



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

**Case Reference** : **LON/OOAN/OLR/2023/0354**

**Property** : **64 Aylmer Road, London W129LQ**

**Applicant** : **Gabriel John Edward Kerr and Alexander  
Anthony Joseph Kerr**

**Respondent** : **Daejan Properties Limited**

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

**Tribunal Member** : **Judge Shepherd**

**Date of decision** : **5th November 2024**

**DETERMINATION**

1. The Respondent is seeking the payment of their legal costs . The Application is brought pursuant to Rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2023, (2013/1169). The Applicant is resisting the application.

2. The background to the claim is the following:

- On 20 September 2022 a notice of Claim was served by the Applicant pursuant to Section 42 of the Leasehold Reform Housing and Urban Development Act 1993 (“the 1993 Act”).
- On 24 November 2022 the Respondent served a Counter-Notice in which it admitted the Applicant’s right to a new lease of the subject property.
- On or around 9 May 2023 the Applicant made an application to the Tribunal requesting that the Tribunal determine the premium payable.
- The Tribunal issued Directions on 25th October 2023.
- The Applicant’s solicitor did not make any comments on the form of draft lease as required by Paragraph 3 of the Directions and accordingly, the Respondent’s Representative deemed the form of lease to be approved as drawn.
- On 31 May 2024 the Tribunal issued a Notice of Hearing confirming that the Hearing had been listed for 17th July 2024.

- On 9th July 2024, the Tribunal wrote to the parties requesting an update as no bundle had been provided.
- On 10th July the Applicant's Representative wrote to the Respondent's Representative stating "This will all be resolved tomorrow and I will revert by midday then".
- On 11th July 2024, the Applicant's Representative wrote to the Respondent's Representative to confirm that a Section 13 Notice had been served pursuant to the Leasehold Reform Housing and Urban Development Act 1993 concerning the subject property. The Applicant's Representative further confirmed that the Tribunal Application would be withdrawn in due course.
- The Tribunal wrote to the parties on 12th July 2024 confirming that the Tribunal "will be minded to strike this out" if an update was not provided.
- The Respondent's Representative called the Tribunal to confirm that they believed the Applicant would be withdrawing but did not have formal confirmation at the time.
- On 12 July 2024, the Applicant confirmed to the Tribunal that their application was withdrawn and the hearing should be vacated.

## **The law**

3. 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.*

4. 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.
5. 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)

6. 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.
  
7. 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).
  
8. 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.

9. 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.
10. 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.
11. 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**

12. I consider that the Applicant did behave unreasonably in this case. The Respondent made a number of attempts to get the Applicant to comply with the directions. The Applicant failed to do this and failed to pursue a case that they had instigated. They “went to ground” and the Respondent incurred costs in



protecting their position by carrying out necessary works to progress the case and by chasing the Applicant to progress their own case.

13. It seems the Applicant had already decided not to pursue the case but instead to serve a new notice based on collective enfranchisement. If they had communicated this at an earlier date the Respondent would not have been left in the tenuous position of having to prepare themselves for a case which may or not proceed.

14. Unfortunately, it is common in the Tribunal for parties to be relaxed about following directions in enfranchisement cases. The Tribunal is usually last to know that a case has settled or is to be withdrawn. Often, we are informed the night before or on the day of the hearing. Costs of hiring a panel have already been incurred. Work has been done in preparing the case only to be told that it will not go ahead. There is a certain arrogance amongst some parties practicing in this area who take advantage of the no costs regime and in effect use the Tribunal as a receptacle for their settlement arrangements ignoring directions in the process.

15. In the present case the clerk was forced to write to the parties threatening a strike out before any information was given. In the event this information came from the Respondent even though it was not their case. The failure by the Applicant to pursue their own case and follow directions was undoubtedly in my view unreasonable conduct. This meets the first of the three stages in Willow

Court. As for exercising my discretion I consider it is only right that the Claimant should pay the costs moreover I consider the costs sought to be reasonable.

16. Accordingly, I determine that the Applicant must pay the Respondent £10296.60 inc vat.

**Judge Shepherd**

**5<sup>th</sup> 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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