



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

Case references	:	CAM/38UF/LAM/2021/0002
	:	CAM/38UF/LIS/2021/0034
HMCTS Code	:	P: PAPER REMOTE
Property	:	The Old Warehouse, 51 Woodgreen, Witney, Oxon OX28 1DD
Applicants	:	1. Mr and Mrs Gibson – flat 3 2. Mr and Mrs Guerriero – flat 12 3. Mr Godfrey – flat 2
Respondent	:	Mrs Sophie Smith (represented by Mr Daniel Smith)
Type of application	:	Rule 13 costs
Tribunal member(s)	:	Judge Wayte
Date of decision	:	20 June 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a remote paper hearing which has not been objected to by the parties. The form of remote hearing was P: PAPER REMOTE. A face-to-face hearing was not held as the directions proposed that the application be determined on the papers in accordance with usual practice for costs claims. I have had regard to the decisions in both substantive applications, Mr Gibson's application dated 11 May 2022 and Mr Smith's response dated 31 May 2022.

The tribunal has decided that:

- (1) The respondent must reimburse Mr Gibson the tribunal fees of £400 within 28 days of the date of this decision.**
- (2) The respondent must also pay Mr Gibson an additional sum of £1,020 within 28 days of the date of this decision, being half of the costs claimed in respect of both applications.**

Background

1. Mr Gibson had applied on behalf of three leaseholders, including himself, for an order appointing a manager of the property under section 24 of the Landlord and Tenant Act 1987 and for a determination in respect of service charges payable under section 27A of the Landlord and Tenant Act 1985. Both applications were heard together on 22 March 2022 and the decisions were sent to the parties on 14 April 2022. Alan Draper was appointed the manager from 22 April 2022 and various decisions were made in respect of the service charges, including that none were payable pending service of a valid section 47 notice.
2. On 11 May 2022 Mr Gibson applied for an award of costs in his favour, having acted as the applicants' representative throughout. He claimed the court fees of £400, being two application fees and one hearing fee and costs and disbursements of £2,040.66.
3. On 17 May 2022 I issued directions in respect of that application, the application to stand as the applicant's case and any representations made by the respondent to be received by 31 May 2022.
4. The respondent made his representations by email on 31 May 2022, albeit after hours. I have taken those representations into account despite the fact that they were late.

The Law

5. Under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal may make an order for costs only under section 29(4) of the Tribunal Courts and Enforcement Act 2007 (wasted costs) or if a person has acted unreasonably in bringing, defending or conducting proceedings (unreasonable costs).
6. The leading decision on Rule 13(1) unreasonable costs is *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. In paragraph 43 the Upper Tribunal made it clear that such applications should be determined summarily and the decision need not be lengthy, with the underlying dispute taken as read. There are three steps: I must first decide if the respondent acted unreasonably. If so, whether an award of costs should be made and, finally, what amount.
7. In deciding whether a party's behaviour is unreasonable the Upper Tribunal in *Willow Court* cites with approval the judgment of Sir Thomas Bingham MR in *Ridehalgh v Horsefield* [1994] Ch 2005. It does so at paragraph 24 of its decision in these terms:

“Unreasonable” conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an

unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or Sir Thomas Bingham's "acid test": is there a reasonable explanation for the conduct complained of?"

8. Under Rule 13(2) the tribunal may also make an order requiring a party to reimburse any other party the whole or part of the tribunal fees. Unlike an order under rule 13(1), the tribunal has a discretion to make the order in all the circumstances of the case. It is not necessary to make any finding as to unreasonable behaviour.
9. An application for costs must be made within 28 days after the date the tribunal sends out the decision.

The applicant's case

10. In his application Mr Gibson relies on the unreasonable behaviour of the respondent throughout the disputes, which he submitted had led to the matters being protracted and therefore significantly more costs being incurred than was necessary. He referred in particular to the respondent ignoring the section 22 notice in respect of the appointment of manager, failing to comply with any of the directions, including service of the application for appointment of manager on the other leaseholders or provision of their contact details and failing to agree the appointment of manager prior to the hearing where he raised no objections.
11. Mr Gibson said that as a result he had incurred additional costs trying to contact the other leaseholders and preparing for the hearing in relation to both applications.
12. In addition to the claim for reimbursement of the court fees, he claimed disbursements of £838.91 in respect of the hearing bundles and 63.25 hours preparation at the rate for litigants in person of £19 per hour, amounting to £1,201.75. He provided evidence of his disbursements and a breakdown of the time spent with his application.

The respondent's case

13. The respondent submitted that Mr Gibson's case was "overblown" and neither he nor his mother were equipped to deal with the matter. He said his own time and costs were about £6,500 plus VAT and asked that the tribunal dismiss the application. He stated that he never opposed the change of regime but was concerned about the service charge shortfall. He did not address the application as such in terms of Mr Gibson's arguments as to the unreasonable conduct or the amount of costs claimed.

The tribunal's decision

14. The application was clearly made in time.
15. Dealing firstly with the application in respect of the tribunal fees, I consider that this is an appropriate case to exercise the tribunal's discretion in favour of the applicant. Both applications were wholly or substantially successful and the respondent made no attempt to defend them, having taken no active part in the proceedings until he appeared at the hearing. There was also a history of neglect of the property, ignoring the responsibilities of the freeholder under the leases. I therefore order the respondent to reimburse Mr Gibson £400 in respect of the fees within 28 days.
16. Turning to the application for costs, I first need to establish whether the respondent behaved unreasonably. Importantly, it is only behaviour defending the proceedings that counts. This means that conduct in respect of the section 22 notice is irrelevant. That said, the respondent ignored the directions ordered in respect of both applications and failed to provide the evidence required in respect of the service charge case. Her son is a professional man with knowledge of property and has represented his mother for some time. I do consider his behaviour unreasonable in the circumstances. A reasonable person would have complied with the directions and, in particular, made a greater effort to try and agree matters or at least narrow the issues. His silence meant that Mr Gibson had to try and cover all bases and undoubtedly increased the costs and time spent by him. His lack of respect for the tribunal and the applicants fell within the *Ridehalgh* test for unreasonable conduct.
17. In those circumstances I agree that an order for costs should be made but I have some sympathy with the argument that the case could have been presented more economically with less paper and a more focussed approach, particularly in relation to the service charge application. I acknowledge that Mr Gibson is an accountant rather than a property professional and that the costs sought are modest but in the circumstances, I consider that the respondent should pay half of the costs and disbursements sought or £1,020, again within 28 days.

Name: Judge Wayte

Date: 20 June 2022

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).