



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

Case Reference : **BIR/00FY/HMV/2017/0002 &
BIR/00FY/HIN/0021**

Property : **30 Ebers Road, Nottingham, NG3 5DZ**

Applicants : **Christopher John Cook**

Representative : **London Property Licensing**

Respondent : **Nottingham City Council**

Representative : **In-house**

Type of Application : **Costs pursuant to Rule 13(1) Tribunal
Procedure (First Tier Tribunal)(Property
Chamber) Rules 2013**

**Date & Venue of
Hearing** : **26 September 2018 by telephone (the parties'
submissions having been received in writing)**

Tribunal Members : **Judge A McNamara
Mr R Chumley-Roberts MCIEH, J.P.**

Date of Determination : **22 October 2018**

DECISION

This is the Applicant's application for an Order pursuant to Rule 13(1) Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, namely that the Respondent should pay the Applicant's costs on the grounds that the Respondent acted unreasonably in resisting these appeals.

1. The proceedings related to the decision by the Respondent to serve an Improvement Notice and to revoke the Applicant's HMO licence under the Housing Act 2004.
2. The proceedings were compromised by a Consent Order signed by the parties on 25 May 2018. By Consent the parties agreed that the Applicant's licence was reinstated and the Improvement Notice quashed. The parties were unable to agree about costs, hence this application.
3. In the light of the compromise of the proceedings it would be inappropriate for the Tribunal to make findings about the merits of the proceedings. It would be neither appropriate nor proportionate to do so since it might risk unravelling the compromise achieved by the parties.

The Rules and the law

4. The Tribunal's power to award costs derives from section 29 Tribunals, Courts & Enforcement Act 2007:

29 Costs or expenses

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal, shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5) In subsection (4) “wasted costs” means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.

(6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

5. Rule 13(1) Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013 (the Rules) provides as follows:

13.—(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—

(i) ...

(ii) a residential property case, or

(iii) ...

6. As is identified in §4 of the submissions advanced by the Applicant, such an award can only follow in the event that the conduct of the Respondent could be said to be *‘improper, unreasonable or negligent’*.
7. Further the Overriding Objective as expressed in Rule 3 of the Rules provides:
 - 3.—(1) *The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
 - (2) *Dealing with a case fairly and justly includes—*
 - (a) *dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;*
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 - (4) *Parties must—*
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8. The Applicant prays in aid the decision of the Upper Tribunal in the case of **Willow Court Management Company (1985) v Mrs Ratna Alexander (2016) UKUT 0290**. However, the Tribunal was not greatly aided by the passing references to that case at paragraphs 1 and 25 of the Applicant's written submissions since it was not made clear precisely which part of the decision was relied upon.
9. The case involved three conjoined appeals to the Upper Tribunal. The lead case, namely the Willow Court case, arose out of a failure to comply with contractual provisions in a lease. Accordingly it is factually dissimilar in relation to the crucial component of reasonableness in bringing or continuing the proceedings.
10. In the second appeal, namely **Sinclair v 231 Sussex Gardens Right to Manage Ltd**, the UT summarised the case as follows in §5 of the Judgment:

'The FTT was critical of Miss Sinclair's conduct in failing to pay her service charges, in defending herself on what it considered to be spurious grounds, unsupported by sufficient evidence, and in generally behaving unreasonably.'

It could not be said of the present proceedings that the resistance to the application was either spurious or based upon an insufficiency of evidence. Accordingly, the analysis of that case does not assist.

11. Therefore the Tribunal assumes, since it is not specified, that the Applicant prays in aid the third of the appeals, namely **Stone v 54 Hogarth Road London SW5 Management Limited** and how that influenced the UT's judgment. That case was summarised as follows by the UT at §6 of the Judgment:

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12. It stretches the meaning of ‘unreasonable’ beyond breaking point if it is merely to be applied to cases in which the parties are said on the one hand to have reasonable grounds for bringing the claim but that money would have been saved had the proceedings been terminated at an earlier stage. That is no more than a statement of the obvious rather than the definition of unreasonable conduct. It seems a particularly harsh approach to a litigant in person.

13. The UT re-stated the well-known principles from the case of **Ridehalgh v Horsefield [1994] Ch 205** taken from the Judgment of the Master of the Rolls Sir Thomas Bingham and went on to formulate its own test:

The element of discretion in rule 13(1)(b)

27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably...” We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the

application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

29. Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that “the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”, subject to the tribunal’s procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case “in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.” It therefore does not follow that an order for the payment of the whole of the other party’s costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.

30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.

The first stage test: did the Respondent behave unreasonably?

14. The Applicant suggests that the Respondent's representatives, Mr. Dott and/or Mr. Hennessy, behaved unreasonably. It is said that that is based upon '*systemic unreasonable behaviour throughout the respondent's handling of both appeals*'.
15. Conversely, in the Respondent's written submissions, that suggestion is resisted. There are differences of view as to approach and the conduct of the proceedings.
16. The Applicant's submissions are lengthy and bring into question the legitimacy of both the decision to revoke the Applicant's licence and to serve him with an Improvement Notice. In particular, it is suggested that the Respondent failed to acknowledge matters in relation to the revocation which it is suggested that the Respondent knew '*to be untrue*' (see §9 of the Applicant's submissions); that an allegation of unlawful eviction was unsubstantiated; and that decision to impose an Improvement Notice was '*unreasonable and unjustified in the circumstances*'.
17. It is also said that the Respondent put the Applicant to unnecessary expense in relation to preparation of bundles pending the hearing.
18. It is prayed in aid that, following the hearing on 25 April 2018, the Applicant was contacted on 9 May 2018 by the Respondent to say that the matter would no longer be resisted.

19. The Respondent makes a number of arguments to the contrary, not least that the notion that the pursuit of the Local Authority's aims was personal is rejected. The point is also made that had the Applicant co-operated at the very outset of the Respondent's involvement the matter would have been resolved before the Local Authority contemplated enforcement.
20. The question the Tribunal has to ask itself is whether, along a spectrum of conduct, the approach of the Respondent's representatives could be said to be unreasonable merely by reason of there being a difference of approach between the parties?
21. Furthermore, in circumstances where the Tribunal was, ultimately, not called upon to adjudicate upon the dispute and the parties have resolved the matter by consent it could be said that that is anathema to orders for costs.
22. In the circumstances the Tribunal finds that although the conduct of the Respondent's representatives may have been robust, it could not be said that it was unreasonable. After all, the purpose of the Local Authority's powers under the Act of 2004 is to promote high standards in management of property in multiple occupation with a view to ensuring tenant safety. It is uncontroversial in this case that certain steps were necessary in order that continued compliance with the terms of the licence could be achieved.
23. The Tribunal is not satisfied that the conduct of the Respondent's representatives could be said to be unreasonable, accordingly it is appropriate to exercise the discretion against the making of a costs order.
24. In the circumstances the application is dismissed. Accordingly there will be no order for costs.
25. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be

received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge Andrew McNamara

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27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: “the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably...” We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. With these points in mind we suggest that a systematic or sequential approach to applications made under the rule should be adopted.

28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the

application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be.

29. Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that “the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”, subject to the tribunal’s procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case “in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.” It therefore does not follow that an order for the payment of the whole of the other party’s costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.

30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases.

The first stage test: did the Respondent behave unreasonably?

14. The Applicant suggests that the Respondent's representatives, Mr. Dott and/or Mr. Hennessy, behaved unreasonably. It is said that that is based upon '*systemic unreasonable behaviour throughout the respondent's handling of both appeals*'.
15. Conversely, in the Respondent's written submissions, that suggestion is resisted. There are differences of view as to approach and the conduct of the proceedings.
16. The Applicant's submissions are lengthy and bring into question the legitimacy of both the decision to revoke the Applicant's licence and to serve him with an Improvement Notice. In particular, it is suggested that the Respondent failed to acknowledge matters in relation to the revocation which it is suggested that the Respondent knew '*to be untrue*' (see §9 of the Applicant's submissions); that an allegation of unlawful eviction was unsubstantiated; and that decision to impose an Improvement Notice was '*unreasonable and unjustified in the circumstances*'.
17. It is also said that the Respondent put the Applicant to unnecessary expense in relation to preparation of bundles pending the hearing.
18. It is prayed in aid that, following the hearing on 25 April 2018, the Applicant was contacted on 9 May 2018 by the Respondent to say that the matter would no longer be resisted.

19. The Respondent makes a number of arguments to the contrary, not least that the notion that the pursuit of the Local Authority's aims was personal is rejected. The point is also made that had the Applicant co-operated at the very outset of the Respondent's involvement the matter would have been resolved before the Local Authority contemplated enforcement.
20. The question the Tribunal has to ask itself is whether, along a spectrum of conduct, the approach of the Respondent's representatives could be said to be unreasonable merely by reason of there being a difference of approach between the parties?
21. Furthermore, in circumstances where the Tribunal was, ultimately, not called upon to adjudicate upon the dispute and the parties have resolved the matter by consent it could be said that that is anathema to orders for costs.
22. In the circumstances the Tribunal finds that although the conduct of the Respondent's representatives may have been robust, it could not be said that it was unreasonable. After all, the purpose of the Local Authority's powers under the Act of 2004 is to promote high standards in management of property in multiple occupation with a view to ensuring tenant safety. It is uncontroversial in this case that certain steps were necessary in order that continued compliance with the terms of the licence could be achieved.
23. The Tribunal is not satisfied that the conduct of the Respondent's representatives could be said to be unreasonable, accordingly it is appropriate to exercise the discretion against the making of a costs order.
24. In the circumstances the application is dismissed. Accordingly there will be no order for costs.
25. A party seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal. This application must be

received by the Tribunal no later than 28 days after the date this decision is sent to the parties. Further information is contained within Part 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (S.I. 2013 No. 1169).

Judge Andrew McNamara

22 October 2018



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

Case Reference : **BIR/00FY/HMV/2017/0002 &
BIR/00FY/HIN/0021**

Property : **30 Ebers Road, Nottingham, NG3 5DZ**

Applicants : **Christopher John Cook**

Representative : **London Property Licensing**

Respondent : **Nottingham City Council**

Representative : **In-house**

Type of Application : **Costs pursuant to Rule 13(1) Tribunal
Procedure (First Tier Tribunal)(Property
Chamber) Rules 2013**

**Date & Venue of
Hearing** : **26 September 2018 by telephone (the parties'
submissions having been received in writing)**

Tribunal Members : **Judge A McNamara
Mr R Chumley-Roberts MCIEH, J.P.**

Date of Determination : **22 October 2018**

DECISION

This is the Applicant's application for an Order pursuant to Rule 13(1) Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013, namely that the Respondent should pay the Applicant's costs on the grounds that the Respondent acted unreasonably in resisting these appeals.

1. The proceedings related to the decision by the Respondent to serve an Improvement Notice and to revoke the Applicant's HMO licence under the Housing Act 2004.
2. The proceedings were compromised by a Consent Order signed by the parties on 25 May 2018. By Consent the parties agreed that the Applicant's licence was reinstated and the Improvement Notice quashed. The parties were unable to agree about costs, hence this application.
3. In the light of the compromise of the proceedings it would be inappropriate for the Tribunal to make findings about the merits of the proceedings. It would be neither appropriate nor proportionate to do so since it might risk unravelling the compromise achieved by the parties.

The Rules and the law

4. The Tribunal's power to award costs derives from section 29 Tribunals, Courts & Enforcement Act 2007:

29 Costs or expenses

(1) The costs of and incidental to—

(a) all proceedings in the First-tier Tribunal, and

(b) all proceedings in the Upper Tribunal, shall be in the discretion of the Tribunal in which the proceedings take place.

(2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a) disallow, or

(b) (as the case may be) order the legal or other representative concerned to meet, the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5) In subsection (4) “wasted costs” means any costs incurred by a party—

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.

(6) In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

5. Rule 13(1) Tribunal Procedure (First Tier Tribunal)(Property Chamber) Rules 2013 (the Rules) provides as follows:

13.—(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—

(i) ...

(ii) a residential property case, or

(iii) ...

6. As is identified in §4 of the submissions advanced by the Applicant, such an award can only follow in the event that the conduct of the Respondent could be said to be *‘improper, unreasonable or negligent’*.
7. Further the Overriding Objective as expressed in Rule 3 of the Rules provides:
 - 3.—(1) *The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.*
 - (2) *Dealing with a case fairly and justly includes—*
 - (a) *dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;*
 - (b) *avoiding unnecessary formality and seeking flexibility in the proceedings;*
 - (c) *ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;*
 - (d) *using any special expertise of the Tribunal effectively; and*
 - (e) *avoiding delay, so far as compatible with proper consideration of the issues.*
 - (3) *The Tribunal must seek to give effect to the overriding objective when it—*
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8. The Applicant prays in aid the decision of the Upper Tribunal in the case of **Willow Court Management Company (1985) v Mrs Ratna Alexander (2016) UKUT 0290**. However, the Tribunal was not greatly aided by the passing references to that case at paragraphs 1 and 25 of the Applicant's written submissions since it was not made clear precisely which part of the decision was relied upon.
9. The case involved three conjoined appeals to the Upper Tribunal. The lead case, namely the Willow Court case, arose out of a failure to comply with contractual provisions in a lease. Accordingly it is factually dissimilar in relation to the crucial component of reasonableness in bringing or continuing the proceedings.
10. In the second appeal, namely **Sinclair v 231 Sussex Gardens Right to Manage Ltd**, the UT summarised the case as follows in §5 of the Judgment:

'The FTT was critical of Miss Sinclair's conduct in failing to pay her service charges, in defending herself on what it considered to be spurious grounds, unsupported by sufficient evidence, and in generally behaving unreasonably.'

It could not be said of the present proceedings that the resistance to the application was either spurious or based upon an insufficiency of evidence. Accordingly, the analysis of that case does not assist.

11. Therefore the Tribunal assumes, since it is not specified, that the Applicant prays in aid the third of the appeals, namely **Stone v 54 Hogarth Road London SW5 Management Limited** and how that influenced the UT's judgment. That case was summarised as follows by the UT at §6 of the Judgment:

Mr. Stone withdrew his application for the determination of the service charge shortly before it was due to be heard by the FTT so that there was no investigation of the merits of his case. The FTT was satisfied that he

had had reasonable grounds for commencing his application but nevertheless considered that he had acted unreasonably in withdrawing it when he did rather than at an earlier stage after concessions had been made by the company and when fewer costs would have been incurred.

12. It stretches the meaning of ‘unreasonable’ beyond breaking point if it is merely to be applied to cases in which the parties are said on the one hand to have reasonable grounds for bringing the claim but that money would have been saved had the proceedings been terminated at an earlier stage. That is no more than a statement of the obvious rather than the definition of unreasonable conduct. It seems a particularly harsh approach to a litigant in person.

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16. The Applicant's submissions are lengthy and bring into question the legitimacy of both the decision to revoke the Applicant's licence and to serve him with an Improvement Notice. In particular, it is suggested that the Respondent failed to acknowledge matters in relation to the revocation which it is suggested that the Respondent knew '*to be untrue*' (see §9 of the Applicant's submissions); that an allegation of unlawful eviction was unsubstantiated; and that decision to impose an Improvement Notice was '*unreasonable and unjustified in the circumstances*'.
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21. Furthermore, in circumstances where the Tribunal was, ultimately, not called upon to adjudicate upon the dispute and the parties have resolved the matter by consent it could be said that that is anathema to orders for costs.
22. In the circumstances the Tribunal finds that although the conduct of the Respondent's representatives may have been robust, it could not be said that it was unreasonable. After all, the purpose of the Local Authority's powers under the Act of 2004 is to promote high standards in management of property in multiple occupation with a view to ensuring tenant safety. It is uncontroversial in this case that certain steps were necessary in order that continued compliance with the terms of the licence could be achieved.
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Judge Andrew McNamara

22 October 2018



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

Case Reference : **BIR/00FY/HMV/2017/0002 &
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