



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

**Case reference** : **LON/00AE/HMF/2023/0285**

**Property** : **Flat 3, 76 Brondesbury Road, London,  
NW6 6RX**

**Applicant** : **Ricardo William Davies and  
Moran Arwas**

**Representative** : **In person**

**Respondent** : **Claudia Pospishek**

**Representative** : **In person**

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

**Tribunal members** : **Tribunal Judge M Jones  
Mr S Mason FRICS**

**Date and venue of  
hearing** : **Reconvened hearing, 3 September 2024**

**Date of decision** : **6<sup>th</sup> September 2024**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The Tribunal makes an Order under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**Rules**”) that the Applicants pay the sum of £3,000.00 (including VAT) to the Respondent in respect of costs incurred by the Respondent relating to the determination of this application.
- (2) The said sum is to be paid by 27 September 2024.

## **Introduction**

1. By application dated 8 October 2023, the Applicant tenants sought a rent repayment order (“**RRO**”) against the Respondent landlord pursuant to sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”). The Applicants contended (in summary) that the landlord committed an offence of control or management of an unlicensed dwelling contrary to section 95(1) of the Housing Act 2004, being an offence under section 40(3) of the 2016 Act.
2. The matter proceeded to a contested hearing on 22 April 2024.
3. By written decision dated 29 April 2024 (“**Decision**”) the Tribunal ordered that the Respondent pay to the Applicants the sum of £2,583 by way of RRO.
4. The Tribunal determined, *inter alia*, that
  - (i) The Applicants’ characterisation of an incident on 23 November 2022, when the Respondent attended the Property in the company of her daughter to effect service of certain documents, their reaction and consequent evidence was deliberately dishonest.
  - (ii) Each of the Applicants deliberately and dishonestly exaggerated the effects of what was an entirely justifiable action on the part of their landlord. The only purpose, objectively judged, must have been to seek to enhance their application, as to liability and quantum.
  - (iii) Such behaviour on the part of the Applicants was to be deplored.
  - (iv) The Tribunal declined to order reimbursement of the tribunal fees paid by the applicants.

## **The Costs Application**

5. The Respondent made written application for costs by email sent to the tribunal dated 16 May 2024, attaching a series of relevant documents.
6. Rule 13(6) provides that the Tribunal may not make an order for costs against a person without first giving that person an opportunity to make representations. The Applicants responded in writing, by serving written submissions dated 30 May 2024.
7. The Respondent served a written response to the Applicants' submissions, also dated 30 May 2024, to which the Applicants responded by further written submissions dated 4 June 2024.
8. We regret the delay in determining the application for costs: consideration of the application required us to reconvene the hearing, which was not possible until 3 September 2024 due to other professional commitments. We apologise to the parties for the delay.

## **The Law**

9. Rule 13 of the Tribunal Rules provides in so far as is relevant to this application (emphasis added):

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

- (1) The Tribunal may make an order in respect of costs only:
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—  
  
.....
    - (ii) a residential property case;

10. In *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC), the Upper Tribunal (“**UT**”) gave guidance on how First-tier Tribunals (“**FTTs**”) should apply Rule 13. The UT for the case consisted of the Deputy President of the UT and the President of the FTT.

11. The UT set out a three-stage test:

- (i) Has the person acted unreasonably applying an objective standard?

- (ii) If unreasonable conduct is found, should an order for costs be made, or not?
  - (iii) If so, what should the terms of the order be?
12. The UT gave detailed guidance on what constitutes unreasonable behaviour. For the purpose of this application we highlight the following passage from the judgment of the Court of Appeal in *Ridehalgh v Horsefield* [1994] Ch 205, per Sir Thomas Bingham MR at p.232C:

*“Unreasonable’ also 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.”*

13. The UT noted at §25 of *Willow Court*:

*“...for a lay person to be unfamiliar with the substantive law or with tribunal procedure, to fail properly to appreciate the strengths or weaknesses of their own or their opponent's case, to lack skill in presentation, or to perform poorly in the tribunal room, should not be treated as unreasonable.”*

14. It added at §32 of *Willow Court*:

*“...In the context of rule 13(1)(b) we consider that the fact that a party acts without legal advice is relevant at the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of proceedings before it, than is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.”*

15. As to whether, if unreasonable conduct is found, the Tribunal should make a costs order, this is a question of exercise of discretion on the part of the Tribunal. As expressed at §28 of *Willow Court*:

*“A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. 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. A discretionary power is then engaged and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not...”*

16. As explained at para 40 of *Willow Court*, there is no need for a causal link between the behaviour complained about and the costs incurred:

*“Unreasonable conduct is a condition of the FTT's power to order the payment of costs by a party, but once that condition has been satisfied the exercise of the power is not constrained by the need to establish a causal nexus between the costs incurred and the behaviour to be sanctioned...”*

17. The unreasonable conduct is not irrelevant, as identified at §42 of *Willow Court*:

*“...the unreasonable conduct, its nature, extent and consequences are relevant factors to be taken into account in deciding whether to make an order for costs and the form of the order...”*

18. *Willow Court* was subsequently considered by the UT in *Laskar v Prescott Management Co. Ltd* [2020] UKUT 241 (LC), to the effect that the *Willow Court* guidelines are an aid to determination of applications of this nature, not a strait-jacket to the consideration of the Tribunal and the exercise of its discretion.

19. Rule 13(1)(b) provides that the amount of any costs in issue may be assessed summarily by the Tribunal.

## **The Tribunal's Determination**

### **Stage 1: Has the Applicant acted Unreasonably?**

20. The Respondent submits that the Applicant's conduct should be considered against the negotiations that took place between the parties, with a view to seeking settlement of the dispute. We were provided

with a series of emails exchanged between December 2023 and January 2024 (many of the latter bear dates of January 2023, but these appear to be the product of the common error early in a new year of referring reflexively to the previous year when dating correspondence).

21. The offers exchanged may be summarised as the Respondent landlord offering to settle the application upon payment of the sum of £3,000, and the Applicant tenants offering to compromise on the basis of payment to them of the sum of £14,892, a figure repeated on at least 2 occasions.
22. The Tribunal's decision awarded the Applicants (just) £2,583, being less than the sums offered by the Respondent in December 2023 and January 2024, and very substantially less than those proposed by the Applicants in their own offers. The Respondent makes the point that the Applicants could have settled for more than they were awarded, which would have avoided the need for and expense of the hearing.
23. The Applicants contend that they sought to negotiate in good faith, having regard to prior decisions of the FTT and the UT in relation to RROs. They point out that they were unrepresented litigants doing their best against unfamiliar legal principles and processes.
24. While the Respondent's submission to the effect that the Applicants would have done 'better' to accept her offer at an early stage is undoubtedly correct, the FTT is not the County Court. There is no set of rules or principles mirroring Part 36 of the Civil Procedure Rules 1998, or the well-known principles articulated in *Calderbank v Calderbank* [1975] 3 All ER 333, that are binding upon us in relation to the effect upon a determination as to the costs that may be payable in relation to proceedings before the FTT.
25. This Tribunal is concerned solely with the question of conduct costs, in accordance with Rule 13(1)(b), as guided by the decisions of the UT in *Willow Court* and *Laskar*.
26. We return to §28 of *Willow Court*:  
  
*"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."*
27. Here, we found the Applicants' case to have been based upon evidence which was (at best) grievously exaggerated and (at worst) dishonest, which is to be deplored.
28. We find that such conduct does not admit of a reasonable explanation, so that the Applicants' behaviour in the conduct of the proceedings is

properly to be regarded as having been unreasonable. This permeated the application, the statement of case, and the Applicants' skeleton argument, as identified in the Decision, and informed the nature of the proceedings at the hearing itself and, we now read, the stance adopted in the negotiation emails.

29. We therefore conclude, against the facts of this matter and the guidance of the UT in *Willow Court* and *Laskar*, that while the Applicants did not act unreasonably in making an application for an RRO *per se*, where the Respondent had failed to license the Property, they acted unreasonably in conducting the proceedings, in seeking to mischaracterise the conduct of the Respondent for the purpose of seeking to maximise their financial benefit from the proceedings, and in the manner of the prosecution of the application.

### **Stage 2: Should the Tribunal Make a Costs Order?**

30. The Tribunal notes that:
  - 30.1 The Respondent spent time and money on instructing counsel to provide advice and representation, against exaggerated allegations of poor conduct which were characterised as harassment.
  - 30.2 These were allegations for which, we find, there were no arguable bases, and which should neither have been made nor persisted in, in the manner in which they were.
  - 30.3 These (as we find) unsupportable allegations were, then, magnified by the Applicants' exaggerations as to the (alleged) effects they claimed to have suffered.
31. The Tribunal is satisfied that this unreasonable conduct by the Applicants calls for a costs order to be made. The Respondent has been obliged to instruct counsel. Unnecessary costs have been incurred as a result of the manner in which the Applicants have conducted this application.

### **Stage 3: What Order Should be Made?**

32. The Tribunal is mindful that it has a discretion as to what order should be made (see *Willow Court*, §29). While there is no need for a causal link between the unreasonable conduct complained of, and found to have occurred, in the circumstances of the present case we conclude that such conduct, its nature extent and consequences are important factors to be considered in the exercise of our discretion.

33. The Respondent instructed Mr Woolf of counsel on a public access basis. Three fee notes were tendered to Ms Nascimbeni, on behalf of her mother, regarding the following work:
- |       |                                  |                       |
|-------|----------------------------------|-----------------------|
| (i)   | Remote conference on 22/1/24     | £950 + VAT = £1,140   |
| (ii)  | Remote conference on 2/2/24      | £500 + VAT = £600     |
| (iii) | Brief fee for hearing on 22/4/24 | £2,500 + VAT = £3,000 |
34. We accept at face value that the fee notes provided represent the costs charged to and payable by the Respondent in relation to this matter.
35. As to the principles applicable to the summary assessment of costs, Rules 44.3(1) and (2) of the Civil Procedure Rules 1998 provide that where the Tribunal assesses the amount of costs on the standard basis it will not allow costs which have been unreasonably incurred or are unreasonable in amount and will only allow costs which are proportionate to the matters in issue. Costs which are disproportionate in amount may be disallowed or reduced even if they were reasonably or necessarily incurred. The court will resolve in favour of the paying party any doubt which it may have as to whether the costs were reasonably incurred or were reasonable and proportionate in amount.
36. We find that the costs of obtaining initial advice, and presumably advice as to the ongoing status of the proceedings as represented in the two conferences have been incurred in relation to work incurred in the 'usual' course of such an application. Many parties to applications seek legal advice as to the proceedings in which they find themselves, and we do not consider it appropriate to order that the Applicants pay in respect of the costs of that advice.
37. We do however find that the justice of the case, taking into account the factors highlighted above, warrants an order that the Applicants pay the Respondent's costs of preparation for and representation at the hearing subject to the questions of costs being reasonably incurred, and reasonable and proportionate in amount.
38. Doing the best we can against the information available, we find that the instruction of Mr Woolf for the fee charged was incurred at least in substantial part in consequence of the unreasonable conduct we have found. The fee of £2,500 plus VAT appears to us to reflect the requirements of proportionality and reasonableness of costs incurred, resolving any questions of doubt in favour of the Applicants as the paying party and we accordingly make an *inter partes* costs order in respect of this element of the fees paid by the Respondent.



39. The Tribunal accordingly orders the Applicants to pay to the Respondent the sum of £2,500 plus VAT, total £3,000 in respect of the costs of the application. The Tribunal is satisfied that these costs have been reasonably incurred in responding to the application, and in particular to the additional burden imposed by the unreasonable facets of the Applicants' presentation of their case.

**Name:** Judge M Jones

**Date:** 6<sup>th</sup> September 2024

### **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.

- (A) 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.
- (B) 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.
- (C) 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.
- (D) 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.
- (E) If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).