



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

Case Reference : CHI/00HG/LSC/2013/0082

Property : 125M King Street Plymouth PL1 5JD

Applicant : Plymouth Community Homes Limited (PCH)

Representative : Danny Damerell Chartered Legal Executive

Respondent : Paul Locker

Type of Application : Costs - Rule 13 of The Tribunal Procedure
(First Tier Tribunal) (Property Chamber)
Rules 2013 [SI 1169] (the Procedure Rules)

Tribunal Member(s) : Judge Cindy A Rai (Chairman)

Dated 7 April 2014

DECISION

1. Following the determination of an application on the reasonableness of service charges dated 14 July 2013, (the Original Application), made by Paul Locker, Respondent to this application, but Applicant in respect of the Original Application, PCH sent the Tribunal, "by way of filing", its statement of costs.
2. That statement set out that Danny Damerell, who had presented its case, was claiming reimbursement of the cost of his time which was itemised as being 990 minutes - 16.5 hours charged at £177 per hour; that the total amount claimed is Two Thousand Nine Hundred and Twenty Pounds and Fifty Pence (£2,920.50). An itemised list of the costs indicated these were incurred between 25 July 2013 and 6 November 2013.

3. The PCH statement was received by the Tribunal on 13 January 2014 which was more than 28 days after the decision dated 11 December 2013, which determined the Original Application, was sent out. The Application was out of time as Rule 13(5) of the Procedure Rules specifies that an application must be made within 28 days after the date upon which a decision is sent to the parties.
4. The Tribunal notified PCH that it would grant a 7 day extension if PCH submitted an application explaining why it was asking for costs as it had summarised the costs claimed but offered no explanation as to the grounds upon which it relied.
5. Mr Damerell responded to the Tribunal in a letter dated 20 January 2014 requesting the extension of time and stating that:-
 - a. He sought recovery of costs at the County Court rate
 - b. The application for a contribution towards PCH costs was due to the excessive amount of time spent providing information to Mr Locker. Costs were not being claimed in regard to the work carried out by employees in the Service Charge, Finance or Customer Service Departments of the Company.

Costs application under rule 13 of the Procedure Rules

6. It is assumed, in the absence of any statement to the contrary, that the Application by PCH is made under Rule 13. At the hearing of the Original Application PCH accepted that it could not recover its costs as Landlord in reliance on any provision in the lease of the Property and accepted that it was appropriate for Paul Locker's application for it to make an order under section 20(C) of the Landlord & Tenant Act 1985.
7. Rule 13 enables the Tribunal to make an order in respect of both application costs and costs in making the costs application only:-
 - a. in respect of wasted costs under section 29(4) of the Tribunal Courts and Enforcement Act 2007 or
 - b. if a person has acted unreasonably in bringing defending or conducting proceedings in specified cases (which includes leasehold cases) which this is.
8. Rule 13(4) provides that a party making an application 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 with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal

9. The Applicant has delivered a schedule of costs claimed. Its only explanation of why it has made a claim is in its letter dated 20 January 2014, referred to in paragraph 5 above.
10. Rule 13(6) provides that no order for costs may be made against the “paying person” without giving that person an opportunity to make representations. Mr Locker has received copies of this application but has made no representations to the Tribunal.
11. At the hearing of the Original Application PCH indicated that it would like to make submissions on costs “in the light of the Applicant’s case” and it was confirmed to it could do so by written representations.
12. In the absence of any representations that Paul Locker acted unreasonably in making the Original Application the Tribunal declines to make the order sought. It does not consider that the grounds of “excessive time spent” are within Rule 13(b) or that such the statement offers sufficient justification as to why it should make the order. Clause 29 of the 2007 Act is not relevant as Mr Locker was not represented.
13. It has considered if it is appropriate to make a costs order on its own initiative which is permitted under Rule 13. It was critical of Mr Locker’s submissions and recorded this in paragraph 64 of the Decision in which said that “it seems to the Tribunal that he largely ignored anything in the Respondent’s (PCH’s) written statement which contradicted what he wished to say”.
14. On balance it does not consider it would, in accordance with overriding objective, be fair to Mr Locker because it did not give him notice at or following the hearing, or on receipt of this application, that it may do so.

Judge Cindy A Rai

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case which application must:-
 - a. be received by the said office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
 - b. 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

2. If the application is not received within the 28-day time limit, it must include a request for an extension of time and the reason for it 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.