



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

Case Reference : LON/00BK/LUS/2014/0005

Property : 45 Marylands Road, London W9
2DU

Applicant : 45 Marylands RTM Company Ltd

Respondent : Chancery Lane Investments Ltd

Type of Application : Costs – Rules 13(1)(b) and 13(2) of
the Tribunal Procedure (First-tier
Tribunal) (Property Chamber)
Rules 2013

Tribunal Members : Judge P Korn
Mr K Cartwright FRICS
Mrs R Turner JP

Determination date : 17th April 2015

Date of Decision : 22nd April 2015

SUPPLEMENTAL DECISION ON COSTS

Decisions of the Tribunal

- (1) The Tribunal makes an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent must reimburse to the Applicant the hearing fee of £195.00, within 28 days of this decision.
- (2) The Tribunal also makes an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent must pay to the Applicant the sum of £945.00 inclusive of VAT, within 28 days of this decision.

The background

1. This application is supplemental to an application (the "**Previous Application**") by the Applicant seeking a determination pursuant to section 94(3) of the Commonhold and Leasehold Reform Act 2002 as to the amount of any accrued uncommitted service charges.
2. A hearing took place in relation to the Previous Application on 19th March 2015 and a decision (the "**Previous Decision**") in respect of the Previous Application was issued that same day.
3. At that hearing the Applicant also made two cost applications, one pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Tribunal Rules**") and the other pursuant to rule 13(2) of the Tribunal Rules. In response the Tribunal reserved its position and in further directions invited both parties to make written submissions on costs prior to making its decision.
4. The Applicant has made written submissions on costs in response to the further directions but the Respondent has not done so.

Applicant's written submissions

5. The Applicant had already made oral submissions on costs at the hearing on 19th March 2015 and these are referred to in the Previous Decision. The Applicant's further submissions consist of a breakdown of its costs and an explanation as to why they are considered to be recoverable. The Applicant argues that in failing to engage and hand over relevant information it has forced the Applicant's managing agents to seek a formal determination and to expend considerable time in doing so. It further argues that it was open to the Respondent to limit the Applicant's costs at any time by engaging properly with the process.
6. Pursuant to rule 13(2) of the Tribunal Rules the Applicant is claiming the hearing fee of £195.00. Pursuant to rule 13(1)(b) of the Tribunal

Rules the Applicant is also claiming reimbursement of other costs totalling £2,760.00 inclusive of VAT and which break down as follows:-

Activity	Time spent by Property Manager @ £75 + VAT ph	Time spent by Associate Director @ £125 + VAT ph	Time spent by Director @ £200 + VAT ph
Preparing application	1 hour	-	1/2 hour
Preparing Statement of Case	-	2 hours	1 hour
Preparing bundle	-	4 hours	1 hour
Appearing at hearing	-	2 hours	2 hours
Administration and client liaison	1 hour	2 hours	-

Respondent's lack of submissions

7. The Respondent has made no written submissions on costs following the hearing and has therefore failed to offer any explanation of its conduct in the context of the Applicant's cost applications, despite having been expressly invited to do so.

Tribunal's analysis

8. Dealing first with the application for the reimbursement of the hearing fee, rule 13(2) of the Tribunal Rules states that *"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"*. In this case the Applicant claims reimbursement of the hearing fee of £195.00 and payment has not been remitted by the Lord Chancellor. Rule 13(2) does not specify the basis on which a tribunal can or should order such fee to be reimbursed, and therefore it is for the Tribunal to weigh up the circumstances and consider whether – taking all those circumstances into account – it would be reasonable to do so.
9. In this case we are satisfied that a hearing was needed either wholly or in large part due to the lack of engagement by the Respondent. In addition, the Applicant was successful in principle in its application,

albeit that we deducted a couple of amounts from the accrued uncommitted service charges for particular reasons. Therefore we consider that it would be reasonable in the circumstances to order the reimbursement of the hearing fee.

10. Turning to the application for the reimbursement of other costs incurred by the Applicant, rule 13(1)(b) of the Tribunal Rules states that "*The Tribunal may make an order in respect of costs only ... if a person has acted unreasonably in bringing, defending or conducting proceedings*". The Respondent has not brought these proceedings, and so the question only arises as to whether it has acted unreasonably in defending or conducting proceedings.
11. The test under rule 13(1)(b) is stricter than that under rule 13(2) in that it requires there to be unreasonable conduct. In *Ridehalgh v Horsfield (1994) 3 All ER 848*, Sir Thomas Bingham MR said in relation to the meaning of the word "unreasonable" when considering a person's conduct in the context of a costs application that the acid test is whether the conduct permits of a reasonable explanation.
12. In our view the Respondent's conduct does not permit of a reasonable explanation. As stated in the Previous Decision, the Respondent has comprehensively failed to engage with this process. It neither accepted the Applicant's right to manage nor served a counter-notice objecting. It seemingly provided no information on uncommitted service charges to the Applicant's managing agents when requested to do so, leaving the Applicant with little choice but to apply to the Tribunal for a determination. The Respondent then failed to comply with the Tribunal's directions, in particular the direction requiring it to serve a full reply to the application by – initially – 3rd November 2014 and then, when the directions were varied, by 29th January 2015. Whilst the flouting of the Tribunal's directions is always serious, it must have been completely apparent to the Respondent that it was particularly important for it to co-operate with the Tribunal in a case such as this, where the Tribunal needs it to provide certain basic information to enable the Tribunal to make an informed determination. The Respondent has provided no explanation of its conduct, even after having been expressly invited to do so in the context of the Applicant's cost application.
13. Rule 13(1)(b) refers (in the context of a respondent) to defending or conducting proceedings, and it could be argued that these are both positive activities and do not include a simple failure to engage. Whilst this argument has some force, in our view – in the particular circumstances of this case and the type of application – the Respondent's failure to engage does constitute unreasonable defending and/or conducting of proceedings. Directions have been comprehensively flouted in circumstances where it will have – or at least should have – been obvious to the Respondent that its failure to

co-operate would cause significant difficulties for both the Applicant and the Tribunal. In the circumstances we are satisfied that the Respondent has “acted unreasonably in ... defending or conducting proceedings” within the meaning of rule 13(1)(b).

14. The next question is to what extent the Applicant has incurred costs as a result of the Respondent acting unreasonably in defending or conducting proceedings. We will take the different heads of claim in turn.
15. The preparation of the application is something which took place prior to the Respondent defending or conducting proceedings, as they only became “proceedings” once the application had been issued. Therefore the cost of preparing the application cannot be included in any cost award under rule 13(1)(b).
16. As regards the preparation of the Applicant’s statement of case, whilst the Applicant would have needed to prepare a statement of case anyway in our view it will have been made significantly harder by the failure of the Respondent to engage. We consider that in the circumstances it would be reasonable to attribute 50% of the time spent on preparing the Applicant’s statement of case to the Respondent’s unreasonable conduct and therefore that 50% of the Applicant’s reasonable costs incurred in preparing the statement of case should be reimbursed.
17. As regards the preparation of the bundle, this would have needed to be prepared even if the Respondent had engaged with the process. There is no evidence that the Respondent’s failings made it harder to prepare the bundle, and therefore the cost of preparing it cannot be included in any cost award under rule 13(1)(b).
18. As regards the cost of appearing at the hearing, the Applicant did not request a hearing and we are satisfied that the need for the hearing arose directly out of the Respondent’s failure to engage with the process. Therefore, in principle the Applicant’s reasonable costs of attendance at the hearing should be reimbursed. However, whilst the Applicant was perfectly entitled to have two people at the hearing we do not consider that it was necessary to do so and therefore we are only prepared to allow the reasonable costs of Mr Cleaver as the principal and more senior person involved.
19. As regards the cost of administration and client liaison, whilst the Applicant would have needed to do some administration and client liaison anyway in our view it will have been made significantly harder by the failure of the Respondent to engage. We consider that in the circumstances it would be reasonable to attribute 50% of the time spent on administration and client liaison to the Respondent’s unreasonable conduct and therefore that 50% of the Applicant’s reasonable costs of administration and client liaison should be reimbursed.

20. Having considered Urang Property Management Limited's charge-out rates, these seem to us to be within market norms and to be reasonable, and therefore no reduction is necessary. We also consider the amount of time allocated to each activity in the Applicant's schedule of costs to be reasonable. In addition, we would add that we see no reason why rule 13(1)(b) should be limited to the recovery of lawyers' fees as distinct from the fees of a managing agent engaged in work connected with an application to this Tribunal.

21. In conclusion, the costs payable by the Respondent to the Applicant amount to £1,140 (inclusive of VAT). These break down as follows:-

- Hearing fee £195.00
- 50% of costs incurred in preparing statement of case £270.00
- Director's costs of attending hearing £480.00
- 50% of costs re administration and client liaison £195.00

Name: Judge P Korn

Date: 22nd April 2015