



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

Case reference : LON/OOAM/LRM/2015/0027

Property : 174 Albion Road, London N16 9JR

Applicant : 174 Albion Road RTM Company Limited

Representative : Urang Property Management

Respondent : Gemma Estates Limited

Representative : Urban Land Group

Type of application : Costs under Rule 13 Tribunal Procedure (First-tier tribunal) (Property Chamber) Rules 2013

Tribunal members : Judge S O'Sullivan
Ms Krisko FRICS

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

Date of decision : 2 February 2016

DECISION

Decisions of the tribunal

The tribunal declines to make any order pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013.

The application

1. By a letter dated 11 November 2015 the Applicant sought the tribunal's determination of its costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Directions were made dated 12 November 2015 further to which the parties lodged submissions. The application was considered by way of a paper determination on 2 February 2016. Neither party requested an oral hearing.
2. The costs in issue are those said to be incurred in bringing an earlier application to the tribunal under case reference LON/OOAM/LRM/2015/0027 (the "Substantive Application"). The costs being claimed by the Applicants total £1,400 plus Vat.

The background

3. The Substantive Application related to an application by the Applicant in which the Applicant sought a determination of its right to manage. Under paragraph 2 the claim notice stated as follows;

"the number of qualifying tenants is more than 2 and represents not less than 2/3rds of the flat. The participating tenants represent more than 50% of the total flats at the date of the application."

4. A counter notice was served by the Respondent. This denied the right to manage and stated as follows;

"The tenants specified are only 2 in number and represent less than 2/3rds of the flats and not more than 50% on 30 July 2015"

5. An application for the determination of no fault right to manage was subsequently made to the tribunal received on 11 September 2015.
6. By email dated 30 October 2015 the landlord withdrew its objection to the right to manage.

The Applicant's case

7. The Applicant set out its case in relation to the application under Rule 13 in a brief 6 paragraph statement made by Urang Property Management dated 5 December 2015. It seeks costs of £1,000 plus Vat in relation to the preparation of a statement in reply in the Substantive Application dated 27 October 2015 in respect of which an invoice is produced. This does not provide any breakdown of the time spent. A further 2 hours is claimed for preparing the bundle in the sum of £400 plus Vat in respect of which no invoice is produced.
8. The Applicant says it was forced to apply for a determination that the RTM notices had been correctly served and that the Respondent ignored the tribunal's directions thereby forcing the Applicant to spend some 5 hours in preparing the statement in response. It says all the time and effort could have been saved had the Respondent realised its mistake in serving the counter notice earlier.

The Respondent's case

9. Correspondence from the Respondent was contained in the bundle. The Respondent stands by its assertion that the claim notice was factually incorrect in that as at 30 July 2015 the number of qualifying tenants was **exactly two** rather than **more than two** as stated by the Applicant. However since the other two flats in the block have since been sold and the Applicant would likely meet the criteria if it applied today, the Respondent took a pragmatic approach and withdrew its objection.
10. The Respondent also submitted that the fee of £200 per hour charged by the Applicant's advisors was excessive as was the time spent.
11. The Respondent points out that it was not acting unreasonably in that it had conceded the right to manage in respect of neighbouring blocks and genuinely believed the Applicant did not have the requisite number of tenants and that the claim notice was invalid. Once it became clear that the remaining two flats had been sold the Respondent chose to withdraw its objection to allow the Applicant to manage the block and to avoid the need for a further claim notice/application. The Respondent says it has tried to act in a reasonable manner throughout.

The tribunal's decision

12. We decline to make any order in respect of the Applicant's legal costs pursuant to Rule 13(1) of the Tribunal Procedure (First tier Tribunal) (Property Chamber) Rules 2013 (the "Procedure Rules").

Reasons for the tribunal's decision

13. The tribunal's power to award costs is contained in Rule 13 (1)(b)(ii) of the Procedure Rules which 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-

(I) a residential property case ..."

14. The power to award costs pursuant to Rule 13 is discretionary and the wording of the provision makes it clear that the tribunal may only make such an order if a person's conduct of the proceedings is unreasonable rather than his behaviour generally.
15. The power to award costs pursuant to Rule 13 should only be made where a party has clearly acted unreasonably in bringing, defending or conducting the proceedings. This is because the tribunal is essentially a costs free jurisdiction where parties should not be deterred from bringing or defending proceedings for fear of having to pay substantial costs if unsuccessful. In addition there should be no expectation that a party will recover its costs if successful. The award of costs should therefore in our view be made where on an objective assessment a party has behaved so unreasonably that it is fair that the other party is compensated to some extent by having some or all of their legal costs paid.
16. Having considered the facts of this case overall we do not consider that it is appropriate that an order is made under Rule 13 in respect of some of the Applicant's costs as we consider that the Respondent has not acted so unreasonably in conducting the proceedings that it is fair that the other party be compensated.
17. We accept that the Respondent withdrew its objection after the Applicant had served its statement of case in the proceedings. The tribunal did not make a decision in the Substantive Application as the landlord withdrew its objection before the matter was heard. Thus the tribunal did not make a finding on whether the claim notice complied with the provisions of section 80. The landlord argued that the claim notice did contain some inaccuracies in that it stated that the number of qualifying tenants was more than 2 when it seems that as at the date of service there were exactly 2 qualifying tenants. In any event the landlord appears to have taken a pragmatic view when the two other flats in the building were sold and withdrew its objection to the right to manage. We are satisfied that the landlord genuinely believed that the claim notice contained errors which may have rendered its validity

questionable and in this scenario it was not unreasonable to oppose the application.

18. Having declined to make any order for costs we did not go on to make a decision on the amount of costs in issue. It did appear to us however that the costs sought were exceptionally high bearing in mind the very brief nature of the statement in response and the minimal work carried out by the Applicant. Further they were not supported by any breakdown or narrative of the work carried out. The Applicant may wish to bear these comments in mind on any other future application under Rule 13.

Name: S O'Sullivan

Date: 2 February 2016