



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

Case Reference : CHI/23UG/LBC/2014/0017.

Property : 5 Chapel Court, 78-80 Barton Street,
Tewkesbury, Gloucestershire, GL20 5PY.

Applicant : Chapel Court (Tewkesbury) Management
Company Limited.

Representative : Mr. Martin Paine, director.

Respondent : Mr. Paul Coombs.

Representative : None.

Type of Application : Determination of breach of covenant,
S168(4) Commonhold and Leasehold
Reform Act 2002 – application for costs.

Tribunal Members : Judge J G Orme (Chairman)
Mr. M J Ayres FRICS (Member).

**Date and Venue of
Hearing** : 11 February 2015.
Paper determination.

Date of Decision : 11 February 2015.

Decision

For the reasons set out below, the Tribunal makes no order for costs.

Reasons

Background

1. The substantive application was issued by the Applicant, Chapel Court (Tewkesbury) Management Company Limited, on 15 August 2014. The Applicant is the freehold owner of the property known as Chapel Court, 78-80 Barton Street, Tewkesbury, Gloucestershire, GL20 5PY (“the Property”). The Respondent, Mr. Paul Coombs, is the leasehold owner of Flat 5 at the Property (“the Flat”). The Applicant applied to the Tribunal for a determination under *Section 168(4) of the Commonhold and Leasehold Reform Act 2002* (as amended) that Mr. Coombs had acted in breach of the terms of his lease of the Flat.
2. The Tribunal issued its written decision on 17 November 2014. The Tribunal determined that breaches of covenant had occurred.
3. By letter dated 9 December 2014, the Applicant applied to the Tribunal for an award of costs on the basis that the Respondent had acted unreasonably in connection with the proceedings before the Tribunal.
4. On 31 December 2014 the Tribunal issued directions providing that:
 - 1) The Respondent must send any written representations in relation to the application to the Tribunal and the Applicant by 23 January 2015;
 - 2) That the Tribunal intended to determine the application without a hearing in accordance with Rule 31 of the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169* (“the Tribunal Procedure Rules”) unless either party requested an oral hearing within 28 days.
5. The Tribunal has not received from the Respondent any written representations in relation to the application. Neither party has requested an oral hearing.

The Law

6. Section 29 of the *Tribunals, Courts and Enforcement Act 2007* provides that, subject to the Tribunal Procedure Rules, the costs of and incidental to all proceedings in the First-tier Tribunal shall be in the discretion of the Tribunal and that the Tribunal has full power to determine by whom and to what extent the costs are to be paid.
7. Rule 13 of the Tribunal Procedure Rules provides as follows:
 - 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 an indemnity basis.*
 - 8) ...
 - 9) ...
- 8. *The Litigants in Person (Costs and Expenses) Act 1975 provides for the recovery of costs by litigants in person. The act applies to proceedings before the First-tier Tribunal subject to the Tribunal Procedure Rules. The Tribunal Procedure Rules make no specific provision for the costs of litigants in person.*

The Submissions

9. In its application, the Applicant submitted that the Respondent acted unreasonably in defending the application by:
- 1) Failing to respond to correspondence prior to the issue of the application inviting the Respondent to admit that breaches had occurred;
 - 2) Failing to comply with the Tribunal's directions;
 - 3) Failing to appear at the hearing on 5 November; and
 - 4) Failing to enter into negotiations thereby forcing the Applicant to continue with proceedings where there was no reasonable prospect of the Respondent being successful.

The Applicant relied on the decision of the Lands Tribunal in the case of *Halliard Property Company Limited v Belmont Hall and Elm Court RTM Company Limited LRX/130/2007* which was decided under earlier legislation where His Honour Judge Huskinson said "*The acid test is whether the behavior permits a reasonable explanation.*"

10. The Applicant submitted with its application a schedule of costs showing the total costs claimed in the sum of £945.00 including VAT.

Conclusions

11. The Tribunal convened to determine the application on 11 February 2015. It noted that neither party had requested an oral hearing and that no representations had been received from the Respondent.
12. The Tribunal accepts the evidence submitted by the Applicant that the Respondent failed to respond to correspondence before issue of the application inviting him to admit the breaches of covenant and that he failed to take any part in the proceedings before the Tribunal.
13. Rule 3 of the Tribunal Procedure Rules sets out the overriding objective of the rules which is to enable the Tribunal to deal with cases fairly and justly. That includes dealing with a case in ways which are proportionate to the importance of the case, the complexity of the issues and the anticipated costs. The rule provides that the parties must help the Tribunal to further the overriding objective and co-operate with the Tribunal generally.
14. The Respondent has not made any suggestion in these proceedings that the breaches of covenant did not occur. He has not put forward any explanation as to why he could not have admitted the breaches before the application was issued, thereby avoiding the need for the application to be issued. He did not admit the breaches once the application was issued. He chose to take no part in the proceedings leaving the Applicant with no alternative other than to proceed to a hearing, thereby causing the Applicant to expend time and costs.
15. Bearing in mind the overriding objective, the Respondent was obliged to co-operate with the Tribunal by saying whether or not he admitted the breaches at the earliest opportunity. The Tribunal concludes that his failure to do so amounted to unreasonable conduct in relation to the

proceedings. It is therefore open to the Tribunal to make an order for costs against the Respondent.

16. The Tribunal went on to consider the Applicant's schedule of costs provided with the application. It is a claim for 3.5 hours of Mr. Paine's time at £225 per hour plus VAT making a total of £945. In each of Mr. Paine's 3 witness statements provided to the Tribunal, he describes himself as a director of the Applicant company. It follows that the Applicant company was a litigant in person, appearing by one of its directors. The Tribunal Procedure Rules do not provide for a litigant in person to recover any costs for work done by the litigant in person which did not cause it any pecuniary loss. There is no evidence before the Tribunal that the Applicant company has suffered any pecuniary loss or incurred any costs in relation to these proceedings. On the basis of the evidence before it, the Tribunal assesses the Applicant's costs in connection with the proceedings at nil.
17. In the circumstances, as there are no recoverable costs, the Tribunal makes no order for costs.

Right of Appeal

18. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.
19. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit. The Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal and state the result the party making the application is seeking.
20. The parties are directed to Regulation 52 of the Tribunal Rules . Any application to the Upper Tribunal must be made in accordance with *the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600*.

J G Orme
Judge of the First-tier Tribunal
Dated 11 February 2015