



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

Case reference : **LON/00AC/HMF/2018/0041**

Property : **Room 3, 141 Princess Park Manor, Royal Drive, London N11 3FQ**

Applicants : **Mr J Snow**

Representative : **Ms C Anslow of counsel**

Respondent : **Holland Park Properties Ltd**

Representative : **Mr S Nehra (director)**

Type of application : **Application by Tenant for a Rent Repayment Order**

Tribunal members : **Judge S Brilliant
Mr I Holdsworth FRICS**

Date and venue of hearing : **20 March 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **25 April 2019**

Date of costs decision : **2 September 2019**

Decision of the Tribunal

1. The hearing in these proceedings took place on 20 March 2019. On 25 April 2019, we made the substantial decision. We found that the applicant was entitled to a rent repayment order of £4,010.00. This is less than the sum of £6,253.00 which is the amount the applicant asked to be awarded in the penultimate paragraph of his case summary dated 17 January 2019

The applicant's application for costs

2. On 22 May 2019, the applicant made an application for costs against the respondent under rule 13(1)(b)(iii) of the Tribunal Procedure (Property Chamber) (First-tier Tribunal Regulations 2013. This provides:

The Tribunal may make an order in respect of costs only ... if a person has acted unreasonably in bringing, defending or conducting proceedings in ... a leasehold case ...

3. The respondent has not replied to the application.
4. The jurisdiction to award costs under rule 13 has been examined recently by the Upper Tribunal in Willow Court Management (1985) Ltd v Alexander [2016] UKUT 290 (LC), [2016] L&TR 34.
5. The head note in L&TR reads as follows:

(1) *The Court of Appeal guidance on what constitutes “unreasonable” conduct in the context of wasted costs applies in FITT proceedings for the purposes of r.13(1)(b), rather than this term having a wider interpretation, Ridehalgh v Horsefield [1994] Ch 205 applied. The test for unreasonable conduct 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, is there a reasonable explanation for the conduct complained of?*

(2) *A systematic or sequential approach to applications under r.13(1)(b) should be adopted. At the first stage the question is whether the person has acted unreasonably. At the second stage it is essential for the tribunal to consider whether, in light of the unreasonable conduct it has found, it ought to make an order for costs or not. If so, the third stage is what the terms of the order should be. At both the second and third stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. Whether the party whose conduct is criticised has had access to legal advice is relevant at the first stage of the enquiry, as the behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice; it may also be relevant, though to a lesser degree, at the second and*

third stages, without allowing it to become an excuse for unreasonable conduct. At the third stage, a causal connection with the costs sought is to be taken into account, but the power is not constrained by the need to establish causation.

- (3) *Applications under r.13(1)(b) should not be regarded as routine, should not be abused to discourage access to the tribunal and should not be allowed to become major disputes in their own right. They should be dealt with summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions. Those submissions are likely to be better framed in light of the tribunal's substantive decision rather than in anticipation of it, and applications at interim stages or before the substantive decision should not be encouraged.*
6. Turning to the actual words used by the Upper Tribunal, the following paragraphs are germane:
24. ... *“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 [in *Ridehalgh v Horsefield* [1994] Ch 205]: is there a reasonable explanation for the conduct complained of?*
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.*
7. The issue in proceedings is whether at the material times there were three persons in occupation of the flat (as the respondent contended) or four (as the applicant contended).
9. The tribunal had no hesitation in finding in favour of the applicant. The text messages attached to the applicant’s witness statement dated 15 March 2019 were compelling evidence that the applicant’s case was true. The respondent’s account of why Mr Ali’s room was being used was found not to be a credible explanation.
10. In our judgment, this case is far removed from one where the tribunal has to give anxious consideration as to whose evidence is to be preferred. In this case the evidence went all one way. We consider that applying an objective standard to the conduct of the respondent in **defending** these proceedings, the respondent was acting unreasonably.
11. The applicant also complains about the respondent’s failure to comply with the timetable for providing documents. It is true that it provided documents out of time, but we do not consider any prejudice was so caused and do not find that the **conducting** of the proceedings was so unreasonable that the first stage of Willow Court is engaged.
12. As to the second stage, we consider that, in the light of the unreasonable defence of these proceedings, an order for costs should be made.
13. As to the third stage, although the applicant did not recover all that he asked for, he was the successful party. It is not normal practice to reduce the costs payable by the losing party simply because the winning party has not been awarded as much as he was claiming.
14. The applicant’s statement of costs is in the sum of £5,284.62 including VAT. The respondent has not taken issue with any aspect of it, and we find it both a reasonable and proportionate amount. Accordingly, the respondent must pay this sum to the applicant’s solicitors are within 14 days of receipt of this decision.

Name: Simon Brilliant

Date: 2 September 2019

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.