



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

Case Reference : **LON/00AY/LBC/2023/0037**

Property : **Third Floor Flat, 81 Brixton Hill, London, SW2 1JE**

Applicant : **Oriel Investments (UK) Limited**

Respondent : **Fraser Oswald Holdings Limited**

Type of Application : **Application costs under Rule 13**

Tribunal Member : **Judge Shepherd**

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

Date of Decision : **6th November 2024**

DECISION

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1. The Applicant seeks costs pursuant to Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2023, (2013/1169) (Rule 13). The Respondent resists the application.

2. The basis of the Applicant's application for costs is the following:
 - a) The Respondent's late arrival at the first hearing leading to the hearing needing to be adjourned. They state the following : *The Respondent did not attend until approximately 3:30 pm, after the hearing had been adjourned and the Applicant's representatives had left. The Freeholder remains unaware of what explanation, if any, was leading to the hearing needing to be adjourned. The Respondent did not attend until approximately 3:30 pm, after the hearing had been adjourned and the Applicant's representatives had left. The Freeholder remains unaware of what explanation, if any, was given for arriving 1 ½ hours late for a two hour hearing. The Respondent's failure to provide supporting evidence to the Tribunal when requested to support her requests to further adjourn the hearing. This in the context of the Respondent objecting to the Tribunal's proposal in the letter of 5 January 2024 that the matter be disposed of on the papers: The Respondent required a hearing and then acted unreasonably in fixing that date.*

 - b) The Respondent's failure to attend the adjourned hearing on 23 July 2024, or to communicate in advance that she would not be attending.

 - c) And the fact that the Respondent continued to operate the Third Floor Flat as an Airbnb/ Short-let in breach of the lease. *This is relevant to the delay as it meant the breach continued whilst the Respondent maintained her denial. The Respondent was delaying the proceedings, and benefitting from that delay.*

3. In her response the Respondent did not give any real explanation for her delay in arriving at the first hearing and said she was away with her family in Paris when the hearing took place. It is clear from her submissions however that she and her family have suffered various unfortunate events.

The law

4. The relevant parts of Rule 13 state the following:

Orders for costs, reimbursement of fees and interest on costs

13.—(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—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case;

(iv) a tenant fees case;

(c) in a land registration case, or

(d) in proceedings under Schedule 3A to the Communications Act 2003 (the Electronic Communications Code)—

(i) under Part 4A (code rights in respect of land connected to leased premises: unresponsive occupiers); or

(ii) that have been transferred from the Upper Tribunal.

.....

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

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

5. Wasted costs is what we are dealing with here. The Tribunal is primarily a no costs tribunal. Unlike the County Court costs do not follow the event. A victorious Applicant or Respondent cannot argue that their opponent was unreasonable simply by maintaining a claim or defence which was ultimately unsuccessful. Something more is required.
6. The criteria for Reg 13 costs were set out in the well known case of Willow Court Management Co (1985) Ltd v Alexander Sinclair v 231 Sussex Gardens Right to Manage Ltd Stone v 54 Hogarth Rd, London SW5 Management Ltd [2016]UKUT 290 (LC)
7. In that case the Upper Tribunal held that an assessment of whether behaviour was unreasonable required 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. There was no reason to depart from the guidance on the meaning of "unreasonable" in Ridehalgh v Horsefield [1994] Ch. 205, [1994] 1 WLUK 563, Horsefield applied. Unreasonable conduct included conduct that was vexatious and designed to harass the other side rather than advance the resolution of the case. It was not enough that the conduct led to an unsuccessful outcome. The test could be expressed in different ways by asking whether a reasonable person in the position of the party would have conducted themselves in the manner

complained of, or whether there was a reasonable explanation for conduct complained of.

8. The Upper Tribunal stated further that Tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings (see paras 24, 26 of judgment).
9. The first stage of the analysis was an objective decision about whether a person had acted unreasonably. If so, a discretionary power was engaged and the tribunal had to consider whether it ought to make a costs order. If so, the third stage was the terms of the order.
10. There was no general rule in the tribunal that the unsuccessful party would be ordered to pay the successful party's costs. Unlike wasted costs, no causal connection between the conduct and the costs incurred was required, *McPherson v BNP Paribas SA (London Branch)* [2004] EWCA Civ 569, [2004] 3 All E.R. 266, [2004] 5 WLUK 273 applied.
11. Rule 13(1)(a) and (b) should be reserved for the clearest cases and it was for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct had been unreasonable.
12. An application should be determined summarily, preferably without the need for a further hearing, and after the parties had had the opportunity to make submissions.

Determination

13. It is clear that the Respondent has failed to engage with these proceedings and that the Applicant has been put to extra cost as a result of her failings. Objectively her conduct has been undoubtedly unreasonable. However, I do not consider that a costs order is appropriate here. The Respondent has already suffered as a result of her own failings. She has an order against her which may ultimately lead to forfeiture of the premises. I consider that it would be disproportionate to burden her further. Accordingly, the application is dismissed.

Judge Shepherd

6th November 2024

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

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