



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

Case Reference : **LON/00BC/HMK/2019/0022**

Property : **27A, Wanstead Park Road, Ilford, IG1
3TG**

Applicants : **Ms Aisha Kulsoom Miah
Mr Farhan Farooq**

Representative : **In Person**

Respondents : **Mr M and Mrs N Gulliver**

Representative : **In Person**

Type of Application : **Application for an order for costs under
Rule 13 of the Tribunal Procedure
(First-tier Tribunal) (Property
Chamber) Rules 2013**

Tribunal Member : **Mrs H C Bowers
Mr M Cairns MCIEH**

Date of Decision : **31 October 2019**

DECISION

The Tribunal makes an order under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Applicants (Ms Aisha Kulsoom Miah and Mr Farhan Farooq) pay to the Respondents (Marc Gulliver and Nkem Gulliver) the costs of £765.02. This payment should be made within 28 days from the date of this decision.

The Application

1. The Tribunal made a determination on an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a Rent Repayment Order (RRO) in respect of 27A Wanstead Park Road, Ilford, IG1 3TG (‘the flat’). The decision was dated 25 July 2019. The Tribunal received a letter dated 29 July 2019 from the Respondents in that case, Mr M and Mrs N Gulliver. By that letter the Respondents sought an order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules). The relevant extract from the Rules is provided in the Appendix below.
2. The Tribunal issued Directions dated 13 August 2019 that set out the steps that the parties should take to prepare for this case. It is clear that the Applicants had received the Directions as Mr Farooq emailed the Tribunal on 19 August 2019 confirming receipt of the Tribunal’s correspondence enclosing the Directions.
3. The Directions provided that the case should be considered on the basis of the papers submitted by the parties, unless either party requested a hearing. There was no request for a hearing.
4. The Respondents provided a bundle. However, the Applicants did not comply with Directions and the Tribunal received no written submissions from them.
5. As there was no request for a hearing the Tribunal considered this matter on the papers in the week commencing 21 October 2019.

Background

6. The Respondents are seeking costs from the Applicants of £1,657.02 (£1,500 for Mr Gulliver’s time – 6 days at £250 per day and the following disbursements - train tickets to attend the hearing £43.40; Post Office costs of £26.40; printing costs of £44.98; photographic evidence printing £12.60 and stationary of £29.64). The application included copies of all the invoices for the disbursements.

The Submissions and Evidence

Respondents’ Case:

7. In the application for an order for costs, the Respondents state that in making the original application the Applicants had signed a statement of truth, but the application had contained a number of false statements. In particular, it is claimed that the Applicants were aware that the correct licence was in place. Reference was made to an email that was sent from the

managing agent to Mr Farooq on 14 January 2019 that explained that the Landlords had applied for a licence before the commencement of the tenancy. This email was several months prior to the substantive application. The Applicants had no raised any concerns about the licensing of the property in the first instance and only raised the issue once rental payments had been missed and the alleged illegal sub-letting had been exposed.

8. The Applicants had lied when they stated that they had been forced to vacate the property. The reality was that the Applicants had left on their own accord and without notice. Reference is made to a letter from the letting agents, Haart dated 7 June 2019. That described how they were not involved in the day to day management but had been aware that there were discussions regarding early termination, but no formal communication was received regarding the termination. They had been informed by the Respondents that the Applicants had moved out on 18 January 2019. It is explained that following rental arrears and the sub-letting the Respondents had taken steps to instruct solicitors to commence eviction proceedings. It was at that stage the Applicants vacated and it is stated that there was no evidence that there was a forced eviction.
9. It is claimed that the Applicants lied in their description of the altercation with Mr Triphook. Mr Triphook was acting on his own accord and was not a representative of the Respondents. The Applicants had also lied in respect of their claim that no notice had been given of the Landlords' inspection on 22 December 2018 and there had been a false allegation of a theft. The Tribunal's findings on these issues had been set out in the main decision.
10. It is claimed that the application was made with the intention of revenge rather than any respect for the legal process. The Applicants had harassed the Respondents by reporting the Respondents to the Local Housing Authority and the Metropolitan Police but there had been no evidence, follow up or any signed witness statements.
11. The Applicants had failed to comply with the Tribunal's Directions and had proceeded with the case even though the Applicants had received confirmation from London Borough of Redbridge that the Respondents had followed the correct process in respect of licencing. As a consequence, the Respondents had incurred various costs and had taken time away from work in dealing with the case.
12. It is submitted that the allegations made by the Applicants could have resulted in a refusal by the Local Housing Authority to give a licence and this could have had an impact on the Respondents' financial circumstances. Likewise, the false allegations about the theft may have resulted in serious implications.

Applicants' Case:

13. As mentioned previously the Tribunal received no written representations from the Applicants.

Our Determination

The Tribunal is mindful of the decision in Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT 290 (LC) and the three-stage approach to be taken. The first stage is to consider whether there has been any unreasonable conduct on the part of the Respondent. The Tribunal needs to consider whether the steps taken by the Applicants in bringing and conducting the application were unreasonable, but this needs to be considered in the context that they were litigants in person.

14. The Tribunal has concerns about the motives in bringing the application. It is noted that the Applicants took the relatively unusual step of making enquiries about the licensing status of the property just prior to the commencement of the tenancy (and just before the Respondents had started the application process). However, they did not address this with the Respondents or the agents prior to the tenancy and despite any potential anxieties they still entered into the tenancy agreement. The question of whether the property was licenced only seemed to become an issue when the Applicants had accrued rent arrears and even at that stage the agents had informed them that the Respondents had started the licensing process prior to the tenancy. It is also noted that 19 days prior to the hearing, the Applicants had been informed by the Local Housing Authority that the Respondents had properly started the licensing process prior to the tenancy and even with this knowledge they did not withdraw or amend their claim.
15. The Tribunal found no evidence in respect of the allegations of harassment and eviction. Although the Tribunal's decision on those points did find for the Applicants, that in itself is not evidence of unreasonable behaviour as it may have been the Applicants' perception of what had occurred. However, it is the Tribunal's opinion that all the allegations with the absence of any evidence and in the context of the Applicants having knowledge that the licencing process had been properly commenced, amounted to unreasonable behaviour in bringing the application.
16. The Tribunal also noted that in the conduct of the case, that the Applicants had failed to comply with Directions and had failed to attend the hearing or at that time provide any explanation as to why they could not attend. Again, the Tribunal finds that this is unreasonable behaviour. Overall the Tribunal finds that there is no reasonable explanation as to why the Applicants had brought the application or in respect of their conduct in the case.
17. Moving to the next stage, although it is not necessary to consider whether there was a causal link, we find that given that the Applicants were unreasonable in bringing the application, then any costs to have been

reasonably incurred by the Respondents are within the scope of what could be recoverable from the Applicants.

18. As to what costs should be awarded, it is noted that the Respondents are litigants in person and the usual hourly rate to be applied following the Civil Procedure Rules is £19 per hour. The Respondents claim six working days, presumably with eight hours to each day, totalling 48 hours. Whilst it is appreciated that there would have been some time in preparing the case and attending the hearing, the Tribunal considers that on a summary basis that this should have equated to approximately 4 days, namely 32 hours. At a charge out rate of £19 per hour this would amount to £608.00 for the time that should have been reasonably incurred by the Respondents. The Tribunal allows all the disbursements of £157.02 to be recoverable from the Applicants. Therefore, the Tribunal makes an order under Rule 13 that the Applicants should pay to the Respondents the sum of £765.02. This sum should be paid within 28 days of the date of this decision.

Mrs H C Bowers

31 October 2019

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.

Appendix

Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Rule 13.—(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;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b)notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a)summary assessment by the Tribunal;

(b)agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c)detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(1), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(2) and the County Court (Interest on Judgment Debts) Order 1991(3) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.