



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

Case Reference : **LON/00BE/LSC/2024/0207**

Property : **Flat 1 Mission Court, 1a Crystal Palace Road, London SE22 9EX**

Applicants : **Jose Da Cruz Gomez**

Respondent : **Peabody Trust**

Type of Application : **Liability to pay service charges**

Tribunal : **Judge Nicol
Mrs A Flynn MA MRICS**

Date of Decision : **10th April 2025**

COSTS DECISION

- (1) The Respondent shall reimburse the Applicant his Tribunal fees totalling £330.
- (2) The Respondent shall pay the Applicant's further costs of £251.30 in accordance with rule 13(1)(b) of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013.

Reasons

1. On 25th March 2025 the Tribunal decided that a number of service charges which the Respondent had sought to impose on the Applicant were not reasonable or payable in accordance with section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). As set out in the Tribunal's reasons, the decision was made in relation to service charges which remained after two matters had already eliminated some service charges:
 - (a) The Respondent had been acting for years as if the Applicant's service charges were fixed, which would have put them outside the Tribunal's jurisdiction,

when the tenancy agreement stated in very clear terms that they were variable. The Respondent had to concede that they were wrong on this issue.

- (b) The tenancy agreement also provided for a consultation process if any categories of service charge were to be added but the Respondent had never carried out any such consultation. The Respondent had to concede that, as a result, there were charges they should not have sought to impose.
- 2. The Applicant sought an order that the Respondent pay his legal costs in accordance with rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Procedure Rules"), for which the Tribunal made some further directions. In fact, both parties sent in their written submissions almost immediately and the Tribunal is able to determine this matter earlier than intended.

Tribunal fees

- 3. Amongst his other costs, the Applicant incurred Tribunal fees of £110 for making his application and £220 for the hearing fee. The Tribunal has the power to order the Respondent to reimburse those fees under rule 13(2) of the Procedure Rules. There are no particular criteria for the exercise of this power but the fact that the Applicant substantially succeeded and would not have achieved the concessions referred to in paragraph 1(a) and (b) above without issuing proceedings leads the Tribunal to the conclusion that it is appropriate to order reimbursement.

Other costs

- 4. The Applicant said he incurred the following further costs totalling £251.30:
 - (a) Post Office Postal orders - £ 37.50; and
 - (b) All colour photographs printed, all other documents printed and photocopies - £ 213.80.
- 5. The Tribunal is satisfied that these are modest and reasonable costs so the real issue between the parties is whether the Tribunal has the power to make a costs order at all.
- 6. The relevant parts of rule 13 state:
 - (1) The Tribunal may make an order in respect of costs only—
 - (a) ...
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (iii) a leasehold case; ...
- 7. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct

which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.

8. The Upper Tribunal in *Willow Court* went on to say:

24. ... 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* 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?

26. We ... consider 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. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...

9. The Court of Appeal considered the above cases further in *Lea v GP Ilfracombe Management Co Ltd* [2024] EWCA Civ 1241; [2025] 1 WLR 371. They held that,

- (a) Although a party would have acted unreasonably if their conduct had been vexatious or designed to harass the other party rather than to advance the resolution of the case, there was no requirement that conduct had to be vexatious or oppressive in order for the party to have acted unreasonably, which would place an impermissible gloss on the statutory language and be potentially much too restrictive.
- (b) Since deciding whether or not a person had acted unreasonably within rule 13(1)(b) was a fact-specific exercise, it was not appropriate for the court to give more general guidance as to what did or did not constitute acting unreasonably but, subject to that, a good practical rule was to ask:
 - (i) whether a reasonable person acting reasonably would have acted in the way in issue; and
 - (ii) whether there was a reasonable explanation for the conduct in issue.

10. The Respondent's failure to read the Applicant's tenancy agreement or to understand and apply its terms before being forced to do so during these proceedings is as unreasonable as a landlord's conduct can get, particularly for a social landlord whose reason for existence is to house those who are vulnerable by reason of limited means. The Respondent sets the terms of the agreement and has the resources denied to most of their tenants to take legal advice and ensure that they are applied correctly.
11. The Tribunal is satisfied that the Respondent acted unreasonably in defending these proceedings and should pay the Applicant's further costs of £251.30.

Name: Judge Nicol

Date: 10th April 2025

Appendix 1 – Relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;

- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.