



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

Case reference : **LON/00AG/OLR/2018/0533**

Property : **6A Springfield Lane, London NW6
5UB (“the flat”)**

Applicant : **Kathie Louise Reveley (“the tenant”)**

Representatives : **Armstrong & Co**

Respondents: : **Edward Joseph McGuire (“the
landlord”)**

Representatives : **In person**

Type of application : **Rule 13 Costs**

Tribunal member : **Judge Angus Andrew
Luis Jarero BSc FRICS**

Date of Decision : **27 February 2019**

DECISION

Decision

1. We order the landlord to pay the tenant's assessed costs of £795 inclusive of VAT pursuant to rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The costs are to be paid within 28 days.

Background and Application

2. Following a hearing on 27 November 2019 and by a decision dated 18 December 2018 we determined a price of £26,050 for the new extended lease of the flat and we approved the draft lease in the document bundle.
3. On 29 November 2018 the tenant applied for "Wasted costs" pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("The Rules"). Directions were issued by Judge Andrew with our substantive decision on 18 December 2018. The directions record Judge Andrew's assumption that the tenant sought an order under rule 13(1)(b), not least because the landlord is in person. Neither party has contradicted that assumption.
4. The tenant seeks costs of £8,749.90 that appear to be all her costs incurred in connection with the tribunal proceedings including the hearing on 18 December 2018. That sum includes £3,600 for her surveyor's fees both in respect of his expert report and also for his advocacy at the hearing. The balance of the claimed costs are essentially solicitor's costs incurred in connection with the proceedings.

Reasons for my decision

5. We are mindful of the guidance at paragraph 43 of the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). In particular that rule 13 costs applications "*should not be allowed to become major disputes in their own right*" and that "*a decision to award costs need not be lengthy and the underlying dispute can be taken as read*".
6. The nub of the tenant's case is that negotiations were at an advanced stage when the landlord dissinstructed his professional team and effectively forced the tenant to proceed with her tribunal application by holding out for an unrealistic premium. The tenant makes other complaints about the landlord's conduct and we shall return to those shortly.
7. Landlord and tenant disputes are often heated because they impinge on the conflicting interests of two or more people in the same property. This tribunal was created as a no-cost jurisdiction to enable both landlords and tenants to have their disputes determined without being at risk as to costs, save where a party behaves unreasonably. Landlords as much as tenants are entitled to the benefit of that protection. The landlord may have failed comprehensively in

these proceedings but that of itself does not entitle the tenant to recover her costs under rule 13. To follow that logic would come perilously close to turning the tribunal into a cost shifting jurisdiction.

8. The landlord was entitled to bring his case to the tribunal. We are satisfied that in doing so he did not act maliciously or unreasonably. He had a genuine belief, based on the premium that he received for extending the lease of the upper maisonette in 2016, that he was entitled to a higher premium than that offered by the tenant. He was wrong, but that of itself does not justify a cost order under rule 13.
9. Furthermore, the tenant benefited from the tribunal proceedings that she now complains about. In an email of 10 April 2018, the tenant's valuer wrote that his valuation was between £32,000 and £34,000 and that he "*could probably just about persuade the client to settle at the upper end*".
10. That offer is an example of what has become known as the Delaforce effect and no doubt involved a pragmatic (and reasonably accurate) assessment of the tenant's likely costs if the claim proceeded to a tribunal hearing. The premium determined by us was a little under £8,000 less than the sum that the tenant was apparently prepared to pay to settle the claim without recourse to tribunal proceedings. If we were now to order the landlord to pay the tenant's costs she would receive a windfall: that is, she would acquire the new lease at a discount whilst at the same time recovering all her costs of the tribunal proceedings. That would be a perverse outcome.
11. Consequently, and for each of the above reasons we reject the tenant's claim for all her costs incurred in the proceedings.
12. However, the tenant also complains about the landlord's conduct during the proceedings. Those complaints may be summarised as follows: -
 - a. The landlord ignored four requests for details of his solicitor's account to which the deposit was to be paid
 - b. The landlord ignored two requests for details of his valuer and when those details were provided the tenant could not progress the negotiations for some months because the landlord did not instruct his valuer
 - c. In breach of the tribunal directions the landlord failed to submit a draft lease to the tenant by 30 August 2018 or at all despite four separate requests. In consequence the tenant had to prepare the draft lease [see paragraphs 29 and 30 of our original decision].
13. The nearest that the landlord gets to dealing with these complaints is when he writes: "*neither I nor my own qualified professionals recognise the chain of events as described in the applicant's solicitor's tale of woe*".

14. The tenant's complaints are substantiated by the landlord's undoubted failure both to submit a draft lease or to complete and return the listing questionnaire and on that basis we prefer the tenant's evidence.
15. We agree with the tenant that the landlord acted unreasonably in failing to (a) comply with the tribunal directions (b) respond to reasonable requests for information and (c) instruct his valuer. It is reasonable that the tenant should be reimbursed for the additional costs that she incurred as a result of this behaviour.
16. Doing the best that we can from the information provided we consider that the tenant's solicitor would have spent an additional two and a half hours on the case as a result of the landlord's unreasonable behaviour. The tenant's solicitor's hourly charging rate is £265. The landlord does not object to it and we are satisfied that it is reasonable. We therefore assess the costs to be paid by the landlord at £662.5 plus VAT: £795 in total. Such costs to be paid within 28 days.

Name: Angus Andrew

Date: 27 February 2019

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).