

12020



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

**Case reference** : LON/00AW/LDC/2016/0045  
LON/00AW/LSC/2016/0193

**Property** : Flat 5, 6 Ladbroke Gardens  
London W11 2PT

**Applicant** : 6 Ladbroke Gardens Management  
Limited

**Representative** : Mr Stephen Newman of D & S  
Property Management

**Respondent** : (1) Sinty Stemp  
(2) Tiffany Stemp

**Representative** : Mr N Trompeter of Counsel  
instructed by Hughmans Solicitors

**Type of application** : Application for costs under Rule  
13(1)(b) Tribunal Procedure (First-  
tier Tribunal) (Property Chamber)  
Rules 2013

**Tribunal members** : Judge E Samupfonda  
Sue Coughlin MCIEH

**Date and venue of  
hearing** : 10 Alfred Place, London WC1E 7LR

**Date of decision** : 15 February 2017

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**DECISION**

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## **Decision of the Tribunal**

- (1) The Tribunal determines that the Respondents are not entitled to recover their costs pursuant to Rule 13(1) (b) of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013.
- (2) The Tribunal did not consider the application for an Order pursuant to Section 20C of the Landlord and Tenant Act 1985 for the reasons set out below.
- (3) **The application**
  1. In their submissions on costs dated 23 December 2016, the Respondents seek an order for the recovery of their costs pursuant to Rule 13(1)(b) of the Tribunal Procedure (First –tier Tribunal) (Property Chamber) Rules 2013. (The Rules) The Respondents also seek an Order pursuant to Section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred by the Applicant in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by them.
  2. The Applicant’s response to the application was received on 3 February 2017.

## **Background**

3. The Applicant applied to the Tribunal for a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) as to the amount of service charges payable by the Respondents in respect of the service charge year ending 31 March 2016. The Applicant also seeks a determination as to the reasonableness of the estimated Budget for the year ending 31 March 2017. The Applicant further applied for an order under section 20ZA of the 1985 Act to dispense with all or any of the consultation requirements in relation to qualifying works described as High Level Emergency works carried out during the year ending 31 March 2016.
4. The hearing took place on 19 - 20 September and 14 October 2016. The Tribunal notified the parties at the conclusion of the hearing that it would consider any applications as to costs on the basis of written representations. Neither party requested an oral hearing. The Tribunal’s judgment is dated 16 December 2016.

## **Summary of the Parties Submissions**

5. The Respondents seek to recover costs in the sum of £67,439.80. The grounds in support of their application are set out in detail in Mr Trompeter's submissions and they rely in particular on the matters set out in paragraph 16. A schedule of how the costs were incurred is included in the application together with supporting documentation.
6. The Applicant opposed the application on the basis that in its view, the criteria for making the order has not been made out as the Applicant has not acted unreasonably in bringing, defending or conducting proceedings. It is also submitted that the costs the Respondents have itemised are excessive in rate with regard to Peter Black (£480 per hour) and in amount with regard to Richard Grove (£14,187.50) and Nicholas Trompeter (£19,475).

## **Statutory Provisions.**

5. The Tribunal's power to order a party to pay costs is governed by Rule 13 of the Rules. Rule 13(1) provides that the Tribunal may make an order in respect of costs only-
  - (a) under section 29(4) of the 2007 Act (wasted cost) and the costs incurred in applying for such costs;
  - (b) If a person has acted unreasonably in bringing, defending or conducting proceedings.....
6. Rule 13 (5) provides a time limit for an application for costs to be made, in that it may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends the decision notice recording the decision which finally disposes of all the issues in the proceedings.
7. Section 20C(1) (as amended) provides as follows  
"A tenant may 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 a court, a First-tier Tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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."

## **Tribunal's decision**

8. In order for the Applicant to succeed, the Tribunal must be satisfied that the costs have been unnecessarily incurred as a result of unreasonable conduct by the other party in bringing, defending or

conducting proceedings. The Rules do not provide a definition as to what amounts to “unreasonable conduct” in the context of Rule 13 (1) (b). In **Willow Court Management Company (1985) Limited v Alexander [2016] UKUT 0290 (LC)** the Upper Tribunal said: “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 is 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?”

9. The Tribunal considered all the information provided by the parties together with the submissions made. It appears from the Respondents’ statement of costs incurred that all sums claimed relate to the conduct of proceedings relating to the Applicant’s applications.
  
10. The reasons given by the Respondents in support of their application primarily relate to historical differences of opinion between the parties from the examples cited. However, whilst the Applicant’s approach may have been as described by the Respondent “unyielding” and it may well have resulted in costs being incurred, the question that arises is whether the Applicant acted “unreasonably.” The Tribunal is not satisfied that the conduct complained of can be regarded as “unreasonable in bringing, defending or conducting proceedings” as it relates to historic matters. In addition, the Tribunal did not regard the conduct complained of to be so unreasonable as to meet the threshold under Rule 13. The Tribunal did not consider that the Applicant acted unreasonably in bringing, defending and conducting the proceedings as in our view, a reasonable Landlord in the Applicant’s position would have acted in the same manner as the Applicant in making its application under section 27A of the Act seeking to recover unpaid service charges in respect of the year ending 31 March 2016 and the Applicant was reasonably cautious in making the application in respect of the estimated Budget for the year ending 31 March 2017. The application under S20ZA arose from the fact that the Building was in an agreed state of disrepair. It was clearly apparent at the hearing that all the issues were hotly contested, as the parties were so diametrically opposed. The Tribunal considered that it was highly unlikely that the parties could have resolved these matters without resorting to a Tribunal to determine the issues. Prior to the hearing, both parties made offers to settle which the other rejected. Attempts at resolving the disputes by way of mediation also failed.

- 11 In the circumstances the Tribunal concluded that it cannot make an order under Rule 13(1) (b) as the criteria for making the Order has not been made out.
  
12. The Tribunal did not consider it necessary to make a determination of the Respondents' application under Section 20C of the Act as the Applicant indicated that "the costs incurred were not incurred as an item to be included as service charge" and the Applicant did not dispute the Respondent's submission that that on the true construction of the Lease, the Landlord is not entitled to recover legal costs incurred in relation to these proceedings.

**Name:** Judge E Samupfonda      **Date:** 15 February 2017