



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

Case reference : **LON/00BK/LDC/2021/0090**

Property : **Ryger House, 11-15 Arlington Street, London SW1A 1RD.**

Applicant : **Rahman Somani and Zahra Ebrahim**

Representative : **In person.**

Respondent : **Ryger Management Co. Ltd.**

Representative : **CMS Cameron McKenna**

Type of application : **Application for Costs under Rule 13(1) of the Tribunal Procedure Rules 2013 following the decision of the tribunal on 1 June 2021.**

Tribunal member(s) : **Tribunal Judge Hamilton-Farey**

Venue : **Remote**

Date of decision : **23 August 2021**

DECISION ON COSTS

The Tribunal rejects Rahman Somani and Zahra Ebrahim's application under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and makes no order as to costs.

Reasons

1. Pursuant to an application for dispensation under S.20ZA of the Landlord and Tenant Act 1985, the tribunal handed down its decision on the 1 June 2021.

2. Within that decision, the tribunal stated that the respondents (the applicants in this application) had suffered some prejudice in relation to the application and that the applicants should pay the reasonable costs in the matter, but these had not been quantified. The tribunal suggested that the parties agree the costs between them, but if they were unable to do so, that an application be made to the tribunal for a determination of the amount payable.
3. Mr. Somani and Mrs. Ebrahim now seek reimbursement of their costs \$18,180.00 (Canadian Dollars) in respect of an invoice from a Canadian Law Firm 'Open Door'. It appears that this invoice includes Mr. Somani's own costs of dealing with this matter. The landlord respondent disputes liability for the costs claimed on the basis that Mr. Somani confirmed that he was representing himself, and that the costs were incurred by a non-UK Law firm, together with the fact that Open Door did not at any time inform them that they were 'on the record' and representing Mr. Somani and Ms. Ebrahim.
4. The tribunal is not persuaded that costs incurred by a party to proceedings, in relation to advice received from a firm outside of the tribunal's jurisdiction may be recovered under Rule 13. The tribunal therefore rejects any claim for costs included within the Open Door account.
5. In addition, that account appears to include costs claimed by Mr. Somani as an individual. These costs are not recoverable under Rule 13 of the Tribunal Procedure Rules, and the tribunal therefore rejects this part of the claim.
6. In the circumstances, the Tribunal declines to make any costs order.

Name: Aileen Hamilton-Farey **Date:** 23 August 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).

The relevant law

7. The relevant parts of rule 13 state:

- (1) The Tribunal may make an order in respect of costs only—
 - (a) ...
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (iii) a leasehold case; ...

8The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"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 judgment, but it is not unreasonable.

8. The Upper Tribunal in *Willow Court* went on to say:

24. ... 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. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. "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?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically

those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...