



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

Case Reference : **LON/00AC/HMF/2019/0042**

Property : **30B Market Place, Falloden Way,
London NW11 6JJ**

Applicant : **Ewa Giedziun**

Representative : **Joobet Ltd**

Respondent : **Mr Eric Elbaz, director**

Type of Application : **Rent Repayment Order**

Tribunal : **Judge Nicol**

Date of Decision : **12th March 2020**

DECISION ON COSTS APPLICATION

The Tribunal orders the Applicant to pay the Respondent's costs in the sum of £300 under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the reasons set out below.

Background

1. On 13th December 2019 the Tribunal dismissed the Applicant's application for a Rent Repayment Order in respect of her former home at 30B Market Place, Falloden Way, London NW11 6JJ. On 13th January 2020 the Tribunal refused the Applicant's application for that decision to be set aside or reviewed or for permission to appeal.

2. By letter dated 21st January 2020, Mr Elbaz, on behalf of the Respondent, applied for an order that the Applicant pay the Respondent's costs of the proceedings.
3. On 27th January 2020 the Tribunal issued directions for the determination of the costs application. The Respondent duly provided a statement of case but the Applicant has failed to provide anything, in accordance with the directions or at all. The Tribunal is satisfied that the Applicant has had a full opportunity to put her case and has proceeded to determine the application on the documents before it.

The relevant law

4. The relevant parts of rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 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—
 - (iii) a leasehold case; ...
5. 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.

6. 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

7. The first issue is to identify the ways in which it is alleged that the Applicant has acted unreasonably in the sense described above.
8. In paragraph 5 of the decision of 13th December 2019, the Tribunal explained why the Applicant was wrong to allege that the Respondent had committed offences under sections 30, 32 and 95 of the Housing Act 2004. The Tribunal is not satisfied that the Applicant did this deliberately rather than being mistaken as to the application of the law. Therefore, the Tribunal is further not satisfied that this was an example of unreasonable behaviour.
9. In the rest of the decision, the Tribunal sets out the Applicant's conduct during the tenancy and, in paragraph 44, describes that conduct as a sufficient basis in itself for refusing to make a rent repayment order. The Applicant's conduct included:
 - (a) Introducing new allegations for the first time at the Tribunal hearing.
 - (b) Filming the Respondent or his witnesses without their consent, including at the Tribunal after Judge Nicol had specifically instructed her not to.
 - (c) Failing to provide the Respondent with access to videos on which she relied until pushed by the Tribunal.
 - (d) Flooding the bathroom floor and then blaming it on other tenants.
 - (e) Refusing to co-operate with the Respondent's reasonable requests for temporary access to her room key, ID or references.
 - (f) Unnecessarily changing the lock to her room and then withholding a large amount from her rent allegedly representing the cost of the work.
 - (g) Alleging that the Respondent's actions in relation to the key, ID and references amounted to criminal conduct, namely harassment designed to get her to leave, when they came nowhere close to that and, indeed, were mostly entirely reasonable.

- (h) Putting forward supposed justifications for her conduct which had no basis in fact or evidence.
 - (i) Making racist remarks aimed at other tenants and anti-semitic remarks aimed at the Respondent.
 - (j) Alleging that the Respondent was in breach of the tenancy deposit requirements when his failure to protect her deposit was at her request.
 - (k) Alleging that the Respondent was having an extra-marital affair with one of the tenants.
 - (l) Alleging that she was the victim of harassment and racism when, in fact, she was the sole perpetrator.
 - (m) Pressing her position on all the above matters without any evidence to support it.
10. The Tribunal concludes that the Applicant acted unreasonably in the sense that there was no rational explanation for the Applicant's conduct other than that it was designed to harass the other side rather than advance the resolution of the case.
11. Therefore, the Applicant should pay the Respondent's reasonable legal costs in accordance with rule 13. The amount of the costs may be determined by summary assessment by the Tribunal under rule 13(7)(a).
12. The Respondent set out a summary of costs totalling £1,281:
- (a) The travel, stationery and photocopying costs total £100. This seems reasonable to the Tribunal and is allowed in full.
 - (b) The costs include lunch for the Respondent and his witnesses but they would all have had lunch whether or not they had attended the hearing. There is no evidence that the £56 claimed is more than they would otherwise have spent. This item is not allowed.
 - (c) The Respondent claims sums for loss of work totalling £1,125. Unfortunately, this has not been supported by any evidence – Mr Elbaz doesn't even say whose work time is being claimed for. Even if he spent the time claimed in preparing the case and attending the hearing, that would not necessarily have resulted in the loss of any remunerative work. In the circumstances, the Tribunal cannot allow more than £200 for this item.
13. Therefore, the total amount of costs allowed is £300.

Name: NK Nicol

Date: 12th March 2020