



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

Case reference : **LON/00AN/HMF/2024/0184**

Property : **8 Wallflower Street, Shepherds Bush,
London W12 0TE**

Applicant : **Maciej Jasinki**

Representative : **Adam Bernard Solicitors**

Respondent : **Mr Imran Hussain
Mr Hygenius Ejikeme Mouneke**

Representative : **n/a**

Type of application : **For an order for costs under Rule 13(1)b
of the Tribunal Procedure (First Tier
Tribunal)(Property Chamber) Rules
2013**

Tribunal members : **Tribunal Judge O'Brien, Tribunal
Member S Johnson MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

**Date of
Determination** : **9 December 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal does not make a costs order pursuant to Rule 13 of the First Tier Tribunal (Property Chamber) Rules 2013.

The Proceedings

1. On 20 May 2024 the Tribunal received an application from the above named Applicant for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 against the above Respondents. In the application the Applicant asserted that the First Respondent was the managing agent/landlord and the Second Respondent was the legal owner. It was the Applicant's case that he had only ever dealt with the First Respondent in relation to the tenancy. He exhibited a tenancy agreement to his application which indicates that the First Respondent signed the agreement as landlord and owner of the subject property.
2. The application was acknowledged by the tribunal on 4 June 2024 by a letter which also sought payment of the application fee of £110. The Tribunal wrote to the Applicant's legal representatives on 7th June 2024 and 25 July 2024 again requesting payment of the fee however no fee was paid and by order of Tribunal Judge H Carr dated 7 August 2024 the application or a RRO was deemed withdrawn. On 8th August 2024 the Applicant's legal representatives applied to restore the proceedings. The First Respondent objected to the application. The application was dismissed by order of Tribunal Judge Nicol on 12 August 2024. The Applicant's legal representatives subsequently submitted a further application, accompanied by a signed witness statement to have the proceedings restored. The First Respondent again indicated by email that he objected to the application. The second application was dismissed by order of Judge Walker on 15 August 2024.

The Application

3. By an application made on Form Order 1 the First Respondent applies for a cost order against the Applicant pursuant to Rule 13(1)b of the Tribunal Rules (First Tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). He seeks costs of £4,485 which he asserts are his legal costs of defending the proceedings. They include the costs of an initial consultation with a solicitor (£2,500) travel costs (£65) and lost earnings of £1920. The Respondent asserts that the Applicant acted unreasonably in joining him as a respondent to the proceedings and in his conduct of them. He asserts that he was not the landlord and should not have been joined as Respondent to the application in the first place. He also asserts that the Applicant's poor conduct of the proceedings merits a costs order under Rule 13(1)b.
4. The Applicant has objected to the application and has filed written submissions. In essence the Applicant's case is that it was not unreasonable to join the First Respondent to the initial application. He points out that a RRO can be made against anyone who manages or is in control of an unlicensed House in Multiple Occupation and that it was arguable that Mr Hussain, even on his own case, was such a person. The applicant accepts that his representative's failure to pay the fee when requested was 'highly unfortunate' but that ultimately the result of this was to the benefit of the First Respondent as it resulted in the failure of a well-founded application for a RRO. The

Applicant takes issue with the costs sought by the Respondent and queries whether they are legal costs at all.

Rule 13(1)b: The law and relevant authorities.

5. The tribunal may make an order under Rule 13(1)b of the 2013 Rules where it is satisfied that a party has acted unreasonably in bringing defending or conducting proceedings.

6. In *Willow Court Management Co v Alexander [2016] UKUT 290(LC)* the Upper Tribunal held the determination of an application under costs under or Rule 13 should be addressed in three stages at the conclusion of the case (at para 28):

“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 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 the order should be”

7. In *Lea v GP Ilfracombe Management Company Ltd [2024] EWCA Civ. 1241* the Court of Appeal held that the acid test is with the conduct in question permits a reasonable explanation:

“[15] A good practical rule for the tribunal to consider is; would a reasonable person acting reasonably have acted in this way? Is there a reasonable explanation for the conduct in issue?”

8. In the latter case the Court of Appeal expressly rejected the submission that the pursuit of an unrealistic or unachievable outcome should be regarded as unreasonable behaviour for the purposes of Rule 13.

9. We are not satisfied that the First Respondent has established that the decision to join him to the proceedings can possibly be described as unreasonable. On the case as brought by the Applicant it was highly arguable that the First Respondent was either in control of or managing the unlicensed premises. We do not consider that the Applicant's failure to pay the fee when requested amounts to unreasonable conduct either; it appears to have been the result of human error or oversight. We do consider that the Applicant, or rather his legal representatives did act unreasonably in the sense described by the Court of Appeal in *Lea v GP Ilfracombe Management Company Ltd* when they applied for a second time to set aside the order of Tribunal Judge H Carr- the application had already been considered by the Tribunal and if the Applicant was not

satisfied with the determination he should have sought permission to appeal; not tried to persuade the Tribunal to change its mind.

10. However notwithstanding our finding that in that limited respect the Applicant did act unreasonably we decline to make a costs order as the only additional step which the First Respondent took in respect of the second set aside application was to email the Tribunal to confirm that he objected to it for the same reasons as he had objected to the first one. Consequently we do not consider that we should make the order sought by the First Respondent or any costs order.

Name : Judge O'Brien

Date 9 December 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).