



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

Case reference : **LON/00BH/LSC/2022/0286**

Property : **Flats 1, 2, 3 & 4, 779 High Road,
Leytonstone, London, E11 4QS**

Applicant : **Binton Estates UK Limited**

Representative : **Mr Simon Stern, Fountayne
Management Limited**

Respondent : **Kashif Hussain**

Representative : **Crown Law Solicitors LLP**

Type of application : **For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985
Rule 13 Costs Application**

Tribunal member : **Judge Bernadette MacQueen**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date of original
hearing and
decision** : **11 March 2024 and 2 April 2024**

**Date of costs
decision** : **12 August 2024**

COSTS DECISION

Decision

- 1. The Application for wasted costs under Rule 13 (1) (a) is refused.**
- 2. The Application for costs made under Rule 13 (1) (b) is refused.**

Application for Costs

1. An application was made by the Respondent under Rule 13 (1) (a) (wasted costs) and Rule 13 (1) (b) (unreasonable conduct) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the 2013 Rules). The Respondent sought wasted costs of £13,221.
2. Following receipt of the Respondent's costs application, the Tribunal made directions dated 28 May 2024 requiring both the Applicant and Respondent to provide submissions to the Tribunal. The directions specified that unless a request for a hearing was made by 25 June 2024, the application would be determined on the basis of written submissions. No request for a hearing was made by either party and therefore the Tribunal considered this matter on written submissions.

Documents before the Tribunal

3. The Respondent provided the Tribunal with a bundle of documents consisting of 97 pages. This bundle included the original decision of the Tribunal in this matter as well as invoices and costs schedules.
4. The Applicant did not provide any documents or submissions to the Tribunal.

The Law

5. It is established law that a three-stage test is applicable when determining costs applications. Firstly, before a costs decision can be made, the Tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the Tribunal to consider whether, in light of unreasonable conduct (if the Tribunal has found it demonstrated), it ought to make an order for costs or not. The third stage is then to determine the terms of the order.
6. Therefore, the Tribunal's powers to order a party to pay costs can only be exercised where a party has acted "unreasonably". What is meant by unreasonable behaviour is helpfully set out in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander [2016] UKTU 0290 (LC)* as follows:

“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 to be set at an unrealistic level...”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?”

The Respondent’s Submissions

7. The Respondent set out his reasons for seeking costs in his application and statement of case. In particular, the Respondent stated that the Applicant was unreasonable because the Tribunal awarded the Applicant £3,521.29, which was significantly lower than the amount claimed by the Applicant. The Respondent asserted that the Applicant’s claim was unreasonable and excessive resulting in unnecessary proceedings, particularly because the Applicant did not assess the strength of their case and did not accept offers to settle.
8. Additionally, the Respondent stated that the Applicant did not comply with the Tribunal’s directions on two occasions, necessitating further extensions and undue financial strain on the Respondent.
9. Further the Respondent stated that the Applicant irresponsibly contacted and claimed the service charge from the mortgage lenders of the Respondent.

Reasons for the Tribunal’s Decision

10. The Tribunal does not accept the Applicant’s claim was unreasonable or exaggerated so as to result in unreasonable behaviour. Set out at paragraph 15 of the Tribunal’s decision are the matters that were not agreed between the parties prior to the hearing, and therefore were those upon which the Tribunal was asked to make determinations. With regards these issues in dispute, the Tribunal accepted the Applicant’s position. Whilst the Tribunal did make a downward adjustment for the management fee, this does not mean that the case was unreasonably brought within the definition of unreasonable conduct.
11. A careful reading of the Tribunal’s original decision shows that the Tribunal accepted the Applicant’s arguments with regards to insurance (see paragraphs 30-31 of the Tribunal’s decision), accounts (see

paragraphs 36-38 of the Tribunal's decision), provision of an out of hours service (see paragraphs 53-54 of the Tribunal's decision), fire prevention system service (see paragraphs 58-59 of the Tribunal's decision) and general maintenance (see paragraph 64 of the Tribunal's decision).

12. The Tribunal therefore does not find that the Applicant's conduct amounted to unreasonable behaviour. The Applicant brought to the Tribunal a dispute that the Tribunal heard evidence on and made findings.
13. With regards to the Respondent's assertion that directions were not complied with, the Tribunal does not find this to be unreasonable conduct. The Respondent points to two occasions where directions were not complied with and included copies of correspondence between the parties at pages 53-55 of the costs bundle. As set out above, the definition of unreasonable conduct is such that the bar to unreasonableness is set quite high and what amounts to unreasonableness must be quite significant. This Tribunal does not find that the failure to comply with directions in the context of this case amounted to unreasonable conduct.
14. Finally, with regards to the Respondent's submission that the Applicant included irrelevant charges, the Tribunal does not accept this argument. The retrieving of service charges from the Respondent's lender was outside of proceedings before the Tribunal. The Applicant still required the Tribunal to make findings in relation to the other properties and it was therefore not unreasonable for this to be pursued.
15. The Tribunal therefore does not find that the Applicant behaved unreasonably so as to meet the first limb of the test and therefore does not make a costs decision under Rule 13.
16. With regard to the application for wasted costs, this arises when a party acts unreasonably and their conduct increased the other party's costs. These costs awards are rarely made and are uncommon in this jurisdiction. Taking into consideration the determination already made, the wasted costs application is also refused.
17. In the circumstances the Tribunal makes no order for costs pursuant to Rule 13.

Name: Judge Bernadette MacQueen **Date:** 12 August 2024

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).