



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

Case reference : **LON/00AS/HMB/2019/0005**

HMCTS code : **P: PAPER**

Property : **82 Torrington Road, Ruislip**

Applicant : **Mrs A Byrne and Mr C Byrne**

Representative : **In person**

Respondent : **Mr R H C Preston, acting by his
attorneys Mrs A Poulton and Mr R
Poulton**

Representative : **The Sethi Partnership, solicitors**

Type of application : **Application for costs**

Tribunal members : **Judge Pittaway
Mr M Cairns MCIEH**

Date of decision : **3 September 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the tribunal considered that the application might be determined by summary assessment, pursuant to rule 13(7)(a), without a hearing, on the basis of the written submissions from the parties unless any party requested a hearing and neither party did. Submissions were received by e mail from both parties,

The documents that the tribunal referred to are in a bundle of 216 pages received from the respondent, the contents of which the tribunal has noted. The decisions made and reasons are set out below.

Decisions of the tribunal

1. The tribunal make no order for costs under rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
2. The tribunal do not set aside or re-make the whole or any part of their decision under rule 51 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
3. The tribunal make no order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Preliminary

4. By a letter dated 14 April 2020 and sent to the tribunal and to the applicants by e mail the respondent seeks an order for costs under section 29(4) Tribunal Courts and Enforcement Act 2007 (the '**2007 Act**') and rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**The Rules**").
5. Rule 13(6) of the Rules provides that the tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations.
6. Accordingly, by directions dated 18 May 2020 provision was made for the respondent to provide a statement setting out his case with legal submissions and full details of the costs being sought and for the applicants to provide a statement in response.
7. In particular, the respondent was asked to specify why he alleged that the applicants had acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke the Rule, dealing with the issues identified in the Upper Tribunal decision in *Willow*

Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC) (**‘Willow Court case’**), with particular reference to the three stages that the tribunal will need to go through, before making an order under Rule 13.

8. On 25 May 2020 the applicants made an application to the tribunal for it to amend its decision under rule 50 of the Rules, which was refused. On 27 June 2020 the applicants asked the tribunal to consider an application to set aside its decision in whole or part under rule 51(2)(d) of the Rules, expanded on 29 June to refer to rules 51(2)(a) and (b) as well.

Reasons for the tribunal’s decision

9. The power to make an order for costs under Rule 13 (1) (a) is for wasted costs under section 29(4) of the 2007 Act. That section is concerned with the conduct of a ‘legal or other representative’ of a party. The applicants were not legally represented and had no other representative so that it is not appropriate for the respondent to seek costs under Rule 13 (1) (a).
10. The applicants applied for the tribunal’s decision to be set aside under rule 51(2)(d) of the Rules on 27 June 2020. On 29 June they requested that the tribunal consider their request under rule 51 to be under rule 51(2) (a) and (b) as well. Neither of these requests was made within 28 days of the date on which the Tribunal sent its decision to the parties as required by rule 51(3). Even if the tribunal was minded to accept that their application, made on 25 May in relation to rule 50, was actually intended to be an application in relation to rule 51, this would still have been out-of-time. Further, the tribunal does not consider that there was any procedural irregularity in the proceedings and it would not be in the interests of justice for the decision to be set aside or re-made in whole or part.
11. The applicant tenants may have failed in the proceedings the subject of this cost application but that does not entitle the landlord to recover his costs under Rule 13 (1) (b). If it did there would be a risk that the tribunal would be turned into a cost shifting jurisdiction. The tribunal was created as a no-cost jurisdiction to enable both landlords and tenants to have their disputes determined without being at risk as to costs, save where a party behaves unreasonably. Both landlords and tenants are entitled to the benefit of that protection.
12. Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case. In reaching its decision in relation to the application of rule 13(1)(b) to this application the tribunal has had regard to the guidance set out in the Upper Tribunal decision in the Willow Court case, in particular that Rule 13 costs applications ‘*should not be allowed to become major disputes in their own right*’ and that, ‘*a decision to award costs need not be lengthy and the underlying dispute can be taken as read.*’

13. Following the Willow Court case the first stage that the tribunal is required to consider is whether the person has acted unreasonably. If it finds that a person has acted unreasonably it is then required to consider, in light of that unreasonable conduct, whether it ought to make an order for costs. If the tribunal decides that it should make an order for costs it then needs to decide the terms of the order.
14. The respondent alleges that the applicants acted unreasonably in persisting with their application after the respondent had pointed out to them that they were making their application in respect of a period for which the tribunal did not have jurisdiction. He also alleges that it was unreasonable to persist with an application which had criminal offence implications for the respondent.
15. The applicant tenants were entitled to bring their case to the tribunal. They believed that they were bringing a meritorious application within the time limits prescribed by section 41(2) Housing and Planning Act 2016. They were wrong but that of itself does not justify a costs order under Rule 13. They did not disobey any tribunal directions or procedures and there is no criticism of their conduct at the hearing. The tribunal's decision was not a foregone conclusion: it turned on the evidence presented to it on the day of the hearing.
16. It is not unreasonable for the applicants not to accept that their application was out-of-time when told so by the respondent's solicitor. They were unrepresented but there is no requirement that they should have legal representation. Lack of representation does not make their conduct unreasonable. And, as recognised in paragraph 25 of the Willow Court case, a lay person unfamiliar with substantive law may fail properly to appreciate the strengths or weaknesses of their own or their opponent's case. In the circumstances the tribunal do not find that they acted unreasonably in not accepting that their application was being made out of time. The criminal offence implications of the tribunal finding for the applicants does not make of itself make bringing the application unreasonable.
17. Paragraph 24 of the Willow Court case states that '*An assessment of whether behaviour is unreasonable requires a value judgement 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.....*' *Unreasonable "conduct includes conduct which is vexatious and designed to harass the other side rather than advance the resolution of the case."* The tribunal recognises that for all parties the case was fraught and emotional but do not consider that the applicants' conduct was designed to harass the other side.
18. The tribunal is satisfied that the actions of the applicants in bringing and continuing the proceedings did not amount to unreasonable behaviour, and therefore does not order payment of costs under rule 13 (1)(b) for unreasonable behaviour on their part.

Name: Judge Pittaway

Date: 3 September 2020

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).