

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL (WALES)

Reference: RPT/0022/10/20

In the Matters of 20–22 Carlisle Street, Splott, Cardiff, CF24 2DS

In the matter of an Application under the Housing Act 2004 – Improvement Notice
Applicant’s Application for Costs pursuant to paragraph 12(d) of Schedule 13

APPLICANT	Tapestart Ltd
RESPONDENT	Cardiff City Council
TRIBUNAL	Judge – Trefor Lloyd Surveyor Member – Andrew Lewis Lay member- Dr Angie Ash
HEARING	Paper Determination on the 22 nd July 2021
REPRESENTATION BY WAY OF WRITTEN SUBMISSIONS:	Mr Benjamin Hammond for the Applicant Mr Richard Grigg for the Respondent

DECISION

The Applicant’s application for costs is permitted in the sum of £500

ORDER

The Respondent is ordered to pay the Applicant the sum of £500 in respect of costs by 4pm on the 20th August 2021.

REASONS FOR THE TRIBUNAL DECISION

Background

1. The Applicant issued an Appeal to the Tribunal pursuant to paragraphs 10(1) of part 3 of Schedule 1 of the Housing Act 2004 “The Act” against an Improvement Notice issued by the Respondent under Section 11 and 12 of the 2004 Act dated the 29th September 2020 relating to 20-22 Carlisle Street, Splott, Cardiff, CF24 2DS (“20-22 Carlisle Street”).
2. Following a case management conference, the matter was heard on the CVP Remote platform on the 27th April 2021.

3. The Decision following the hearing was handed down on the 5th July 2021 dismissing the Improvement Notice and allowing the Applicant's appeal. At the end of the 27th April 2021 hearing the Applicant raised the issue of costs. As a consequence the Order handed down following that hearing provided in the following terms:-

"If so advised the parties are to file and serve narrative statements limited to the issue of costs in accordance with Schedule 13 of the Housing Act 2004 and Section 2(d) thereof by 12.00 noon on the 22nd July 2021".

4. Both the Applicant and Respondent have served and filed submissions as to costs and the same Tribunal panel that heard the substantive matter dealt with the issue of costs on the papers on the 27th July 2021.]].

The Law

5. Paragraph 12 of Schedule 13 of the Housing Act 2004 provides as follows:-

Costs

12(1) A Tribunal may determine that a party to proceedings before it is to 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 failed to comply with an Order made by the Tribunal;
- b) in accordance with regulations made by virtue of paragraph 5(4), which dismisses or allows the whole or part of any application or appeal by reason of his failure to comply with a requirement imposed by regulations made by virtue of paragraph 5;
- c) in accordance with the regulations made by virtue of paragraph 9. The Tribunal dismisses the whole or part of an application or appeal made by him to the Tribunal or;
- d) he has in the opinion of the 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 must not exceed –

- a) £500.00 (or in the case of the Mobile Homes Act 1983, £5,000.00) or;
- b) Such other amount as may be specified in procedure regulations.

(4) A person may not be required to pay costs incurred by another person in connection with proceedings before a Tribunal, except:-

- a) By determination under this paragraph or;
- b) In accordance with provision made any enactment other than this paragraph.

The Applicant's Written Submissions

6. By way of a written statement Mr Benjamin Hammond Solicitor for the Applicant sets out the Applicant's case with reference to exhibits attached thereto.

7. In summary, the Applicant relies upon paragraph 12(2)(d) of Schedule 13 of the Act and specifically avers that the Respondent has acted in an unreasonable manner in so far as there has been unreasonable conduct on the part of the Respondent in connection with these proceedings.
8. The Applicant's submissions cover pre-action correspondence which reveal that following receipt of the Improvement Notice Mr Hammond on the 6th October 2020 e-mailed Mr Gronow the Respondent's Officer who had dealt with the Improvement Notice indicating that the relevant parts of the building had been demised i.e. they were not the responsibility of the Applicant.
9. Mr Gronow replied on the same day stating that:-

"As I am not familiar with leasehold law, I am unable to comment on your suggestions regarding the control of the common areas of this property. However, I will seek advice from our legal service area and respond in due course".
10. Mr Hammond again contacted Mr Gronow on the 15th October and asked for the Improvement Notice to be either be withdrawn or held in abeyance. Mr Gronow replied the following day to say that he was awaiting legal advice.
11. Unsurprisingly, the Applicant then applied to the Tribunal to protect his position. A further e-mail followed to Mr Gronow from Mr Hammond asking for an update to which Mr Gronow replied to state that he had not received any response from the Respondent's solicitors. Worthy of note is that the 16th of November e-mail also made reference to the issue of costs.
12. This Tribunal issued directions on the 19th November 2020, one of which was for the parties to discuss / meet by the 25th November 2020 with a view to settling the dispute or narrowing the issues and also for the Respondent to send the Applicant copies of calculations used to calculate the hazards upon the Improvement Notice predicated.
13. Mr Hammond then wrote to Mr Grigg the Respondent's solicitor on the 20th November 2020 by e-mail. Mr Grigg responded on the 23rd November to say that he was available for mediation but had not seen the appeal documents. There then followed a series of correspondence between the Applicant and Respondent's representatives with the Respondent taking until the 10th February 2021 to set out its case. That document was a single sheet of paper which did not include a Statement of Truth.
14. A case management conference ("CMC") was arranged on the 16th February 2021. The outcome of the CMC was that the Respondent had not engaged at all with the Appeal until a few days before the CMC and there had also been a failure to provide calculations for the hazards.
15. At the CMC Mr Grigg apologised and said the matter "had fallen between two stools".
16. Given what was included within Mr Gronow's Witness Statement the Applicant applied to this Tribunal for Mr Gronow to be present to give evidence at the hearing on the 27th April 2021. That request was acceded to and a direction in that regard was made.
17. Despite the aforementioned direction Mr Grigg attended the virtual hearing alone. He stated that he had attempted to make contact with Mr Gronow but had failed to do so.

18. Thereafter Mr Hammond on the 12th July 2021 invited Mr Grigg to agree to meet £500.00 of the Applicant's costs to avoid taking up further Tribunal time. Mr Grigg's reply was that the Respondent would resist the Applicant's application for costs.

Submissions

19. Mr Hammond makes the point that behaving unreasonably in the context of the Tribunal rules and more specifically the provision in the Act is not the same as Wednesbury unreasonableness and that we simply have to find that the Respondent's behaviour has been unreasonable in other words behaviour an objective bystander would consider unreasonable.

20. We were also taken to the Residential Property Tribunal Fees Wales 2016 Rules and more specifically the overriding objective, the need for parties to assist the Tribunal (Rule 3(3)(a)) and our rights where a party has failed to comply with directions to supply information or to attend a hearing (Rule 19)(a)

21. At Paragraph 26. The Applicant summarises its case on costs requesting that this Tribunal finds the Respondent as being unreasonable and costs should follow for the following reasons:

- a) The Respondent did not communicate with the Applicant prior to serving the Improvement Notice;
- b) The Respondent failed to identify the correct person on whom the Improvement Notice should have been served;
- c) The Respondent failed to serve the Improvement Notice on the persons on whom the Improvement Notice was required by law to be served;
- d) The Respondent failed to provide any reasonable explanation on Mr Gronow's decision making process or any review or audit of that process;
- e) The Respondent did not address the concerns raised by the Applicant immediately following receipt of the Improvement Notice, failed to act in such a manner that would have avoided the appeal application. Mr Gronow did not appear at the virtual hearing despite a direction to that effect.
- f) Respondent put the Applicant to unnecessary costs in connection with the appeal by failing to state its case properly and narrow the issues, proceedings and in correspondence.

22. Attached to the Witness Statement is a Schedule of Costs for summary assessment. The costs total £2,265.50. No VAT has been applied as Mr Hammond is an in-house solicitor. His charge out rate is £201.00 per hour being a Grade 1 solicitor National Scale 2. The Schedule of Costs confirms 10.5 hours charged.

The Respondent's Statement as to Costs

23. Unlike the Applicant's the statement Mr Grigg on behalf of the Respondent Authority simply filed a two page statement. The first page is predominantly a cover page. The second page consists of five short paragraphs which oppose the application made and makes at paragraph 5 a denial that the Respondent acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

24. The only detail by the Respondent as regards the costs application is contained in Paragraph 6 of the Respondent's submissions:-

“The Council believed that throughout the proceedings that the Improvement Notice had been served on the correct party. Their only concern throughout was the safety of the people living and visiting the premises due to the category 1 hazards”

25. No further explanation or evidence is given as to why the application should not be granted.

Discussion

26. We accept that the relevant test as to unreasonableness is that of the objective standard as submitted by Mr Hammond and not the submissions made by Mr Grigg in oral evidence during the hearing of essentially ‘Wednesbury unreasonableness’.
27. Having considered all of the written submissions carefully we unanimously find as a fact that there have been failings on the part of the Respondent authority in dealing with this matter.
28. The Applicant throughout had clearly set out its case in relation to the opposition of the Improvement Notice. Whilst the opposition may well have been a legal issue which Mr Gronow would need to refer to the Respondent’s solicitor that does not in our view justify the delay which occurred in the Respondent providing any form of reasoning and/or explanation for its conduct.
29. Ultimately when the reply came on the 10th February 2021 it appeared upon a single sheet of paper which did not fully assist and furthermore was not accompanied by a Statement of Truth.
30. The Applicant set out its stall from the outset whereas the Respondent Authority had failed to do so. The failings further progressed to include a failure of an explanation by Mr Gronow as to how he had come to the conclusion to issue the Improvement Notice. The failure was further compounded by reason of an absence of any rationale where the Respondent’s stance differed from that of the Applicant’s reasons in terms of the detail to be included in the Scott Schedule provided to narrow the issues.
31. Matters culminated with Mr Gronow not attending the virtual hearing for the purposes of cross examination despite a direction in that regard having been made at the earlier case management conference.
32. Whilst taken in isolation none of the failings would have been in our view sufficient to, upon the balance of probabilities, constitute unreasonable conduct. However when considered as a whole from the time the Improvement Notice is issued to the virtual hearing on the 27th April 2021 the constant failings we unanimously find upon the balance of probabilities as amounting to unreasonable conduct.
33. In the circumstances we allow the Applicant’s application in relation to costs.

Quantum of Costs

34. The Applicant has incurred legal costs of £2,265.50 up to the date of the virtual hearing.

The costs schedule details 6 hours considering the leases, preparing the appeal notice and supporting documents. A further 1 hour for preparation and attendance at the case management conference, a further 3 ½ hours drafting the schedules of lease interpretation for the Scott Schedule. No charge is claimed made for the actual hearing itself or in relation to the costs application which followed. The hourly rate is £201 based upon a Grade A fee earner.

35. Given the nature of the dispute we find as a fact that both the charge out rate of £201.00 per hour and the time spent dealing with matters running up to the hearing are both reasonable.
36. Notwithstanding the above finding this Tribunal's ability to award cost is capped at £500.00 due to the provisions of paragraph 12(3)(a) of the Housing Act 2004.
37. In terms of quantum given all the circumstances we award the maximum costs available under the Act of £500.00. Such costs to be payable by the 20th August 2021.]

Dated this 28th day of July 2021

Trefor Lloyd
Chairman