



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

Case reference : **LON/00AE/OLR/2019/1302**

Property : **First floor maisonette, 36b Belton Rd, London NW2 5PE**

Applicant : **Mr Robin Yewdall**

Representative : **In person**

Respondent : **Orchidbase Ltd**

Representative : **Ms Alison Sandler**

Type of application : **Application for determination of premium or other terms of acquisition under section 48(1) Leasehold Reform Housing and Urban Development Act 1993 and Application for costs under Rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

Tribunal members : **Judge Pittaway
Ms M. Krisko FRICS
Mr A Harris LLM FRICS FCI Arb**

Date of hearing : **24 May 2021**

Venue : **10 Albert Place London WC1E 7EB**

Date of decision : **2 June 2021**

DECISION

Decisions of the tribunal

1. The form of lease having been agreed as that annexed to this decision the determination of the tribunal is no longer required as to its form. The following timetable was agreed by the parties for the completion of the lease;
 - The respondent shall send to the applicant the engrossed counterpart lease for execution by the applicant by recorded delivery in the **week commencing 7 June 2021** and in any event no later than **11 June 2021**. This will be accompanied by a completion statement setting out the monies required to complete the lease. This will detail the premium, the agreed s60 costs and make allowance for the deposit held by the respondents.
 - The applicant shall return the duly executed counterpart lease to the respondent by **25 June 2021**.
 - Subject to receipt by the respondent of the monies required to complete the same, the lease shall be completed on **2 July 2021** when the respondent will send the applicant the original lease sealed by the respondent.
2. The premium for the lease was agreed during the hearing at £44,190. The determination of the tribunal is therefore no longer required as to the amount of the premium.
3. The tribunal makes no order for costs under Rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 in favour of either the applicant or the respondent.
4. The tribunal does not order the reimbursement of the application and hearing fees paid by the applicant.
5. The reasons for the Tribunal's decisions are set out below.

Submissions

6. The tribunal records here only those submissions which it heard that are relevant to the matters which remained before it to determine, namely the claims by each party for wasted costs against the other party.
7. The applicant submitted that the draft lease had not been submitted to him in a timely manner and that he had incurred unnecessary costs in negotiating its form. He also submitted that the respondent had sought, incorrectly, to claim that his application was deemed withdrawn. He complained about the manner in which the respondent had conducted itself. The costs sought included the costs that he had incurred in commencing proceedings against the respondent in the county court and for obtaining a transcript of the county court proceedings (£467

and £430 respectively). During the hearing the applicant provided a schedule of the other costs which he was claiming, such as postage and copying charges, that he had incurred in connection with his application. Mr Yewdall stated that he was not seeking to recover the cost of his own time spent on the application.

8. In reply Ms Sandler submitted that the respondent was a commercial but good landlord who rarely found itself before the tribunal on this type of application. She did not accept the applicant's allegations as to the respondent's conduct and submitted that the delay in submitting the draft lease had been due to an issue as to whether the applicant's solicitors had been disinstructed. Ms Sandler submitted that much of the cost incurred by the applicant was unnecessary. As to the county court costs Ms Sandler submitted that the county court had not awarded the applicant any costs, and the respondent was not seeking to recover its costs in the county court. Ms Sandler submitted that the respondent was not seeking to recover any wasted costs other than those of the valuer attending the hearing of £1,625 plus VAT, which attendance she submitted the respondent had considered necessary if the respondent's valuation was going to be challenged. Mr Nesbitt stated that this was his charge for half a day's attendance at the tribunal. Ms Sandler confirmed that for the respondent the issue of costs was one of payability.
9. The applicant pointed out that there was no expert's report from the valuer in the bundles before the tribunal. All that was before the tribunal was the valuation of each valuer, and that accordingly the valuer's attendance was unnecessary.

Reasons for the tribunal's decision

10. The determination of the tribunal was not required as to the form of the lease or the amount of the premium. At the start of the hearing the applicant accepted the form of the extended lease set out in the respondent's bundle at pp.141 to 147, which pages are attached to this decision. To assist both parties in the completion of the lease a timetable for completing the lease was discussed and accepted by the parties and is set out above.
11. During the hearing the respondent agreed the premium of £44,190, so that the determination of the tribunal was not required.
12. The parties agreed the costs under section 60 Leasehold Reform and Urban Development Act 1993 ('**s60 costs**') to be
 - Legal costs of £1,250 on which VAT is not payable; and
 - Valuer's fees of £894 plus VAT.

The tribunal note Ms Sandler's assurance that the respondent does not seek to recover any further s60 costs.

13. Both parties sought wasted costs under Rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the 2013 Rules**”). Rule 13 (1) (a) provides;

‘**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;’

Section 29(4) of the Tribunals, Courts and Enforcement Act 2007, being the 2007 Act referred to in Rule 13 (1)(a) states;

‘(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
(a) disallow, or
(b) (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.’

The proceedings mentioned in subsection (1) include the costs of and incidental to all proceedings in the First-tier Tribunal.

14. The applicant did not have a representative against whom Mr Nesbitt’s costs could be awarded. In any event the tribunal questioned the need for Mr Nesbitt to have attended the tribunal. Ms Sandler said that he was there to deal with any issue that might arise on the amount of the premium, if that was not agreed. However there was no valuation report from Mr Nesbitt in the bundle before the tribunal and the tribunal therefore questioned why his attendance had been required. It accepts Mr Yewdall’s submission that the attendance of the valuer was unnecessary given the valuations of both valuers in the bundles.
15. The tribunal does not award wasted costs against the applicant.
16. Ms Sandler’s conducted the proceedings on behalf of the respondent, and as such was a ‘legal or other representative’ of the respondent, against whom wasted costs might be awarded.
17. Subsection 29(5) of the 2007 Act provides that
“wasted costs” means any costs incurred by a party—
(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
18. For wasted costs to be recoverable against Ms Sandler the applicant would have to show that she had acted improperly, unreasonably or negligently, or that it was unreasonable for the tribunal to expect Mr Yewdall to pay those costs by reason of any act or omission by her after the costs were incurred.
19. The question of what amounts to unreasonable conduct was considered in detail (in relation to what constitutes unreasonable behaviour under

Rule 13 (1)(b)) by the Upper Tribunal in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC)*, in which it was stated at paragraph 24 that,

“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.....“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?”

And at paragraph 34 of the same decision the Upper Tribunal stated that Rule 13 (1) (a) should both be reserved for the clearest cases and that in every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable.

20. The tribunal do not find, on the evidence before it, that Mr Yewdall has demonstrated that Ms Sandler acted improperly, unreasonably or negligently. It accepts that Mr Yewdall believes that there was a delay in the production of the draft lease but it finds that Ms Sandler provided a reasonable excuse for that delay. The tribunal also accepts Ms Sandler's submission that she believed she had reasonable grounds for believing that the applicant had withdrawn his application.
21. A considerable part of the costs claimed by Mr Yewdall are in respect of the application to the county court which was made by him, not the respondent. The applicant did not seek recovery of these costs from the county court and the tribunal does not consider that it is the forum in which he should now do so.
22. Some of the costs sought by Mr Yewdall were incurred before any action by Ms Sandler, and are costs which any applicant might reasonably expect to incur when deciding to extend his lease, namely the costs of serving the notice, communicating with his landlord, applying to the tribunal and providing to it the documents required for the tribunal to make its decision.
23. The tribunal is traditionally not a 'cost shifting' forum and on the basis of the evidence before it the tribunal finds no reason to order wasted costs against the respondent.

Name: Judge Pittaway

Date: 2 June 2021

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).