



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

**Case reference** : **CAM/34UF/LBC/2023/0005**

**Property** : **Flat 16 Denbeigh House, Hamblin  
Court, Rectory Road, Rushden,  
Northamptonshire NN10 0AT**

**Applicant** : **Warrenden Limited**

**Representative** : **Conway & Company, Solicitors**

**Respondents** : **(1) Nathan Andrew Leigh  
(2) Matthew Richard Leigh**

**Representative** : **(1) Sarah Leigh  
(2) Unrepresented**

**Type of application** : **Rule 13 costs application**

**Tribunal** : **Judge K. Saward**

**Date of decision** : **21 October 2024**

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**DECISION AND REASONS**

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## DECISION OF THE TRIBUNAL

**The application for an order that the Respondents pay the Applicant's costs pursuant to rule 13(1) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 is refused.**

### REASONS

#### **The application and background**

1. The application for costs is made by the Applicant landlord of the Respondents who are the leaseholders of Flat 16 Denbeigh House. It follows a remote hearing on 6 September 2024. The Applicant had applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the Respondents were in breach of covenant. The alleged breach was twofold: (i) keeping a dog at the flat without the lessor's consent, and (ii) the keeping of a dog at the flat which may cause annoyance to other owners/occupiers.
2. By decision dated 9 September 2024 the Tribunal determined that the Respondents have breached a clause of the Lease by keeping a dog in the flat without the written consent of the lessor. It found no breach was demonstrated by keeping a dog which may cause annoyance.
3. The costs application was made on 7 October 2024, being within the requisite 28-day period of dispatch of the Tribunal's decision. The First Respondent's representative submitted two responses by email that same day.
4. The Applicant seeks costs totalling £5,564.96, including counsel's fees.
5. This has been a determination on the papers, the issues being capable of resolution without a hearing. No hearing was requested.

#### **The Tribunal's approach**

6. Except to the limited extent provided below, the Tribunal is normally a "no costs" jurisdiction. The basic power of the Tribunal to award costs is found in section 29 of the Tribunals, Courts and Enforcement Act 2007. This provides that costs shall be in the discretion of the Tribunal subject to (in the case of this Tribunal), The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, as amended ("the 2013 Rules").
7. The limited powers of the Tribunal to award costs are contained within rule 13 of the 2013 Rules. Under rule 13(1)(b) the Tribunal *may* make

an order in respect of costs only [emphasis added] “if a person has acted unreasonably in bringing, defending or conducting proceedings”.

8. The Upper Tribunal gave clear guidance on the principles to be applied in respect of rule 13(1)(b) in *Willow Court Management Company 1985 Ltd v Alexander* [2016] UKUT 0290. At paragraph 43, it is made clear that such applications should be determined summarily, and the decision need not be lengthy, with the underlying dispute taken as read.
9. The UT in *Willow Court* suggested a sequential three-stage approach. It is not of rigid application as each case will be fact sensitive but provides a helpful framework. In summary: (i) applying an objective standard, has the person acted unreasonably? (ii) if so, should the Tribunal exercise its discretion to make an order for costs? (iii) if so, what should the terms of the order be?
10. Stage 1 is essentially a gateway to stages 2 and 3. In deciding what is meant by acting “unreasonably”, the Upper Tribunal followed the approach set out in *Ridehalgh v Horsfield* [1994] EWCA 23 Civ 40, [1994] Ch 205, citing (at paragraph 24) the judgment of Sir Thomas Bingham MR:

*“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” [in Ridehalgh]: is there a reasonable explanation for the conduct complained of?”*

11. The Upper Tribunal did not go so far as to state that rule 13(1)(b) costs should only be awarded in the most exceptional of cases. However, it is made plain that orders under rule 13(1)(b) are to be reserved for the clearest cases and the bar is a high one.

## **Findings**

12. The application is brief. An award of costs is requested on the basis that the Respondents “*clearly admitted that a dog was present, should have known that that was a breach of the Lease having it [sic] been pointed out to them on numerous occasions by the Applicant and thereafter confirmed by the Tribunal in its award.*” In response, the First Respondent’s representative accepts he is breaching the Lease. but he cannot afford to pay the costs.
13. The Applicant has not explained how or why it is considered that the Respondents acted unreasonably in defending or conducting the

proceedings. The “proceedings” started with the notice of application pursuant to rule 26. When the proceedings were started the First Respondent had already admitted that he keeps his dog in the flat. This was remarked upon in the Tribunal’s Directions of 13 May 2024 when querying the purpose of the application if there had been an admission, as indicated. The Applicant’s statement of case clarified that an Order of the Tribunal was sought determining that a breach has occurred prior to taking forfeiture proceedings in the County Court.

14. The act of keeping a dog in breach of covenant prompted the proceedings, but a costs application in the Tribunal does not involve any primary examination of a party’s actions before an application is brought. Pre-commencement behaviour might be relevant to an assessment of the reasonableness of later actions in “defending or conducting proceedings”. However, the Applicant has not clearly and specifically identified conduct claimed to be unreasonable in connection with the application itself through to its conclusion at hearing. It is not for the Tribunal to speculate.
15. At the hearing, the First Respondent’s representative readily confirmed from the outset that a dog has been kept in the flat since July 2014 without the written consent of the lessor. There was no attempt to dispute those bare facts. It was disputed that the dog had caused annoyance to other residents as claimed by the Applicant, and the Tribunal found no breach of the Lease in this regard.
16. Just because the Tribunal found a breach of covenant in respect of one ground, does not automatically mean that the Respondents acted unreasonably in the proceedings. They were not legally represented. As set out at paragraph 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.”

### **Conclusions**

17. Unreasonable conduct in “defending or conducting proceedings” has not been demonstrated for rule 13(1)(b) to be engaged. The first part of the test is not met, and the application must fail. The discretionary power of the Tribunal under stage 2 is not engaged.

**Name: Judge K. Seward**

**Date: 21 October 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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).