570

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AY/LBC/2014/0082**
Property	:	**Ground Floor Flat, 28 Pearman Street, London SE1 7RB**
Applicants	:	**Dr S Prineas and Ms L Mowbray**
Representative	:	**SLC Solicitors**
Respondent	:	**Ms C Sinha**
Representative	:	**Knights Solicitors LLP**
Type of Application	:	**For the determination of costs under Rule 13 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.**
Tribunal	:	**Judge Goulden**
Date and venue of Hearing	:	**6 June 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**6 June 2014**

DECISION

Decision of the Tribunal

(1) The Tribunal dismisses the application under Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The application

1. The Applicants seek a determination as to costs payable under Rule 13 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Rules").

The background

2. An application had been made by solicitors acting for the Applicants for an order under S168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that a breach of covenant or a condition in the lease had occurred. The property which was the subject of this application is Ground Floor Flat, 28 Pearman Street, London SE1 7RB ("the property"). The application was dated 3 October 2013 and was received by the Tribunal on 7 October 2013. The Applicants and the Respondent were as stated on the frontsheet to this decision.

3. A Case Management Hearing was listed for 5 November 2013., following which the Tribunal's Directions of the same date were issued. The Directions were subsequently varied, on request, by the Tribunal on 19 December 2013 and 8 January 2014.

4. On 14 March 2014, the Applicants' solicitors wrote to the Tribunal confirming that the parties had settled.

5. On 21 March, the Applicants' solicitors wrote to the Tribunal requesting that the case be withdrawn. The Tribunal's consent to the withdrawal was dated 21 March 2014.

6. On 17 April 2014, the Applicants' solicitors wrote to the Tribunal to indicate that they wished to pursue an application for costs against the Respondent. Directions of the Tribunal were issued on 24 April 2014.

7. The matter was listed for a paper determination. Neither side requested an oral hearing.

The Applicants' case

8. In the Applicants' statement of case, dated 14 May 2014, which had been prepared and signed by their solicitors, SLC Solicitors, a request for an order for costs be made against the Respondent was made *"as she has acted unreasonably in defending the Applicants' application for a determination that the Respondent was in breach of the covenants in her lease".*

9. It was stated, inter alia *"issues first began to arise in 2011 when the Respondent without the Applicants' knowledge or permission installed a PVC pipe in the chime on the Applicants' roof garden creating an ongoing trespass and nuisance and in the process damaed the chimnehy block and crown. ....The Applicants were prompted to seek legal advice last year only when it became clear to themthat the Respondent intended to proceed with alterations outside her demised premises by installing a boiler flue through the Applicants retained premises to the front of their building despite the Applicants explicit refusal to allow this.....From the beginning of 2013 extensive correspondence was entered into between the parties raising the issues which form the basis of the application but the Respondent continued tod deny the breaches and did not indicate any intention to negotiate settlement of the issues that had been raised. Throughout this correspondence the Respondent typically was slow to respond ...and failed repeatedly to produce on request documentation relevant to issues of concern under the lease. Furthermore the Respondent has repeatedly appeared unable or unwilling to recognise the limits of the demised premises under the Lease and continues to be unable or unwilling to accept the covenants governed by those boundaries and the consequences of unauthorised action beyond those boundaries. This has contributed significantly to both the escalation of the dispute and towards the accrual of costs.....".*

10. It was stated that there were 4 experts' report, being one gas expert's report for each party and one surveyor's report for each party which, including the joint statements amounted to some 331 pages to consider. It was submitted that many matters could have been agreed, but it was by a letter dated 6 March 2014 that some admissions had been made by the Respondent. After the Respondent was said to have *"admitted without qualification virtually all breaches alleged by the Applicants"* by a letter dated 13 March 2014 was the application withdrawn some two weeks before the substantive hearing. The Applicants contended that the Respondent in acting unreasonably resulted in considerable costs being incurred which could have been avoided and the Applicants were entitled to their costs by virtue of Clause 3 (9) of the lease, a copy of which was provided.

11. The application to the Tribunal dated 3 October 2013 was provided as evidence in support of the further alleged breaches of covenant. In

addition, inter alia, copy correspondence between the parties and their legal representatives were provided, as was the Scott Schedule, a costs summary. The costs requested were £25,902.07 (being £22,411.97 plus VAT of £3,490.10).

The Respondent's case

12. In the Respondent's statement of case, dated 28 May 2014, which had been prepared and signed by her solicitors Knights Solicitors LLP, it was stated, inter alia, *"the Applicants appear to claim that the Respondent is liable in full for all costs that they have incurred in relation to their dealings with the Respondent from 3 April 2013 to 3 October 2013 (before an application was submitted to the Tribunal) and in respect of their application from 3 October 2013 to date....The Respondent does not consider that the Applicants are entitled to recover their costs in full as they have acted unreasonably in bringing proceedings against her in the Tribunal in relation to some of the alleged breaches".* It was contended that Clause 3(9) of the lease may not fall within the meaning and definition of that clause. It was also contended that certain costs incurred by the Applicants were for gaining approval under clause 3(5) of the lease which should be an administration charge and *"the Applicants' application made on 3 October 2013 relates to a request for a determination of breaches of covenant by the Respondent and they have not made an application in relation to a determination of administration charges due and payable by the Respondent".* Several issues had been contested by the Respondent and were detailed. The Respondent commented that certain issues gave no reason for the Applicants to complain and other issues had been historic and had been waived by the Applicants. It was only after receiving expert reports that the Respondent had been in a position or otherwise to remedy a breach. The Respondent contended that she had incurred considerable costs of her own and *"she considers that the Applicants have approached this matter in a disproportionate and oppressive manner and.....does not therefore consider that they are entitled to recover their costs in full from the Respondent as is claimed".*

The Tribunal's decision

13. In residential property cases, Rule 13 replaces both paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and paragraph 12 of Schedule 13 to the Housing Act 2004. The Tribunal's powers are no longer limited to the amount of costs which may be awarded.

14. The application has been made under Rule 13(1)(b) of the Rules which states: **(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; .....

15. The first matter for the Tribunal to consider is whether the Respondent has acted unreasonably in defending the proceedings brought against her under S168(4) of the 2002 Act. Those proceedings were withdrawn by the Applicants and therefore there is no such application before the Tribunal.

16. The only application before the Tribunal is under S13(1)(b) of the Rules and the Tribunal is constrained by those Rules. The Tribunal does not intend to consider Clause 3(9) of the lease since there is no application before the Tribunal under Schedule 11 of the 2002 Act.

17. It is not for this Tribunal to consider the merits or otherwise of the breach of covenant case (which has been withdrawn by the Applicants in any event). The Tribunal has noted from the documentation – and in particular the Scott Schedule – that the Respondent and her solicitors felt that her case had merit and, that being the case, she was entitled to defend proceedings instituted against her. The Tribunal is unable to say that she had no case and of course, this was not tested, the application having been withdrawn. The Tribunal therefore does not find that the Respondent has acted unreasonably.

18. On that basis, the Tribunal dismisses the application under Rule 13(1)(b) and, since there is no application before the Tribunal under Schedule 11 of the 2002 Act, the Tribunal has no jurisdiction to make a determination.

Name: J Goulden **Date:** 6 June 2014