



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

Case Reference : CHI/29UG/LIS/2018/0009

Property : Flat 6, Southfields House, 5 Southfields
Green, Gravesend, Kent DA11 7BF

Applicant : (1) Natasha Bennett
(2) James Bennett (Tenants)

Representative : In person

Respondent : Hyde Vale Ltd (Landlord)

Representative : Felicity Thomas of counsel

Type of Application : Landlord and Tenant Act 1985 ss.27A and
s.20C (costs)

Tribunal Members : Judge MA Loveday
Mr R Athow FRICS
Mr P Gammon MBE

**Date and venue of
hearing** : 5 September, 14 November 2018, Medway
Magistrates Court and 27 November 2018
(reconvene)

Date of Decision : 18 February 2019

COSTS DETERMINATION

Introduction

1. The substantive applications relate to the determination of liability to pay service charges in respect of a lease of Flat 6, Southfields House, 5 Southfields Green, Gravesend Kent DA11 7 BF. The Applicants are the lessees and the Respondent is the landlord.
2. Hearings took place on 5 September and 14 November 2018 and (having reconvened to reach its decision) the Tribunal gave its decision on 21 January 2019. It determined that the Applicants were liable to pay the Respondent various service charges for the 2016/17 and 2017/18 service charge years. The Tribunal also made an order under LTA 1985 s.20C in respect of the Respondent's relevant costs incurred in relation to the Tribunal proceedings.
3. On 10 December 2018, and prior to the substantive determination, the Applicants emailed the Tribunal in respect of their costs. They asked the Tribunal to "consider our claim for costs for a total of £1,465.68". They submitted documents in support suggesting the Applicants had incurred costs of £665.84 for loss of earnings, £300 for tribunal fees, £40 for travel costs and the rest for printing, stationery etc. There has been no response from the Respondent to this email.
4. The Tribunal has limited powers to award costs in favour of a party to an application. Under Rule 13(1)(b) of the 2013 Rules, the Tribunal may make an order in respect of costs "if a person has acted unreasonably in bringing, defending or conducting proceedings". Under Rule 13(2) 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. Although the email of 10 December 2018 does not in terms apply for costs under Rules 13(1)(b) or (2), the Tribunal proposes to deal with the application for costs under these two rules.
5. As to Rule 13(1)(b), the Tribunal notes the invitation to be brief given by the Upper Tribunal in Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 0290 (LC) at para 43:

“The applicant for an order should be required to identify clearly and specifically the conduct relied on as unreasonable, and if the tribunal considers that there is a case to answer (but not otherwise) the respondent should be given the opportunity to respond to the criticisms made and to offer any explanation or mitigation. A decision to dismiss such an application can be explained briefly. A decision to award costs need not be lengthy and the underlying dispute can be taken as read.”

Willow Court does not specifically deal with applications for the reimbursement of costs under Rule 13(2), and the principles for an award under Rule 13(2) differ from those under Rule 13(1)(b). But we will dispose of the costs under both rules in the same way.

6. The email of 10 December 2018 simply states that the Applicants had made numerous attempts to resolve issues directly with the Respondent and through the Housing Ombudsman. The Tribunal considers that, in relation to Rule 13(2)(b), the Applicants have not identified “clearly and specifically” any conduct on the part of the Respondent which could be relied upon as unreasonable, within the test established by the Upper Tribunal in Willow Court. Neither is there anything in the Respondent’s conduct generally which the Tribunal could consider to be unreasonable. Looking at matters in the round, in their application, the Applicants succeeded in relation to about one third of the sums originally in dispute. But the Respondent succeeded in relation to the other two thirds. Moreover, almost all the service charges which the Applicants succeeded on had already been the subject of formal concessions by the Respondent before the hearing. This does not suggest the Respondent’s overall approach could be characterised as unreasonable. And insofar as there was any unreasonable conduct on the part of the Respondents, the Tribunal would not in any event have exercised its discretion to make an order for costs under Rule 13(2) in the light of the very significant s.20C order already made in favour of the Applicants. The Tribunal therefore finds there is no case to answer under Rule 13(1)(b).
7. Finally, the Tribunal would not exercise its more general discretion to order reimbursement of the £300 in Tribunal fees under Rule 13(1). The Applicants brought the application, not the Respondent. The broad balance of ‘success’ in

the proceedings is given above, and no other reason is given as to why the Respondent should reimburse the fees of £300. Again, the Tribunal would also take into account the very significant concessions made by the Respondent before the hearing, and that the determination in any event made a very significant order under LTA 1985 s.20C.

8. It follows that the applications for costs are rejected.

Judge Mark Loveday
18 February 2019

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.