



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

**Case reference** : **LON/00BG/LAC/2023/0024**

**Property** : **Flat 91, Hermitage Court, London, E1W  
1PW**

**Applicants** : **Mr Ken Horn**

**Representative** : **Ms Sarah Lancaster**

**Respondent** : **Knighten Street Freehold Company  
Limited**

**Representative** : **Mr Hugh Rowan of Counsel, instructed  
by Wallace LLP**

**Type of application** : **For the determination of the liability to  
pay administration charges**

**Tribunal members** : **Judge N Hawkes  
Ms Sarah Phillips MRICS**

**Date of reconvene** : **19 November 2024**

**Date of decision** : **2 December 2024**

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**DECISION**

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## **The Tribunal's decision**

The Respondent's application for an order for costs pursuant to rule 13(1)(b)(ii) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 is dismissed.

## **The background**

1. The Applicant sought a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of administration charges payable by the Applicant arising out of a fire at Flat 91, Hermitage Court, London, E1W 1PW ("the Property") and the subsequent flooding of neighbouring properties.
2. By a written decision dated 10 June 2024, the Tribunal ruled that it had no jurisdiction to determine this application because it concerns matters which have been agreed by the Applicant.
3. By an application dated 9 July 2024, the Respondent sought an order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").
4. Directions of the Tribunal were issued on 15 July 2024 leading to a paper determination, unless an oral hearing was requested. An application was made by the Applicant for an oral hearing, but this application was subsequently withdrawn. Accordingly, the Tribunal reconvened to carry out its decision making on the papers on 19 November 2024.
5. The Tribunal's power to award costs is derived from section 29 of the Tribunals, Courts and Enforcement Act 2007, which includes provision that:

*29. Costs or expenses*

*(1) The costs of and incidental to—*

*(a) all proceedings in the First-tier Tribunal ...*

*shall be in the discretion of the Tribunal in which the proceedings take place.*

*(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.*

*(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules ...*

6. Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”) provides, so far as is material:

*13.—(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—*

...

*(ii) a residential property case.*

...

*(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.*

7. In determining this application, the Tribunal has had regard to *Lea v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241 and to *Willow Court Management Ltd v Alexander* [2016] UKUT 290 (LC); [2016] L. & T.R. 34, in which guidance was given concerning the approach that a Tribunal should take when considering a Rule 13 application for costs.

8. The Tribunal has considered the entirety of *Willow Court* and notes that, at paragraph 43 of the judgment, the Upper Tribunal stated:

*“A decision to award costs need not be lengthy and the underlying dispute can be taken as read.”*

9. There are three matters to be considered before an award of costs under rule 13(1)(b)(ii) of the 2013 Rules can be made: whether the party has acted unreasonably (applying an objective test); if so, whether in the light of the unreasonable conduct, the Tribunal ought to make an order for costs; and, if so, the terms of the order.
10. At [24] of *Willow Court*, the Upper Tribunal stated (emphasis supplied):

*“... 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?”***

11. The Tribunal at the second and third stages should have regard to all the circumstances. The nature, seriousness and effect of the unreasonable conduct are important factors but no causal connection between the conduct and the costs incurred is required.
12. In *Lea v GP Ilfracombe Management Co Ltd*, the Court of Appeal stated:

*“9. It is important to note that neither *Ridehalgh* nor *Willow Court* decide that unreasonable conduct must involve vexatious conduct or harassment. On the contrary, the UT make clear in *Willow Court* that unreasonable conduct can include conduct which is vexatious or designed to harass, but it does not require such conduct; that is just one way in which unreasonable conduct may be established. It appears that confusion has arisen from the second sentence of [23] in *Willow Court* (with the recorded submission that unreasonableness should not be interpreted as encompassing only behaviour which is also capable of being described as vexatious, abusive or frivolous), and the first sentence of [24], which did not accept the submissions in [23]. However, on closer analysis, it appears that the submissions that were not accepted were those set out later in [23],*

*a point emphasised in the body of [24], where the UT makes it plain that unreasonable conduct includes conduct which is vexatious and designed to harass, but therefore by definition cannot be elided with it.*

...

*14. This court will not normally lay down general guidelines – untethered to the facts - as to what may or may not constitute unreasonable conduct, and I decline to do so here. Instead, I follow the decisions in Ridehalgh, Willow Court and Dammerman as to the applicable test. As I have said, deciding whether or not there has been unreasonable conduct, and if so, whether an adverse order for costs should be made, is a fact-specific exercise.*

*15. Subject to what I have said above, sufficient guidance in respect of rule 13(1)(b) is set out in Ridehalgh and Willow Court. A good practical rule is for the tribunal to ask: would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?”*

### **The Tribunal’s determinations**

13. In summary the Respondent’s case is as follows:

“The Applicant’s behaviour was unreasonable in seven key regards:

i. The Applicant was unreasonable in bringing proceedings in respect of sums that they had already agreed to pay as part of a binding settlement agreement (the “Settlement Agreement”);

ii. The Applicant was unreasonable in bringing proceedings which were on their face vexatious and which he was repeatedly informed it would be unreasonable to pursue;

iii. The Applicant was unreasonable in bringing proceedings knowing that the Respondent could not recover the costs of the same through the service charge;

iv. The Applicant was unreasonable in conducting proceedings by making unfounded, unparticularised, and unsubstantiated allegations of duress against the Respondent;

v. The Applicant was unreasonable in conducting proceedings by stating incorrectly that they did not have the benefit of legal advice at the relevant time;

vi. The Applicant was unreasonable in conducting proceedings by advancing two fundamentally inconsistent cases;

vii. The Applicant was unreasonable in conducting proceedings by failing to properly engage with the Respondent's settlement discussions."

*The submission that the Applicant was unreasonable in bringing proceedings in respect of sums that he had already agreed to pay as part of a binding settlement agreement*

14. The matters which the Tribunal ultimately found gave rise to a binding settlement are as set out at paragraphs 19 to 28 of the Decision to follows:

19. By email dated 12 September 2022, the Applicant asked LBM whether there was any update concerning the terrace repairs for the Property and whether the insurance assessor had visited the Property. There was subsequently a further email indicating that an offer had been received and that the buyer's mortgage was due to expire. However, the mortgage offer must have been extended because, on 7 December 2022, Ms Lancaster wrote to Ms Kazdal stating that the mortgage was only approved to January 2023.

20. By an email sent at 14.32 on 8 December 2022, Ms Unwin wrote to the Applicant forwarding an email which had been sent to her by Ms Wayne concerning the proposed Licence to Assign which stated:

*'With regard to the insurance claim made in respect of the fire resulting from your client's breach, I understand that £1,906.50 is not being covered by the insurers. My client's position is that those costs would not have been incurred were it not for your client's breach and consequent required clear up and that, accordingly, it requires your client to be responsible for the costs of £1,906.50 plus its legal fees of £750 plus VAT which total £2,806.50 in addition, the tenant would be responsible for any increase in the insurance policy premium and the attached rider will be needed to be added to the licence (with hand amendment suitably initialled after clause 9 to read "10. See Rider").*

*Please let me know if this is agreed...'*

21. By a further email to the Applicant sent at 4.42 pm on 8 December 2022, Ms Unwin stated:

*'Dear Ken/Sarah*

*... I note your various comments and concerns. I will liaise with a colleague who specialises in dispute resolution to see if he can provide you with any advice in this situation, but in the meantime, please see below the response from the landlord's solicitors to my request for a breakdown of the costs being claimed:-*

*"I understand that the breakdown is as follows:*

*£118.80 – London Drainage Facilities – Inv 102567 – works to check on fractured pipe – date attended 26/08/22*

*£721.20 – Unblock – Invoice 98340 – works to jet and replace timesaver – date attended 28/09/22*

*£201.50 – A P Property Maintenance – Invoice 10023 – Works to divert gutter line*

*£252.50 – A P Property Maintenance – Invoice 10022 – Works to assist Unblock*

*£612.50 – A P Property Maintenance – Invoice 10021 – Works to assist Unblock*

*The additional legal fees relate to considering the terms of the lease and the insurance claim and advising in that regard. Please note the following clauses of the lease which are relevant to your client's breach:*

*[the clauses of the Lease relied upon by the Respondent are set out]*

*Rider*

#### *10 INSURANCE PREMIUM*

*10.1 The parties acknowledge that an insurance claim has been made by the Landlord in relation to a fire caused at the Property due to the Tenant's breach of Lease and the damage thereby caused ("the Claim").*

*10.2 It is hereby agreed by all parties that, in the event that there is any increase in the buildings insurance premium for the building of which the Property forms part which is attributable to the Claim, such increase shall be at the sole cost of the tenant for the time being of the Property which sum shall be payable immediately on demand. '*

*22. By an email sent to Ms Wayne at 11.43 hours on 14 December 2022 marked "Without Prejudice and Subject to Agreement", Ms Unwin stated on behalf of the Applicant (emphasis supplied):*

*'Following further discussions with my client, he would like to propose that he pay the full amount of the additional costs that your client is claiming from him as well as an up front sum for any possible increase in the buildings insurance premium as a result of the recent claim on*

*the basis that the Rider to the Licence to Assign will not then be required and that **these payments will be in full and final settlement of all claims and potential claims that your client may have against them in relation to the property.***

*I look forward to hearing from you as soon as possible as to whether this proposal can be agreed please. ‘*

23. At 15.55 hours the same day, Ms Unwin writes to Ms Wayne, copying in the Applicant, and stating (emphasis supplied):

*‘Thank you for your earlier email with your client’s instructions **to accept my client’s proposal** to pay the additional costs claimed as well as the proposed sum of £3,222.20 in anticipation of any increase in insurance premium, and to therefore remove the Rider from the Licence to Assign. I would be grateful if you could please provide your client’s formal written agreement to this effect noting that the payments are made by my client without any admission of liability and **on the understanding that the payments will be in full and final settlement** of all claims and potential claims that they may have against my client in relation to the service charge, insurance premium (or, indeed, the property and the Lease as a whole), both future and present.*

*I will also notify our buyer’s solicitors that **the Rider is no longer required as all matters regarding the breach and insurance claim have been settled directly between our respective clients.** ‘*

24. Around eleven minutes later, at 16.06 hours, Ms Wayne replied stating;

*‘You will appreciate that I have picked up this matter today notwithstanding it is my day off to assist your timings. However, I am only on my phone and not in a position to draft what you propose*

*Please provide a draft of what you propose for consideration and passing to my client. It can only relate to the payment in respect of the insurance premium to which it relates. What is the issue with the service charges as I was not previously aware? Please also note that this additionally requested document and need to agree the same will prolong timings.*

*Finally, please also confirm that your client will pay the full amount of my legal fees for dealing with this matter which continues to increase with your additional requests.’*

25. The Tribunal was referred to a copy of an email from Ms Wayne to Ms Unwin which did not specify the time and date when the email was sent. In light of its contents, the Tribunal finds on the balance of probabilities that this email was likely to have been sent before completion. This email states (emphasis supplied):

*Further to your email below, I have taken instructions from my client and I have been advised as follows:*

***“We are happy to remove the rider if they will settle the outstanding amount sent previously and contribute to the expected increase in premium (see below).***

*The current premium is 64,444.00 (tax is not included). The insurers have said:*

*At the moment insurers are applying between 5-15% rating increase for claim free/low claim policies before the application of RICS index linking which is currently at circa 15%.*

*As they are willing to pay the outstanding costs and a sum upfront, we are happy to go to the lower end of the scale with the understanding that our premium will increase due to the costs.*

*At a 5% increase, we would ask the sellers to apply an additional 3222.2 to cover the cost of any increase*

*If they are happy with this then the sale can be finalised”*

*Please note that my fees for dealing with this additional matter I estimate to have increased from £750 plus VAT to £1000 plus VAT...’*

26. The following day, 15 December 2022, completion occurred and the completion statement includes: “Additional payments not covered by recent insurance claim” in the sum of £1,906.50; “Landlord’s Solicitors’ Legal Fees” in the sum of £1,000 plus VAT of £200; and “Payment for any potential increase in the Buildings Insurance Premium” in the sum of £3,222.20. The Rider which had initially been proposed was not included in the Licence to Assign.

27. On 20 December 2022, Ms Unwin acting on behalf of the Applicant sent Ms Wayne an email which included the following statement (emphasis supplied):

***“Your clients agreed with mine that they would accept the costs as detailed by you as well as a sum of £3222.20 in respect of any possible increase in the insurance premium, in full and final settlement of any claim they may have in this regard. This amount was therefore paid to you on completion of the sale along with the full amount of your fees for the Licence to Assign, so the matter should therefore be fully finalised and completed.”***

28. After considering this correspondence, the Tribunal expressed the preliminary view that the offer to make the payments referred to above in full and final settlement of the breach of covenant allegations, and the acceptance of that offer and the making of those payments constituted a binding agreement as confirmed by the Applicant’s own

legal representative on 20 December 2022. Ms Unwin clearly has ostensible authority to act on the Applicant's behalf.

15. The Tribunal notes the nature and extent of the advice which the Applicant states he received, but we do not place any significant weight upon this for the reasons given by the Respondent in its written submissions concerning the rule 13 application. The Tribunal accepts the submission that, whilst a letter before action is preferable, its absence is not of itself sufficient to amount to unreasonable conduct.
16. The settlement agreement was not contained in one single signed and dated document. The Tribunal found that Ms Unwin had ostensible authority to act on behalf of the Applicant but made no finding concerning whether or not she had actual authority. The success of the Respondent depended upon findings of fact made by the Tribunal on considering a chain of written correspondence and all the circumstances of the case.
17. The Tribunal does not accept that the Applicant was unreasonable in disputing or putting the Respondent to proof that a binding settlement agreement had been reached. As stated in *Willow Court*, it is not enough that the relevant conduct leads in the event to an unsuccessful outcome. A reasonable explanation for the Applicant's conduct is that there was no signed settlement agreement contained in one single document, and the Applicant did not accept that a binding settlement agreement had been reached.
18. As regards the Respondent's submissions concerning the words "*in full and final settlement of all claims and potential claims*", the Tribunal placed reliance upon these words in its Decision and, in our judgment, the Applicant did not appreciate the strengths and weaknesses of the parties' respective cases. However, the Applicant's failure to appreciate the weakness of his case is insufficient in all the circumstances to comprise unreasonable conduct.

*The submission that the Applicant was unreasonable in bringing proceedings which were on their face vexatious and which he was repeatedly informed it would be unreasonable to pursue*

19. It follows from our findings above, that the Tribunal does not accept that the proceedings were on their face vexatious.

*The submission that the Applicant was unreasonable in bringing proceedings knowing that the Respondent could not recover the costs of the same through the service charge*

20. A reasonable explanation for the conduct in issue is that there is no legal requirement to bring proceedings at a time when the costs are potentially recoverable through the service charge. Further, the application was not out of time with reference to any limitation period. The Tribunal made no finding of fact that the Applicant's motives were vexatious and, having seen and heard the parties/their representatives, we are not satisfied on the balance of probabilities that this was the case. Accordingly, we are not satisfied that the test for unreasonable conduct has been met.

*The submission that the Applicant was unreasonable in conducting proceedings by making unfounded, unparticularised, and unsubstantiated allegations of duress against the Respondent*

21. The Tribunal in its Decision accepted the Applicant's account that he felt under a degree of pressure at the time the agreement was entered into due to significant increases in interest rates, the position of his proposed buyer, and the general economic situation. However, in our judgment this was simply the commercial reality of the market at the time, and we found that these matters do not give rise to a legal entitlement to avoid the contract. We also rejected the Applicant's claims that the Respondent sought to delay the Applicant's sale and sought to deliberately conceal relevant matters from the Applicant. This was a finding of fact which could only be made on hearing oral evidence.

22. The Applicant was clearly unfamiliar with the law in relation to duress and he failed to establish his case on the facts. As stated in *Willow Court* it is not enough that the conduct leads in the event to an unsuccessful outcome. The Applicant did not fully appreciate the strengths and weaknesses of the parties' respective cases but, in our judgment, that is insufficient in all the circumstances to comprise unreasonable conduct.

*The submission that the Applicant was unreasonable in conducting proceedings by stating incorrectly that he did not have the benefit of legal advice at the relevant time*

23. A reasonable explanation for the Applicant's conduct is that he considered that he did not have the benefit of legal advice "with respect to the dispute" because, at the material time, he was being represented by a licensed conveyancer (who was only in position to give advice concerning conveyancing) rather than by a solicitor. We do not accept that there was any deliberate falsehood and we are not satisfied that the test of unreasonable conduct is met.

*The submission that the Applicant was unreasonable in conducting proceedings by advancing two fundamentally inconsistent cases*

24. A reasonable explanation for the conduct in issue is that the Applicant's primary case was that there was no binding settlement agreement. However, if he was wrong about that, he would rely upon duress. He was unfamiliar with the law relating to duress, but lack of understanding of the law does not of itself amount to unreasonable conduct. The Tribunal is not satisfied that the test for unreasonable conduct is met.

*The submission that the Applicant was unreasonable in conducting proceedings by failing to properly engage with the Respondent's settlement discussions.*

25. The Applicant submits that no offers of settlement were proposed by the Respondent and that the Applicant was proactive in taking legal advice. Whether or not that is correct, in this jurisdiction, unless a specific direction is given for settlement discussions to take place (which sometimes occurs), there is no requirement to engage in settlement discussions.
26. Settlement discussions are to be encouraged, and it is generally in both parties' interests to engage in settlement discussions and/or to make use of the Tribunal's free mediation scheme. However, we do not accept that the Applicant, who has had no legal representative on the record in these proceedings, was potentially liable to pay the Respondent's legal costs if he failed to properly engage with the Respondent's lawyers or failed to obtain his own legal advice. Accordingly, we are not satisfied that the test for unreasonable conduct is met.

*The substantive proceedings*

27. The Tribunal made no findings concerning the substantive proceedings and it would not be appropriate to do so on the papers in determining this application concerning costs. In any event, if the Applicant had been unsuccessful in the substantive proceedings, lack of success of itself would be insufficient to amount to unreasonable conduct.

*Conclusion*

28. As the Tribunal is not satisfied that any of the matters relied upon by the Respondent amount to unreasonable conduct (as defined by the case law referred to above), this application is dismissed.

**Name:** Judge N Hawkes

**Date:** 2 December 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).