



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

Case Reference : **LON/00AB/HIN/2022/0028**

HMCTS : **P: PAPERREMOTE**

Property : **93 Charlton Crescent, Barking,
Essex, IG11 0NW**

Applicant : **Tajudeen Adebayo**

Representative : **In person**

Respondent : **London Borough of Barking &
Dagenham**

Representative : **Paul Mahoney (Housing
Enforcement Officer)**

Type of Application : **Costs – Rule 13**

Tribunal Member : **Judge Robert Latham**

Venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 September 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was P:PAPER REMOTE. The Directions provided for the application to be determined on the papers unless any party requested a hearing. No party has requested a hearing. The tribunal has had regard to the Bundle of Documents filed by the Applicant (24 pages) and the Respondent's witness statement (30 pages). The Tribunal has also had regard to the extensive papers relating to the substantive appeal.

Decision

The Tribunal does not make any order for costs against the Respondent pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The Application

1. The property at 93 Charlton Crescent is a two bedroom first floor flat ("the Flat"). On 24 November 2022, the Respondent served an Improvement Notice pursuant to the provisions of sections 11 and 12 of the Housing Act 2004. On 12 December 2022, the Applicant issued this substantive application seeking to appeal against this order. On 24 February 2023, the Tribunal gave Directions and set the matter down for hearing on 15 June. Pursuant to these Directions both parties served their respective statements of case. The Applicant filed a Bundle of 137 pages and the Respondent a Bundle of 214 pages. The Respondent's Bundle included a detailed witness statement from Mr Paul Murphy, a housing enforcement officer employed by the Respondent .
2. On 28 April 2023, the Respondent revoked the Improvement Notice and cancelled the charges which had been demanded in respect of this. The Respondent asserts that they withdrew the Noticed because of the works that had been executed by the Applicant. On 28 April, the Respondent applied for the appeal to be dismissed.
3. On 7 June 2023, the Applicant applied for an order for costs against the Respondent. On 9 June, Judge Carr vacated the hearing fixed for 15 June and gave Directions for the determination of the application for costs. Pursuant to these Directions, the parties have filed their respective statements of case. The Applicant has filed a Bundle of Documents with the papers on which the parties seek to rely. He did not include a further witness statement from Mr Murphy which extends to 30 pages with exhibits.
4. The Applicant seeks to recover the following costs:

(i) Tribunal Fees of £300; and

(ii) Legal fees of £210 relating to legal advice in respect of the application.

The Law

5. This Tribunal is normally a no costs jurisdiction. The limited circumstances in which costs can be awarded as set out in rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Two provisions apply in this case:

(i) Rule 13(2) permits a tribunal to make an order requiring a party to reimburse any other party the whole or part of any tribunal fees paid by that party. The Applicant seeks a refund of the tribunal fees of £300 which he has paid. The Tribunal has a general discretion as to what it considers to be just and equitable. In the current case, the Tribunal must consider the factual situation when the application was issued. Had the Respondent been justified in serving the Improvement Notice on 24 November 2022? The Respondent contends that it was and that it only withdrew the Notice in the light of the works which were subsequently executed by the Applicant. But for those works, the application would have failed.

(ii) Rule 13(1)(b) only permits a tribunal to make a penal costs order in respect of the legal costs of £210 if satisfied that the Respondent has acted unreasonably in "defending or conduction proceedings". In *Willow Court Management Co v Alexander* [2016] UKUT 290 (LC), the Upper Tribunal set out the high threshold that must be met before such an order can be made. Unreasonable conduct includes conduct that is vexatious and is designed to harass the other side rather than advance the resolution of the case. The initial question which the Tribunal must ask itself, is whether the Respondent has acted unreasonably.

6. The Applicant applies for his costs on the ground that the Respondent issued the improvement notice prematurely. Any disrepair could have been resolved without the need for statutory action. The Applicant suggests that Mr Mahoney has acted unlawfully, demonstrated bias and abused his position of power. He wrongly advised the tenants not to move. He condoned their criminal acts in filing fraudulent council tax returns. The Applicant suggests that the health hazards that Mr Mahoney had identified were no more than "hygiene issues" which were the responsibility of the tenants. Mr Mahoney had acted unfairly by not inviting the Applicant to be present when the Improvement Notice was issued. The Respondent only withdrew the Improvement Notice because it recognised that it should not have been served.

The Background

7. The Respondent have introduced a Selective Licencing Scheme. On 3 November 2020, the Respondent licenced the Flat for a maximum of 8 people living in a single household. On 1 May 2018, the Applicant let the Flat to Ms Margaret Omotoyinbo and Mr Akingbade Sanni at a rent of £1,000 per month.
8. In July 2021, the Respondent received a complaint from the tenants about damp and mould and a number of other defects. On 29 July, the Respondent sent an informal disrepair letter.
9. On 13 September 2022, the tenants made further complaints about their living conditions. They provided a number of photographs. On 27 September, the Respondent wrote to the Applicant asking him to remedy a number of defects within 14 days.
10. On 8 November 2022, Mr Murphy assumed responsibility for the case. He carried out a number of checks and served a Notice of Entry informing the Applicant that he would be inspecting the Flat on 14 November. On 14 November, Mr Murphy inspected the Flat and took a number of photographs. The defects related to damp and mould growth on the bedrooms, kitchen and bathroom, defective sealant around the bathtub and wash hand basin, and defective sealant around the sink. The smoke and carbon monoxide alarms were missing. On 24 November, Mr Murphy carried out a Housing Health and Safety Ratings System Assessment. He identified a number of Category 1 and 2 hazards which are listed in Schedule 1 of the Improvement Notice which he served. Schedule 2 listed the remedial works which were to be executed no later than 24 December 2022.
11. On 1 December, Mr Murphy agreed to grant an extension for the Applicant to complete the works until 24 January 2023. However, it seems that the Applicant wanted him to withdraw the Notice. On 12 December, the Applicant proceeded to issue this appeal.
12. When the Tribunal gave Directions, it urged the parties to consider mediation. Both parties were willing to do so. On 23 March 2023, the Applicant notified the Respondent that the required works had been executed. On 28 March 2023, Mr Murphy inspected the Flat. He recorded that most of the required works had been executed. However, he identified four outstanding issues. He sent the Applicant an email stating that the Respondent would revoke the Improvement Notice if these works were executed by 28 April.
13. On 27 April, the Applicant informed the Applicant that the required works had been executed and provided a number of photos to confirm this. On 28 April, the Respondent served a Notice revoking the Improvement

Notice. As a gesture of good will, Mr Murphy also waived the charges for the service of the Improvement Notice.

The Tribunal's Determination

14. The Tribunal does not accept that the Respondent acted unlawfully or unfairly in serving the Improvement Notice. A complaint had been made by the tenants. Mr Murphy investigated these complaints. He carried out the requirement assessment of risk and concluded that the service of an Improvement Notice was the appropriate action. Having identified Category 1 Hazards, he was under a duty to take action. The only lesser step was the service of a Hazard Awareness Notice. He did not consider this to be appropriate given the previous informal action that had been taken.
15. The Applicant suggests that Mr Murphy acted unlawfully by advising the tenants not to leave the property and to prevent the Applicant from executing the required works. There is no evidence to support this contention. The Applicant has suggested that he required vacant possession before the works could be executed. Mr Murphy disputes this.
16. It seems that at some stage, the tenants had notified the Respondent's council tax department that they were no longer occupying the property, despite the fact that they were still there. There is no evidence that Mr Murphy was either aware of this or condoned their action. It is quite improper for the Applicant to make such unfounded allegations. As a result of the tenant's actions, it seems that the Respondent wrongly summonsed the Applicant for non-payment of council tax. This is not relevant to the current application. There is no evidence that Mr Murphy was involved in these proceedings.
17. The Applicant suggests that Mr Mahoney had acted unfairly by not inviting him to be present when the Improvement Notice was issued. There was no requirement for Mr Mahoney to do so. It would have been most unusual had he done so.
18. The Applicant finally suggests that Respondent only withdrew the Improvement Notice because Mr Murphy recognised that it should not have been served. The Tribunal does not accept this. The Housing Act 2004 required Mr Murphy to carry out a detailed Housing Health and Safety Ratings System Assessment before deciding what statutory action is required. The Tribunal is satisfied that Mr Murphy carried out such an assessment.
19. The Tribunal is therefore satisfied that the Respondent acted properly in serving the Improvement Notice. The Respondent only withdrew the Notice because the required works had been executed. Had the works not been executed, it is most unlikely that the tribunal would have quashed the

Improvement Notice. In the light of these fundings, the Tribunal declines to make any costs order under either rule 13(2) or 13(1)(b) of the Tribunal Rules.

Judge Robert Latham
13 September 2023

ANNEX - 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.