



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

- Case Reference** : CHI/00HN/LSC/2023/0166 and
CHI/00HN/LBC/2023/0025
- Property** : Flat 11, 17 Admirals Walk, West Cliff Road,
Bournemouth, BH2 5HH
- Applicant** : Admirals Walk 2002 Limited
- Representative** : Cassandra Zanelli, solicitor, Property
Management Legal Services Limited
- Respondents** : Kevin Roy Dixon
David Paul Bell
- Representative** : Not represented
- Type of Application** : (1) Application for costs Rule 13 of the
Tribunal Procedure (First Tier Tribunal)
(Property Chamber) Rules 2013
(2) Application paragraph 5A to Schedule 11
of the Commonhold and Leasehold
Reform Act 2002
(3) Application section 20C of the Landlord
and Tenant Act 1985
- Tribunal Members** : Judge N P Jutton, Mr M J F Donaldson FRICS,
Ms T Wong
- Date** : 23 July 2024

DECISION

1 **Introduction**

2 The Tribunal made its written decision in this matter on 11 June 2024. It determined that the Respondents had acted in breach of the terms of certain covenants contained in their lease. It made determinations as to the amount service charge payable by the Respondents for the year ending 24 March 2022 and of estimated service charges payable on account for the years ending 24 March 2023 and 2024.

3 At the end of its Decision the Tribunal made Directions in respect of submissions for orders for costs or reimbursement of Tribunal fees under rule 13 of the Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 or for Orders under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

4 The Tribunal has received the following applications (and responses thereto):

- (1) An application by the Respondents dated 13 April 2024 for an order under paragraph 5A to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) for an order to reduce or extinguish the Respondents liability to pay an administration charge in respect of litigation costs.
- (2) An Application by the Respondents dated 13 April 2024 for an order under section 20C of the Landlord and Tenant Act 1985 (the 1985 Act) that all or any of the costs incurred by the Applicant in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents or any other person or persons specified in the application.
- (3) An application by the Applicant dated 27 June 2024 for an order for payment of costs and Tribunal fees by the Respondents pursuant to Rule 13 of the Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules).

5 **The 2002 Act Application**

6 Paragraph 5A part 1 of Schedule 11 of the 2002 Act provides that a tenant of a dwelling in England may apply to the Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of 'litigation costs'. 'Litigation costs' means inter alia costs incurred by the landlord in connection with proceedings before this Tribunal. The Tribunal may make whatever order on the application that it considers to be just and equitable.

7 The grounds relied upon by the Respondents are very brief. They say that they wish to ensure that they and other residents are not charged with the costs of litigation. They also refer to an order that they seek in separate county court proceedings.

- 8 Neither party has referred the Tribunal to the terms of the lease as regards a contractual liability for legal costs to be recovered as administration charges. Accordingly the Tribunal does not make a determination as to whether or not the lease allows for the recovery of litigation costs as administration charges. The Applicant may only recover litigation costs as administration charges from the Respondents if there is provision in the lease to allow that.
- 9 The Applicant was successful with its application. It sought and was granted a determination that the Respondents had acted in breach of certain covenants in their lease. It sought and was granted a determination as to the amount of service charges payable for the year ending 24 March 2022 and estimated service charges on account for the years ending 24 March 2023 and 2024.
- 10 In the circumstances the Tribunal declines to make an order reducing or extinguishing the Respondents liability to pay an administration charge in respect of litigation costs under paragraph 5A of part 1 of Schedule 11 of the 2002 Act and dismisses the Respondents application in that regard.

11 The 1985 Act Application

- 12 Section 20C of the 1985 Act provides that a tenant may make an application for an order that all or any of the costs incurred by a landlord in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- 13 In their application form the Respondents set out no grounds in support of their application. Neither party makes any submission to the Tribunal as to whether or not the Respondents lease allows litigation costs to be recovered by the Applicant as part of the service charges payable by the Respondents. Accordingly, the Tribunal does not make a determination as to whether or not the lease so allows. The Applicant can only recover litigation costs as part of the service charge payable by the Respondents if there is provision in the lease to allow that.
- 14 The Applicant was successful with its application. It sought and was granted a determination that the Respondents had acted in breach of certain covenants in their lease. It sought and was granted a determination as to the amount of service charges payable by the Respondents for the year ending 24 March 2022 and estimated service charges on account for the years ending 24 March 2023 and 2024.
- 15 In the circumstances the Tribunal declines to make an order that all or any of the costs incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents and dismisses the Respondents application in that regard.

16 The Rule 13 Application

- 17 Rule 13(1) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013 provides as follows:

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

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

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

.....

(ii) a residential property case”.

- 19 Guidance was given by the Upper Tribunal (Lands Chamber) in *Willow Court Management Company (1985) Limited & Others v Mrs Ratna Alexander & Others* (2016) UK UT 0290 (LC) as to how the First-Tier Tribunal should in practice exercise the application of rule 13.

- 20 The Upper Tribunal identified a 3 stage process. The first stage was for the Tribunal to determine whether or not a person had acted unreasonably in bringing, defending or conducting the proceedings. The second stage was for the Tribunal to consider in light of unreasonable conduct that it found whether or not it ought to make an Order for costs. The third stage in the event the Tribunal decided to make an Order was what the terms of the Order should be.

- 21 The Applicant seeks an order for costs solely in relation to the application in respect of the breach of covenant under section 168(4) of the 2002 Act. It does not seek an order for costs in relation to the service charge application brought under section 27A of the 1985 Act. The Applicant says that the Respondents acted unreasonably in defending and conducting the proceedings in relation to the section 168(4) application. Further the Applicant reasonably says that it does not seek an order in relation to all of the costs that it incurred in relation to section 168(4) application. It acknowledges that there were elements of the evidence presented to the Tribunal which did not concern the Tribunal in determining the application brought. It therefore invites the Tribunal to make a partial rule 13 order in respect of its costs associated with section 168(4) application. The Applicant says that taking a broad brush approach 25% of its overall costs incurred should be disregarded as relating to the section 27A application. The Applicant acknowledges that elements of the evidence presented did not fall within Tribunal’s remit to determine under section 168(4) and therefore seeks 60% of the remaining costs. To apply that to the figures claimed for costs; the total costs that the Applicant says it has incurred are £29,810.28 (being costs in the proceedings but excluding pre-litigation costs). If Tribunal fees are deducted from that sum and the resultant figure multiplied by 75% a figure of £22,132.71 is produced. The Applicant seeks 60% of that sum i.e. £13,279.63 (plus the application fee in respect of the section 168(4) application and the hearing fee of £200).

- 22 The Applicant says that the Respondents by their conduct have been found to have breached clauses 3.18 and 3.19 their lease. That the breach occurred between January 2023 and March 2024. That the covenants are absolute covenants. That as such the Respondent's argument that they were making a protest and thus that the breach was justified was irrelevant. The Applicant says the breaches were prolonged. That they were committed over a period of approximately 15 months. They were not accidental breaches but deliberate acts on the part of the Respondents. That the breaches caused considerable nuisance annoyance and anguish to other residents. That the breaches caused damage to property belonging to other residents. That despite formal letters being sent to the Respondents by the Applicants solicitors their behaviour did not stop. That the Respondents conceded that there were notices etc displayed from their balcony and windows but still maintained there was justification for this. That the Respondents knowingly continued with a defence which defence was always doomed to fail. There is as such the Applicant says no reasonable explanation for the conduct complained of and therefore the threshold is crossed and the Tribunal's jurisdiction to make an order under Rule 13 is engaged.
- 23 As to whether the Tribunal should make an order the Applicant says that it is a lessee owned and controlled company. That the application was brought as a result of Respondents conduct. That the Applicant had attempted to engage with the Respondents before making the application to the Tribunal. That instead of the Respondents modifying their behaviour, that behaviour and the volume of notices (and damage to property) increased. That the Applicant was left with little choice but to bring the proceedings. That in those circumstances it would be neither just nor equitable for the Respondents to avoid some liability for the Applicant's costs.
- 24 The Respondents say that the Applicant acted unreasonably in continuing with the proceedings in the knowledge that the Respondents had remedied the breach of covenant on 1 January 2024 in respect of the balcony and in early March to 24 respect of the windows. The Respondents say they were justified in their 'protest' because of the Applicant's actions.
- 25 The Respondents say that the Applicant continued with section 168(4) application to harass them and to allow them less time to address the section 27A application. They do not accept that their conduct of the case was unreasonable. The Applicant was wrong, they say, to 'aggressively' pursue its application in the knowledge that the cause of action had been remedied. The Respondents say that they have acted reasonably in their conduct of proceedings in accordance with the Tribunals procedures 'as well as any layperson would understand them'. The Respondents complain of the Applicant's conduct in the form of alleged harassment and stalking of them. The Respondents complain of the Applicant's alleged conduct inter alia in not honouring a settlement reached in previous County Court proceedings, in a failure to produce invoices and documents, in an alleged breach of the Data Protection Act 2018 and in respect of alleged communications with the Respondents mortgagee. The Respondents alleged that the Applicant's witnesses have lied in witness

statements and to the Tribunal. They make various allegations as to the conduct historically of the Applicant and its agents.

26 The Tribunals Decision

27 The first question that the Tribunal asks itself is whether the Respondents acted unreasonably in defending the section 168(4) application or in their conduct of the proceedings.

28 The question of whether behaviour might be regarded as unreasonable was addressed by the Upper Tribunal in *Willow Court* (and with reference to the court of appeal decision in *Ridehalgh v Horsefield* (1994) Ch 205) at paragraph 24:

‘An assessment of whether behaviour is unreasonable requires a value judgement on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* 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. 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?’

29 Further at paragraph 32 when considering the position of unrepresented parties:

‘ In the context of rule 13(1)(b) we consider that the fact that a party acts without legal advice is relevant to the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of the proceedings before it, then is in fact possessed by the party whose conduct is under consideration. The behaviour of unrepresented party with no legal knowledge should be judged by the standards of the reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.’

30 The Respondents concede that the notices etc were displayed from their balcony and windows. Their defence was that they were justified in doing so. That their actions were a form of protest against the perceived actions and behaviour of the Applicant and its agents. The Respondents do not accept that their actions constituted a nuisance or annoyance to other residents. The question is was the failure of the Respondents as lay persons to properly appreciate the weakness of their defence unreasonable? Would a reasonable person without the benefit of legal

advice reasonably have believed that the defence raised by Respondents had a chance of success? The Tribunal is not concerned with the historic behaviour of the Respondents in breaching the covenants but whether or not they acted unreasonably in defending the proceedings.

- 31 *Willow* made it clear that the Tribunal should not be overzealous in detecting unreasonable conduct after the event. That a failure by a party to appreciate the strengths or weaknesses of their own or their opponents case should not be treated as unreasonable. In this case however the Tribunal is satisfied the Respondents knew and understood that their actions in displaying notices et cetera from the balcony and windows of their flat constituted a breach of the covenant at 3.19 of their lease. The wording of the covenant is clear, is ; '*Not to display any notice or advertisement either on the outside of the property or visible from outside it*'. In the view of the Tribunal a reasonable person without the benefit of legal advice would not in the circumstances have reasonably believed that displaying notices containing allegations such as '*this block is corrupt*' (e.g. see pages 85-98, 193-207, 280-284 of the hearing bundle) was a form of protest that justified their actions and would constitute a defence to a breach of the covenant at clause 3.19 of the lease. The Tribunal has no doubt that the Respondents knew well that they were acting in breach of the said covenant but that they continued with their actions, to include defending these proceedings, as a form provocation against the Applicant, its agents and certain other lessees. The Respondents continued, in the view of the Tribunal unreasonably, to defend the Applicants section 168(4) application up to and including the hearing. As such, in all the circumstances in the view of the Tribunal the Respondents acted unreasonably in defending that application.
- 32 The second question that the Tribunal asks itself is whether or not in light of the Respondents unreasonable conduct in defending the proceedings it ought to make an order for costs. It is clear that the Respondent's behaviour in continuing to defend the application or even to acknowledge that they had acted in breach of the covenant incurred the Applicant in substantial costs. It is disingenuous of the Respondents to argue that the Applicant acted unreasonably in continuing with the application after the notices and banners had been removed from the balcony and windows of their flat. It was open to the Respondents at any time during the proceedings to admit to a breach of covenant (albeit after the notice and banners were removed, to an historic breach) which would no doubt have brought the application to a conclusion. The Applicant is a company owned by the lessees. It would in the circumstances in view of the Tribunal be inequitable for the Applicant (and ultimately the lessees) to bear the entirety of the costs of the application.
- 33 The third question that the Tribunal asks itself is what are the terms of the order that it should make. The Applicant seeks an order for costs in respect of the section 168(4) application only. Taking a broad brush approach it puts those at 75% of its total costs. In the view of the Tribunal, having regard to the paperwork and the amount of time spent on each issue that is a reasonable apportionment. The Applicant acknowledges that certain elements of its submissions to the Tribunal were irrelevant to the issues before the Tribunal and accordingly in the circumstances seeks an order

for 60% of the balance of its costs. Having regard to the evidence before it and to the submissions made by the Applicant to it, the Tribunal is satisfied that constitutes a reasonable reduction in the balance of the Applicants costs.

- 34 The Applicant has filed a statement of its total costs using County Court form N260. The Tribunal makes a summary assessment of those costs. The Tribunal is satisfied that the hourly rates claimed for each grade of fee earner are reasonable. In relation to the costs as a whole and the assessment thereof the Tribunal bears in mind that this was not a particularly complex matter either legally nor factually. It was not a case that required any particular skill or expertise. The Tribunal does take into account the conduct of the Respondents, which undoubtedly caused additional work to be done. The Tribunal makes the following reductions:
- The Applicant claims a total of 11 hours 36 minutes on letters/emails with the Applicant. The total amount of time claimed is in the view of the Tribunal unreasonable in amount. The Tribunal allows a total of eight hours a reduction of £1,275.
 - As they are dealt with below under the application for the repayment of the application and hearing fees the Tribunal removes the total sum of £300 in respect of tribunal fees from its assessment.
 - It is unreasonable for time spent in travelling and waiting to be charged at the Applicant's solicitors full hourly charge out rate. The amount claimed is £2925, the Tribunal allows 50% a reduction of £1,462.50
 - The Applicant claims 'Applicant's fees' for attending the hearing of £1,293.50. These are presumably fees charged by the Applicant's agent for the time spent by Mrs Lacey-Payne in attending the hearing. Mrs Lacey-Payne did not attend as an expert witness. The Tribunal disallows this item. (Whether such fees are recoverable under the terms of the lease as either service charges or administration fees is not something which the Tribunal addresses here).
- 35 The Tribunal is satisfied that the remainder of the Applicants costs were reasonably incurred and are reasonable in amount. The effect of the above reductions is to reduce the total profit costs claimed net of VAT from £23,038 to £20,300.50 a total inclusive of VAT of £24,360.60. The Tribunal fees and expenses are reduced from £2,052.82 to £459.32. That leaves a balance of £24,819.92. The Tribunal is satisfied that that sum is proportionate in amount. 75% of that sum is £18,614.94 and 60% thereof £11,168.96 which taking a broad brush approach the Tribunal rounds down to £11,000.00.
- 36 The Tribunal Orders the Respondents to pay to the Applicant within 21 days of the date of this decision costs of £11,000.
- 37 The Applicant also seeks an order under rule 13(2) requiring the Respondents to reimburse it the fees paid by it, that is an application fee of £100 and a hearing fee of £200. The Applicant has been successful in its application under section 168(4). The Respondents were warned in the form of letters before action of the potential consequences of not remedying the breaches of covenant. Although they did belatedly remedy those breaches the only did so after these proceedings had been instituted and they continued to defend their historic breaches before

this Tribunal. In all the circumstances the Tribunal is satisfied that it is just and equitable to make an order that the Respondents reimburse the Tribunal fees paid by the Applicant in the total sum of £300, to be paid within 21 days of the date of this decision.

37 **Summary of Decision**

- (1) The Tribunal declines to make an order under paragraph 5A of part 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 reducing or extinguishing the Respondents liability to pay an administration charge in respect of litigation costs and accordingly the Respondent's application in that regard is dismissed.
- (2) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable and accordingly the Respondent's application in that regard is dismissed.
- (3) The Tribunal Orders the Respondents to pay to the Applicant costs of £11,000 within 21 days of the date of this Decision.
- (4) The Tribunal Orders the Respondents to reimburse to the Applicant Tribunal fees paid by the Applicant of £300 to be paid within 21 days of the date of this Decision.

Dated this 23rd day of July 2024

Judge N P Jutton

Appeals

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.

4. 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.