



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

Case reference : **CHI/29UE/HIN/2023/0006**

Property : **62 Tower Street, Dover, Kent, CT17 0AW**

Applicant : **Beverley Akinbile**

Representative : **None**

Respondent : **Dover District Council**

Representative : **None**

Type of application : **Application for costs in respect of an
appeal against an Improvement Notice
Section 11 Housing Act 2004**

Tribunal member : **Judge H. Lumby**

Venue : **Paper determination**

Date of decision : **19 September 2023**

DECISION

Decisions of the tribunal

The applicant's application for costs pursuant to Rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 is refused.

The application and background

1. By way of an application received by the Tribunal on 9 February 2023 the applicant sought to appeal an Improvement Notice dated 3 February 2023.
2. The Tribunal issued directions on 16 May 2023 setting out a timetable for the progress of the case leading to the submission of the hearing bundle by 5 July 2023.
3. On 16 May 2023 the respondent served a notice of revocation pursuant to Section 16 Housing Act 2004 on the applicant on the grounds that the council considered reasonable progress was being made to mitigate the hazards identified. A copy of a letter to such effect, addressed to the applicant, and issued by post and email that day was submitted to the Tribunal also on 16 May 2023.
4. On 20 June 2023 the applicant submitted an application for costs pursuant to Rule 13 Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 relating to reimbursement of the Tribunal application fee of £100.00.
5. On 4 July 2023 the applicant submitted an application to withdraw the appeal against the Improvement Notice proceedings which has been approved by the Tribunal.
6. Directions were issued by the Tribunal on 4 July 2023 and 9 August 2023 in relation to the application for costs.

Tribunal determination

7. This has been a determination on the papers. The documents that the tribunal was referred to are the applicant's application for the costs order, two statements by Joanne Pendergast and one by Timothy John Lovell, both of the respondent in a bundle of exhibits to those statements, running to 404 pages, the contents of which the tribunal have noted. The decisions reached and the reasons for them are set out below.
8. Having considered all of the documents provided, the tribunal has made determinations on the various outstanding issues as follows.

Applicant's case

9. The applicant has set out her case in her application to the tribunal for the costs order. She has not responded to the case set out by the respondent.
10. Her case is that the respondent acted improperly when they served the improvement notice on her. She argues that the respondent took no steps to notify her of the intention to serve an improvement notice, allegedly acting in an underhand way calculated to catch her off guard. By consulting the Land Registry to find her address rather than emailing or phoning her in advance to check. They then obtained the correct address from the managing agents but again acted unreasonably by serving the notice by post, not by email or phone.
11. She further contends that the council did not give her an opportunity to engage or discuss, just giving her 21 days to appeal.
12. Finally, she argues that the works specified in the notice had either been completed or were underway or were the tenant's responsibility and had been rectified by him.
13. She contends that this shows of lack of due process which caused her to incur the £100 appeal fee.

Respondent's case

14. Two statements have provided by Joanne Pendergast, who is a housing improvement officer at the respondent. A short statement has also been provided by Timothy John Lovell who is the private sector housing manager at the respondent.
15. Ms Pendergast has set out the history of the events leading to the service of the improvement notices. Mould and damp were raised an issue by the tenant of the Property, with pictures showing this provided as an exhibit to Ms Pendergast's statement. Following an inspection (which was also attended by the applicant's agent), an improvement notice was served, using the applicant's address ascertained from the Land Registry, the letting agents address and the Property itself.
16. The original notice on the applicant was returned to sender. The correct address was obtained from the letting agents but rather than reserving the original, it was redated without the dates for compliance being amended and so was not a valid notice.
17. Evidence has been provided of various offers to the applicant to discuss the required works. As a result of the applicant engaging with the local authority and authorising works to be carried out, a decision was reached to revoke the improvement notice.

18. Finally, although the respondent had the power to make reasonable charges in relation to improvement notices, no such charges were levied in this case.

Law

19. The basic power of the Tribunal to award costs is found in section 29 of the Tribunals, Courts and Enforcement Act 2007, which states that costs shall be in the discretion of the Tribunal but subject to, in the case of this Tribunal, the Rules. The Rules then proscribe the discretion substantially.
20. The Rules provide that costs may be awarded to a party if another party has acted unreasonably or an award of wasted costs is appropriate. More particularly, the relevant provision in the Rules reads as follows:

13 Orders for costs, reimbursement of fees and interest on costs

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.....

21. The leading authority in respect of part (b) the above rule is the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander* (and linked cases) [2016] UKUT 290 (LC). This lays down guidance of general application when considering such cases. The Upper Tribunal considered three sequential stages which should be worked through, summarised as follows:

Stage 1: Whether the party has acted unreasonably. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed.

Stage 2: Whether the tribunal ought (in its discretion) to make an order for costs or not. Relevant considerations include the nature, seriousness, and effect of the unreasonable conduct.

Stage 3: Discretion as to quantum. Again, relevant considerations include the nature seriousness and effect of the conduct.

The Upper Tribunal expanded on what constitutes “unreasonable conduct”. The Upper Tribunal said that an assessment of whether behaviour is unreasonable requires a value judgment and views may differ. However, the standard of behaviour should not be set at an unrealistic level. Tribunals must not be “over-zealous in detecting unreasonable conduct” and must use their case management powers appropriately. The Upper Tribunal referred to tests and comments from other case authorities.

22. The burden is on the applicant for an order pursuant to Rule 13 and where orders under r.13(1)(b) are to be reserved for the clearest cases.
23. Rule 13(1)(b) is quite specific that an order may only be made “if a person has acted unreasonably in ... defending or conducting proceedings”. Under the Tribunal Procedure Rules, the word “proceedings” means acts undertaken in connection with the application itself and steps taken thereafter (Rule 26). Such an application does not therefore involve any primary examination of a party’s actions before a claim is brought (although pre-commencement behaviour might be relevant to an assessment of the reasonableness of later actions in “defending or conducting proceedings”).

The tribunal’s decision

24. I do not consider the respondent to have acted unreasonably in defending or conducting proceedings. The applicant has relied heavily on pre-application behaviour; as referred to above, this is only relevant in assessing the reasonableness of later actions in “defending or conducting proceedings”. That said, I find that the respondent acted reasonably in the process followed leading up to and including the service of the improvement notices. The use of the Land Registry address was reasonable, especially as the letting agents were present at the inspection and received service of the notices. The only issue was the dating problem with the re-issued notice but this did not affect the outcome and the decision to revoke the notice was properly made, as a result of the applicant’s engagement and commitment to carry out required works.
25. I cannot identify anything amounting to unreasonableness in defending the proceedings or in their conduct such as to merit a costs order. Whilst it is correct that the notices were withdrawn, this was as a result of a proper process. There is nothing to suggest that the respondent did not follow a proper process during the proceedings or acted unreasonably. Instead, it was performing its role as local authority in ensuring that issues with the Property were properly addressed. It also engaged with the applicant and with her managing agents.
26. In terms of the respondent’s conduct of the proceedings, the respondent took the steps directed as and when directed. There was nothing of the conduct of the respondent which has been identified to me that could properly be regarded as unreasonable.
27. It follows that the application for costs on the basis of acting unreasonably falls at stage 1. I do not consider stages 2 and 3, there being no basis for doing so and so make no comment in relation to these.
28. For the avoidance of doubt the applicant is not, in my determination, entitled to payment from the respondent of the fee paid for the application.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
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.
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.