



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

**Case reference** : **LON/00AP/LBC/2014/0030**

**Property** : **505 Lordship Lane London N22  
5DL**

**Applicant** : **Mr Sulman Rahman**

**Representative** : **Mr Myers, Churchills Solicitors**

**Respondent** : **Mayor and Burgesses of the  
London Borough of Haringey**

**Representative** : **Mr Richard Ricks- In House  
Counsel**

**Type of application** : **Costs under Rule 13 Tribunal  
Procedure (First –tier tribunal)  
(Property Chamber) Rules 2013**

**Tribunal member(s)** : **Judge Haria**

**Date and venue of  
hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **16 January 2015**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal make no order for costs.

## **The application**

1. On the 13 October 2014 the Tribunal received an application for an order in respect of costs under Rule 13 (1)(b) of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013 (“The Rules”).
2. Directions were issued on 5 November 2014 further to which the parties lodged submissions and the Applicant produced an agreed bundle of documents for the hearing. Neither party requested an oral hearing and the application was listed for a paper determination on the 16 January 2015.
3. The costs in issue are those said to be incurred in bringing an earlier application to the tribunal under case reference LON/00AP/LBC/2014/0030 (the “Substantive Application”). The costs being claimed by the Applicant amount to £5,413.20 inclusive of VAT.
4. The relevant provisions of The Rules are set out in the Appendix attached to this decision.

## **The background**

5. The Substantive Application related to an application by the Respondents in this application for a determination pursuant to subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 in relation to an alleged breach of covenant of a lease. The Tribunal found that the Respondent’s acquiescence or delay in seeking a determination that a breach of covenant had occurred amounted to a waiver on the Respondent’s part of the breach of the covenants in issue.

## **Preliminary matters**

6. The Respondent submitted that the application for costs is out of time as it was not made within the mandatory 28 day period prescribed under the Rules. The Respondent referred to Rule 5 of the Rules but quoted the provisions of Rule 13(5) of the Rules.
7. The provisions of Rule 13(5) does provide that an application or 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 decision notice which finally disposes of all issues in the proceedings. In this case the decision in relation to the Substantive

Application was sent to the parties on the 15 September 2014. The Tribunal received a letter on the 13 October from the Applicant's solicitor seeking an order for cost. The application was therefore made in time.

### **The Applicants' Case**

8. The Applicant relies on the submissions made by Churchills Solicitors dated 20 November 2014 and the Statement in Reply dated 4 December 2014.
9. The Applicant contends that the decision in the Substantive Application warrants an order for costs under Rule 13. It is submitted that the Tribunal's determination in the Substantive Application shows that the Respondent acted unreasonably in bringing the Substantive Application.
10. The Tribunal is refers to extracts from the Applicant's Witness Statement dated 26 June 2014 and correspondence prior to the hearing between the Applicant and various departments of the Respondent in support of the view that the Respondent's conduct was wholly unreasonable in bringing the Substantive application.
11. The Applicant submits that in the light of the Tribunal's findings that the acquiescence or delay on the part of the Respondent amounted to a waiver of a breach of the covenants, and therefore the Respondent acted unreasonably in bringing the Application. Furthermore it is submitted that the Respondent was fully aware of the waiver of the breach and had been forewarned by the Applicant in communications well before it made the Substantive Application. It is submitted that the Respondent acted wholly unreasonably in bringing and conducting proceedings at the Tribunal and in failing to recognise that it was unlikely to succeed.
12. The Applicant relies on a schedule of costs providing a breakdown of the costs incurred.

### **The Respondents Case**

13. The Respondent relies on the submissions dated 4 December 2014 of Richard Ricks.
14. The Respondent relies on the determination of the Tribunal and submits that it contains no criticism of the Respondent's approach. The Respondent submits the evidence was finely balanced with the Tribunal ultimately concluding that the Respondent's acquiescence or delay amounted to a waiver and that this does not constitute conduct which

could give rise to a costs Order given the requirement for the Applicant's conduct to be construed as having been "unreasonable".

15. In relation to the Applicant's submissions that the Respondent had been forewarned by the Applicant in communications prior to the hearing that its behaviour amounted to a waiver, the Respondent submits that since it did not accept it had waived the breach the bringing of the Substantive Application cannot constitute unreasonable conduct.

### **The Tribunal's decision**

16. The Tribunal make no order for costs under Rule 13.

### **Reasons for the Tribunal's decision**

17. In dealing with any application for costs the Tribunal must seek to give effect to the overriding objective under Rule 3 of the Rules.
18. The Court of Appeal in Ridehalgh v Horsefield [1994] Ch 205, CA laid down guidelines to assist courts exercising a very similar jurisdiction and considered the meaning of 'Unreasonable' and stated that it ".....describes conduct which was vexatious, designed to harass the other side rather than advance the resolution of the case: it made no real difference that the conduct was 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 judgement, but it is not unreasonable.....".
19. In addition even where "unreasonable" conduct was shown, an order was within the Tribunal's discretion.
20. This Tribunal is essentially a costs-free jurisdiction where an applicant should not be deterred from bringing an application for fear of having to pay the other party's costs in the event that their application is unsuccessful. There should be no expectation on that a party that is successful will recover its costs. The award of Rule 13 costs should be reserved for cases where on any objective assessment a party has behaved so unreasonably that it warrants an order for costs as it is only fair and reasonable that the other party is compensated by having their legal costs paid.
21. The Tribunal does not accept the Respondent acted unreasonably in bringing the Substantive Application. Although the Applicant had

informed the Respondent of its view that the Respondent's acquiescence or delay in seeking a determination that a breach of covenant had occurred amounted to a waiver, this was not accepted by the Respondent who considered it had an arguable case and was of the view that there was a reasonable prospect of success. The submissions made by both parties in relation to the Substantive Application show that there was an arguable case. The fact that the Respondent was unsuccessful in the Substantive Application does not inevitably mean that it acted unreasonably in bringing the Application. The Tribunal considered the bringing of the Application, the manner in which the Application was conducted and the merits of the application. In order for the Respondent's conduct to be unreasonable, it must be conduct which is out of the ordinary. In this case the Respondent's conduct in bringing the Substantive Application may be considered to have been optimistic but it certainly falls short of conduct that is unreasonable. Accordingly, the Tribunal makes no order to costs under Rule 13.

**Name:** N Haria

**Date:** 16 January 2015

## Appendix

### **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

#### **Rule 3: Overriding objective and parties' obligation to co-operate with the Tribunal**

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes—

(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must—

(a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

#### **Rule 13: Orders for costs, reimbursement of fees and interest on costs**

(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 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(c) 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.