**

17.At the end of the hearing, the Applicant made an Application under Rule 13 for costs. The Applicant submitted the Respondent had failed to comply with the Directions, had failed to attend a previous Case Management Hearing, although it was noted, the Respondent had given the Tribunal notice of non-

attendance, had failed to give notice of nonattendance at today's hearing and had not attended today's hearing, The Applicant submitted failure to engage with the process or in absence of defending the claim, failure to accept the claim amounted to unreasonable behaviour for the purposes of Rule 13.

## **The Law**

18.

Rule 13 9. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber Rules 2013, in so far as relevant, provides that

(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 – .....

(iii) a leasehold case

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(2) The Tribunal may make an order under this rule on an application or on its own initiative.

## **The Applicant's submissions**

19. In essence the Applicants seek to establish that the Respondent acted unreasonably in defending or conducting the proceedings, that is to say the proceedings relating to the preliminary matter.

20. To that end they make reference to a number of issues surrounding the dispute that they had raised already in the submissions relating to the preliminary and substantive stages of the Tribunal proceedings.

21. They summarise the grounds relied on as follows.

A Case Management Hearing (CMH) was arranged prior to the administrative costs hearing, the Respondent prior to the CMH informed through illness that they could not attend.

The Respondent failed to comply with the Directions for this hearing.

The Respondent gave no notice of non-attendance of this hearing

The Respondent made no effort to defend or settle the claim in advance of the hearing.

## **Discussion and determination**

The first point to note with regard to Rule 13(1) is that the person whose conduct complained of must have behaved unreasonably in bringing defending or conducting the proceedings.

In the present case that means either defending or conducting the proceedings relating to the preliminary matter.

22. The meaning and scope of Rule 13(1) was considered by the Upper Tribunal in *Willow Court Management Company (1985) Limited v Alexander and Others* [2016] UKUT 0290 (LC). In its decision the Upper Tribunal held that “When considering the r.13(1)(b) power, attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably...” We make two obvious points: first, that unreasonable conduct is an essential precondition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the Tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.” The Upper Tribunal continued “An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in Tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh v Horsefield* at 232E, despite the slightly different context. “Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham’s “acid test”: is there a reasonable explanation for the conduct complained of?”

22. In the present case the Applicants suggest that it was unreasonable of the Respondent, to prolong the Application through not engaging either to defence or attempt settlement.

23. In conclusion there is evidence that the Respondent behaved unreasonably when conducting the Tribunal proceedings. It follows that the discretionary power of the Tribunal to make a Rule 13(1) costs order is engaged because the preliminary threshold of establishing unreasonable conduct in defending or conducting the proceedings has been met.



24. The Tribunal Orders the Respondent to pay the Applicants costs as outlined on papers submitted to the Tribunal date 18 June 2024. The costs are **£4698.00 excluding VAT** within 28 days of receipt of the decision.

### **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).