FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/HMF/2025/0807.**
Property	**:**	**19 Alderney Road, London E1 4EG**
Applicants	**:**	**Beatrice White;** **Ellen Walder;** **Bryony Johnson;** **Emily O'Brien;** **Florence Bennett;** **Sophie Hanna.**
Representative	**:**	**James Cairns of Justice for Tenants** **Ref: 38324**
Respondent	**:**	**VHGK Limited**
Representative	**:**	**Harrison Engler of counsel**
Type of application	**:**	**Application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**
Tribunal	**:**	**Judge Adrian Jack, Tribunal Member** **Ian B Holdsworth FRICS**
Date of Decision	**:**	**10th July 2026**

DECISION

© CROWN COPYRIGHT

1. By an application dated 23rd May 2025 the tenants sought a rent repayment order against the landlord in respect of the twelve months ending 29th July 2024. On 28th October 2025 the tenants sought to withdraw the application. On 19th November 2025 the Tribunal consented to the withdrawal.

2. By an application dated 30th October 2025 the landlord seeks an order for costs under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a case such as the present.

3. Such applications are generally determined on the papers, however, in the current case it appeared at an early stage that there was or might be a substantial dispute of fact. In consequence, Judge Vance ordered that there be an oral hearing of the application. In the event this proved unfortunate, since the costs being claimed were only £240, a fact which only became apparent after the order for a hearing was made. In the event we heard the application over half a day with the landlord represented by counsel and the tenants by Justice for Tenants.

The facts

4. The six tenants rented the property from 23rd September 2022 to 22nd September 2024 at a rent of about £60,000 per annum. (The tenancy agreement was not in evidence, nor the application of 23rd May 2025.) It is common ground that the property was a house in multiple occupation ("HMO"), which required an HMO licence from the Council. Failure to obtain an HMO licence is an offence under section 72(1) of the Housing Act 2004. In turn a failure of a landlord to obtain a licence gives the landlord's tenants a right to make a claim for a rent repayment order ("RRO") under section 41(1) of the Housing and Planning Act 2016.

5. If the tenants apply for a RRO within one year of a breach of section 72(1) of the 2004 Act, they could (under the legislation as it stood prior to the Renters' Rights Act 2025) apply for repayment of up to one year's rent from the landlord. There is much caselaw on what percentage of the rent should be paid, if a case for a RRO is made out.

6. At some point, the tenants consulted Justice for Tenants as to whether they had a claim for a RRO. Justice for Tenants is a well-known organisation specialising in the obtaining of RROs for tenants. It says it is a non-profit organisation, but it nonetheless charges 36 per cent of any monies recovered as its fee (the 36 per cent being 30 per cent plus VAT). It is not an authorised firm of legal practitioners, but many, if not all, of its advocates are lawyers, often barristers who have not yet undertakenpupillage.

7. No one from Justice for Tenants gave oral evidence as to steps the organisation took to investigate the facts of the current case. Mr Cairns, who appeared instructed by Justice for Tenants, said that the relevant advisor in the organisation had left in February 2025. Instead of oral evidence, various documents have been produced, although they do not appear to be a complete documentary record.

8. On 22nd November 2024, Justice for Tenants wrote to the London Borough of Tower Hamlets and explained that they were acting on behalf of the six tenants. They asked the following questions, with the Council's answers underlined, but the bold entries as in the original:

> "1) Does the property… **currently** have a licence under any of the licensing schemes currently operating in the London Borough of Tower Hamlets?… Yes
>
> 2) Has the property listed above **ever** held a license [*sic*] under any of the licensing schemes currently operating in the [Borough]? If so a) was the licence application duly made in accordance with the requirements specified by the [Borough]? Yes
>
> …
>
> 4) If the property **does** currently hold a licence under any of the licensing schemes currently operating in the [Borough] please can you confirm the **date the application was made**? 29/7/24"

9. On 20th December 2024 Justice for Tenants advised the tenants that they had a potential claim for a RRO for two months' rent. They explained this in an email of 23rd December 2024 where they said:

> "With respect to the period of claim, from a review of your case it appears that this is the case due to the Property previously having a licence during your period of occupation. We corresponded with the council who confirmed that the Property held a licence between 08/06/2021 and 08/05/2024 and that a new licence application was received on 29/07/2024. As such we will be able to recover relevant rent for this period (08/05/2024 - 29/07/2024)."

10. The correspondence between Justice for Tenants and the Council which is said to establish that there was no licence in place between 8th May 2024 and 29th July 2024 is not in evidence. In fact it is now common ground that there were licences in place for the whole period. The first licence was granted on 10th May 2022 for a period from 6th August 2021 to 5th August 2024. The second licence was granted on 16th September 2024 for a period from 6th August 2024 to 5th August 2027.

11. The email of 23rd December 2024 contains a further error. The rent was payable on 23rd of each month. Thus there were in fact three rent days between 8th May and 29th July 2024, so the tenants' claim (on the

assumptions in that email) would potentially have been for three months' rent, not two.

12. Notwithstanding the advice of 23rd December 2024, the application of 23rd May 2025 claimed a RRO for twelve months ending 28th July 2024.

13. On 23rd May 2025 Justice for Tenants made the landlord an offer without prejudice save as to costs to settle the matter at 85 per cent of the twelve months' rent. There had been no pre-claim correspondence and no attempt prior to making the application to narrow the issues.

14. Originally there was an issue between the parties as to whether the landlord had sent the tenants a copy of the HMO licence back in 2022 and whether various visits by workmen in 2024 mentioned that an application was to be made or had been made for a *renewal* of an HMO licence. The tenants denied that the HMO licence had been sent or that mention of a *renewal* of an HMO licence had been made. The landlord did not pursue this issue before us, so we did not hear evidence from the tenants on these points. The parties were content for us to determine the application for costs on the basis that these matters were not proven.

The law

15. It was common ground between the parties that the Tribunal in determining the current application had to apply the three-stage approach set out in *Willow Court Management Company (1985) Limited v Alexander* [2016] UKUT 290 (LC), where the Lands Chamber of the Upper Tribunal said:

> "28. At the first stage the question is whether a person has acted unreasonably. 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.
>
> 29. 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. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case 'in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal.' It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.
>
> 30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant."

Unreasonable conduct

16. In our judgment there are four concrete examples of unreasonable conduct by Justice for Tenants. Firstly, the request dated 22nd November 2024 to the local authority for information about the licensing position was defective. The request did not include the key question: was there a licence in force during the whole of the relevant period? Instead the questions actually posed allowed a completely erroneous inference to be drawn that there was in fact no licence prior to 29th July 2024.

17. Secondly, by 20th and 23rd December 2024 Justice for Tenants had clearly established that there was a prior licence. Why they thought there was no licence between 8th May and 29th July 2024 is left unexplained. The relevant correspondence is not produced and, as we have noted, there is no oral evidence to explain this.

18. Thirdly, on 23rd May 2025 Justice for Tenants issued the substantive application claiming repayment of twelve months of rent. We were told that the application was signed by each of the six tenants with a statement of truth, although we have not seen this. In our judgment, this is the most egregious example of unreasonable behaviour in this case. Mr Cairns, who appeared for Justice for Tenants, suggested that this was just a mistake, but there is no explanation for how such a mistake could come to have been made. (In fairness to Mr Cairns, we should say he only became involved in the case once the landlord's application for costs was made. He had no involvement in the issuing of the application on 23rd May 2025 or the earlier investigations by Justice for Tenants.)

19. Fourthly, the same day Justice for Tenants wrote the "without prejudice save as to costs" letter claiming 85 per cent of twelve months' rent. Quite apart from the twelve month issue, the claim for 85 per cent was grossly exaggerated. Most RROs are made for between 40 and 60 per cent of the twelve months' rent, with scope for awards somewhat above or below. 85

per cent would be exceptional. We do not accept that Justice for Tenants can have had any genuine belief that 85 per cent was a reasonable settlement figure. On the contrary, we find it was made to intimidate the landlord, who had no legal advice at that point.

20. In our judgment, each of these four examples objectively constitute unreasonable behaviour, so the first stage of *Willow* is satisfied.

21. We then move to the second stage. Here it is right to say that if the first or second examples stood on their own, it is unlikely we would have made an order at the second stage. However, they do not stand on their own. The third example is, as we have noted, particularly egregious. Justice for Tenants and (in the light of the emails of 20th and 23rd December 2024) the tenants themselves were aware that no claim for twelve months' rent lay. When we take all four examples together, in our judgment there is a very strong case for making an order under rule 13(1)(b). In the exercise of our discretion, we do make an order for such costs.

22. This leads to the third stage, the terms of the order. This consists of two elements. The first is the immediate cost to the landlord of responding to the claim. It acted reasonably in our judgment by instructing a firm of estate agents, Acquire Estate Agents, to act. This was not part of their usual duties, but the firm had a property manager, Mr Vinh Ta, who had experience in HMO matters. They were entitled to and did charge for their time. The total claim is for four hours at £50 per hour, plus VAT, a total of £240.

23. In our judgment, this is wholly reasonable. In the exercise of our discretion, we allow this sum completely.

24. The second element is more complicated. Once the Tribunal ordered that there should be an oral hearing of the costs application, the landlord was placed in a difficult position. The legal issues are, sadly, not straightforward. There might very well have been factual issues where cross-examination was necessary. The tenants were likely (as in fact occurred) be represented by an experienced specialist advocate from Justice for Tenants. They had, as we have noted, taken an extremely aggressive approach to the litigation. The tenants at no point made any offers without prejudice as to costs in respect of the costs. In our judgment the landlord acted reasonably in seeking legal representation.

25. In order to obtain legal representation, the landlord instructed counsel on a direct access basis. That in our judgment was reasonable. Mr Engler is only of 2023 call, but he is from specialist chambers. In our judgment he was an appropriate person to instruct. His clerks agreed to instructions on a flat brief-fee basis of £2,500 plus VAT, a total of £3,000. Although the fee was not agreed on an hourly basis, by comparison one can say that it equates to 10 hours at £250 per hour. For a half day hearing, that in our judgment is a reasonable fee. We find as a fact that the landlord could not have obtained proper representation for less.

26. Mr Cairns makes two submissions. The first is that what he described as "the costs of the costs" were not recoverable under a rule 13(1)(b) application. He draws attention to the difference between the first two limbs of rule 13(1) which provides that "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; [or]
>
> (b) if a person has acted unreasonably in bringing, defending or conducting proceedings…"

27. Rule 13(1)(a) refers expressly to "the costs incurred in applying for such costs" whereas rule 13(1)(b) does not. It is to be inferred, he submits, that such costs are not recoverable under rule 13(1)(b).

28. We do not accept this submission. Section 29 of the Courts and Tribunals Act 2007 provides, so far as relevant:

> "(1) The costs of and incidental to (a) all proceedings in the First-tier Tribunal… shall be in the discretion of the Tribunal in which the proceedings take place.
>
> (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
>
> (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
>
> (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
>
> > (a) disallow, or
> >
> > (b) (as the case may be) order the legal or other representative concerned to meet,
>
> the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
>
> (5) 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.

(6) In this section 'legal or other representative', in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf."

29. In our judgment, without the extension in rule 13(1)(a) it would not be permissible to add the costs of the application for wasted costs to the costs order for wasted costs. These are claims against a non-party. By contrast where a claim is made against a party, the Tribunal has a general jurisdiction to award costs (albeit subject to the Procedure Rules and the general "no costs" regime), so there is no need for a like extension to that in rule 13(1)(a).

30. Accordingly, in our judgment we have jurisdiction to award the costs of counsel's appearance on the application for costs.

31. This leads to Mr Cairns' second submission that the amount of the costs sought is in any event disproportionate. He contrasts the sum of costs in dispute of £240 with the sum for appearance before us of £3,000.

32. The difficulty in our judgment with this submission is that it does not address the question of what the landlord should have done. As we have explained above, the landlord on the facts of this case acted reasonably in instructing Mr Engler on the terms on which it did. The landlord could not reasonably have obtained proper representation for less in our judgment. In effect, the landlord had a choice: instruct Mr Engler or represent themselves.

33. Mr Cairns did not go so far as to say the landlord should have represented themselves. Given that he was appearing as a specialist advocate on behalf of the tenants, in our judgment he was right not to make that submission. Equality of arms requires that "so far as practicable,... the parties are able to participate fully in the proceeding": Procedure Rules rule 3(2)(c).

34. Standing back, in our judgment, it is right to award the full sum claimed of £3,240.

35. We were not addressed on the parties' means and not invited to take them into account. The tenants are in any event professional women who would appear to be able to afford £540 each.

36. As regards the fees payable to the Tribunal, the tenants have lost and should bear these costs themselves.

DETERMINATION

(a) It is ordered that the six applicant tenants do jointly and severally pay the respondent landlord £3,240 in respect of costs within 28 days.

(b) There be no order as to costs in respect of the fees payable to the Tribunal.

Signed: Judge Adrian Jack **Dated: 10th July 2026**