FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BG/HMB/2022/0012**
HMCTS code (paper, video, audio)	**:**	**P – Paper Remote**
Property	**:**	**1, Celtic Street, London E14 6QB**
Applicant	**:**	**Mr. Adam Mohammed Naeem**
Representative	**:**	**Mr. S. Ali of Adam Bernard Solicitors**
Respondent	**:**	**Mr. Abdul Haque Habib**
Representative	**:**	**Mr. M. Collard of counsel by direct access**
Type of Application	**:**	**Respondent's application for costs**
Tribunal	**:**	**Tribunal Judge S.J. Walker**
Date of Decision	**:**	**13 December 2023**

DECISION ON COSTS

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(1) The Respondent's application for an order for costs is allowed to the following extent.

(a) The Tribunal makes an order under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") requiring the Applicant to pay the Respondent within 28 days a total of £2,070 in wasted costs.

(b) The Tribunal makes no order against the Applicant's solicitors.

Reasons

Background

1. On 31 October 2022 the Applicant made an application to the Tribunal seeking a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act") against the Respondent. The basis of that application was that the Respondent was guilty of an offence contrary to section 1(2) of the Protection from Eviction Act 1977. The Tribunal issued directions to the parties on 19 May 2023. Those directions required the production of hearing bundles. That for the Applicant was provided to the Tribunal on 8 November 2022.

2. The Respondent produced a response. As part of that response, it was asserted that the Applicant was not and never had been a tenant of the premises.

3. As a result of this the Tribunal contacted the Applicant in order to ascertain whether or not they were continuing with their application. By a letter dated 20 July 2023 the Applicant's solicitors responded stating that they wished to continue with their claim. They requested a case management hearing in order to address the preliminary issue of whether the Applicant was a proper party to the proceedings.

4. That case management hearing took place on 1 August 2023. Prior to that, on 24 July 2023, the Respondent applied to the Tribunal for an order pursuant to rule 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") to strike out the proceedings. That application was heard at the case management hearing on 1 August 2023 and was successful. The Tribunal struck out the Applicant's application.

5. The reason for this was simple. The Respondent's case was that the applicant was not, at any material time, a tenant of the property in question and so the Tribunal had no jurisdiction to make an order under sections 43 or 44 of the Act. The evidence before the Tribunal clearly showed that the real tenant of the property – as named in the tenancy agreement – was a limited company named We let Rooms Ltd. The Applicant was merely a personal guarantor for the company.

6. In the course of the hearing the Tribunal invited the Applicant's representative to explain how, in the light of this evidence, the Tribunal had jurisdiction to make an order in favour of the Applicant. Mr. Ali accepted that the Applicant was not the tenant named on the tenancy agreement and that he had signed a personal guarantee to cover any default by the named tenant, We Let Rooms Ltd.

7. Following the Tribunal's decision to strike out the Applicant's application the Tribunal directed that any application for costs was to

be made within 28 days of the notice of its decision being provided. That notice was written on 10 August 2023.

This Application

8. On 23 August 2023 the Tribunal received an application from the Respondent seeking costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") against the Applicant and/or the Applicant's solicitors.

9. On 6 September 2023 the Tribunal forwarded the application to the Applicant and his solicitors. The Tribunal received a response from the Applicant's solicitors together with a witness statement from the Applicant.

The Relevant Law

10. The general approach to costs in this Tribunal is that it is a no-costs jurisdiction. The Tribunal's powers to make orders for costs is found in rule 13 of the Rules. By virtue of that rule the Tribunal only has power to make an order for costs in three situations, one of which does not apply here as it concerns land registration cases. Those situations are (a) where wasted costs as defined in section 29(5) of the Tribunal Courts and Enforcement Act 2007 are payable and (b) where a person has acted unreasonably in bringing, defending or conducting proceedings. There is no general discretion in the Tribunal to award costs where it considers this to be appropriate.

11. Wasted costs are defined in section 29(5) of the Tribunal Courts and Enforcement Act 2007 as follows;

"*In subsection (4) "wasted costs" means any costs incurred by a party;*

(a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay"

12. The following principles apply when considering wasted costs. Firstly, the burden is on the party seeking wasted costs to show that they should be paid. The Tribunal has a two-stage discretion. It has a discretion whether to embark upon an enquiry as to whether wasted costs should be paid, and it has a further discretion as to whether it is just to make an order.

13. When considering whether wasted costs are payable the three-stage test set out in the case of Ridehalgh v Horsefield [1994] Ch 205 applies. The first stage is to consider whether there has been improper, unreasonable or negligent conduct. Insofar as unreasonable conduct is concerned, Lord Bingham MR gave the following guidance in Ridehalgh;

> "*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"

14. Lord Bingham also gave guidance that negligent conduct does not mean conduct which is actionable as a breach of the legal representative's duty to his own client. Negligence should be understood in an untechnical way to denote failure to act with the competence reasonably expected of ordinary members of the profession. However, it is not necessary for an applicant for a wasted costs order to prove under the negligence head anything less than he would have had to prove in an action for negligence.

15. The second stage is to consider whether the conduct identified has caused the specific costs to be wasted. The third stage is to consider whether it is just in all the circumstances that the Tribunal should make an order. This also involves considering the overriding objective in rule 3 of the Rules.

16. The leading case dealing with costs in this Tribunal under rule 13(1)(b) of the Rules is that of Willow Court Management Co (1985) Ltd v Alexander [2016] UKUT 0290 (LC). This makes it clear that the principles which apply in cases of wasted costs and in cases of unreasonable behaviour under the rule are broadly the same. In order for the Tribunal to have the power to make an award of costs it is a necessary pre-condition for it to be established that there has been unreasonable behaviour which must be established objectively. In Willow Court the Upper Tribunal quoted with approval the passage from Ridehalgh already referred to above.

17. The Upper Tribunal in Willow Court went on to say:

"*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?

The Parties' Cases

The Respondent

18. Having set out the case of Willow Court at length, the Respondent goes on to argue as follows;

19. As against the Applicant he argues that the he acted unreasonably in bringing the proceedings in that;
    (a) he delayed paying the application fee;
    (b) he brought proceedings which can only be brought by a tenant when he was not a tenant;
    (c) the application was based on an allegation of the commission of an offence contrary to section 1(2) of the Protection from Eviction Act 1977, an offence which can only be committed against a residential occupier, when he was not a residential occupier;
    (d) parts of the tenancy agreement were not included in his application;
    (e) the application was based on a falsely dated document;
    (f) the application was pursued despite having seen the Respondent's response, which indicated the weakness of his case;
    (g) the Applicant was late in complying with the Tribunal's directions;
    (h) the Applicant failed to attend or to instruct his solicitors to attend a mediation which had been listed for 17 July 2023, despite being aware of the date, and failed to notify the Tribunal that there would be no attendance; and
    (i) he pursued the application even after receiving the Respondent's full statement of reasons.

20. As against the Applicant's solicitors the Respondent argues that they have acted for the Applicant at least from the time the application was made. They argue that the solicitors have acted either unreasonably or negligently in that;
    (a) they either did not consider all the papers in the case or the advice provided on the basis of the papers was negligent;
    (b) they expressly advised the Applicant to make the application in his own name despite having considered the tenancy agreement which is in the name of a company;
    (c) they made an application which was bound to fail;
    (d) the application wrongly claims payment for a period in excess of 12 months;
    (e) put forward a case based on an incorrect date;
    (f) referred throughout to the Respondent as "her", suggesting the grounds were cut and pasted from another application and were not properly considered;
    (g) they continued to act even after receiving a response and supporting documents which confirmed that the application had no reasonable prospects of success;

(h) they referred to a Part 36 offer which had not in fact been made and which, in any event, should not have been referred to, thereby displaying a failure to act with the competence reasonably to be expected of ordinary members of the profession

(i) they should have advised the Applicant not to issue the application, not to pursue it, and to attend the mediation.

21. A schedule of costs was submitted with the application totalling £10,410. All the costs incurred were the Respondent's counsel's fees. No indication is given in the schedule of the amount of time spent in respect of any of the costed items. The application does not seek indemnity or exemplary costs.

22. Finally, the application states that the Respondent is neutral as to whether a costs order is made only against the Applicant or against his solicitors.

The Applicant

23. In his witness statement the Applicant states that his solicitors throughout acted in his best interests and followed his instructions. Despite the Tribunal's conclusion and the evidence it relied upon, he continues to maintain that he was a tenant of the property, without explaining why that is. He states that he was living at the property and was evicted as a person not as a company. He provides no evidence of the existence of this claimed tenancy in addition to that which was previously before the Tribunal. That evidence included the operative tenancy agreement which clearly named the company as the tenant and him as a personal guarantor.

24. The Applicant argues that he was living in the property and it was his residence. This may or may not have been the case. Such occupation would not, though, have been inconsistent with the tenancy agreement being one between the Respondent and the company. The tenancy agreement provides that the property is to be used as a private dwelling occupied by the "permitted occupier" (clause 7.1). This person is defined as the occupier under the terms of a licence in the form annexed to the tenancy. In other words, under the terms of the tenancy agreement, the company is entitled to grant licence agreements to occupiers to live in the property. The Applicant may or may not have been such a licensee, but he was not the Respondent's immediate tenant.

25. The Applicant claims that he is the victim of fraud and argues that he was misled by the Respondent. He gives no particulars in support of that contention. In effect he argues that he was the tenant and, in effect, that the Tribunal's decision was wrong.

26. With regard to his non-attendance at the mediation the Applicant states that he forgot to mark the date of the mediation in his diary, got busy, and failed to update his solicitors on his behalf.

The Applicant's Solicitors

27. The Applicant's solicitors argue that they acted in the best interests of their client and that they did not act negligently or improperly. The arguments put forward are very similar to those contained in the Applicant's witness statement and are largely based on the contention that the Applicant was in fact in occupation of the premises and he was confident that his case would succeed. They also repeat the assertion that the Applicant has been a victim of the Respondent's fraud.

28. At paragraphs 21 to 23 of the response they argue that the tenant company should itself have been given notice of eviction and that this had not happened. That may or may not be the case, but no application was made in the name of the company and, in any event, the company could not ever be a residential occupier so any application in its own name would have been equally doomed to failure.

29. The Applicant's solicitor's response refers to the case of Ridehalgh -v- Horsfield and draws attention to the principle set out in that case that in practical terms an application for wasted costs should be capable of being determined in a summary process with hearings measured in hours, not days and weeks. It argues that there is no causal link between the conduct complained of and the costs incurred. It further argues that the application is unsuitable for summary determination because the case would require extensive findings of fact at trial, and that the factual and legal background was very complex requiring the consideration of very large amount of documentary material such that a hearing could potentially last more than a week (paras 27 to 33).

30. With regard to the mediation the response states that the solicitors;

> "*informed the applicant that mediation is the key factor in resolving the issues in this case, but the applicant was more interested in attending the mediation if there was any chance from the respondent side, to offer the money in relation to damages and cost spent on repair work from the applicant.* [sic]
> *"the applicant was fully informed .. to utilise the opportunity of mediation to resolve any issues, but the applicant declined at a later stage*"

31. The response points out that the Applicant has not waived his privilege and draws attention to the decision in Medcalf -v- Mardell [2002] UKHL 27 where it is said that where a wasted costs order is sought against a practitioner precluded by legal professional privilege from giving his full answer to the application, the court should not make an order unless it is satisfied that there is nothing the practitioner could say if unconstrained to resist the order.

32. It also argues that wasted costs applications should be limited to straightforward matters such as failures to attend court. The point is made that a legal representative is not to be held to have acted improperly simply because he acts for a party who pursues a claim

which is plainly doomed to fail. However, it acknowledges that an application should not be pursued if it amounts to an abuse of process of the court.

33. The response also correctly identifies that rule 13(1ZA)(b) of the Rules prohibits the making of orders for costs under rule 13(1)(b) in proceedings under Part 1 of the Housing Act 1988. However, it goes on to argue that this application was based on section 13 of the Housing Act 1988. That is a complete misunderstanding of the law. Section 13 is concerned with increases in rent under assured periodic tenancies. It has nothing whatsoever to do with the Tribunal's jurisdiction to make a rent repayment order.

The Tribunal's Decision

34. In the light of what is set out above I concluded that it was appropriate to enquire as to whether an order for costs should be made. It was clear to me that the Respondent had been put to the expense of defending an application which had been struck out on the basis of it having no reasonable prospects of success. Such a situation merits at least an enquiry about costs even if the ultimate conclusion is that no costs should be awarded.

The Position as Against the Applicant

35. Having decided that an investigation into whether costs should be awarded was appropriate I first considered the case as against the Applicant.

36. I concluded that many of the heads of complaint set out by the Respondent did not cross the very high threshold which applies in cases of wasted costs or unreasonable conduct. In particular I was not satisfied that the matters set out in paragraphs 19(a),(d),(e), and (g) above were sufficient to cross that threshold.

37. However, there were two aspects of this case which I was satisfied did amount to unreasonable conduct. The first was the pursuit of an application which, had he been properly advised, he would know was doomed to fail, and the second was the failure to attend the mediation or, more importantly, the failure to advise the Respondent that he would not be attending.

38. With regard to the first point, I bear in mind that the Applicant has been advised by solicitors throughout. Privilege has not been waived in this case, so I cannot know what advice he was given, but I can only assume that it was advice that any reasonably competent solicitor would have given.

39. It is clear that any application by the Applicant was doomed to fail for the simple reason that he was not a tenant of the Respondent. It is perhaps the most basic aspect of the law applying to rent repayment orders that they can only be made against landlords in favour of their

tenants and, following the case in Rakusen & Jepsen [2023] UKSC 9, the landlord must be the immediate landlord of the tenant.

40. I bear in mind that the Supreme Court decision in Rakusen was not published until 1 March 2023. Although the decision in the Court of Appeal was to the same effect, it is possible that an application which was made in October 2022 could be made in the hope that the Supreme Court would reach a different conclusion and in order to avoid the application becoming time-barred. To that extent I give the Applicant the benefit of the doubt.

41. However, what there is no doubt about is that the Applicant was subsequently informed of the Respondent's defence to the application and this was at a time after the Supreme Court's decision in Rakusen was known. At this point the Applicant's case was unarguable, yet he proceeded with it even after being asked expressly by the Tribunal whether his case was continuing.

42. I am satisfied that at that stage no competent lawyer would have advised continuing with the application and I regard the fact that the Applicant pursued his case even after knowing the case against him, and even with the benefit of legal advice, amounts to unreasonable conduct.

43. The other issue is the failure of the Applicant to notify the Respondent that he would not be attending the mediation. Although mediation is voluntary, a failure to attend a mediation appointment fixed by the Tribunal without satisfactory explanation is equivalent to a failure to attend any other tribunal or court hearing. Had the Applicant decided not to pursue mediation and informed the Respondent, or even just the Tribunal, in advance of this, there could be no criticism. However, he informed nobody, it seems not even his solicitors, and so the Respondent and his lawyer attended pointlessly.

44. I do not consider that the explanation put forward by the Applicant – that he got busy and forgot – is a reasonable one. It certainly would not provide a reasonable excuse for not attending a hearing. I therefore am satisfied that this too amounts to unreasonable conduct.

45. Having concluded that there was unreasonable conduct by the Applicant I go on to consider whether that conduct has resulted in costs being incurred. There is no doubt that the Respondent has incurred costs in responding to the Applicant's application, in attending the failed mediation, and in appearing at the case management conference where his strike-out application was considered. I am therefore satisfied that the second stage of the test in Ridehalgh is met.

46. This then brings me to the question of whether it is just to make an order against the Applicant, and in what sum. I have no doubt that it is just and equitable to make an order requiring the Applicant to pay some costs. The question is how much.

47. The Respondent's schedule is not helpful when considering this question as it provides only total sums with no indication of time spent or charging rates. I bear in mind that the issues in this case were very simple. Just as it should have been obvious to the Applicant's solicitor that his case was hopeless, it would have been equally obvious to the Respondent's representative what the weakness of the Applicant's case was. Identifying that weakness and drafting a response and a strike-out application should not have taken a great deal of effort.

48. The first noticeable feature of the schedule of costs produced by the Respondent is that it includes a charge of £1,350 for advice which it is said was given on 22 April 2022. That is 6 months before the Applicant made his application. No explanation is given for this work nor for how it is said it was brought about by this application. I see no justification for the Applicant being required to pay this sum. The same applies to a charge of £840 for a conference which was held on 1 July 2022, again before the application was made.

49. The schedule then includes a charge of £450 for a conference on 16 November 2022. This is after the application was made, but before the decision in Rakusen in the Supreme Court. As explained above, I am prepared to give the Applicant the benefit of the doubt in relation to steps taken before the law finally became clear. and appears to me to be reasonable. I therefore do not consider it reasonable for the Applicant to be required to pay these costs.

50. There is a charge of £1,350 for drafting the Respondent's response. This is two pages long and is supported by a bundle totalling 38 pages in all. This is also a charge for work done before Rakusen and for the reasons already given I do not consider that an ward of costs is appropriate for this sum.

51. There is then a charge of £4,800 in respect of the failed mediation. I consider this charge to be excessive. I accept that some charge may be made for attending the mediation. However, it would have quickly become clear that the Respondent would not be attending and the Respondent's lawyer would be available to perform other work. Even at a charging rate of £450 per hour the charge put forward amounts to a charge for nearly 11 hours. That is clearly unreasonable. I assess the wasted costs in respect of the mediation to be £450.

52. There is a charge for attendance at the case management conference on 31 July 2023 where the strike-out application was heard. This is for £900. I consider that to be reasonable.

53. Finally, there is a charge of £720 for drafting the costs application. Having concluded that it is reasonable to require the Applicant to pay costs for unreasonable conduct, I also consider it reasonable for him to pay the Respondent's reasonable costs in applying for those costs. I also consider the sum of £720 to be reasonable.

54. In conclusion I consider that the total wasted costs which I consider it is just for the Respondent to recover from the Applicant is £450 + £900 + £720 = £2,070.

The Position as Against the Applicant's Solicitors

55. Whilst the papers before me raise some doubts about the competence of the advice given by the Applicant's solicitor to their client, and raise questions about whether or not they should have acted as they did, I bear in mind two things. Firstly, privilege has not been waived in this case and, secondly, the Respondent has indicated that they are indifferent as to whether costs should be paid by the Applicant or his solicitors.

56. That being the case, I do not consider it appropriate to make an order requiring the Applicant's solicitors to pay costs. If the Applicant considers that he has been badly advised he has his own remedies against them.

Conclusion

57. For the reasons given above the Tribunal makes an order pursuant to rule 13(1)(b) of the Rules requiring the Applicant to pay the Respondent a total of £2,070 in costs.

Name: Tribunal Judge S. J. Walker **Date:** 13 December 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.

58. On 31 October 2022 the Applicant seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act").

The Law

59. The power to make a rent repayment order under section 40 of the Act is a power to order repayment of rent paid by a tenant. Section 41 allows either a tenant or a local housing authority to apply for an order. Section 41 also provides that a tenant may only apply for an order if the offence relates to housing that, at the time of the offence, was let to the tenant. It is clear, therefore, that a person who is not, and has never been, a tenant of housing cannot apply for an order.

60. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. In this case the offences alleged were those contrary to sections 1(2), 1(3) and 1(3A) of the Protection From Eviction Act 1977. It is an essential ingredient of each of these offences that the person accused must have either deprived a residential occupier of their occupation of premises or that they must have harassed such an occupier. Section 1(1) of the Protection From Eviction Act 1977 defines a residential occupier as a person occupying premises as a residence.

Procedural Background

61. The Application in this case was dated 31 October 2022, though the application fee was not paid until 8 March 2023. It named the Applicant as Mr. Naeem.

62. Directions were issued by the Tribunal on 19 May 2023. These required the production of hearing bundles. That for the Applicant had already been provided to the Tribunal on 8 November 2022 and comprised 44 pages.

63. In response to this the Respondent produced a response comprising 38 pages. As part of that response, it was asserted that the Applicant was not and never had been a tenant of the premises.

64. As a result of this the Tribunal contacted the Applicant in order to ascertain whether or not they were continuing with their application.

By a letter dated 20 July 2023 the Applicant's solicitors responded stating that they wished to continue with their claim. They requested a case management hearing in order to address the preliminary issue of whether the Applicant was a proper party to the proceedings.

65. The Tribunal therefore arranged for a case management hearing which took place on 1 August 2023.

The Hearing

66. The Applicant and the Respondent both attended the hearing. The Applicant was represented by Mr. Ali of Adam Bernard Solicitors and the Respondent was represented by Mr. M. Collard of counsel.

67. In addition to the bundles referred to above the Tribunal had before it a skeleton argument produced by Mr. Collard. Mr. Ali had not seen this before the hearing began and so the hearing was adjourned to enable him to read it. The hearing then resumed. References in what follows to page numbers are to the numbers printed at the foot of the documents in the Applicant's bundle unless otherwise stated.

Strike Out Application

68. When he confirmed his attendance at the case management hearing, which he did on 24 July 2023, the Respondent stated that he wished the application to be struck out on the basis that it had no reasonable prospect of success. That application was expanded upon in the skeleton argument. The Tribunal was invited by Mr. Collard to exercise its powers under rule 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") to strike out the proceedings.

69. The Respondent's argument was a simple one. It's case was that the evidence clearly showed that the tenant of the property at the material time was not the Applicant Mr. Naeem but rather We Let Rooms Ltd., a limited company. In support of this they relied on the contents of two documents contained in the Applicant's own bundle. The first was a tenancy agreement which on its face stated that it was made on 1 April 2021. This document clearly stated that the agreement was made between the Respondent – who is described as the landlord – and "*We Let Rooms (10452757) incorporated and registered with company number * whose office is at 4, Blenheim Avenue, Ilford, IG2 6JG ("the Tenant")*[sic]" (page 18). The second document is described as a tenancy agreement guarantee and is dated 24 March 2021. The parties to that agreement are the Respondent – again described as the landlord – We Let Rooms Ltd. – again described as the tenant – and Mr. Adam Naeem (the Applicant) – described as the Guarantor. This agreement was made in contemplation of the tenancy agreement already referred to and provides that in the event of a default by the tenant – ie the company - Mr Naeem would make good any losses incurred by the landlord (page 16).

70. In the course of the hearing I invited Mr. Ali to explain how, in the light of this evidence, the Tribunal had jurisdiction to make an order in favour of the Applicant. He accepted that Mr. Naeem was not the tenant named on the tenancy agreement and that he had signed a personal guarantee to cover any default by the named tenant, We Let Rooms Ltd. He argued, though, that the Respondent Mr. Habib referred to Mr. Naeem as his tenant and that Mr. Naeem was actively involved in managing the property.

The Tribunal's Decision

71. I was satisfied that the evidence was such that there was no reasonable prospect of Mr. Naeem establishing that he was ever a tenant of the property. The documentation was clear. The property was let to We Let Rooms Ltd., of which Mr. Naeem is a director. I was satisfied that it was the clear intention of the parties that the tenant should be the company not Mr. Naeem personally. This was made abundantly clear by the personal guarantee entered into by Mr. Naeem. Such a document would have been redundant if the real tenant were Mr. Naeem himself. In addition, correspondence provided by the Respondent with his estate agent (page 31 of his bundle) makes clear that he was contemplating letting the property to We Let Rooms, director Adam Naeem, and that a personal guarantee had also been agreed. The agent added *"I can confirm that I have worked with Adam* [the Applicant] *for the past ten years supplying we let rooms with numerous HMO properties.*"

72. As the power to make a rent repayment order extends only to applications by tenants, it follows that I was satisfied that Mr. Naeem had no reasonable prospect of establishing that an order should be made in his favour in this case.

73. I therefore struck out his application pursuant to rule 9(3)(e) of the Rules. I announced my decision to the parties at the hearing.

74. There was no application by Mr. Ali to amend the application to replace the Applicant with We Let Rooms Ltd. However, in any event, even if such an application did not fall foul of the 12-month time limit for bringing proceedings, such a substitution would have been of no practical effect. This is because, as Mr. Ali accepted, We Let Rooms Ltd. could not, as a limited company, be a residential occupier, so the offences relied on could never be established if they were the applicant.

Costs

75. Although there was a costs application before the Tribunal, I decided that it would be more appropriate for it to receive a detailed written application. I directed that such an application should be made within 28 days of the date of this notice of decision, with any respondent to such an application being granted 28 days in which to respond, with a further reply being permitted within 7 days thereafter.

76. The Tribunal also directed that if an application for costs were to be made against a person other than the Applicant, a copy of this decision should be included when such an application is served.

Name: Tribunal Judge S.J. Walker **Date:** 10 August 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.

- If a party wishes to appeal against 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.