FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/LBC/2019/0020**
Property	**:**	**Ground Floor Flat, 14 Folkestone Road, London, E17 9SD**
Applicant	**:**	**Mrs Anna Kyriacou**
Representative	**:**	**Mr Andreas Kyriacou (Spouse)**
Respondent	**:**	**Ms Vanessa Louise Linden**
Representative	**:**	**ODT Solicitors**
Type of Application	**:**	**Costs - rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal Member	**:**	**Judge L Rahman**
Date of Decision	**:**	**14/10/19**

DECISION

Decision of the tribunal

(1) The tribunal does not make an order for costs under paragraph 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The application

1. Following the tribunals decision dated 6/7/19, in which the tribunal determined that the applicant had been successful on one of the 2 disputed issues raised by the applicant, the applicant seeks an order for costs against the respondent under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("The Rules") on the basis that the respondent had acted unreasonably in defending or conducting those proceedings.

2. The tribunal considered that if neither party requested an oral hearing then it would be appropriate for the application to be dealt with without a hearing. Neither party requested an oral hearing so the matter was listed to be dealt with on paper.

3. The tribunal had before it an 82 page bundle submitted by the applicant comprising all the evidence both parties intended to rely upon.

The tribunal's findings and conclusion

4. In **Willow Court** the Upper Tribunal provided guidance on how the tribunal should exercise its jurisdiction conferred by rule 13(1)(b). It emphasised that such applications 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 (para 43). That rule 13(1)(b) should be reserved for the "clearest cases" (para 34).

5. In every case it will be for the party claiming costs to satisfy the burden of demonstrating that the other party's conduct has been unreasonable (para 34).

6. The Upper Tribunal suggests a systematic/sequential approach. At the **first stage**, the question is whether a person has acted unreasonably. This 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. The **second stage** involves a discretionary power, namely, whether in the light of the unreasonable conduct it has found to have been

demonstrated, the tribunal ought to make an order for costs or not. If the tribunal decides that it should make an order for costs, then at this **third stage** the tribunal determines the terms of any such order (paras 27 and 28). At both the second and third stage the tribunal is exercising a judicial discretion in which it is required to have regard to 'all relevant circumstances', which includes the nature, seriousness, and effect of the unreasonable conduct but can include other matters (para 30).

7. The word "unreasonable" is not defined, but in considering whether a person had acted unreasonably, the Upper Tribunal referred to **Ridehalgh v Horsefield [1994] 3 All ER 848**, in which it was held: *"'Unreasonable' also 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 practitioners judgment, but it is not unreasonable."*

8. The tribunal notes that the applicant accepts, given the applicants failure to prove that the respondent had breached the nuisance covenant, that it was not unreasonable for the respondent to have defended that allegation.

9. The applicant was successful in proving that the respondent had breached the notice covenant. It is only in relation to this that the applicant argues that the respondent had behaved unreasonably.

10. Whilst the tribunal notes the lengthy submissions made by the applicant, which includes a lot of historical matters [alleged previous breaches of the notice covenant], the fact remains that the application related only to the failure by the respondent to notify the applicant of the assured shorthold tenancy granted on 9/1/19. Therefore, the tribunal must consider whether or not the respondent behaved reasonably in relation to this specific allegation only.

11. The tribunal had found that under the terms of the lease the respondent was required *"Within one month after every assignment… or underlease…of the demised premises… to give notice in writing with particulars thereof to the lessor…and produce such assignment…or underlease… and to pay…fee of £8.00…"* The tribunal determined that this meant that the written notice / copy of the tenancy agreement must be received by the applicant within one month of the assignment / underlease. The tribunal found that although the AST was granted on 9/1/19, and the written notice / copy of the tenancy agreement should

have been received by the applicant by 9/2/19, the notice / copy of the tenancy agreement was in fact received on 12/2/19. Therefore, not within one month of the assignment / underlease. Furthermore, the respondent conceded that she had failed to provide the tenants' names in writing, as required under the terms of the lease, as she had deleted the tenants' names in the copy of the tenancy agreement provided to the applicant. The tenants' names were only provided in the respondent's letter dated 21/2/19, received by the applicant on 23/2/19. The tribunal therefore found that the "notice in writing with particulars thereof" was not provided within one month of the grant of the tenancy. In any event, the tribunal found that providing the tenants' names in the respondent's letter dated 21/2/19 was inadequate as the respondent was also required to provide a copy of the tenancy agreement within one month. By the time the respondent's letter was received, the applicant was entitled to and had in fact returned the incomplete tenancy agreement to the respondent. The tribunal found that the respondent had only provided the complete tenancy agreement, which included the tenants' names, six weeks late.

12. The tribunal notes that when asked why the respondent had failed to comply with the notice covenant, the respondent stated that this was the only property that she owned, she had a lot to learn, she was learning on the job, she would occasionally "fall down", she was aware that she must provide the names of the tenants but she naively deleted the tenants' names as she had made a "foolish mistake" in believing that she was not allowed to disclose such information to the applicant because of data protection issues, and she now understood that she was required to provide the names of the tenants.

13. The respondent further stated that she believed that the applicant was already aware of her tenants' names as the applicant had already met them and had exchanged emails with them, she had subsequently in her letter dated 21/2/19 provided the tenants' names, and in any event she had provided an undeleted copy of the tenancy agreement six weeks later.

14. The tribunal had no reason to disbelieve the explanation provided by the respondent. However, given the factual circumstances, the tribunal found that there had been a 'technical breach' of the notice covenant.

15. The tribunal accepts that the respondent genuinely believed that she had satisfied the notice covenant, given her belief that the applicant was already aware of her tenants' names. In the circumstances, it was not unreasonably for the respondent to defend this application. The tribunals understanding of the provisions of the lease, and the subsequent finding of a technical breach, does not necessarily mean that it was unreasonable for the respondent to have defended this application.

16. For the reasons given, the tribunal finds the applicant has failed to discharge the burden of demonstrating that the respondent had behaved unreasonably in defending or conducting those proceedings.

17. Even if the applicant were able to satisfy the first stage of the test set out in **Willow Court**, the applicant would have failed at the second stage as this was only a technical breach and the application was only issued after the respondent had already remedied the breach. In the circumstances, it would not have been appropriate to make an order for costs against the respondent.

Name: Mr L Rahman **Date:** 14/10/19

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).