



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

Case Reference : LON/00AL/HMK/2018/0034

Property : 168 Burrage Road, Woolwich,
London SE18 7LA

Applicant : Vishal Wilde

Respondent : Ana Walmesley

Type of Application : Costs – Rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal) (Property
Chamber) Rules 2013

Tribunal : Judge Nicol

Date of Decision : 25th April 2019

DECISION

The Tribunal refuses the Respondent's application for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 against the Applicant for the reasons set out below.

Background

1. On 11th September 2018 the Tribunal determined that it may not make a rent repayment order because it could not be satisfied that a relevant offence had been committed. On 8th October 2018 the Tribunal refused permission to the Applicant to appeal to the Upper Tribunal.
2. By letter dated 3rd October 2018 the Respondent applied for her costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Tribunal issued directions on 12th December 2018 for a determination on the papers but a hearing was requested. The application was heard on 25th April 2019. The Applicant informed the Tribunal by email that he would not be attending but he did send in written representations. The

Respondent attended on her own behalf, together with her partner, Mark Walmesley.

The relevant law

3. 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—
 - (ii) a residential property case; ...

4. The 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.

5. 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. ...

The Tribunal's reasoning

6. The Respondent complains that the Applicant has been deliberately unreasonable in the conduct of his tenancy, making unfounded allegations to the police, the Information Commissioner and the local authority, in revenge for not being released early from his tenancy. However, rule 13(1)(b) is only concerned with his conduct in bringing and conducting the current proceedings.
7. In relation to his application to this Tribunal, the Respondent complains that the Applicant requested a copy of his own bundle as part of a Data Subject Access request so that she had to scan it, page by page, to email to him. Further, he refused to enter into settlement negotiations or to check with her what had happened to her licence application.
8. However justified these complaints, the Tribunal is satisfied that they do not meet the requisite definition of unreasonable. The Applicant is accused of exploiting the RRO procedure with an improper motive but it is in the nature of an RRO that it is a penal matter and the possibility that a tenant applicant has no basis for seeking compensation is irrelevant. The fact is that the Respondent did not have a licence and, according to the local authority, had not applied for one for 6 months after the scheme started, enough for a prima facie case for an RRO.

Conclusion

9. In the circumstances, the Applicant's application for costs must be refused.

Name: NK Nicol

Date: 25th April 2019

NOTES

- (a) Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email.**
- (b) If the applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").**
- (c) If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**