



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

**Case Reference** : CAM/22UF/LSC/2014/0075

**Property** : 59 Claremont Heights, Colchester CO1 1ZU

**Applicant** : Mr Robert Cook

**Respondent** : Claremont Heights 1-72 RTM Company Ltd

**Application** : Costs relating to the tribunal proceedings and hearing on 6 November 2014

**Tribunal Members** : Judge Reeder  
Mrs Evelyn Flint DMS FRICS IRRV (valuer member)  
Mr John E Francis (lay member)

**Date of Decision** : 18 March 2015

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**COSTS DECISION**

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**Summary of the costs decision**

1. The respondent is ordered to reimburse to the applicant the tribunal application fee of £125 and the tribunal hearing fee of £190.
2. No order is made in respect of the Land Registry fee for copy lease, the paper, printing and postage costs, and the loss of earnings claim costs.
3. An order is made providing that the respondent's costs of and occasioned by the proceedings before this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr Cook in this or any future service charge accounting year.

## **The related substantive decision**

1. On 6 November 2014 the Tribunal made its substantive decision in relation to this application.

That decision was as follows -

- 1.1 The Tribunal determines that the cost of works proposed by the respondent to replace, rather than repair, the windows to the 72 flats in "Block 1" Claremont Heights (ie. flats 1 -72) in Spring 2015 would not, on the evidence before it, be reasonably incurred.
- 1.2 The Tribunal makes no order relating to the applicant's criticism that the statutory consultation process in relation to the works programme proposed to commence in Spring 2015 has, thus far, been a 'hollow' consultation which has ignored the views of the leasehold owners of flats in 'Block 1'.

## **The directions issued for a costs decision**

2. No decision was made in relation to the costs of the proceedings for the reasons given in that substantive Decision. That Decision concluded with a direction that, within 28 days of the date that the Decision is sent to the parties, any party may file with the Tribunal office, and serve on the other party, an application for any of the following orders -
  - 2.1 an order requiring a party to reimburse to the other party the whole or part of the amount of any fee paid by the other party (pursuant to regulation 13(2) of the First-Tier Tribunal (Property Chamber) Rules 2013), and/or
  - 2.2 an order requiring a party to pay the costs of the other party costs on the ground that the paying party has acted unreasonably in bringing, defending or conducting the proceedings before the Tribunal (pursuant to regulation 13(1)(b) of the First-Tier Tribunal (Property Chamber) Rules 2013), and/or
  - 2.3 an order providing that the respondent's costs of and occasioned by the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the applicant in this or any future service charge accounting year (pursuant to section 20C of the Landlord & Tenant Act 1985).

- 2.4 Any party served with such an application shall, within 14 days of receiving that application, file with the Tribunal office and serve on the other party a written response to that application.
- 2.5 The Tribunal will determine any such cost application(s) on the papers and without a hearing.

### **The parties' costs submissions**

3. On 05.02.15 a letter was received from the applicant, Mr Robert Cook, seeking an order for costs against the respondent, together with an order precluding the respondent from recharging their costs of the tribunal proceedings as a service charge. That letter sets out 5 pages of narrative argument in support of an application that the respondent pay the following costs -
- (i) Tribunal application fee - £125
  - (ii) Tribunal hearing fee - £190
  - (iii) Land Registry fee for copy lease - £23
  - (iv) Paper costs (5.5 reams of paper) for hearing bundle - £18.08
  - (v) Printing costs (1 toner cartridge) for hearing bundle - £158.44
  - (vi) Postage costs for hearing bundle - £29.38
  - (vii) Loss of earnings for 2 x 5 hour days @ £250 p/h - £1,250
4. On 24.02.15 a letter as received from Messrs Bradys solicitors for the respondent stating that "we have been instructed not to file a response to Mr Cook's application for costs" and indicating that they are no longer acting for the respondent. No further contact or correspondence has been received by the Tribunal from or on behalf of the respondent.

### **Summary assessment**

5. Having regard to the costs provisions in Rule 13(7) and to the overriding objective in Rule 3 of the First Tier Tribunal (Property Chamber) Rules 2013 the Tribunal determines that it is proportionate to deal with this matter by summary assessment based on the documents provided and having regard to the substantive Decision.

### **Reimbursement of fees**

6. The core issue in these proceedings is the window replacement/repair dispute. Mr Cook contended that the windows did not need replacement. The Tribunal determined that the costs of replacement in Spring 2015 would not be reasonably incurred having regard to the reasoning

in paragraphs 37-62 of the substantive Decision. Having regard to that determination it is just and equitable in the circumstances to make an order pursuant to Rule 13(2) of the First Tier Tribunal (Property Chamber) Rules 2013) requiring the respondent to reimburse to Mr Cook the application fee of £125 and hearing fee of £190.

### **Costs & the respondent's conduct**

7. Notwithstanding, the arguments ably expressed by Mr Cook in his letter dated 15.02.15 and having regard to the substantive Decision made on 06.11.14 the Tribunal is not satisfied that the respondent acted unreasonably in defending or conducting the proceedings before the Tribunal.
8. The respondent clearly and reasonably relied on the advice received from Messrs Boydens (managing agent) and Messrs Daniel Connal Partnership (surveyors) in pursuing window replacement as part of a wider works package proposed for Spring 2015.
9. As can be seen from the substantive Decision this issue required careful analysis of not only the state of the windows but the comparative cost benefits, potential economies of scale and scheme costs within the context of wider works programme. In the event the respondent was determined to have erred in their decision-making in a number of ways. This clearly does not, in the circumstances, constitute them acting unreasonably in terms of the proceedings.
10. Mr Cook makes express reference to the late filing and serving of Mrs Friedlander's witness statement and 86 page exhibit bundle. This is considered at paragraph 24 of the substantive Decision. Those materials were marshalled late and largely directed at the statutory consultation issue in relation to which the Tribunal determined there was no bad faith as alleged.
11. Mr Cook makes reference to the removal, disqualification and/or resignation of directors of the respondent RTM since the hearing. This is of no relevance to the respondent's conduct of the proceedings before the Tribunal.
12. Again, these matters do not, in the circumstances, constitute the respondent acting unreasonably in terms of the proceedings.
13. It follows that no order is made requiring the respondent to pay Mr Cook's costs as claimed pursuant to regulation 13(1)(b) of the First-Tier Tribunal (Property Chamber) Rules 2013).

## Section 20C order

14. Having regard to the Tribunal's determination on the core issue of window replacement/repair it is just and equitable in the circumstances to grant an order, pursuant to section 20C of the Landlord & Tenant Act 1985, providing that the respondent's costs of and occasioned by the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by Mr Cook in this or any future service charge accounting year.

Stephen Reeder  
Judge of the First Tier Tribunal