



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

Case reference : **LON/00BG/LBC/2016/0039**

Property : **200 Finnis Street, London E2 0DX**

Applicant : **Graham Wilkinson**

Representative :

Respondent : **Laurence Freilich of Moreland
Estate Management**

Representative :

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

Tribunal member(s) : **Tribunal Judge Dutton**

Date of decision : **26TH October 2016**

DECISION

DECISION

The Tribunal determines that the Respondent in these proceedings, Laurence Freilich, has acted unreasonably within the terms of rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules) and orders him to pay to Mr Wilkinson the sum of £600 within 28 days for the reasons set out below.

Background

- (1) By a letter dated 25th August 2016 the Applicant in these proceedings, the Respondent in an action alleging there had been breaches of the covenants and conditions in his lease of the property 200 Finnis Street, London E2 ODX, (the Property) sought an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“The Rules”). Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case (“the Rule”).
- (2) Briefly the background to the matter is that on 14th June 2016, Mr Freilich, in his capacity as Tribunal appointed manager of the Property commenced proceedings at this Tribunal alleging that Mr. Wilkinson had breached the terms of his lease. Directions were issued on 20th June 2016, but these were not complied with by Mr Freilich. Further directions were issued by the Tribunal on 15th July 2016 giving Mr Freilich until 4pm on 21st July 2016 to comply with directions 1 and 5 of the original directions but he again failed to do so. As a result, and following the clear warnings contained in the further directions of 15th July 2016, the Tribunal gave notification that the case involving the allegation that there had been breaches of his lease by Mr Wilkinson was struck out. No application to reinstate has been made by Mr Freilich. The best that can be said is that by a letter dated 30th August 2016, Mr Freilich wrote to Mr Wilkinson under the heading ‘Tribunal against Mr Wilkinson’ saying as follows *“Once you provided me with evidence that the freeholder had permitted consent to sublet I had no further reason to pursue this matter with the Tribunal, however your failure to provide me with that letter prior to the action led me to applying for a Determination”*. It is not wholly clear when the authority from the Landlord was disclosed to Mr Freilich but the implication from the statement of case made by Mr Wilkinson is that he had needed only to ask and the authority initially dated 5th October 2014, although there is a further email which purports to be dated 5th October 2015, would have been supplied.
- (3) Rule 13(6) provides that the tribunal may not make an order for costs against a person (“the paying person”) without first giving that person an opportunity to make representations. Such opportunity has been given. However, to compound matters Mr Freilich has not complied with directions issued on 9th September 2016 in respect of the claim by Mr Wilkinson under Rule 13 and has not participated in any way with this application.

- (4) As was provided for in the directions the matter will be dealt with by way of a paper determination.
- (5) Before the determination I was provided with a bundle of papers which had been produced by Mr Wilkinson. This contained his statement of case, a copy of the fee note from Seth Lovis & Co, solicitors instructed by Mr Wilkinson in respect of this matter totalling £600, with a breakdown, some correspondence and documents obtained from Companies house relating to Barclays Real Estate Securities Limited. I have noted all that has been said.

The Law

- (7) The provisions of Rule 13 of the Rules are set out below

Findings

- (8) Before I reach my decision I must bear in mind the recent Upper Tribunal decision of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2106]JUKUT (LC). I have considered the provisions of paragraphs 24 – 26 and 28 of the decision in reaching my conclusion on costs. Paragraph 28 says as follows:

“28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.”

- (9) I have also considered the provisions of paragraphs 24 – 26 of the decision which says as follows:

*“24. . We do not accept these submissions. An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. “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?*

25. *It is not possible to prejudge certain types of behaviour as reasonable or unreasonable out of context, but we think it unlikely that unreasonable conduct will be encountered with the regularity suggested by Mr Allison and improbable that (without more) the examples he gave would justify the making of an order under rule 13(1)(b). For a professional advocate to be unprepared may be unreasonable (or worse) but for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.*

26. *We also consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FIT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. It is the responsibility of tribunals to ensure that proceedings are dealt with fairly and justly, which requires that they be dealt with in ways proportionate to the importance of the case (which will critically include the sums involved) and the resources of the parties. Rule 3(4) entitles the FIT to require that the parties cooperate with the tribunal generally and help it to further that overriding objective (which will almost invariably require that they cooperate with each other in preparing the case for hearing). Tribunals should therefore use their case management powers actively to encourage preparedness and cooperation, and to discourage obstruction, pettiness and gamesmanship."*

- (10) It is said by Mr Wilkinson that Mr Freilich's conduct in bringing the proceedings under s168(4) of the Commonhold and Leasehold Reform Act 2002 (the Act) was vexatious and designed to harass him. The fact that Mr Freilich, in his letter dated 30th August 2016 (see para (2) above) indicates the ease with which the matter could have been resolved does give some support to Mr Wilkinson's assertions. I would also remind Mr Freilich of the words contained in the further directions issued by Regional Judge Andrew "*The applicant is a professional person appointed by this tribunal to manage the property. As such he owes a duty to the tribunal that he has failed to fulfil... It could be said that the applicant has treated the tribunal with contempt*" These justified and strong words appear to have no impact on Mr Freilich as he has adopted the same stance in the proceedings before me.
- (11) I am satisfied that the threshold set by the Willow case has been crossed and that Mr Freilich has acted unreasonably both in the bringing of the proceedings under the Act and the conduct of same in failing, on three occasions, to comply with directions of this tribunal.
- (12) The costs sought by Mr Wilkinson are reasonable, limited to the recover of the solicitors fees incurred under the invoice dated 26th July 2016 in the sum of £600. I award him costs in that amount to be paid within 28 days. I have no evidence before me of any other costs, although reference is made to compensation for time spent and stress, the latter element I consider being beyond the scope of this application.

- (13) The other matters to which he refers in his statement of case relating to Mr Freilich's appointment as a manager are for another time I fear.

Andrew Dutton

Tribunal Judge Dutton

26th October 2016

Orders for costs, reimbursement of fees and interest on costs

13.

—(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;

(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 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.

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

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

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).