



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

Case reference : **LON/00AG/HMF/2020/0140**

Property : **50A Woodsome Road
London NW5 1RZ**

Applicant : **Jonea Geary**

Respondent : **Jessica Slamon**

Type of Application : **Costs – Rule 13(1)(b) of the Tribunal
Procedure (First-tier Tribunal)
(Property Chamber) Rules 2013**

Tribunal members : **Judge Nicol**

Date of Decision : **21st June 2021**

DECISION ON COSTS

The Tribunal rejects the Respondent's application under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and makes no further order as to costs.

Reasons

1. On 12th January 2021 the Tribunal determined that the application for a Rent Repayment Order should be struck out. On 15th January 2021 the Respondent applied for an order that the Applicant pay her costs of the proceedings under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. She has provided a Schedule of Costs totalling £3,975.
2. The Tribunal invited the Applicant to make written representations in response, which she did on 28th May 2021. The Tribunal has proceeded to determine the application on the papers, without a hearing.

The relevant law

3. The relevant parts of rule 13 state:
 - (1) The Tribunal may make an order in respect of costs only—
 - (a) ...
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (ii) a residential property case; ...
4. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... 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.

5. The Upper Tribunal in *Willow Court* went on to say:

24. ... 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?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...

The application

6. The Respondent has submitted the following as to why the Applicant should be ordered to pay her costs, on which the Tribunal's comments also follow:

(a) The Applicant took no legal advice and, if she had, she would have been told she had no case. The Respondent was facing accusations of criminal offences so that it is unreasonable to fail to take advice.

Attached to the Applicant's submissions are two solicitor's letters, one being from Moore Barlow, acting for the Applicant and raising various allegations, some of which were also raised in these proceedings. It is not clear why the Respondent would allege that the Applicant had not taken legal advice when she clearly had. In any event, it is neither obvious that she would have been told she no case at all nor is the mere fact of failing to take legal advice sufficient by itself to constitute unreasonable behaviour.

(b) The Applicant substantially failed to comply with the Tribunal's directions. This could have resulted in a strike-out by itself but the Respondent couldn't rely on this and had to spend a "huge amount" of time and money in the lead-up to the hearing.

This submission is somewhat disingenuous. As recorded in paragraph 3 of the Tribunal's decision of 12th January 2021, neither party had been able to comply with the Tribunal's directions. The Respondent claims to have spent money on legal advice but it clearly did not extend to how to prepare her papers for the Tribunal.

(c) When Camden Council corrected their earlier error and informed the Applicant that the Respondent did, in fact, have a licence, the Applicant did not put a stop to the Tribunal process but carried on to the hearing.

The Applicant's allegations were not limited to that of failing to licence but also included allegations of offences under the Protection from Eviction Act 1977. Removing the former allegation would not have put a stop to the proceedings. In any event, it was within the Respondent's power to put a stop to the licensing allegation. She could have provided the Applicant with a copy of the licence and, if that didn't work, she could have applied accordingly to the Tribunal. It appears she did neither.

(d) The Respondent had not personally harassed the Applicant.

It is not clear why it is said that this is relevant to a claim of unreasonable behaviour. The Applicant's allegation has always been that the Respondent was responsible for harassment carried out by others. The Tribunal's decision was limited to a finding that there was insufficient in the material before it to conclude beyond a reasonable doubt that the Respondent had committed the relevant offence in relation to the behaviour of the Applicant's neighbour, Ms Boyd-Caten.

- (e) The Applicant is abusing the process by asking for the same amount of money in county court proceedings.

The Applicant's causes of action before the Tribunal and in the county court are entirely different. It is possible for a tenant to obtain a RRO from the Tribunal and damages from the county court in relation to the same behaviour by the landlord. It is not an abuse of process to run both sets of proceedings.

- (f) The Applicant appears to have had help with fees which implies she is in receipt of Universal Credit or Housing Benefit which should have precluded an application for an RRO.

Help with Fees does not imply reliance on the housing element of Universal Credit or on Housing Benefit.

- (g) The Applicant wrongly included a claim for her deposit in her RRO claim and thereby claimed a greater amount for her RRO than she actually paid in rent.

Under section 52 of the Housing and Planning Act 2016, offsets against the rent may count as rent. If a deposit is used to pay rent, it is capable of being included in an RRO. It is not necessarily wrong to include a deposit in an RRO claim, let alone being unreasonable.

7. The parties' relationship as landlord and tenant has clearly broken down. The Applicant has vested a great deal of emotion in her legal actions against the Respondent and genuinely believes, rightly or wrongly, that she is the victim of unlawful behaviour. She did not have the evidence to establish this before the Tribunal but that is a long way from saying that her conduct was vexatious or designed to harass the Respondent rather than advance the resolution of the case
8. The Tribunal agrees that the Applicant's case was weak. The course adopted by the Applicant may certainly be regarded as optimistic. However, that is insufficient to be regarded as unreasonable within the definition referred to in *Willow Court*.
9. In the circumstances, the Tribunal declines to make any costs orders.
10. If there had been a basis for finding the Applicant to have behaved unreasonably, the Respondent would not have recovered anything like her full costs. As the Applicant has pointed out, the Respondent did not provide any documentary evidence in support, such as her lawyers' invoices, despite the fact that they should be easily available.
11. In her submissions, the Applicant also listed the costs she had incurred but there is no basis for making a costs order in her favour.

Name: Judge Nicol

Date: 21st June 2021