



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

Case Reference : **CAM/2UE/LSC/2022/0007**

HMCTS : **Paper**

Property : **116 Horizon Place, Studio Way, Borehamwood,
WD6 5FQ**

Applicants (Tenant) : **Sarah Levy**
Representative : **Philip Levy**

Respondent (Landlord): **E & M Ltd**
Managing Agent : **First Port Limited**

Type of Application : **To make an order under Rule 13 of the
Tribunal Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal : **Judge J R Morris**

Date of Original Decision: **24th June 2022**
Date of Application : **8th July 2022 & 23rd July 2022**
Date of Decision : **12th August 2022**

DECISION

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Decision

1. The Tribunal makes an Order under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the Respondent to reimburse the Applicant £50.00 towards the Tribunal Application Fee of £100.00 within 28 days of receipt of this Decision.
2. The Tribunal makes no Order for costs under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Reasons

Background

3. On 16th February 2022 the Applicant applied for a determination under section 27A of the Landlord and Tenant Act 1985 as to whether a charge of £609.72 for a contractor to assess whether a leak from a Service Installation was from a part of the Maintained Area or part of a Demise (“the Cost in Issue”).
4. On 24th June 2022 the Tribunal found that the inspection of a Service Installation to assess whether a water leak is from a part of the Maintained Area or part of a Demise, and hence determine whether the cost of its repair is a Service Charge or Tenant liability, is part of the Management of the Building within the Fifth Schedule of the Lease and so a Service Charge cost. Therefore, the Tribunal determined that the Cost in Issue comes under the head of Management and is a Service Charge Cost.
5. The Tribunal determined a reasonable charge for the Cost in Issue as a Service Charge cost of Management is £120.00 including VAT comprising £100.00 plus £20.00 VAT.
6. The Tribunal did not make an order under section 20C of the Landlord and Tenant Act 1985 but did make an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.
7. On 8th July 2022, the Tribunal received an enquiry from the Applicant’s Representative as to whether the Applicant could recover the cost of the application fee from the Respondent. The Tribunal treated this enquiry as an application from the Applicant for the reimbursement by the Respondent of the Tribunal’s fees pursuant to rule 13(2) and (5)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondent was invited to make representations, by 29th July 2022 and the Applicant was given an opportunity to reply by 5th August 2022. Both parties responded as directed.
8. In an email dated 23rd July 2022 the Applicant’s representative also applied for costs under Rule 13(1) of the 2013 Rules.

The Law

9. The Law relating to these proceedings is set out in Tribunals Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

Rule 13 (1) states that:

The Tribunal may make an order in respect of costs only-

- (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings in-*
 - (ii) *a residential property case*

Rule 13(2) states:

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.

Applicant's Case

10. The Applicant's Representative submitted that the decision had effectively been in favour of the Applicant and so felt an entitlement to reimbursement of the fee. In addition, it was said that the Applicant had been placed under a great deal of needless stress by the Respondent's unreasonable demands. The Applicant said she had repeatedly attempted to explain the sum demanded was incorrect but the Respondent's Managing Agent refused to engage with her which forced her to apply to the Tribunal. The Applicant was of the opinion that it seemed entirely appropriate that having had her reasoning confirmed to be correct by the Tribunal that the Respondent should pay the Applicant's fee. It was added that the claim had taken approximately 50 hours researching and preparing the case and attempting to communicate with the Respondent to resolve the dispute without going to the Tribunal. It was requested that a sum for costs should also be included.

Respondent's Case

11. The Respondent's Representative conceded that it was correct that the Applicant was able to avoid liability for the whole of the cost of the relevant charge (via a reasonableness reduction) the Applicant was still found to be liable to contribute towards the cost of the charge i.e., it was found to be a charge chargeable to the leaseholders via their service charges (including the Applicant) albeit at a reduced amount. In addition, there was at all times a legitimate question for the Tribunal to answer (the proceedings thus being necessary). The Respondent has not acted unreasonably, irresponsibly or otherwise and so should not be subjected to further fees/restrictions in furthering the Overriding Objective.

Decision

12. The wording of the email of 8th July 2022 from the Applicant's Representative was sufficient for the Tribunal to find it to be an application for reimbursement of fees under Rule 13(2) of the 2013 Rules.
13. In an email dated 23rd July 2022 the Applicant's representative also applied for costs under Rule 13(1) of the 2013 Rules. Such Application must, pursuant to Rule 13(5) be made "within 28 days after the date on which the tribunal sends a decision notice recording the decision which finally disposes of all issues in the proceedings". Also, under Rule 13(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".
14. Firstly, the Tribunal considered the application under Rule 13(2) for reimbursement of the Tribunal fees (i.e., £100 application fee) to be paid by the Respondent.
15. The reimbursement of fees does not require the Applicant to prove unreasonable conduct on the part of the Respondent. The Tribunal noted all the submissions by both parties regarding fees.
16. In its Decision dated 24th June 2022 the Tribunal found that there were two issues which were:

1) is the Cost in Issue chargeable to the Service Charge and 2) if it is, is it reasonable. The Tribunal finds that both issues were legitimate questions to come before the Tribunal and that either party could have applied to the Tribunal for their determination. In the event the Tribunal found that the Cost in Issue was chargeable to the Service Charge and made a determination as to its reasonableness which in this instance happened to favour the Tenant.

17. The Tribunal finds that in the circumstances it is just and equitable that the fee should be split equally between the parties. The Applicant having paid the fee of £100.00 the Tribunal determines that the Respondent should reimburse the Applicant £50.00.
18. Secondly, the Tribunal considered the application under Rule 13(1) for costs.
19. The Tribunal starts from a position that its jurisdiction is one in which costs are generally not awarded. The only exception being where a party has acted unreasonably. The Civil Procedure Rules do not apply to tribunals including the provision relating to costs and “*there is no equivalent general rule that the unsuccessful party will be ordered to pay the costs of the successful party*” as per paragraph 28 of *Ridehalgh v Horsefield* [1994] Ch 2015.
20. In addition, paragraph 43 of *Ridehalgh v Horsefield* states that a costs application “*should not be regarded as routine, should not be abused to discourage access to the tribunal, and should not be allowed to become major disputes in their own right*”.
21. The Tribunal applied the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
 - (i) Whether the Respondent had acted unreasonably, applying an objective standard;
 - (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
 - (iii) If so, what should the terms of the order be?
22. The Tribunal also took into account the meaning of “unreasonable” in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

“Unreasonable” means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgement, but it is not unreasonable.

23. The Tribunal considered whether the Applicant *has acted unreasonably in bringing, defending or conducting proceedings.*
24. In making its determination in respect of Rule 13(2) the Tribunal found that the two issues raised legitimate questions and as such it was reasonable for the Respondent to defend the action. In conducting the proceedings, there were two provisions of the Lease to be considered, that of repair and that of management. The Respondent's approach was that under the repair provision in that as the leak came from a part of the demise its repair was the responsibility of the Tenant Applicant. The Applicant's approach was, in effect, that the work actually related to management, with which the Tribunal agreed. Both were reasonable.
25. The Tribunal therefore found that the proceedings had been conducted reasonably by the parties.
26. Having found that neither party had acted unreasonably the Tribunal makes no order for costs under Rule 13.
27. This does not affect the Respondent's contractual right to charge costs through the Service Charge. The Tribunal is aware that the Respondent's Representative had not been given an opportunity under Rule 13(6) to specifically address the issue of costs under Rule 13(1). However, as the Tribunal determined to make no order, it was of the opinion that, taking into account the wording of Rule 13(6), to seek further representations might incur unnecessary costs.

Judge JR Morris

APPENDIX - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.