



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

<b>Case Reference</b>	:	CHI/43UG/HMF/2021/0001
<b>Property</b>	:	77 Park Avenue Egham Surrey TW20 8HL
<b>Applicant</b>	:	Dawid Olesinski
<b>Respondent</b>	:	Bong Ki Lee
<b>Representative</b>	:	Christopher Jacobs (Counsel)
<b>Type of Application</b>	:	Application for a rent repayment order by Tenant. Sections 40, 41, 42 43 & 45 Housing and Planning Act 2016 (the Act)
<b>Tribunal Members</b>	:	Judge C A Rai (Chairman) Mr M F J Donaldson FRICS MCI Arb MAE Mrs Juliet Playfair
<b>Date type and venue of Hearing</b>	:	6 May 2021 Video CVP (remote)
<b>Date of Decision</b>	:	28 May 2021

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**DECISION**

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1. he Tribunal dismissed the application. T
2. he Tribunal rejected the Respondent's Application for an order for costs under Rule 13(2) of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** (the Rules). T
3. he reasons for its decisions are set out below. T

## **Background**

4. The Applicant was the tenant of a dwelling located at 77 Park Avenue Egham Surrey TW20 8HL (the Property).
5. He had rented a bedsitting room with a kitchenette and shared shower and WC facilities located within the garden of the Property from the Respondent between November 2018 and November 2020. The tenancy agreement produced to the Tribunal is dated 11 November 2018 and was for a term of 12 months from 10 November 2018. The Applicant told the Tribunal that he returned the keys of the property to the Respondent on 13 November 2020.
6. The Applicant applied to the Tribunal on 6 January 2021 for a Rent Repayment Order, (the Application) The grounds of the Application were not entirely clear. In the application form he referred to “living in a wooden shed attached to a small building”. He also stated that there were 7-8 people living at the same address and identified faults with regard to insufficient refuse disposal facilities and the absence of gas and electricity checks. He suggested that the Landlord had threatened another tenant. He mentioned an investigation of the Property by Runnymede Council, the Local Housing Authority (“LHA”) and said that the Respondent was unable to produce an HMO licence, claiming that he did not need one.
7. Mr D. Banfield FRICS, Regional Surveyor, issued Directions dated 27 January 2021 (the January Directions) requiring the Applicant to send the Tribunal and Respondent a signed dated statement of truth setting out the amount of rent claimed, the period for which it was claimed and the grounds for the application together with proof of payment of rent and if appropriate written evidence from the LHA regarding the alleged offence.
8. The January Directions contained an explanation of the Tribunal’s jurisdiction to make a Rent Repayment Order and referred to the relevant sections of the Act relating to the offences which a tenant had to show that a landlord had committed. The Applicant was directed to provide a copy of the tenancy agreement and other documents on which he wished to rely.
9. The Respondent was urged to seek independent legal advice provide a statement of truth responding to the Applicant’s case and supply evidence of any benefit payments and rent received together with evidence of his financial circumstances and payments made by him relating to the property for the period of the claim.
10. The Applicant failed to comply with the January Directions within the stated time limits which resulted in the Tribunal sending notice, dated 15 February 2021, to both parties that it was minded to strike out the application.

11. Further Directions were issued by Mr D. Banfield on 24 February 2021 in response to an acknowledgement by the Applicant that he had mistakenly failed to comply with the January Directions because he had not understood that he had to supply a statement and further documents. He was granted an extension of time to comply with the Tribunal's Directions.
12. Bundles were received from the parties which the Tribunal's office consolidated into a single hearing bundle. On the day before the hearing the Respondent's solicitor submitted a skeleton argument (the "skeleton") from Mr Jacobs of Counsel and a statement of costs in form N260.

### **The Hearing**

13. This was a remote hearing, not objected to by the parties. The form of remote hearing was Video (V). A face to face hearing was not held because it was not practical and all issues could be determined in a remote hearing. The documents to which we were referred are contained in a single electronic bundle "B" (162 pages), the skeleton, "S" (6 pages) and a statement of costs, "C" (5 pages). Following the Hearing the Applicant submitted a two page statement on the costs application "AC" and the Respondent submitted a three page statement "RC". References in this decision in square brackets are to the pages in those bundles.
14. The Applicant represented himself and the Respondent, was represented by his Counsel, Mr Jacobs. Both the Respondent and his solicitor Mr Jung attended remotely.
15. Prior to the commencement of the formal hearing Mr Jacobs applied for the application be struck out under Rule 9 of the Rules on the ground that the Applicant had conceded, in his statements, that he cannot produce any evidence that the Respondent has committed an offence that would enable the Tribunal to decide to make a Rent Repayment Order.
16. In response to an enquiry from the Tribunal as to why the Respondent had not applied to strike out the Application before the Hearing Mr Jacobs said that he had only been instructed by the Respondent on 4 May 2021.
17. Whilst the Tribunal acknowledged the Respondent's application it suggested to Mr Jacobs that the Respondent had ample opportunity to make an application to strike out much sooner and following receipt of the Applicant's first statement dated 10 March 2021. For that reason, it would not strike out the Application prior to the Hearing.
18. Mr Jacobs said that his application was made because the Applicant has submitted no evidence which would enable the Tribunal to find that the Respondent has committed a relevant offence under the Act. He said he has set out his reasoning in the skeleton. He suggested that it may be helpful for him to briefly restate those submissions to enable the Applicant to respond to these when presenting his case.

19. The Tribunal explained to the Applicant why Mr Jacobs had made the strike out application and asked him to confirm whether he had had an opportunity to read the skeleton and if he understood it. It suggested to him that it may assist his own submissions if the Tribunal agreed to Mr Jacobs making the Respondent's submissions first. The Applicant agreed to the Hearing proceeding in that order.

### **Respondent's case**

20. Mr Jacobs submitted that the Applicant had neither shown nor could show that the Respondent, as his landlord, had committed any one of the seven offences listed in section 40 of the Act. He referred to each specifically but acknowledged that the Applicant had referred to three possible offences, the first being harassment referred to in 40 as being the unlawful eviction or harassment of occupiers contrary to section 1 of the Protection from Eviction Act 1977 (PEA).
21. The Applicant's allegation of harassment referred to an exchange of text messages between the parties which took place after the Applicant had vacated the Property. Mr Jacobs said that could never have constituted evidence of an offence under the PEA.
22. Although the Applicant had also referred to another incident, that involved an alleged threat to another tenant so could not be relevant to this application.
23. The second alleged offence was that the Respondent had no HMO Licence as required under the Act. However, the Applicant's first statement referred to an email from the LHA stating that following an inspection it was satisfied that no licence was required because the letting units were distinct and there was no evidence that five or more unrelated persons shared facilities. [B page 28]. That email which is dated 9 March 2021, was received by him some time after he had made the Application.
24. Thirdly the Applicant alleged that the Respondent failed to comply with an Improvement Notice. However, the Improvement Notice disclosed in the Bundle was served on the Respondent in January 2021 by which time the Applicant was no longer a tenant of any part of the Property.
25. In summary Mr Jacobs said that the Applicant has produced no evidence of allegations of violence or threats made against him by the Respondent. There was no suggestion of harassment by the Respondent during his occupation. Evidence relating to failure to comply with an Improvement Notice is not relevant because he cannot demonstrate any failure to comply with it by the Respondent during the tenancy. None of the other offences are relevant and the references to the Respondent not obtaining an HMO are incorrect because the LHA has confirmed this was not necessary. For those reasons there is no evidence at all that the Respondent has committed any of the offences listed in section 40 of the Act.

26. Mr Jacobs categorised the Applicant's claim as a disputed "repairs claim" which is not within the Tribunal's jurisdiction under the Application.

### **Applicant's case**

27. The Applicant confirmed that he understood Mr Jacobs submissions. He told the Tribunal that he had not been "exactly aware" of the seven offences listed in section 40 of the Act or what evidence he needed to provide to the Tribunal to prove that an offence had been committed by the Respondent.
28. He now understood why the exchange of text messages between himself and the Respondent, which took place after he left the Property, is not evidence which could be used to support his application.
29. He had not understood until it was explained to him during the Hearing that he would have to provide evidence that the Respondent had failed to comply with an Improvement Notice during his tenancy.
30. The Tribunal had explained that although the LHA served an Improvement Notice on the Respondent in December 2020 the operative date stated was 15 January 2021 [B page 37]. The Notice gave the Respondent three months within which to comply. The earliest date on which an offence could be committed was 16 April 2021. The Application is dated 6 January 2021 which is before the Improvement Notice became operative.
31. The Applicant referred to the many difficulties he had encountered with the Respondent's management and letting of the Property which he had attributed to a desire, on the part of the Respondent to maximise income. He said he had made the Application to highlight those issues and because the Property was not fit for purpose. He acknowledged to the Tribunal that he was unable to show that the Respondent had committed any offence listed in the Act during his tenancy.

### **Costs**

32. In his skeleton Mr Jacobs applied for an award of costs under Rule 13 of the Tribunal Rules. The Tribunal explained that whilst it would consider the application it must afford the Applicant an opportunity to respond. The Applicant stated he had not received the skeleton until late on the preceding day. The Tribunal suggested to Mr Jacobs that the skeleton argument made no reference to the guidance given by the Upper Tribunal with regard to an award of costs under Rule 13 in the case of **Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC)** (Willow Court). Mr Jacobs offered to briefly amend his submissions to refer to Willow Court without charging the Respondent additional fees.
33. The Tribunal told both parties it would make directions regarding submissions on costs as soon as possible after the Hearing. Its decision would deal with both applications.

34. Directions dated 6 May 2021 were issued by the Tribunal and gave the Respondent until 13 May 2021 to make submissions on costs which addressed the guidance in Willow Court and the Applicant until 20 May 2021 to respond generally to that application.

### **The Law**

35. The relevant provisions of the Housing Act 2016 are listed in the January Directions. The Respondent has referred to the Rules, which apply to proceedings before this tribunal. Extracts from Rule 13 are set out below.

**13. (1)** The Tribunal may make an order in respect of costs only-

(a) .....

(b) if a person has acted unreasonably in bringing, defending or conduction proceedings in-

(i) .....

(ii) a residential property case, or

(iii) .....

**13. (4)** A person making an application 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 a summary assessment of costs by the Tribunal

**13. (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

### **Reasons for the Decision Rent Repayment Order**

36. During the Hearing, the Applicant conceded he had not fully understood that to succeed with the Application he had to show that the Respondent had committed an offence listed in clause 40 of the Act during the period of his tenancy. He had discovered that the Respondent did not need an HMO licence for the Property after the tenancy had ended.

37. Neither of his two statements contains any evidence of an offence, listed in clause 40 of the Act having been committed by the Respondent.

38. The Tribunal accepted as indeed was acknowledged by the Applicant that the alleged harassment, even if proven, could not be construed as harassment within the definition in the PEA which refers to harassment of a tenant with a view to eviction during the tenancy.

39. In the case of the other two alleged offences, it was agreed that no HMO was required for the Property albeit that was not established by the Applicant until March 2021. The Respondent was not served with an Improvement Notice which related to the Property during the tenancy.
40. The Application is therefore dismissed.

### **Costs**

41. The Tribunal has discretion to make an award of costs under Rule 13(1)(b) if it finds that a party has acted unreasonably in bringing, defending or conducting proceedings.
42. The Respondent made an application for Rule 13 costs formulated by Mr Jacobs and encapsulated in a single paragraph in the skeleton. He said the Applicant acted unreasonably in bringing defending or conducting proceedings in a residential property case. No additional reasons in support were given save and except that Mr Jacobs relied upon his earlier submissions that the Applicant had not provided any valid grounds to support his application.
43. Given the admissions made by the Applicant during the Hearing it was unnecessary for the Tribunal to consider the full details of either party's statements. It has noted that the Applicant, in his second statement dated 10 April 2021 [B page 155] disputed many of the rebuttals by the Respondent from which the Tribunal concluded that there was no agreement between the parties as to the facts which led to this dispute.
44. Following the Hearing Mr Jacobs submitted a further three page submission dealing with **Willow Court**. He said that it was self-evident that lack of knowledge on the part of the Applicant was not a reasonable explanation for his conduct. He suggested that there was plenty of available guidance which would have enabled the Applicant to better understand what he needed to establish for his application to succeed.
45. Mr Jacobs also submitted that, in his evidence, the Applicant had sought to impugn the character of the Respondent from which he concluded that "the Applicant's motivation was vexatious and motivated by feelings of antipathy towards the Respondent" [RC page 2].
46. He suggested that if the Tribunal accepted that the Applicant has acted unreasonably then in deciding whether to exercise its discretion it should consider the approach cited in the **Cancino v. Secretary of State for the Home Department [2014] UKFTT 00059 (IAC)** (cited at paragraph 34 of **Willow Court**) which considered the balance to be struck when considering an application for costs against unrepresented parties and he repeated the quotation from that case referred to by Martin Rodger QC Deputy President of the Upper Tribunal in **Willow Court**.
47. The Applicant submitted a brief statement in response to the Respondent's application for costs in which he acknowledged that until

the Hearing he had misunderstood the criteria which applied to HMO licensing.

48. The Applicant denied acting unreasonably within the definition referred to in **Willow Court** in which case the Upper Tribunal had followed the analysis in **Ridehalgh v Horsfield [1994] Chancery 205**. He said he had never intended to be vexatious or to harass the Respondent.
49. He also referred to paragraph 25 of **Willow Court** in which Martin Rodger had said that whilst lack of preparation might be treated as unreasonable for a professional advisor it was not so for a lay person unfamiliar with the law or tribunal procedure. Neither is it evidence of unreasonable behaviour that such a person might fail to appreciate the strengths of his opponent's case and the weakness of his own case.
50. The Applicant also stated that the Respondent had not challenged the Application until less than 48 hours before the case (referring to the date he was advised that the Respondent was being represented by Mr Jacobs at the Hearing) which had resulted in his receiving the skeleton and costs schedule 24 hours before the Hearing.
51. Having considered the Respondent's initial submission and both parties post Hearing submissions the Tribunal finds that the Applicant has not acted unreasonably. It does not accept the Respondent's submission that he was vexatious in submitting the Application.
52. During the Hearing, the Applicant admitted that he had not fully understood that he needed to prove that an offence listed in Section 40 of the Act had been committed by the Respondent.
53. He said that he and other tenants at the Property had similar concerns about the problems each encountered at the Property. The Applicant had engaged the LHA to try to address their concerns.
54. It seems likely to the Tribunal that the LHA would have had to inspect the Property before it could respond to the Applicant. The inspection resulted in the issue of the Improvement Notice but that occurred after the end of the Applicant's tenancy. The Respondent's evidence disclosed that he carried out works to the Property soon after the Applicant's tenancy ended.
55. The Respondent replied to the Application and addressed the matters raised in the Applicant's first statement (dated 10 March 2021) in his statement dated 31 March 2021 [B page 62]. Had the Respondent believed or been advised that the Applicant had no grounds on which to make the Application he could and should have referred to this in his statement but he did not.
56. The Respondent obtained legal advice, evidenced by the invoice from his solicitors, Murray Hay dated 19 March 2021, for a one hour consultation exhibited to his statement [B page 154]. The Tribunal does not know if he was advised that the Applicant had identified no



grounds which supported the Application, and if he was so advised why, he did not refer to that in his statement.

57. Mr Jacobs told the Tribunal that he was instructed on 4 May 2021, two days before the Hearing.
58. The Tribunal has accepted that the Applicant did not fully understand what he would have had to have proved for the Application to succeed. Had he understood the January Directions, it is possible that he might have considered the guidance in those Directions more carefully. The same criticism applies equally to the Respondent. He sought legal advice in March 2021, before he submitted his statement of fact. That should have enabled him to understand the guidance contained in those Directions and helped him submit a statement which took account of it.
59. The Tribunal does not accept that the Applicant's lack of understanding of what he needed to prove for his Application to succeed demonstrate that he acted unreasonably, simply by making the Application. Furthermore, when he received information that did not support the Application (from the LHA), he disclosed it to the Respondent which the Tribunal finds demonstrated that he has acted properly and not unreasonably.
60. Since the Tribunal does not find that there is any evidence before it of unreasonable behaviour on the part of the Applicant the Respondent's application for costs is rejected.

**Judge C A Rai**  
Chairman

## **Appeals**

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.