



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

Case reference : **LON/00BK/LBC/2024/0017**

Property : **Flat 204, John Aird Court, Harrow Road, London, W2 1UX**

Applicant : **The Lord Mayor & Citizens of Westminster**

Representative : **Mr. Pye – Litigation Team Manager**

Respondent : **Zulmira Albuquerque**

Representative : **N/A and did not attend**

Type of application : **For an order for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

Tribunal members : **Judge Sarah McKeown
Mrs. A. Flynn MA MRICS**

Date and Venue of hearing : **19 December 2024 at
10 Alfred Place, London, WC1E 7LR**

Date of decision : **30 December 2024**

DECISION

Decisions of the tribunal

- (1) The Tribunal finds that the Respondent has not acted unreasonably in the ways alleged by the Applicant and dismisses the application for an award of costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

The Application

1. This is the Applicant's application for costs against the Respondent pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
2. The Applicant is the freeholder of Flat 204 John Aird Court, Harrow Road, W2 1UX ("the Property"). The Property is a two-bedroom flat in a purpose-built block.
3. The application for costs arises out of a substantive application brought by the Applicant by which the Applicant sought a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), that the Respondent tenant was in breach of various covenants contained in the lease (breach of para. 5 and para. 7 of the Seventh Schedule). It was said as follows:
4. First, that there are hoarded items in the Property which pose a fire safety risk. It is said that the Lessee has stored a large amount of possessions in the Property, including flammable materials such as newspapers, papers etc, which would increase the intensity and rapid spread of a fire. It was also said that there are several boxes on the balcony and the Lessor is concerned that they could pose a fire safety risk. It was said that there is an outstanding repair associated with the Flat and that the Lessee has failed to provide access on a number of occasions to allow the Lessor to connect a new lateral main into the Property. It was said that the Lessor was unable to allow contractors to enter the Property to do the work because of health and safety reasons and that the work can only be completed once the items had been removed.
5. On 28 August 2024, the Tribunal conducted an inspection at the Property and then proceeded to hear the substantive application. It issued a decision dated 29 August 2024 (p.3). Its finds were as follows:
 - (1) Breaches of the following covenants and/or conditions in the lease of the Property dated 29 January 1991 have occurred on the part of the Respondent:
 - (a) breach of clause 2 and paragraph 17 of the Seventh Schedule of the Lease as the Respondent has permitted or suffered to be done on the Property any act or thing which may be or become a nuisance or inconvenience to the Lessor or any other owner or occupier of any of

- the Flats or to the owner or occupier of any adjoining or neighbouring property”;
- (b) breach of clause 2 and paragraph 5 of the Seventh Schedule of the Lease as the Respondent did not, to the satisfaction of the Lessor, keep in good and substantial repair and condition and properly cleansed throughout the term granted...”;
 - (c) breach of clause 2 and paragraph 7 of the Seventh Schedule of the Lease as the Respondent did not permit the Lessor with or without workmen and all other persons authorised by it at reasonable times and upon reasonable notice... during the term hereby granted to enter upon and view and examine the condition of the Property and prepare a schedule of all landlord’s fixtures and fittings herein and for any other purposes”;
 - (d) breach of clause 2 and para. 3 of the Sixth Schedule as the Respondent did not allow the Lessor its servants or agents at all reasonable times with or without workmen and others as often as need or occasion shall require to have access to and enter the Property and remain therein for such reasonable time as is necessary for the purpose of executing repairs or carrying out any other works to any part of the Estate or to any cisterns tanks sewers drains gutters pipes wires cable ducts and conduits or other things serving any part of the Estate which cannot otherwise be executed and of complying with their respective obligations either hereunder or under any covenants relating to another other Flat...”.
6. The Tribunal provided that any application by the Applicant for an order for costs against the Respondent pursuant to rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 had to be made to the Tribunal within 28 days of the date on which the Tribunal sent its substantive decision and that if any such application was made, the Tribunal would issue any necessary direction and it would be considered by this Tribunal, on the papers, unless either party requests a hearing or the Tribunal determined that a hearing is necessary.
 7. The substantive decision was sent to the parties on 3 September 2024. On 27 September 2024, the Applicant made the application for costs.
 8. On 10 October 2024, the Tribunal issued directions in respect of the application for costs (p.22). It provided that it would determine the matter on the basis of written representations unless a hearing was requested. No such hearing has been requested.
 9. As set out in the decision dated 29 August 2024, the Respondent had informed the Applicant that she would be temporarily moving to Portugal. She gave no date for her return to the Property. She did not engage with either the substantive application. For the reasons given in the decision dated 29 August 2024, the Tribunal was satisfied on the balance of probabilities that the Respondent was both aware of the proceedings and had been notified of the hearing.

Documentation

10. The Applicant has provided a bundle of documents for the application for costs (references to which are “p.”) which runs to 53 pages. References herein are to that bundle.
11. In the application for costs, the Applicant submits that the Respondent has acted unreasonably for the following reasons:
 - (1) The Respondent had failed to engage or cooperate with the Applicant;
 - (2) The Applicant had tried to engage with the Respondent;
 - (3) The Respondent had ignored an injunction order;
 - (4) The Respondent had not sought help from any of the services available from the Applicant;
 - (5) The Respondent was given a number of opportunities to contact the Applicant to make arrangements to dispose of the items in the Property;
 - (6) The Respondent did not engage with the substantive application;
 - (7) The Respondent had acted unreasonably by not attempting to defend the case and not taking any reasonable steps/actions to prevent the Applicant from commencing legal proceedings.
12. The Respondent has sent a letter (received on 25 November 2024) in which she states, among other things, as follows:
13. She had told the Applicant, in January 2024, that her husband was ill and she would return to the UK as soon as she could, and when she did, she would start cleaning the Property. She had an accident on 13 August 2024 and lost the use of her right upper limb. She was having physiotherapy. As soon as she is fit and well, she will return to the UK and start to sort out the Property. She said that the Respondent had made her flat unsafe. She did not have the money to pay any amount ordered against her. She was struggling to survive on a small UK pension and living on donations of food from her relatives.
14. The Applicant responded to this letter in an email dated 3 December 2024.

The Law

15. In the Residential Property Tribunal, costs do not follow the event. Rule 13(1)(b) provides that they are only payable by one party if they have acted unreasonably in bringing, defending or conducting proceedings.

16. Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, provides:

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; or
 - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (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, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 199 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.

17. The Upper Tribunal have given guidance on the approach to take to claim for costs under rule 13 in *Willow Court Management v Alexander* [2016] UKUT 0290 (LC) that is to say cases of alleged unreasonable conduct in “bringing, defending or conducting proceedings” which is the essence of the application in this case. In that case, the Upper Tribunal identified a three stage approach, as follows:

(1) Has the person acted unreasonably?

(2) Should an order be made? If the party has acted unreasonably, the Tribunal has a discretion whether or not to take make an order;

(3) What should the order be?

18. In *Willow Court*, the Upper Tribunal explained what, in this context, “unreasonable” meant, by reference to the judgment of Bingham LJ in *Ridehalgh v Horsefield* [1994] Ch 205:

“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?”

19. An unsuccessful outcome is not sufficient on its own to warrant an order and the Tribunal needed to be careful not to use this power too readily. This is a value judgment which should not be set at an unrealistic level; the type of conduct included that which was vexatious and designed to harass the other side rather than advance the resolution of the case.

20. The Upper Tribunal in *Willow Court* added that for a lay person to be unfamiliar with the substantive law or with tribunal procedure or to fail to properly appreciate the strengths or weaknesses of their own or their

opponent's case should not be treated as unreasonable. Tribunal should not be over-zealous in detecting unreasonable conduct after the event.

21. As noted in "Service Charges" (Tanfield Chambers – 5th ed.) at para.32-37, "[t]he approach in *Willow Court* is restrictive, and it is clear that r.13(1)(b) orders will be the exceptions, and not the rule".

Analysis

Unreasonable behaviour

22. The question for the Tribunal, as set out at [24] of *Willow Court*, is whether a reasonable person would have conducted themselves in the manner complained of or is there a reasonable explanation for the conduct complained of?
23. As set out above, the Upper Tribunal in *Willow Court* said that for a lay person to be unfamiliar with the substantive law or with tribunal procedure or to fail to properly appreciate the strengths or weaknesses of their own or their opponent's case should not be treated as unreasonable. Further, the Tribunal should not be over-zealous in detecting unreasonable conduct after the event. As set out above, an unsuccessful outcome is not sufficient on its own to warrant an order. Taking account of the above, the Tribunal does not find that the Respondent's conduct in not engaging with the proceedings was vexatious and designed to harass the Applicant.
24. For those reasons, the Tribunal does not find that the Respondent has acted unreasonably, and the application for costs pursuant to r.13(1)(b) is dismissed.

Judge Sarah McKeown

30 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