

11748



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

**Case reference** : **LON/00AR/LSC/2016/0218**

**Property** : **7 The Maltings, South Street, Romford,  
Essex RM1 2AW**

**Applicants** : **East Thames Group Limited**

**Representative** : **Ms A Tkaczynska of counsel**

**Respondent** : **Dr Mohamed Khalil**

**Representative** : **-**

**Type of application** : **For the payment of costs under rule 13  
of the Tribunal Procedure (First-tier)  
(Property Chamber) Rules 2013**

**Tribunal members** : **Mr S Brilliant  
Mr F Coffey**

**Date and venue of  
hearing** : **1 September 2016  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **6 September 2016**

**Date of costs  
decision** : **19 October 2016**

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**DECISION**

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## **Decision of the tribunal**

1. The Tribunal determines that an order for costs should be made against the Respondent under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The order is that the Respondent is to pay the Applicant its costs of these proceedings. We assess the Applicant's costs summarily in the sum of £4,543.00 including VAT. This sum is to be paid within 28 days.
2. Rule 13(1)(b)(iii) of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 provides that in a leasehold case the Tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings.
3. A leasehold case is defined in rule 1 as a case in respect of which the Tribunal has jurisdiction under any of the enactments specified in section 176A(2) of the Commonhold and Leasehold Reform Act 2002.
4. One of the enactments so specified is the Landlord and Tenant Act 1985.
5. In paragraph 30 of our decision dated 6 September 2016 we directed the Applicant by 15 September 2016 to provide to the Tribunal and to the Respondent a schedule of costs in Form N260 or similar and reasons in support of an application for costs.
6. On 9 September 2016 the Applicant's solicitors provided to the Tribunal a schedule of costs in the sum of £4,543.00 and reasons in support of an application for costs. These documents were also provided to the Respondent who has failed to respond to them.
7. In the recent case of Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC), the Upper Tribunal has given the following guidance in respect of an award of costs under rule 13(1)(b)(iii):
  28. *At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to*

*make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.*

29. *Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes 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.' It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.*
  30. *At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.*
8. With regards to parties who act without legal advice or representation the Upper Tribunal stated as follows:
32. *In the context of rule 13(1)(b) we consider that the fact that a party acts without legal advice is relevant at the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of proceedings before it, than is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.*

33. *We also consider that the fact a party who has behaved unreasonably does not have the benefit of legal advice may be relevant, though to a lesser extent, at the second and third stages, when considering whether an order for costs should be made and what form that order should take. When exercising the discretion conferred by rule 13(1)(b) the tribunal should have regard to all of the relevant facts known to it, including any mitigating circumstances, but without either 'excessive indulgence' or allowing the absence of representation to become an excuse for unreasonable conduct.*
9. As to the first stage, we are satisfied that the Respondent has objectively acted unreasonably for the reasons put forward by the Applicant:
- (1) he failed to respond to the application;
  - (2) he failed to comply with the directions sent by the Tribunal on 9 June 2016;
  - (3) the Applicant was prepared for the matter to be dealt with on paper only and had the Respondent agreed a hearing might have been avoided;
  - (4) the Respondent told Mr Ashraf on 24 June 2016 that he would be represented at the hearing on 1 September 2016;
  - (5) the Applicant was prepared to mediate, but the Respondent was not;
  - (6) the Respondent failed to attend at the hearing.
10. Taking into account all the circumstances, we consider at the second stage that we ought to make an order for costs. The Respondent is a registered medical practitioner. It must have been apparent to him that his failure to engage, when he had no answer to the application which was being made against him, could only lead to the Applicant incurring what would otherwise be unnecessary costs.
11. As to the third stage, we are satisfied that the costs claimed are reasonable and proportionate.

**Name:** Simon Brilliant

**Date:** 19 October 2016