



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

**Case References** : LON/00BD/LSC/2016/0192  
LON/00BD/LDC/2016/0106

**Property** : 6 Kew Gardens Road, TW9 3HL

**Applicants** : Ms Irene Mulkeen  
Mr Gordon David Innes

**Respondent** : Ms Jane Harrison

**Parties present** : All

**Type of Application** : Service Charges; Dispensation  
from consultation

**Tribunal** : Mr M Martyński (Tribunal Judge)  
Mr P Roberts DipArch RIBA  
Mr A Ring

**Date of Hearing** : 21 November 2016

**Date of Decision** : 8 February 2017

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**DECISION ON APPLICANTS' APPLICATION FOR COSTS AND RE-  
IMBURSEMENT OF FEES**

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## DECISION SUMMARY

1. The tribunal declines to make an award of costs or fees against the Respondent.

## BACKGROUND

2. On 21 November 2016 the tribunal heard three applications issued by the Applicants against the Respondent. Those applications were:-
  - (a) An application for a declaration as to the reasonableness and payability of Service Charges (following a transfer of proceedings from the County Court in which Ms Mulkeen was suing for Service Charges incurred by herself and Mr Innes)
  - (b) An application from both Applicants seeking dispensation from the statutory consultation regulations in respect of the Service Charges concerned in (a) above
  - (c) An application from both Applicants for a variation of the leases in the Building so as to be able to recover; (i) management charges for a managing agent or the charges of freeholder managing without a managing agent; (ii) the freeholder's costs resulting from a breach or non-observance of the terms of the leases in the building
3. In a decision dated 7 December 2016 dealing with the applications in respect of the Service Charges and dispensation, we found that the Service Charges were reasonable and payable and we granted the dispensation sought.
4. The decision in respect of the variation of lease application is dated 8 February 2017. That decision was delayed as the tribunal was waiting for proper copies of all the leases in the building from the parties before making its decision. The decision concluded that the leases should be amended to allow for the costs of a professional managing agent but refused to vary the leases so as to allow a freeholder to recover the costs of management and for the tenant to be responsible for the freeholder's costs of a breach of the lease.

## THE APPLICATION

5. The Applicants' application for a costs order is dated 22 December 2016. It is made pursuant to Rule 13(1)(b)<sup>1</sup> and seeks costs, not all of which are fully quantified. The schedule of costs provided by the Applicants also includes the fees paid to this tribunal for the applications and the hearings. The relevant parts of Rule 13 provide as follows:-

**13. Orders for costs, reimbursement of fees and interest on costs**

(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;

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<sup>1</sup>The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

(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; or  
(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse 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.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

6. The application relies on various matters. First, it was alleged that the Respondent's conduct and claims during the hearing were unreasonable in that the Respondent was dishonest and her arguments were fabricated.
7. Second it was alleged that the Respondent failed to comply with directions leading to the final hearing
8. Third, it was said that the Respondent's behaviour in the proceedings was part of a wider unreasonable pattern of behaviour in other proceedings between the parties.

#### **DECISION**

9. We did not make any specific finding in our decisions that the Respondent had been dishonest or that her arguments were fabricated. The only adverse finding that we made against the Respondent as to the correctness of her account was in relation to the dispensation application. We found that she was not correct in saying that she was prevented from responding to consultation notices as a result of bail conditions (not to contact Ms Mulkeen) because she could have responded to Mr Innes<sup>2</sup>.
10. Whilst the Respondent may not have properly complied with directions leading to the final hearing, that did not prevent the final hearing from being effective. We note that we refused the Respondent's application to adjourn the final hearing; we considered that she could have, and should have, prepared adequately for the hearing.
11. We do not consider that other proceedings (and allegations of unreasonable behaviour in those proceedings) are relevant to the question of unreasonable behaviour in these proceedings (on the question of costs).
12. There are further important points to make regarding the proceedings and the merits of the costs application as follows.

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<sup>2</sup>Paragraph 32 of our decision relating to Service Charges and Dispensation

13. As to the dispute regarding Service Charges, the Respondent refused to pay those Services Charges in any amount exceeding £250.00 (that being the statutory limit) because, she said, the Applicants had not complied with the statutory consultation requirements in respect of the works in question. In our decision on the Service Charges, we found that the Respondent was right. We found that the statutory consultation regulations had not been complied with. The consequence of that was that, until such time as dispensation from the need to comply with those regulations had been granted, the Respondent was liable to pay no more than £250.00 towards the costs of the works.
14. As to the Respondent's objection to the application for dispensation, whilst we may have found against her in that application and whilst we may have found that at least one of her arguments could not be correct (see paragraph 9 above), we do not consider that this amounts to unreasonable behaviour within the meaning of Rule 13. Even if it did, in the overall circumstances of this case (as explained in this decision), we do not consider that we should exercise our discretion to award costs against the Respondent.
15. It has to be remembered that the dispensation application had to be issued and decided because the Applicants had failed to comply with their statutory obligations (although we recognise that the failure was ultimately minor and technical). It would be highly unusual in such circumstances to make an award of costs against a party opposing such an application.
16. As for the amount of the Service Charges that we found were payable by the Respondent, that turned upon a difficult interpretation of the lease. The lease was far from clear as to what proportion of Service Charges were payable by the leaseholders<sup>3</sup>. The Respondent's arguments as to the share payable by her under the terms of the lease were entirely reasonably argued.
17. Moving on to the Variation of Lease application; we point to the fact that we refused a large part of the Applicants' proposals in this application. There was nothing unreasonable in the Respondent's approach to this part of the case.
18. For all these reasons we find that; (a) the Respondent's behaviour in these proceedings has not been unreasonable; (b) even if elements of the Respondent's behaviour were unreasonable, in all the circumstances of this case we decline to make any award of costs for the reasons given above.
19. Finally, we have to deal separately with the application in respect of the fees paid to the tribunal by the Applicants. Those fees amount to £220 (we have ignored the fees paid to the County Court – those are a matter for the Court).

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<sup>3</sup>See paragraphs 35-52 of the decision relating to Service Charges and Dispensation

20. We are not prepared to order the Respondent to repay these fees. On a technical analysis of the result of the applications, the Respondent has had some considerable success, further, she was ultimately proved correct in her approach to elements of the Service Charge application. Further, some of the problems in the building relate to the difficulties with the drafting and interpretation of the leases in respect of which no party to these proceedings is to blame.

**Mark Martyński, Tribunal Judge**  
**8 February 2017**

#### **ANNEX - RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.