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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SCHEDULE 12 PARAGRAPHS 10 OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Case Reference: LON 00AD/LRM/2013/0010

Premises: The Limes 1-6 Acacia Way Sidcup Kent DA15
8WW

Applicant(s): The Limes Residents RTM Company Limited

Representative: Canonbury Management Limited

Respondent(s): Countryside Properties Limited

Representative: OM Property Management

**Leasehold Valuation
Tribunal:** P L Leighton LLB (Hons)

Date of decision: 20th May 2013

Decision of the Tribunal

The Tribunal determines that the application by the applicants for costs against the respondent under Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 is refused]

(1) The application

1. The Applicant seeks a determination pursuant to Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether the Respondent should pay costs on the ground that their opposition to the Applicants' claim for a Right to Manage Order was frivolous vexatious and/or an abuse of the process or otherwise unreasonable within the meaning of Schedule 12 Paragraph 10 of the Act .
2. The relevant legal provisions are set out in the Appendix to this decision.
3. When directions were given it was decided and accepted that the matter would be determined on the basis of written representations from each party.

The background

4. The property which is the subject of this application is a block of 6 flats in Acacia Way Sidcup Kent. The Applicant is a RTM company formed in 2012 for the purpose of managing the block. Four of the six tenants are qualified tenants and members of the company. The two other tenants are not part of the company.
5. . Neither party requested an inspection of the premises and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute
6. An invitation to participate was given to the two other tenants of the building Mr Rowe Flat 3 and Mr and Mrs McGowan Flat 4 on 4th December 2012 .the notice of claim was sent to the landlord on 3rd January 2013 and the Respondent served a counter notice on 6th February 2013 in which they alleged that eh Applicant had failed to comply with Section 79(2) and (5) of the Act which involved giving notice to the qualifying tenants.
7. As a result an application was made to the tribunal to recognise the RTM company for the purposes of the Act and to make a no fault right to manage order. On 28th March 2013.
8. Shortly after the directions were given on 3rd April 2013 the Respondent wrote withdrawing the counter notice on 10th April 2013 .

The issues

9. The Applicant's representatives contend that by serving the counter notice and requiring the Applicant to issue proceedings before the Tribunal they behaved frivolously vexatiously or unreasonably, and resulted in the Applicant incurring unnecessary costs
10. Having received evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the issue and concluded that this is not a case which merits the order requested.

Reasons for the Tribunal's decision

11. It is suggested by the Applicant that the Respondent "inappropriately" served a counter notice and that the tribunal should use its powers to discourage such inappropriate behaviour it is contended that no grounds existed for opposing the application and that therefore the counter notice was "unreasonable" for the purpose of the section.
12. The Respondent contends that a letter was written on 24th January 2013 requesting relevant information and that if such information was forthcoming the counter notice would be withdrawn. The letter was apparently sent on 5th February
13. The information was sent on 7th February and an acknowledgement was sent saying that the documents would be reviewed... the Respondent states that MisbahKhan who was dealing with the matter was out of the office for a considerable period of time because of other litigation in Brighton and Nottingham
14. Even after a chasing letter was sent in March the Respondent did not withdraw the counter notice until April 10th after the application was issued and directions given.
15. The Tribunal is of the opinion that the Respondent could have dealt with the matter more promptly but was entitled to serve the counter notice in order to preserve the position until the documents had been properly reviewed. If the tribunal had ordinary costs jurisdiction this would have been an appropriate case for ordering the Respondent to pay costs.
16. But the tribunal does not have costs jurisdiction and Schedule 12 Paragraph 10 should be used sparingly for exceptional cases
17. As the Upper Tribunal states in Belmont Hall Court and Elm Court LRX /130/2007 and LRA/85 /2008

Applying the reasoning of the court in Ridehalgh -v- Horsefield (1994 3 All E R 848

18. "Unreasonable" also 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 Harris 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 resolved 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 practitioners judgement, but it is not unreasonable."
19. In the view of the tribunal the conduct of the Respondent may have been somewhat dilatory but it there is no evidence that it was deliberate and the delay was to some extent excusable on the grounds of other work intervening and was not so great as to amount in the view of the tribunal to "unreasonable" conduct. The respondent did not persist with the counter notice once the documents had been reviewed.
20. If it were established to the tribunal's satisfaction that the Respondent habitually dragged its feet in dealing with such applications it might consider taking a different view in future, but on the facts of the present case, the grounds for an order have not been made out

Chairman: Peter Leighton

Date: 20th May 2013



Appendix of relevant legislation

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.