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LEASE

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CG/LBC/2017/0015**
Property	:	**Metis Apartments, Scotland Street, Sheffield S3 7AQ**
Applicant	:	**Adriatic Land 1 (GR3) Limited**
Representative	:	**J B Leitch, Solicitors**
Respondent	:	**Metis Management (Sheffield) Ltd**
Representative	:	**N/A**
Type of Application	:	**Application for costs**
Tribunal	:	**Judge J Holbrook** **Deputy Regional Valuer N Walsh**
Date and venue of Hearing	:	**Determined without a hearing**
Date of Determination	:	**1 May 2018**
Date of Decision	:	**9 May 2018**

DECISION

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The Respondent is ordered to pay costs to the Applicant in the sum of £8,446.09.

REASONS

Background and application

1. By a decision dated 18 January 2018 the Tribunal determined that multiple breaches of covenant in the lease of the Property have occurred. The determination was made upon an application made by the Applicant landlord under section 168(4) of the Commonhold and Leasehold Reform Act 2002.

2. On 15 February 2018, the Applicant made an application for costs. The Tribunal issued directions for the conduct of the application on 13 March 2018. The parties were informed that the application would be dealt with on the basis of their written representations, without an oral hearing being arranged, unless a hearing was requested. No such request was received. Indeed, the Respondent did not respond to the costs application in any way. The Tribunal has therefore proceeded to determine the application on the basis of the Applicant's submissions alone.

The relevant law on costs

3. The Tribunal's powers to make orders for costs are governed by rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. The application of rule 13 was considered and explained by the Upper Tribunal (Lands Chamber) in the case of *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC). The correct application of the rule requires the Tribunal to adopt the following approach when determining an application for costs:

    1. Is there a reasonable explanation for the behaviour complained of?

    2. If not, then, as a matter of discretion, should an order for costs be made?

    3. If an order for costs should be made, what should be the terms of that order?

Discussion and conclusions

The behaviour complained of

4. The Applicant notes that it was wholly successful in its application for a determination under section 168 of the 2002 Act. It also notes that, prior to making that application, it had formally invited the Respondent tenant to admit the breaches of covenant in question, but states that the Respondent had declined to do so. Nevertheless, the Respondent subsequently confirmed that it had "no objection" to the Tribunal application or, indeed, to the possible forfeiture of the lease. In spite of this, the Respondent continued with its defence that there had been no breach of the lease. The Applicant submits that this amounted to unreasonable conduct because it put the Applicant to the inconvenience and expense of progressing the application to a final determination in circumstances where the Respondent's stated position was inconsistent with its continued denial that there had been breaches of the lease.

5. The Applicant also asserts that the Respondent acted unreasonably during the proceedings by failing to properly engage with the application. In particular, it is alleged that the Respondent failed to file a statement of case that complied with the Tribunal's case management directions: it is argued that the correspondence received from the Respondent amounted to little more than a bare denial of any breach, as opposed to the reasoned grounds of objection which the Tribunal's directions required the Respondent to provide.

6. Although we do not agree that the Respondent necessarily acted unreasonably by failing to admit the alleged breaches of covenant in the run-up to the section 168 application being made to the Tribunal, we do agree that it has acted unreasonably in the manner in which it has responded to that application. In particular, we consider it to be unreasonable for the Respondent to have maintained its denial of the alleged breaches in circumstances where it has failed to engage with the detailed case put forward by the Applicant. Having seen the Applicant's case, it should have been obvious to the Respondent that the Tribunal would find in favour of the Applicant in the absence of any detailed rebuttal of the facts it asserted. It was therefore wholly inadequate for the Respondent merely to assert that it denied that the alleged breaches had occurred. Moreover, that denial was itself inconsistent with the Respondent's separate confirmation that "many of the alleged breaches have now been resolved".

7. The Respondent has not attempted to justify its conduct in response to the costs application and it remains unclear why the Respondent persisted with its denial of the alleged breaches on the one hand whilst, on the other hand, it confirmed that it had no objection to the application or to the possible forfeiture of the lease. Despite this confirmation, the Applicant had no choice but to continue the tribunal application in the face of the denial that any breach had occurred. We therefore consider the Respondent's conduct to have been unreasonable.

Whether an order for costs should be made

8. Given the nature and extent of the unreasonable conduct identified above, we consider it appropriate to exercise our discretion to make a costs order in this case. The Respondent has offered no argument why we should not do so.

The terms of the order

9. We are satisfied that the order for costs should require payment of all costs reasonably and properly incurred by the Applicant in these proceedings. Again, the Respondent has not offered any argument why this should not be the case.

10. The Applicant seeks costs of £8,446.09 (inclusive of VAT) in this regard. This sum includes costs of £7,461.85 incurred by the Applicant in relation to the section 168 application, together with costs of £984.24 incurred in relation to the subsequent costs application. The Applicant has provided a breakdown of these costs for summary assessment and we note that a significant proportion of the costs being claimed relates to the preparation of documents in the proceedings; in particular, the statements of case which form the basis of the two applications. The claim also includes significant costs attributable to written and telephone communications on the part of the Applicant's solicitors. Whilst we consider these costs to be at the upper end of the range of acceptable charges for a matter of this nature and complexity, we nevertheless consider them to be within the range of reasonable charges. In coming to this view we have taken into account the complex factual background to the original application and the resulting detailed and complex statement of case which had to be prepared for the Tribunal proceedings.

11. We therefore conclude that it is appropriate for the Respondent to be ordered to pay costs to the Applicant in the sum of £8,446.09.

1 May 2018
Judge J Holbrook