



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

Case References : **BIR/00CS/HMK/2023/0027**

Property : **3, Highbury Road, Oldfield,
Birmingham. B68 8QF**

Applicants : **Maryia Anam**

Representative : **None**

Respondents : **Shahina Rashid & Maneesha Rashid**

Representative : **Sebastian Anderson,
Lawrence Kurt Solicitors**

Type of Application : **Application for an order for costs. Rule 13
Tribunal Procedure(First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member
Mr R Chumley Roberts MCIEH. JP**

Date of Hearing : **6 August 2024**

Date of Decision : **04 November 2024**

Decision

Introduction

1. By its Decision of 15 August 2024 the Tribunal dismissed the Applicants claim for a rent repayment order. The Respondent now seeks an order for legal costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Respondent makes this application alleging the Applicant's unreasonable conduct in bringing a claim for a Rent Repayment Order.

The parties submissions

2. The reason for the claim is that the Applicant's case was based on serious allegations of misconduct on the part of the Respondent contrary to the Protection from Eviction Act 1977 and the Criminal Law Act 1977 which the Tribunal found were not proved to the standard of proof required by section 40 Housing and Planning Act 2016. The Respondent contends the Applicant's failure to provide evidence to support her serious allegations, her speculative claims, and the overall lack of foundation for her case constitute unreasonable conduct.
3. In reply the Applicant rehearsed much of her primary case as justification for her allegations against the Respondent.

The legal framework

4. The Respondent referred to the decision of the Upper Tribunal in *Willow Court Management (1985) limited v Ratna Alexander [2016] UKUT 290 (LC), 2016 contending* the Applicant's failure to provide evidence to support her serious allegations, her speculative claims, and the overall lack of foundation for her case constitute unreasonable conduct. This is consistent with the threshold set out in Willow Court.
5. Rule 13 Tribunal Procedure (First-tier)(Property Chamber) Rules 2013 (the Rules) provides (1) *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 in –

(i) an agricultural land and drainage case

(ii) a residential property case or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs –

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

6. The parties appear to agree and accept that “*Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that “the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid”, subject to the tribunal's procedural rules” per Martin Rodger KC at par 29 Willow Court.*

7. Also in that case the Deputy President said

“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?

8. Then in *Lea v GP Ilfracombe*[2023] UKUT 108 (LC), 2023 WL 03766071 HHJ Cooke after referring to this paragraph said "*The Tribunal in Willow Court envisaged a three-stage decision-making process: first, the FTT should decide whether the Respondent to the application behaved "unreasonably" in the sense set out above; if it was then, second, the FTT should decide whether it should therefore make a costs order; third, and if so, it should consider what order it should make. At paragraph 28 it was said:*
- "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; it is only if it decides that it should make an order that a third stage is reached when the question is what the terms of that order should be."*

The Decision

9. The Tribunal must first decide whether it was unreasonable for the Applicant to bring these proceedings before its discretion is engaged whether or not to make an order for costs.

10. In the judgment of Lord Bingham in *Riddhalgh* when describing unreasonable behaviour he said “*It is not enough that the conduct leads in the event to an unsuccessful outcome.*” The basis of the Respondent’s claim for costs is that it was unreasonable to bring a case which the Tribunal dismissed. Rule 13 costs do not follow the event. The Tribunal must be satisfied that bringing these proceedings was unreasonable.
11. The Applicant was unrepresented although from her papers and submissions it appeared there had been some legal advice given at some point. The Tribunal decided her allegations of misconduct by the Respondents did not satisfy the burden of proof required on the evidence presented. That decision does not mean that bringing the proceedings was unreasonable per se. The Applicant was not unreasonable in bringing these proceedings as required by Rule 13.
12. The Respondent’s claims the sum of £1773.00 including £500 counsel’s fee. Had the Tribunal decided there was unreasonable conduct by the Applicant so as to engage the Tribunal’s discretion it would have had regard to the Applicant’s unrepresented status, her dependency on Universal Credit and the purpose of the Tribunal as a low or no cost forum in determining that no costs would be ordered payable by the Applicant.

Appeal

13. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Tribunal Judge Peter Ellis