



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

Case reference : **LON/00AK/HMD/2019/0003**

Property : **27 Mitchell Road, London N13 6EG**

Applicant : **Mr A Lytras**

Representative : **Mr G Nicastro**

Respondent : **London Borough of Enfield**

Representative : **Ms Jackie Williams, Housing
Enforcement Officer**

Type of application : **Application for costs under
rule 13 Tribunal Procedure
(First-tier Tribunal)
(Property Chamber) Rules
2013**

Tribunal member : **Judge Pittaway
Mr T Sennett**

Date of decision : **14 June 2019**

DECISION

Decision of the Tribunal

1. The applicant's application for an order for costs is refused.

Introduction

2. This is an application by the applicant seeking an order for costs against the applicant under the provisions of Rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules"), made by e mails dated 18 March, 3 April and 8 April 2019.
3. Directions were issued by the tribunal on 10 April 2019. These required the applicant to send the respondent a full statement of case by 26 April 2019 clarifying whether the application was made under Rule 13(1) (a) or Rule 13(1) (b), and setting out further directions to be complied with depending upon whether the application was made under Rule 13(1) (a) or Rule 13(1) (b).
4. In his statement of case dated 26 April 2019 the applicant stated that the application was made under Rule 13 (1) (a) only, for "wasted costs".
5. In his statement of case the applicant submits that the respondent had acted unreasonably in that it failed to advise the applicant of the correct date by which the applicant could appeal to the tribunal in relation to an HMO Declaration under section 255 Housing Act 2004.
6. The applicant refers the tribunal to section 29(5) of the Tribunals, Courts and Enforcement Act 2007, referred to in Rule 13 (1)(a), which defines wasted costs as costs incurred "as a result of any improper, unreasonable or negligent act or omission on the part of a representative".
7. The applicant has referred the tribunal to *Ridehagh v Horsefield* [1994] Ch 205. He submits that the respondent had not acted improperly, but that it had acted negligently by misstating the date by which the applicant had to lodge an appeal. He makes no submission as to whether the respondent had acted unreasonably.
8. The respondent's statement of response of 9 May 2019 submits that it acted reasonably and has not acted in a manner that gives rise to an application for wasted costs; in particular the issuance of the HMO Declaration does not form part of the proceedings.

The Law

9. Rule 13(1) (a) of the Rules provides as follows:

(1) *The Tribunal may make an order in respect of costs only—*

- (a) *under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;*

10. Section 29 (4) Tribunals, Courts and Enforcement Act 2007 refers to the wasted costs incurred in any proceedings mentioned in Section 29(1) which include
- (1) The costs of and incidental to-*
- (a) All proceedings in the First-tier Tribunal*
11. Section 29(5)(a) Tribunals, Courts and Enforcement Act 2007 defines “wasted costs” as costs incurred by a party
- 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 representative*

Decision and Reasons

12. The applicant has not provided the tribunal with details of any wasted costs.
13. Both the applicant and respondent in their submissions refer to the conduct of the “respondent”. As stated in Section 29(5)(a) Tribunals, Courts and Enforcement Act 2007 a wasted costs application may only be made in respect of an improper, unreasonable or negligent act of a legal or other representative or an employee of such representative. There is no such representative in this case, as accepted by both parties in their respective statements of case. As stated at paragraph 19 of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) a wasted costs order may never be made against a party itself.
14. If there had been such a representative the tribunal accepts the respondent’s submission that the issuance of the HMO Declaration does not form part of the “proceedings”. For costs to have been “wasted costs” they must have been incurred of and incidental to “proceedings”. And even if the HMO Declaration did form part of “proceedings” the tribunal do not consider that the applicant has satisfied it that the costs were incurred by the applicant as a result of the negligent behaviour of the respondent.

Judge Pittaway

Date: 14 June 2019

ANNEX 1 - RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.