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

Case reference : LON/00BE/OLR/2016/1002

Property : Flat 1, Strata Court, 28 Solway Road, London SE22 9BG

Applicant : Kathryn Laura Evans

Representative : Bennett Welch Solicitors

Respondent : Gateway Holdings (NWB) Limited

Representative : Wallace LLP

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

Tribunal members : Judge N Hawkes
Miss M Krisko BSc(EstMan) BA
FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of paper determination : 26th January 2017

DECISION

Decision of the Tribunal

The Tribunal determines that costs in the sum of £1,350 + VAT are payable by the applicant to the respondent pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The background

1. This is the respondent's application for an order for costs against the applicant pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the 2013 Rules").
2. The respondent is the freehold owner of Strata Court and the applicant is the qualifying tenant of Flat 1, Strata Court, 28 Solway Road, London SE22 9BG ("the property").
3. On 16th June 2016, the applicant applied to the Tribunal pursuant to section 48 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act") for a determination of the terms of a proposed new lease for the property.
4. Directions were issued on 6th July 2016 and the application was listed for hearing on 18th and 19th October 2016. The applicant failed to comply with the Directions and, by letter dated 17th October 2016, the applicant's solicitors informed the Tribunal that they had been unable to obtain instructions and "... in light of our client's continuing silence we must assume that she does not intend pursuing her application".
5. There is a note on the Tribunal's file which states "spoke to both parties re hearing on 19/10...Wallace (Samantha Bone) informed they do not need to attend".
6. On 19th October 2016, the Tribunal struck out the applicant's application pursuant to rule 9(3)(a) of the 2013 Rules. Mr Serota of Wallace LLP was present at the hearing. The respondent states in its statement of case that its solicitors were advised by the Tribunal that the Tribunal would decide on 19th October whether to strike out the application or to adjourn it and that Mr Serota therefore attended in order make submissions in support of the application being struck out.
7. On 19th October 2016, the Tribunal determined that any application for costs pursuant to rule 13 of the 2013 Rules ("Rule 13 costs") should be made in writing and copied to the applicant's solicitors, given that the applicant did not attend the hearing, in order that the applicant would have an opportunity to respond to the application.

8. By letter dated 26th October 2016, the respondent applied for Rule 13 costs and Directions were issued on 7th November 2016. These Directions required the applicant to send the respondent a statement setting out the reasons for opposing the application and any challenge to the amount of costs being claimed. The applicant has also failed to comply with these Directions.

The law

9. In determining this application, the Tribunal has had regard to the issues identified by the Upper Tribunal in Willow Court Management Company (1985) Ltd v Mrs Ratna Aleaxander [2016] UKUT 290 (LC), which is referred to at paragraph 3 of the Directions dated 7th November 2016.
10. In this case, the Upper Tribunal set out the following sequential three-stage test:
 - (i) has the person acted unreasonably, applying an objective standard?
 - (ii) If unreasonable conduct is found, should an order for costs be made or not?
 - (iii) If so, what should the terms of the order be?
11. There is, of course, no general rule in a Tribunal that the unsuccessful party will be ordered to pay the successful party's costs. An assessment of whether behaviour was 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.
12. The test could be expressed in different ways by asking whether a reasonable person would have conducted themselves in the manner complained of, or whether there was a reasonable explanation for the conduct complained of. 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 to manage cases before they get to a full hearing.
13. The Tribunal at the second and third stages has to have regard to all the circumstances. The nature, seriousness and effect of the unreasonable conduct will be important factors. Unlike in the case of wasted costs, no causal connection between the conduct and the costs incurred is required.

The Tribunal's determination

14. The Tribunal finds, applying an objective standard, that the applicant has acted unreasonably in failing to comply with any of the Tribunal Directions whilst also failing to communicate with her solicitors, the respondent and the Tribunal, and failing to take any steps to withdraw her application.
15. The Tribunal is satisfied that it is appropriate, in all the circumstances of this case, for an order for costs to be made. In determining that an order for costs should be made and in determining the terms of the order for costs, the Tribunal takes into account the nature and seriousness of the conduct which it has found to be unreasonable; the likely inconvenience and expense to which the respondent has been put; and the fact that the applicant has had the benefit of legal representation.
16. The Tribunal assesses the costs payable as follows.
17. The respondent seeks the sum of £450 plus VAT in respect of costs incurred in preparing for the Tribunal hearing, being 1.5 hours at the rate of £300 per hour. The respondent would not have been aware that the hearing of 19th October 2016 was not going to proceed as a substantive hearing until 17th October 2016 at the earliest. The Tribunal finds that the sum claimed in respect of this work is payable in its entirety.
18. The respondent seeks the sum of £600 plus VAT for attending the Tribunal hearing. The note on the Tribunal's file records that the respondent's solicitors were informed that they need not attend the hearing. The respondent states that its solicitors were advised by the Tribunal that the Tribunal would decide on 19th October whether to strike out the application or to adjourn it. The respondent submits that, accordingly, it was necessary for the respondent's solicitor to attend the hearing in order to make submissions in support of the application being struck out.
19. The Tribunal accepts that it was reasonable for the respondent to seek to make submissions on this point but considers that the submissions could have been made in writing and that any written submissions would have been relatively short. Accordingly, the Tribunal allows the sum of £100 plus VAT in respect of this work.
20. The respondent seeks the sum of £270 plus VAT in respect of eight routine letters. The Tribunal notes that some of these letters were very brief and considers that, in all the circumstances it is appropriate to allow the sum of £100 plus VAT under this heading.

21. The respondent seeks the sum of £1,200 plus VAT in respect of the valuer's fees for preparing a report for use at the hearing. Much of the content of the valuer's report appears to be generic with minor additions which are specifically relevant to the present case. There is no comparable sales evidence and the only paragraph which focusses on the value of the applicant's property is paragraph 6.1.
22. The valuer's invoice dated 10th November 2016 is divided into three sections. The first two sections appear to the Tribunal to relate to work which would have been carried out for the preparation of the counter notice and only the third section appears to relate to additional work on the part of the valuer in preparation for the hearing. The Tribunal considers that the fees for the valuer's work relating to the counter notice are likely to be in the region of £800 plus VAT and allows the sum of £400 plus VAT in respect of the valuer's work for the abortive hearing.
23. The respondent seeks the sum of £600 plus VAT in respect of the respondent's solicitors' costs of making this application and preparing the statement of case. The statement of case is approximately three pages long (excluding the heading) and the bundle is 42 pages long. In all the circumstances, the Tribunal considers that it is appropriate to allow the sum of £300 + VAT in respect of this work.

Conclusion

24. Accordingly, The Tribunal determines that costs in the sum of £1,350 + VAT are payable by the applicant to the respondent pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Name: Judge N Hawkes

Date: 26th January 2016