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

**Case Reference** : **LON/00AY/LSC/2017/0349**

**Property** : **Flat 6 Brittany Point, Lollard Street, London SE11 6UJ**

**Applicant** : **Miss M Njoku**

**Respondent** : **The Mayor and Burgesses of the London Borough of Lambeth**

**Type of Application** : **Supplemental cost application following application for determination of liability to pay service charge**

**Tribunal Member** : **Judge P Korn**

**Date of Original Decision** : **12<sup>th</sup> December 2017**

**Date of receipt of all written submissions** : **1<sup>st</sup> February 2018**

**Date of Supplemental Decision** : **13<sup>th</sup> February 2018**

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**SUPPLEMENTAL DECISION ON COSTS**

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## **Decisions of the Tribunal**

- (1) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.
- (2) The Tribunal also makes no order under paragraph 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

## **The background**

1. This application is supplemental to an application (the "**Main Application**") made by the Respondent pursuant to section 27A of the Landlord and Tenant Act 1985 (the "**1985 Act**") for a determination as to the payability of certain service charges in relation to the Property. The Main Application itself began as a claim in the County Court which was then transferred to this Tribunal for determination.
2. The Tribunal determined that the estimated service charges which were the subject of the Main Application were payable in full by the Applicant.
3. The Applicant has now made (a) a cost application pursuant to section 20C of the 1985 Act and (b) a cost application pursuant to paragraph 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Tribunal Rules**").

## **Timing of application**

4. In its further directions at the end of the hearing in respect of the Main Application, the Tribunal directed that if Miss Njoku wished to make any cost applications she would have to do so within 14 days after the date of the hearing. The hearing took place on 20<sup>th</sup> November 2017 and her cost applications were sent by a letter dated 1<sup>st</sup> December 2017 which was not received by the Tribunal until 5<sup>th</sup> December 2017. The application was therefore received very slightly out of time. However, as Miss Njoku is a litigant in person and as the non-compliance with the Tribunal's direction was a very minor one I consider it just and appropriate to waive the requirement contained in that direction pursuant to the Tribunal's power contained in paragraph 8(2)(a) of the Tribunal Rules to waive compliance with a direction. Accordingly, I am able to consider the cost application.

## **Applicant's written submissions**

5. The Applicant states that the Respondent has acted unreasonably in bringing and conducting the proceedings relating to the Main

Application. The Respondent's attitude has in her view been unnecessarily combative and the Respondent has wasted a substantial amount of time in not complying with the Tribunal's directions. The Respondent has also not provided invoices to substantiate the disputed costs despite her having reasonably requested these. In addition, the Respondent failed to attend a mediation meeting on 3<sup>rd</sup> November 2017 without explanation.

6. The Applicant has provided details of the costs incurred by her which she would like to recover pursuant to paragraph 13(1)(b) of the Tribunal Rules.

### **Respondent's written submissions**

7. As regards the section 20C application, the Tribunal found in favour of the Respondent in relation to the Main Application and therefore it sees no reason why it should be prevented from putting the costs incurred by it through the service charge. The Respondent also states that it made attempts to resolve the issues raised by the Applicant prior to issuing proceedings, and it has provided copies of relevant correspondence in support of this submission.
8. In relation to the application under paragraph 13(1)(b) of the Tribunal Rules, the Respondent states that prior to the case being transferred to the Tribunal a mediation appointment was made by the County Court's Small Claims Mediation Service, and that the mediation did not proceed because the Applicant declined to participate. As regards the Applicant's claim that the Respondent failed to attend a mediation meeting on 3<sup>rd</sup> November 2017, this is disputed by the Respondent. The Respondent states that a representative did attend but there was miscommunication as to whether an advocate would be attending to conduct the mediation.
9. The Respondent further states that the Applicant has not provided any evidence or receipts to support her claim for costs.

### **The Tribunal's analysis**

#### **Paragraph 13(1)(b) of the Tribunal Rules**

10. Paragraph 13(1)(b) of the Tribunal Rules states as follows: "*The Tribunal may make an order in respect of costs ... if a person has acted unreasonably in bringing ... or conducting proceedings in ... a leasehold case*".
11. In the case of *Ridehalgh v Horsfield (1994) 3 All ER 848* Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a cost application as being whether the conduct admits of a

reasonable explanation. This formulation was adopted by the Upper Tribunal (Lands Chamber) in the case of *Halliard Property Company Ltd v Belmont Hall and Elm Court RTM Company Ltd LRX 130 2007*. It was also considered recently by the Upper Tribunal (Lands Chamber) in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander (2016) UKUT 0290*. One principle which emerges from these cases is that costs are not to be routinely awarded pursuant to a provision such as Rule 13(1)(b) merely because there is some evidence of imperfect conduct at some stage of the proceedings.

12. In the present case I do not accept the Applicant's contention that the Respondent has acted unreasonably in bringing or conducting these proceedings. The service charges which formed the basis of this application remained unpaid for a considerable period of time, and the Tribunal has found them to be payable in full. The Respondent was therefore fully justified in taking legal action to try to recover them.
13. As regards the Respondent's conduct, as explained at the hearing the disputed charges are estimated charges and therefore the Applicant's wish to see supporting invoices was misplaced. I also do not accept that the facts support the Applicant's contention that the Respondent has wasted a substantial amount of time in not complying with the Tribunal's directions, and I note the evidence provided by the Respondent in support of its own contention that it made attempts to resolve matters prior to issuing proceedings.
14. As regards the question of attendance at the November 2017 mediation, the factual position is disputed and the Respondent has also stated that the Applicant declined to attend an earlier mediation. However, even if the Applicant's version of events is the more accurate one – and I do not find that it is – in my view the Respondent's conduct does not come even close to the level of unreasonable conduct envisaged by Sir Thomas Bingham MR in *Ridehalgh v Horsfield* as applied by the Upper Tribunal in *Willow Court*.
15. In conclusion, therefore, I decline to make an order under paragraph 13(1)(b) of the Tribunal Rules. It follows that the precise details of the Applicant's costs do not need to be considered.

#### Section 20C of the 1985 Act

16. Section 20C of the 1985 Act permits a tenant "to make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before ... the First-tier Tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application ..." and goes on to state that "the ... tribunal ... may make such order on the application as it considers just and equitable in the circumstances".

17. The Respondent has won the main case in that the Tribunal has found the disputed service charges to be payable in full. In my view it was fully justified in bringing proceedings, as the disputed charges had remained unpaid for a considerable period of time. In addition, there is nothing about the Respondent's conduct of the case and nor are there any other circumstances which would in my view make it just and equitable to make a section 20C order.
18. In conclusion, therefore, I decline to make a section 20C order.

**Name:** Judge P. Korn

**Date:** 13<sup>th</sup> February 2018

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.