



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

Case reference : **CAM/00KB/LSC/2023/0036**
Applicant : **CATHERINE CARMEL ENRIGHT**
Respondent : **PAUL WILLIAM HOARE**
Property : **39 The Embankment, Bedford,
Bedfordshire, MK40 3TP**
Tribunal : **Judge Shepherd
Gerard Smith FRICS**
Date of decision : **25th February 2025**

DETERMINATION

1. This application concerns service costs relating to the property at 39, The Embankment ,Bedford, MK40 3TP ("**the Premises**"). The Applicant is the leaseholder of the Ground Floor Flat. She wishes to sell her flat and seeks a determination from the Tribunal as to the sums she owes. She argues that she owes nothing. The Respondent failed to take any active part in the preparation of the hearing but did attend the hearing itself which took place on line on 12th November 2024.
2. The premises is a detached Victorian house, which has been converted into three flats. The Applicant holds the lease of 39a, The Embankment under a lease extension dated 31.05.22 . She has had the leasehold interest in Flat 39a since 1999. The Respondent holds both the freehold of the Property and the leasehold interest in flat 39c.The leasehold interest in flat, 39b, is held by the Respondent's son , Leigh Austin Hoare.

3. The Applicant had historically been paying a monthly service charge to the Respondent but stopped in 2009 because she says that no documentation was provided. Since then, no valid service charge demands have been received.
4. Following the grant of the 2022 Lease, the Applicant wrote to the Respondent authorising Mr Dodge to communicate with him. Mr Dodge wrote to the Respondent on 28th September 2022 and again on 11th October 2022 to obtain bank details for the payment of ground rent. No response was received.
5. On 1st November 2022, Mr Dodge again wrote to the Respondent, this time also asking for a copy of service charge accounts since 2008, the balance of funds held on account, and a copy of the buildings insurance schedule. Again, no response was received.
6. These requests were repeated, along with a request for the amount of service charge payable at that time under the 2022 Lease, by the Applicant's solicitors on 31st January 2023. Again, no response was received. The solicitors put the Respondent on notice on 12th May 2023 that the Applicant was considering making an application to the Tribunal and giving him a further opportunity to respond.
7. The Respondent eventually responded on 26th May 2023 by providing some information in relation to the insurance of the Property, and asserting that there had been certain items of expenditure such as a tree removal and internal decorations. The letter also asserted that he anticipated needing to re-roof the Property. No demands were provided however.
8. The Applicant's solicitors wrote to the Respondent on 12th June 2023 explaining that Ms Enright still required service charge accounts so that she would be in a position to sell Flat 39a, and she offered terms on which the Respondent might purchase her interest. These were not agreed by the Respondent.
9. The present Application was made on 5th July 2023. In a letter dated 2nd January 2024 the Respondent claimed amongst other things that the Applicant was liable for a maintenance charge in the sum of £15600 but this was not in the form of a formal demand.
10. Directions were given by the Tribunal on 23rd July 2024, requiring the Respondent to send all relevant service charge documentation to the Applicant by 14th August 2024. Predictably none was sent.

11. The only written evidence before the Tribunal was contained in the witness statement of the Applicant's husband, Martin Dodge, who deals with her flat on her behalf. He confirms that no valid service charge demands have been received in relation to the Property since 2009. Indeed this was not in issue. Although the Respondent has incurred some costs as the freeholder he accepted he hasn't managed the premises properly at all. He hasn't demanded sums due never mind pursuing them. This meant that the Applicant was left to proactively seek a clean bill of health from the Tribunal so that she can sell her flat. We were told that another leaseholder experienced difficulty selling her flat by reason of the Respondent's intransigence in confirming that no service charges were due. We did not however have any direct evidence on this and it played no role in the decision we have reached.

The hearing

12. The Applicant was represented by Thomas Cockburn of Counsel. The Respondent represented himself. Prior to the hearing the Respondent had claimed in writing that he had spent £7600 on insuring the building but there was no suggestion that the premiums had been demanded.
13. The Respondent said he had been in poor health and his recollection of events was not good. Finally, he had also been out of the country for long periods for a bereavement. None of this explained why he hadn't managed the property properly.
14. Mr Cockburn said that no service charges were payable for the period between April 2015 and October 2023 because none had been demanded. Although in a recent letter the Respondent had claimed he had spent £7633.77 on insurance there was no proof of this and no demand for it. The Respondent maintained he had spent money on the premises but accepted he hadn't sent demands.

Determination

15. Service charge demands were a necessary requirement under the lease terms (which were not disputed) and under statute (s.21B LTA 1985). In the absence of any demands for payment no service charges can be payable. Further as rightly pointed out by Mr Cockburn the Respondent is time barred from recovering any contributions to service costs incurred more than 18 months ago pursuant to section 20B of the Landlord and Tenant Act 1985. This has the effect for the purpose of these proceedings that no charges are payable in relation to any period before 14th February 2023.

Costs

Rule 13 costs

16. The parties were invited to make submissions in relation to Rule 13 costs.
17. The relevant parts of Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 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.

18. 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.

19. 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)

20. 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.

21. 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).
22. 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.
23. 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.
24. 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.
25. 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

26. It is clear that the Respondent abjectly failed to engage with the Applicant both prior to and during the preparation of these proceedings. He simply did not manage the premises at all. Owning the freehold carries with it a responsibility to fulfil the functions of the landlord. Here the Respondent simply stepped away from this responsibility either deliberately or negligently it doesn't matter- his conduct was lamentable. The Applicant was left with no choice but to proactively seek to draw him out in proceedings. Once she had made the application the Respondent continued to actively avoid taking any action either

to concede or challenge the case. Objectively the Respondent's conduct has been undoubtedly unreasonable. We do consider that a costs order is appropriate here. In fact, it is essential to give some recompense to the Applicant for having to pursue the case and obtain a determination allowing her to sell her flat.

27. The Applicant claims costs of £12557.60. These costs are broken down in a schedule and appear entirely reasonable. Accordingly, this is the sum of costs that we determine is payable by the Respondent. We also make an order that the Respondent is prevented from recovering any of his costs from the service charge pursuant to s.20C Landlord and Tenant Act 1985.

Judge Shepherd

25th February 2025

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 should be made on Form RP PTA available at

<https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).

