UPPER TRIBUNAL (LANDS CHAMBER)

UT Neutral citation number: [2020] UKUT 0218 (LC)
UTLC Case Number: LRX/18/2020

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

LANDLORD AND TENANT – SERVICE CHARGES – costs - procedure

CONCERNING AN APPEAL AGAINST A DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL (WALES)

BETWEEN:

Dr BRENDA BHAT

Appellant

And

LANDMARK PLACE (MANAGEMENT) LIMITED **Respondent**

Re: 117 Landmark Place,
Cardiff,
CF10 2HU

Judge Elizabeth Cooke
Determination on written representations

© CROWN COPYRIGHT 2020

Introduction

1. This is an appeal by Dr Brenda Bhat from the decision of the Residential Property Tribunal (Wales) ("the RPTW") refusing to make an order for costs in favour of her and of Vineet Srikrishna Bhat following the withdrawal of an application made to the RPTW by the respondent.

2. The appeal has been determined on the basis of written representations as a review of the RPTW's decision. I shall refer to Dr Bhat and her co-tenant as "the tenants" and to the respondent as "the management company" for the avoidance of confusion, since the management company was the applicant in the RPTW and is the respondent in the Tribunal.

3. The tenants hold a 999-year lease of Flat 117, Landmark Place; Landmark Place is a block of 280 flats. The management company is a party to the lease and there is no dispute that it is entitled to enforce the tenants' covenants in the lease.

4. In August 2019 the management company made an application to the RPTW seeking a determination that the tenants were in breach of covenant and that it was entitled to an order for forfeiture. The tenants filed and served a defence. On 31st October 2019 the management company withdrew its application to the RPTW. The tenants applied to the RPTW for an order for costs as a condition of the management company being permitted to withdraw, and their solicitor made written submissions in support of the application. It is the tenants' position that the application to the RPTW was pointless and vexatious and that there had been no breach of covenant; the management company says that its withdrawal was a commercial decision made because the breach of covenant had been remedied.

5. On 11 December 2019 the RPTW made a decision on the application for costs, which extended to half a page in five short paragraphs. It said that a notice of withdrawal had been filed by the management company; it recorded the tenants' case that the application was aggressive, time-wasting and an abuse of process; it said that the management company's case was that it was entitled to withdraw its application. The decision concluded:

> "Having considered the submissions the Tribunal considers that there are no circumstances arising which would allow an application for costs to be reasonably considered."

6. The decision did not say whether the management company required permission to withdraw, and it did not explain why it would not award costs.

7. The tenants asked the RPTW for permission to appeal the refusal to award costs. The RPTW's refusal of permission set out the tenants' reasons for saying that the management company's application had had been vexatious, and made no comment upon them. It recorded that the application relied upon the Housing Act 2004, Schedule 13 paragraphs 12(2)(d) and (3)(b), the Tribunals Courts and Enforcement Act 2007, section 29 and the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, paragraph

13(1)(a) and (b). It noted that all those provisions apply to England and not to Wales, that "the appeal therefore fails" and that permission to appeal to the Upper Tribunal was refused.

8. The RPTW observed that the tenants should have referred to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and to the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004; so it was in no doubt about its jurisdiction to order costs.

9. The tenants agree that they made their application on the basis of the wrong statutory provisions.

10. The tenants' application for costs was refused without explanation, and permission to appeal was then refused on the basis that they had relied upon the wrong provisions but without engagement with the substance of the application. The mistake was a forgivable one and there is no reason why the RPTW should not have engaged with the substance of the application, in its decision of 11 December 2019 and, failing that, in response to the application for permission to appeal.

11. The respondents have made written representations through their solicitor, relying upon the tenants' mistake; they say they are not liable for costs in any event because, they say, their application to the RPTW was entirely proper. But they offer no reason why I should not set aside the decision of 11 December 2019 for the reasons I have just given.

12. The decision of 11 December 2019 is set aside because it contained no reasons for the refusal to award costs; the reasons put forward by the RPTW in its refusal of permission to appeal did not amount to a reason why an order for costs was refused.

13. Because the application for costs depends upon disputed matters of fact I have to remit it to the RPTW for a decision.

14. Because the appeal has been successful I am minded to order that the management company reimburse the fees that the tenants have paid to the Upper Tribunal in accordance with rule 10 (14) of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010; if the management company wishes to say that such an order should not be made it may do so within 21 days of the date that this decision is sent to it.

Judge Elizabeth Cooke

10 July 2020