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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/OLR/2014/1863**
Property	:	**Flat 3, 27 Mackeson Road, London NW3 2LU**
Applicant	:	**Mr Chester Jan Omana**
Representative	:	**Capulet Solicitors**
Respondents	:	**Mr Brian Alexander Neil Johnston and Ms Susan Margaret Emmett**
Representative	:	**Colman Coyle Solicitors**
Type of Application	:	**Costs - Rule 13(1)(b) Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013**
Tribunal Member	:	**Judge John Hewitt**
Venue of Determination	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24 February 2015**

DECISION

Decisions of the Tribunal

1. The Tribunal determines that:
   1.1 The application for costs made by the applicant and dated 17 November 2014 shall be dismissed; and
   1.2 Insofar as the respondent may have made applications for costs in witness statements of Hema Anand dated 23 January and 13 February 2015 those applications shall be dismissed

2. The reasons for my decisions are set out below.

NB Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provide for my use at the hearing.

Procedural background

3. The applicant tenant gave to the respondent reversioners an initial notice claiming the right to a new lease. The notice, given pursuant to section 42 Leasehold Reform, Housing and Urban Development Act 1993 (the Act), is dated 11 April 2014. The applicant proposed a premium of £36,000.

4. The respondents gave a counter-notice. It is dated 9 June 2014. The respondents did not accept the proposal of £36,000 for the premium and counter-proposed £50,000.

5. The parties were not able to agree all of the terms of acquisition and on 17 November 2014 the applicant made an application to the tribunal pursuant to section 48 of the Act for the terms of acquisition in dispute to be determined. It appears that at that time the premium and terms of the new lease were in dispute

6. Evidently by 2 December 2014 the premium and terms of the new lease had been agreed and the tribunal were informed of this on 10 December 2014.

7. The applicant's solicitors' chronology of the events which occurred between 3 October and 2 December 2014 is at [19].

8. On 11 December 2014 the applicant has made an application for costs pursuant to rule 13(1)(b). The claim was for £375 + VAT, a total of £450.00. Rule 13(1)(b) provides as follows:

> *"13.- (1) The Tribunal may make an order for costs only-*
> *(a) ... ;*
> *(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in –*
> *(i) ...*
> *(ii) a residential property case, or*
> *(iii) a leasehold case"*

9. Directions were given on 19 December 2014 [1]. The parties were notified that the tribunal proposed to determine the application on the papers and without an oral hearing unless either party made a written request for a hearing. The tribunal has not received any such request.

10. The gist of the directions was that the applicant was to serve on the respondents a statement of case by 12 January 2015 (direction 3). The respondents were to serve on the applicant a statement of case in response by 23 January 2015 (direction 4). The applicant was to serve a short statement in reply by 30 January 2015 (direction 5). The applicant was to file with the tribunal and serve on the respondents a bundle of material documents by 6 February 2015 (direction 6).

11. The tribunal has received from the applicant a bundle of documents paged numbered:

5-22	applicant's statement of case (witness statement of Margaret Ilori);
23-44	respondents' statement of case (witness statement of Hema Anand (; and
45-47	applicant's reply (witness statement of Margaret Ilori)

Separately on 16 February 2015 the tribunal received from the respondents' solicitors a letter dated 13 February 2015 enclosing a further witness of Hema Anand said to be in reply to the witness statement of Margaret Ilori dated 30 January 2015. It is not obvious that this letter was copied to the applicant's solicitors although direction 9 made it clear that all correspondence sent to the tribunal must be copied to the other party and must be endorsed accordingly.

The gist of the case for the applicant

12. The costs of £450 claimed by the applicant in his original application were made up as to 1 hours work at £250 per hour + VAT thereon being the costs said to have been incurred by the applicant in making his application to the tribunal pursuant to section 48 of the Act and a further half hours' work pursuing the claim for costs. The total thus claimed was £450.

13. The gist of the case for the applicant is that the respondents were slow to agree the premium and the terms of the new lease and that had they acted more speedily the costs of making the section 48 application could have been avoided.

14. The applicant relies upon the chronology set out in his solicitor's letter dated 2 December 2014 [19]. I observe that that chronology covers the period 3 October to 2 December 2014. That is expanded upon a little in the witness statement of Margaret Ilori dated 12 January 2105 [5] made in support of the application. Paragraph 16 of the witness statement says that " ... *the Respondents conduct leading to the application being made to the Tribunal and until the application was withdrawn was unreasonable as it has caused the Applicant wasted costs.*"

A schedule of costs was attached to the witness statement [21] which claims three hours' work at £250 per hour + VAT. The claim includes 10 units for letters out, 7 units for letters in, 6 units for telephone attendances and 7 units for the preparation and submission of the application to the tribunal. In the absence of any detail it is not clear to me whether the reference to *"application to the tribunal"* is a reference to the original section 48 application and/or the subsequent rule 13 application for costs.

15. A further witness statement of Margret Ilori, by way of a reply, is dated 30 January 2015 [45] in which a number factual matters concerning the manner in which agreement on the premium and lease terms was arrived at.

Reference is also made to related court proceedings

An amended schedule of costs is attached [47] and the applicant purports to increase his rule 13 application for costs to the sum of £1,350. It appears that the applicant's solicitor seeks to include the costs of dealing with the rule 13 application as well as the costs on which the application was based. No particular 'unreasonable conduct' arising in the conduct of the rule 13 application has been identified.

The gist of the case for the respondents.

16. This is set out in the witness statement of Hema Anand dated 23 January 2015 [23]. The point is made that the applicant took no steps from 13 June 2014 when the counter-notice was served to 3 October 2014 to progress the applicant's claim to a new lease and that the steps which then took place were not exceptional for a transaction such as this where it was necessary to coordinate information from the respondents' valuer and to check instructions from the clients which inevitably sometimes takes time.

17. Further the point is made that there was a genuine lack of certainty over whether or not premium had been agreed subject to agreement on the section 60 costs payable and it took time to obtain clarification.

18. The respondent also asserts that the applicant's section 48 application to the tribunal was premature in any event and that it was the applicant's choice to make the application at the time that he did.

19. Ms Anand says that the respondents have been put to unnecessary expense in considering the subject application and in preparing the response and purports to claim costs of £570 + VAT. It appears that such a claim is made pursuant to rule 13(1)(b) but the tribunal does not appear to have received an application pursuant to the rule and the respondents do not appear to have identified the 'unreasonable conduct' complained of.

20. In a further witness statement dated 13 February 2015 Ms Anand makes reference to the related court proceedings. Ms Anand also

attaches a revised costs schedule and now purports to claim £855. I observe that the directions did not provide for a further statement of case from the respondents and, as mentioned earlier, it is not obvious this witness statement has been served on the applicant.

Conclusions

21. The rule 13 application made by the applicant was limited to the sum of £450 and was expressly based on the work carried out in making the section 48 application and a half hours' work thereafter. The application expressly relies upon alleged unreasonable conduct on the part of the respondent in being slow to agree or confirm formal agreement on the premium payable and the terms of the new lease.

22. Section 48 (1) of the Act provides that where a counter-notice admitting the right to a new lease is given and any terms of acquisition remain in dispute at the end of a period of two months from the date on which the counter-notice is given, either the tenant or the landlord may make an application to the tribunal for those terms to be determined. Section 48(2) provides that such an application must be made no later than the period of six months beginning with the date on which the counter-notice was given. Section 48(3) provides that where all the terms of acquisition have been either agreed between the parties or determined by a tribunal but a new lease has not been entered into within a specified period (two months) the court may on the application of either the tenant or the landlord, make such order as it thinks fit. Section 55 (1) of the Act provides that if no application is made to the tribunal or to the court (as the case may be) the tenant's notice of claim shall be deemed withdrawn. Often there will significant adverse consequences for a tenant where his claim notice is deemed withdrawn.

23. The applicant chose to exercise his right to claim a new lease. The scheme and related time limits for the pursuit of such a claim and clearly set out in the Act. I find that prime responsibility to pursue such a claim and to comply with the time limits falls on the applicant as the person seeking to exercise his rights.

24. Having given a counter-notice admitting the right to a new lease, there is no provision in the Act that I am aware of that obliges a landlord respond to the claim within particular time limits. There are steps a landlord can take but he is not obliged to take them. It seems to me that a landlord is entitled to stand back to see how the tenant chooses to pursue his claim. Intervening events may have arisen which preclude the tenant from pursing his claim and it seems to me the landlord is entitled to wait and see what occurs.

25. Section 60 of the Act expressly sets out what costs are payable in connection with claims to exercise the right to a new lease.

The application of rule 13 against this background

26. I am conscious that in general this tribunal operates in a no costs jurisdiction. However section 29 (4) Tribunals, Courts and

Enforcement Act 2007 and rule 13 empower the tribunal to make orders for costs in limited circumstances.

27. Rule 13(1)(b) enables the tribunal to make an order for costs where a party has acted unreasonably in bringing, defending or conducting proceedings. I consider that the expression 'acted unreasonably' should be construed as being broadly similar to the provisions of paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 which applied to leasehold valuation tribunals, which were also a no costs jurisdiction in general terms. Guidance on the application of paragraph 10 was given by HHJ Huskinson sitting in the Lands Tribunal in *Halliard Property Company Limited v Belmont Hall and Elm Court RTM Company Limited* who adopted, in broad terms, dicta of Sir Thomas Bingham MR in *Ridehalgh v Horsfield* [1994] 3 AER 848 regarding provisions of the Supreme Court Act 1981 concerning a wasted costs order.

28. In the light of this guidance I find that a costs order under rule 13 should only be made in exceptional circumstances and where unreasonable conduct has caused a party to incur more costs that he would otherwise have incurred had it not been for the unreasonable conduct.

29. In the present case I am concerned solely with the claim that the respondents have acted unreasonably in bringing, defending or conducting proceedings. The unreasonable acts complained of, alleged delay in responding the applicant's efforts to agree the premium and/or lease terms, occurred before the application was made to the tribunal. I am not satisfied that the conduct complained occurred in bringing, defending or conducting the proceedings. For this reason alone the application must fail.

30. In case this matter should be taken further I find that the conduct complained of was not unreasonable. I find there was no undue delay on the part of the respondents in responding to the correspondence. It was necessary and reasonable for the respondents' solicitors to confer with the valuer and to take instructions and give advice as necessary. These things can take time. The time taken was not unreasonable in context.

31. Whilst I can appreciate that the applicant wished to make purposeful progress and to avoid the need for a section 48 application to the tribunal, I do bear in mind that the cost of doing so was only one hours' work at £250 + VAT a total of £300. The applicant would have been aware at the outset that in exercising his right it might be necessary for him to make an application to the tribunal. Although put in challenge by the respondents the applicant has not provided any evidence to explain what steps, if any, he was taking between receipt of the counter-notice in June 2014 and 3 October 2014 to progress his claim.

32. In arriving at this decision I have not taken into account any of the rival evidence concerning the subsequent court proceedings. Those proceedings were made well after the matters giving rise to the subject application took place and I do not see that they are material to the matters I have to decide.

33. As I have noted the rule 13 application before me is a claim for costs of £450 expressly concerning conduct alleged to have occurred prior to the issue of the section 48 application. In the course of these proceedings the applicant has sought to increase the amount of the costs claimed, not because the original claim was erroneous or incorrectly calculated but seeks to recover costs of dealing with the rule 13 costs application. That is not permitted by rule 13 properly construed.

34. In making a rule 13 costs application the applicant would be aware that he will incur routine costs in connection with it. Such costs are for the account of the applicant in any event on the footing that the tribunal is a no costs jurisdiction. However, if in connection with the subject application the respondents were to act unreasonably so that the costs expected to be incurred are greater than would otherwise be the case then the applicant can make a further rule 13 costs application in relation to such increased costs. In doing so the applicant would need to set out clearly the (further) unreasonable conduct complained of.

35. In a similar manner the respondents have purported to make rule 13 costs applications in the witness statements filed on their behalf. Such purported applications are not rule 13 compliant. In opposing the applicant's rule 13 costs application the respondents would be aware that they would incur costs in connection with it. Such costs would be for the account of the respondents in any event on the footing that the tribunal is a no costs jurisdiction. If the respondents contend that the applicant has acted unreasonably in connection with the subject application such that the costs they have incurred have been increased it will be open to them make a (compliant) rule 13 costs application.

36. For the reasons set out above I have dismissed the applicant's rule 13 costs application. Also, insofar as the respondents have made one or more rule 13 costs applications I have dismissed them because they were not rule 13 compliant. It will be open to either party to make further rule 13 costs applications but given the modest sums involved it may be that both parties will conclude that a disproportionate amount of time has already been spent on the costs issues between them.

Judge John Hewitt
24 February 2014