

4406



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CHI/00HG/OLR/2015/0263

Property : 51a Thornbury Park Avenue, Peverell, Plymouth,
Devon PL3 4NJ

Applicants : Mrs Brenda Priscilla Lyle &
Mr Raymond Lawrence Toms

Representative : Goldbergs Solicitors

Respondent : Sanctuary Housing Association

Representative : Gowling WLG (UK) LLP

Type of Application: Application for costs under Rule 13 of The Tribunal
Procedure (First-tier Tribunal)(Property Chamber) Rules
2013

Tribunal Member : Judge P J Barber

Date of Decision : 18th November 2016

DECISION

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Decision

1. In regard to the Applicants` claim for an order for costs against the Respondent pursuant to the provisions of Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, ("the 2013 Rules") the Tribunal makes no order.
2. In regard to the Respondent`s claim for an order for costs against the Applicants referred to in its representations dated 16th September 2016, and in Gowling WLG`s letter of 5th October 2016 and the Respondent`s Schedule of Costs dated 4th October 2016, the Tribunal directs that the Applicants may submit any representations which they may wish to do, in respect of such claim, in writing to the Respondent and also to the Tribunal within 21 days of the date of this decision, and the Tribunal will within 6 weeks thereafter, determine the Respondent`s application for costs on the papers, and issue its decision in writing thereon to the parties.

Reasons

Introduction

3. This matter being a claim for costs, derives from an application dated 26th November 2015, for determination, under Section 48(1) of the Leasehold Reform, Housing and Urban Development Act 1993 ("the 1993 Act"), of the premium to be paid by the Applicants to the Respondent for the grant of a new lease of the Property, pursuant to a notice of claim under Section 42 of the 1993 Act issued by the Applicants to the Respondent and dated 8th April 2015. The Respondent issued a counter-notice to the Applicants dated 2nd June 2015. The application provided that the only matter in dispute and for determination was the premium to be paid.
4. Directions were issued by the Tribunal to the parties dated 2nd December 2015, offering to hold over the proceedings for three months to enable the parties to reach agreement. By letter dated 7th December 2015 the Applicants` solicitors, Goldbergs confirmed to the Tribunal that their client did not accept the offer to hold over and accordingly the matter was set down for a hearing on 6th May 2016, although such hearing date was subsequently vacated.
5. On 20th July 2016, the Tribunal issued a notice to the parties warning that it was minded to strike out the application on the basis that the Tribunal had requested, but not received, confirmation from the parties that the application was intended to be withdrawn, despite the fact, as referred to in the notice, that by letter dated 28th April 2016, the Applicants` representatives Goldbergs, had advised the Tribunal that terms had been agreed. Representations as to why the matter should not be struck out, were invited from the parties, to be made by no later than 3rd August 2016.
6. The Applicants responded to the strike-out warning notice, by making detailed representations in an 11 page statement dated 2nd August 2016, in which they applied for an order that the Respondent pay their costs pursuant to Rule 13(1)(b) of the 2013 Rules. Consequently, the Tribunal issued further directions on 25th August 2016 advising the parties that the matter would not be struck out, but that

the only live issue was that relating to the Applicants' ancillary application for costs under Rule 13.

7. The further directions of 25th August 2016 provided that the Applicants' representations dated 2nd August 2016, enclosing their Schedule of Costs dated 29th July 2016 and the Applicants' further representations made in Goldbergs' letter dated 19th August 2016, should stand as the Applicants' case; the Respondent was directed to identify its points of dispute and add its comments in an electronic schedule, by 16th September 2016, and the Applicants were directed that they may send a brief narrative, and complete their comments in the electronic schedule, by 30th September 2016. The directions further provided that if no oral hearing was requested, determination would take place on the basis of the paper representations, within four weeks from 21st October 2016; no request for oral hearing was received.

The Law

8. Rule 13(1) of the 2013 Rules provides that :-

"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;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in-

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

The written representations

9. By their representations dated 2nd August 2016, the Applicants submitted in broad terms that had it not been for the unreasonable conduct of the Respondent in failing to respond sooner, to the issues raised in the Applicants' claim notice of 8th April 2015, there would have been no need for the Applicants to incur the cost of proceedings. The representations also included reference to the fact that the premiums proposed to be paid by the parties were respectively, £2050 by the Applicants, and £8250 by the Respondent. The representations further averred that the Respondent's surveyor, Mr Plotneck, had delayed giving responses to the Applicants' surveyor, Mr Monk. The Schedule of Costs dated 29th July 2016 identified costs in a total of £5,983.92 including VAT, for work undertaken by various fee earners at Goldbergs, between November 2015 and July 2016.
10. By their further representations dated 19th August 2016, Goldbergs broadly submitted that their clients were entitled to make application for an order under Rule 13, notwithstanding that the Respondent's unreasonable conduct about which they complained, had occurred primarily before they made their application to the Tribunal on 26th November 2015; they added that Section 29(1) of the Tribunals Courts and Enforcement Act 2007 refers to costs of and incidental to all

proceedings in the First-tier Tribunal, at the discretion of the Tribunal. Goldbergs further submitted that it was the Respondent's poor conduct, prior to making their application, which gave the Applicants no choice but to make such application.

11. By its representations dated 16th September 2016, the Respondent broadly submitted that it was denied that the Respondent had failed or refused to negotiate prior to the issuing by the Applicants of their application to the Tribunal, and it disputed entitlement of the Applicants to any of the costs claimed. The Respondent averred that it had not acted unreasonably and submitted that costs in a total of £5,983.92 (including VAT) were entirely disproportionate to the matter of determining the premium payable and where there were no legal issues to be dealt with. The Respondent referred to its entitlement for costs under Section 60(1) of the 1993 Act yet to be advised, and submitted that the usual position for a tenant applying for a new lease, would be to pay its own costs. The Respondent further submitted that the standard of behaviour required to found a claim for unreasonable behaviour was very high, and referred to the decision in *Willow Court Management Company (1985) v Alexander [2016] UKUT 290 (LC)* and the three stage test for approaching applications under Rule 13, by reference to an objective assessment as to whether on the facts, the standard of conduct was unreasonable. The Respondent denied that it had acted unreasonably and suggested that there had in fact been delay in the Applicants' surveyor communicating with the Respondent's surveyor. The Respondent stated that, so as to deal with the matter proportionately, it did not propose to query each individual costs entry in the Applicants' schedule, but cited certain examples all of which were disputed.
12. The electronic schedule included comments from both parties, although in the case of the Respondent, the only substantive comment was "*For the reasons set out in its representations dated 16th September 2016 the Respondent submits that the Applicants should not be entitled to any of the costs claimed.*" The Applicants appended certain additional "*general comments*" to the electronic schedule, submitting that the Respondent had failed to complete the schedule properly by referring to its earlier submissions and not responding to each item.
13. By a letter dated 5th October 2016, Gowling WLG referred to the Applicants' earlier statements, including the Applicants' allegation that the Respondent had failed properly to complete the electronic schedule, and attached a schedule of its own costs in a total of £787.92 which it wished to claim against the Applicants apparently also under Rule 13.

Consideration

14. The Tribunal is of the view that the letter from Gowling WLG dated 5th October 2016 raises a separate and further claim for costs by the Respondent as against the Applicants and upon which the Tribunal will make no determination at present, but in respect of which it invites the Applicants to submit any written representations they may wish to make, to each of the Tribunal and the Respondent within 21 days from the date of this decision. The Tribunal will then separately determine the Respondent's application for costs on the papers, within a further 6 weeks thereafter and will then issue its decision to the parties.

15. The Tribunal has taken into account all the written representations and such case papers as have been provided and to which it has been specifically referred. The Tribunal has discretion under Rule 13 whether or not to make an order in respect of costs, if a person has acted unreasonably in bringing, defending or conducting proceedings. Goldbergs acknowledged that the Respondent's unreasonable conduct about which they complained, had occurred primarily before the application was made to the Tribunal. In such circumstances, whether or not such conduct was unreasonable, it was not conduct in defending or conducting the proceedings, nor could it be said to be incidental to proceedings which had not then been commenced. The Tribunal notes in this matter, the admission by the Applicants' solicitors in their letter of 28th April 2016 that terms had then been agreed; the only matter which had been referred by the Applicants for determination, having been the premium to be paid for the new lease. It is also noted that the parties differed regarding which of their respective surveyors had been responsible for delay in taking forward negotiations, each to some extent blaming the other for delays. The Tribunal notes that the premium agreed was the compromise figure of £4,800.00, being a sum less than the net costs of £4,986.60 claimed by the Applicants.
16. Applying the first stage of the systematic three stage test in *Willow Court*, the Tribunal has considered whether by an objective standard of conduct, the Respondent may be considered to have acted unreasonably. However, the Tribunal finds there to be little evidence that the Respondent acted unreasonably in defending or conducting the proceedings, given in particular that the only matter in dispute was settled without any hearing taking place. The Tribunal is unable to find that any objectively unreasonable standard of conduct on the part of the Respondent has, in the context of a costs claim under Rule 13, been unequivocally established.
17. In addition the Tribunal notes the Respondent's proportionality argument concerning the amount of costs claimed in relation to the amount in dispute, and also the relative lack of complexity as to the matter in dispute, and finds such points to be persuasive. The Tribunal has further taken into account the overriding objective which underpins the 2013 Rules, being to deal with cases fairly and justly, and that this includes dealing with cases in ways which are proportionate to their importance and the complexity of the issues, the anticipated costs and resources of the parties and of the Tribunal.
18. Accordingly, taking all the above into account, and on balance, the Tribunal is not minded to exercise its' discretion so as to make any order for costs pursuant to Rule 13 as claimed by the Applicants.
19. The decision is made accordingly.

Judge P J Barber

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.