

12676



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

Case reference : **LON/00AH/LSC/2018/0012**

Property : **278,282 & 284 Old Lodge Lane,
Purley CR8 4AQ**

Applicant : **M & J Partners Ltd**

Representative : **Mr Horne (Solicitors Agent)**

Respondent : **Mr Rajaratnam Rasiah**

Representative : **Rasiah & Co Solicitors**

Type of application : **Costs - rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013.**

Tribunal members : **Mr A Harris LLM FRICS FCIArb**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 March 2018**

DECISION

Decision of the Tribunal

1. The Tribunal makes an order under rule 13 of the Tribunal Procedure (First – tier Tribunal) (Property Chamber) Rules 2013 (The Rules) in favour of the respondent in the sum of £1379.96.

The application

2. The the respondent seeks an order under rule 13 of the rules on the basis that the applicant has acted unreasonably in bringing proceedings.

The hearing

3. A written application was made by Rasiah & Co, solicitors on behalf of the respondent.
4. A bundle of correspondence and documents was supplied to the tribunal.

The background

5. An application was made to the Tribunal on 23 December 2017 by Pims and Co for determination of liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985.
6. A case management conference was arranged for 8 February 2018 at which the application was withdrawn. Consent to withdraw was given by the Tribunal under rule 22 of The Rules. The consent stated "*Upon the Respondent's name being amended to Rajaratnam Rasiah and upon the Applicant having issued proceedings against the wrong Respondents and in respect of the wrong properties*" upon the applicant applying to withdraw the original application consent was given. The Respondent made an oral application for costs under rule 13 (1) (b)

Directions

7. Directions for the determination of the rule 13 application were made on 8 February 2018 and required the respondent to set out its statement of case by 15 February 2018 and to send a copy to the applicant.
8. The Applicant was to respond by 1 March 2018 following which arrangements would be made for a hearing or determination of the application.

9. The Respondent wrote to the Tribunal on 20 February 2018 stating that a letter to the Applicant dated 14 February 2018 had been returned by the Post Office stating the letter had been refused. A further letter was written on 19 February 2018 to the Applicant and proof of posting was supplied to the Tribunal.
10. The Tribunal is satisfied that the applicant had notice of the respondent's case and that the directions have been complied with.
11. No submissions have been received on behalf of the Applicant.

The Tribunal's decision

12. The Tribunal makes an order under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in favour of the respondent in the sum of £1379.96.

Reasons for the Tribunal's decision

13. An application for an order for costs under rule 13 was considered by the Upper Tribunal in *Willow Court Management Company Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) and a three-stage process was laid down to be satisfied before an order for costs should be made. The respondent was directed to address these stages. Firstly is the conduct unreasonable, secondly should the Tribunal exercise its discretion to award costs and thirdly what order should the Tribunal make.
14. The Respondent submits that the Applicant's unreasonable conduct is self-evident. The application was made to the Tribunal under section 27A of the 1985 Act which only applies to service charges of residential properties. Two of the properties, 278 and 282 Old Lodge Lane are shops to which the act does not apply. The third property, 284 Old Lodge Lane is a residential lease but the Respondent is not the leaseholder. The Applicant "issued proceedings against the wrong the Respondent and in respect of the wrong properties" and there can be no reasonable explanation for this.
15. The Tribunal agrees, particularly as no explanation for the conduct has been offered by the Applicant.
16. Turning to exercise of the Tribunal's discretion the Respondent point out the Applicant had the benefit of legal representation from Pims and Co Ltd and they should have been aware of the fundamental flaws in the application. The withdrawal was not due to a tactical or considered "concession" as the Applicant was asked to withdraw as the tribunal did not have jurisdiction.

17. The Respondent submits that the appropriate order is that the Applicant should pay all of the Respondents legal costs incurred as a result of the application. Supporting documentation is supplied for the amount claimed being solicitor's fees and counsel's fees.
18. The Tribunal notes that the amount claimed is not challenged.
19. Based on its knowledge and experience the Tribunal is satisfied that the time spent, and hourly rates claimed are appropriate for preparation and attending at the Tribunal to show that the application should be withdrawn and in making this application for costs.

Name: A Harris LLM FRICS FCIArb

Date: 21 March 2018

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).