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

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| **Case Reference** | **:** | **LON/00AY/HMK/2018/0012** |
| **Property** | **:** | **111 Park Hill, Clapham, London SW4 9NX** |
| **Applicants** | **:** | **Paul Mamak**<br>**Georgina Reeves**<br>**Aseel Karam**<br>**James Goodall**<br>**Hollie Crawford**<br>**Adnan Khan**<br>**Lucy Grime**<br>**Jenna Johnson**<br>**Alexander Roberts**<br>**Tara Spicer**<br>**Ruba Sonbol**<br>**Matthew Darch** |
| **Representative** | **:** | **Justice for Tenants** |
| **Respondent** | **:** | **Living London Property Management Ltd** |
| **Type of Application** | **:** | **Costs – rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013** |
| **Tribunal** | **:** | **Judge Nicol** |
| **Date of Decision** | **:** | **6th August 2018** |

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**DECISION**

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**The Tribunal refuses the Respondent's application for costs** under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 against both the Applicants and their representatives, Justice for Tenants, for the reasons set out below.

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## Background

1. The Applicants used to live at the subject property, a house in multiple occupation operated by the Respondent. In November 2017 they contacted Justice for Tenants for advice. Two issues gave Justice for Tenants cause for concern:

   (a) The Respondent was making significant deductions from the Applicants' security deposits without apparently resorting to the dispute resolution system available through any deposit protection scheme.

   (b) Although each of the Applicants appeared to have exclusive possession of their room at the subject property for a term at a rent, the Respondent issued each of them with a "Lodgers Agreement" which expressly purported to be a licence, not a tenancy.

2. The Tribunal is not surprised that these matters gave rise to concerns. There do exist, unfortunately, landlords who abuse security deposits for profit and who try to deny tenants security of tenure by using sham licence agreements. Justice for Tenants, as its name implies, is aware of such problems and looks to address them where possible. That is not to suggest that the Respondent has done anything wrong but just that it is reasonable to query practices which, on their face, might be further examples of such behaviour.

3. Justice for Tenants sent a Freedom of Information request to the local authority, the London Borough of Lambeth. On 28th December 2017 Lambeth provided information that the property had been licensed under the Housing Act 2004 for a maximum of 7 occupants forming no more than 5 households. If that had been true, the Respondent would have committed an offence under section 72(2) of the Act as it was clear that the property had more than that number of paying residents. The Applicants also complained of harassment and unlawful eviction which, again if true, would have constituted criminal offences.

4. Therefore, on 15th March 2018 Justice for Tenants applied to the Tribunal on behalf of the Applicants for Rent Repayment Orders under the Housing and Planning Act 2016. The amounts claimed for each of the 12 Applicants ranged from £752.22 to £4,628.71 for a total of £34,394.06 at an average of £2,866.17.

5. By letter dated 12th April 2018 the Respondent invited Justice for Tenants to withdraw the application by return, failing which they would "bring an application to Court seeking an order that those proceedings are struck out with costs awarded." In particular, they pointed that they had an HMO licence for 10 occupants, not 7. They refuted the claim of unlawful eviction on the basis that 10 of the 12 Applicants had been given one month's notice of the termination of their "licences" and the other two were "served notice to terminate … in line with the licence agreement terms".

6. By letter dated 13th April 2018 the Tribunal issued some preliminary directions ahead of a case management hearing to take place on 29th May 2018. The Applicants were directed to send more information about their case to the Respondent and the Tribunal at least 7 days before the hearing, i.e. by 22nd May 2018. The letter also pointed out that, if the Respondent's alleged offences occurred before 6th April 2017 then the Tribunal may lack jurisdiction under the then applicable provisions of the Housing Act 2004 but, if they were after that date, the Tribunal may have jurisdiction under the later applicable provisions of the Housing and Planning Act 2016.

7. On 25th April 2018 the Respondent filed and served a Defence and a bundle of documentary evidence. It is not clear why they incurred the expense of doing this since there was no rule or direction requiring them to do so and they have not since purported to provide any explanation.

8. In the meantime, Justice for Tenants had asked Lambeth whether the Respondent's allegation about their HMO licence was correct. By email dated 26th April 2018 they confirmed that it was – their previous information given in response to the Freedom of Information request had been wrong.

9. As a result of this new information, by letter dated 3rd May 2018 Justice for Tenants sought to withdraw the application on the basis that the grounds were no longer valid. The Tribunal does not understand why they would say that. Lambeth's erroneous information about the number of permitted occupants meant that the part of the application which had relied on it had never actually been valid but that still left the claims of harassment and unlawful eviction. It is possible that Justice for Tenants were confused by the terms of the Tribunal's letter of 13th April 2018 because their letter of 3rd May 2018 asked for clarification as to whether the landlord had to have been convicted of an offence before a tenant could apply for a rent repayment order. The application was under the Housing and Planning Act 2016 which, as referred to below, allows for such orders whether or not the landlord is convicted.

10. On 4th May 2018 the Respondent purported to write to "Justice for Tenants Legal Limited". The Applicants' representative is an unincorporated association and, therefore, a different organisation from this company, despite the similarity of their names. In any event, the letter made a number of points:

    (a) It was pointed out that the Respondent had provided a copy of their HMO licence on 12th and 25th April 2018, the implication being that the Applicants could have withdrawn sooner. In the Tribunal's opinion, this point is not well-made. Justice for Tenants very reasonably checked the information with Lambeth before withdrawing. Their withdrawal was prompt thereafter. In the meantime, the Respondent was subject to no prejudice. They incurred the expense of the Defence but, as already pointed out,

that was their choice. In terms of provoking the withdrawal, the Defence appears to have made no difference.

(b) It was asserted that the legislation was unequivocal, namely that, under section 73(8) of the Housing Act 2004, there had to have been a conviction. However, the application stated on its face that it was made under the Housing and Planning Act 2016. The amounts claimed were stated to be for periods which all post-dated the commencement date of that Act and, therefore, were plainly in relation to offences allegedly committed after that date. Section 43(1) of the Housing and Planning Act 2016 states unequivocally that the Tribunal may make a rent repayment order whether or not the landlord has been convicted.

(c) It was asserted that the Applicants must use a Notice of Discontinuance in Form N279. This is a court form which has no relevance to Tribunal proceedings.

(d) It was asserted that the Applicants (termed "Claimants") were now liable for costs under rule 38.6 of the Civil Procedure Rules. They are the court rules which have no relevance to Tribunal proceedings. The Tribunal is governed by its own rules, the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

11. By letter dated 14th May 2018 the Tribunal confirmed that the application had been withdrawn and their file was now closed.

12. However, by letter dated 25th May 2018 the Respondent sought to recover their costs under rule 13 of the aforementioned Tribunal Procedure Rules. The letter was accompanied by a Statement of Costs in court form N260 for a total of £2,236.73.

13. On 5th June 2018 the Tribunal issued revised directions for the purposes of the costs application, to be determined on the papers, without a hearing. Neither party requested a hearing and both provided bundles of documents, on the basis of which the Tribunal proceeded to determine the costs issue.

**<u>The relevant law</u>**

14. The relevant parts of rule 13 state:

> (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—
> (ii) a residential property case; ...

15. The Upper Tribunal considered rule 13(1) 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.

16. 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?
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> 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. ...
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> 27. When considering the rule 13(1)(b) power attention should first focus on the permissive and conditional language in which it is framed: "the Tribunal may make an order in respect of costs only ... if a person has acted unreasonably...." We make two obvious points: first, that unreasonable conduct is an essential pre-condition of the power to order costs under the rule; secondly, once the existence of the power has been established its exercise is a matter for the discretion of the tribunal. ...

## The nature of the application

17. The Respondent has not been consistently clear about who is the object of their application. Justice for Tenants have repeatedly stated in correspondence that they believe costs are being sought directly against them, which would apparently be financially disastrous for the organisation. The Respondent at first did not contradict this but, instead, repeatedly engaged in a dispute about the differences between Justice for Tenants on the one hand and Justice for Tenants Legal Ltd on the other and addressed their letters in the second person as if there were no distinction between the Applicants and their representatives.

18. The Tribunal itself clarified the situation in a letter dated 19th June 2018, stating that the costs application is against the Applicants under rule 13(1)(b), not against Justice for Tenants under rule 13(1)(a). That is the basis on which the Tribunal had issued its directions.

19. However, by letter dated 25th June 2018 the Respondent stated that, not only would they pursue the "Claimants" for the full costs, but also they would hold Justice for Tenants responsible and quoted rule 13(1)(a).

## Unreasonableness

20. The Respondent's statement of case is their letter of 25th May 2018. They have asserted that the Applicants behaved unreasonably in the sense that their application never had any merit. However, that is not the correct test. The correct test, as set out above is whether the Applicants acted unreasonably in the sense that their actions were vexatious and designed to harass the other side rather than advance the resolution of the case.

21. In the Tribunal's opinion, the Applicants' behaviour was patently not unreasonable in that sense. They proceeded on the basis of a mistake made by the local authority. They were entitled to trust the information from the authority which is responsible for the licensing regime. They acted promptly to correct the error and, in withdrawing the case entirely, seemed to go further than was required. As already pointed out in paragraph 10(a) above, the Respondent incurred no prejudice in the period from first notification of the error on 12th April 2018 until the withdrawal of the application on 3rd May 2018, the cost of their Defence being both unnecessary and entirely their own choice.

22. The Respondent has accused Justice for Tenants and the Applicants of acting dishonestly and for profit. There is not a shred of evidence to support such a serious allegation and the Tribunal has no hesitation in dismissing it. The Respondent's behaviour in this regard is not professional and certainly falls short of standards expected from legal representatives (as to which, see further below).

23. The Respondent's letter of 25th May 2018 made two further points:

(a) The Respondent pointed out that the HMO licence had been displayed inside the main entrance to the property, the implication being that the Applicants knew the terms of the licence before the application was issued. However, that fails to take into account that none of Applicants any longer had access to the property, all of them having left well before issue. Justice for Tenants themselves made the valid point that the Applicants cannot be expected to have remembered the detailed content of the licence.

(b) The Respondent claimed that Justice for Tenants and the Applicants had failed to follow "the Procedural Rules" by not sending them a pre-action protocol letter. In fact, the Tribunal Procedure Rules do not contain any pre-action protocols. The Respondent appears to be repeating their error about the applicability of court rules, despite the Tribunal having already pointed out the difference. There is an obligation on a local authority to issue a notice of intended proceedings under section 42 of the Housing and Planning Act 2016 but there is no equivalent obligation on tenants or former tenants. Instead, they need to act quickly to limit the effect of the 12-month limitation on the amount that can be recovered under section 44. While the Tribunal would always encourage parties to engage with each other in order to limit the need to resort to legal action, the Applicants cannot possibly be regarded as having acted unreasonably in the required sense by not doing so in these circumstances.

**<u>Wasted costs</u>**

24. Having found that the Applicants did not behave unreasonably, the Tribunal is bound to dismiss the Respondent's application under rule 13(1)(b) without the need to consider its discretion. However, there is still the Respondent's application under rule 13(1)(a). This application was made so late in the proceedings that this alone could justify the Tribunal in dismissing it but it has been considered in any event.

25. The test for a wasted costs order was decided in *Ridehalgh v Horsefield*, already quoted above. For a wasted costs order to be made against Justice for Tenants, the Tribunal would have to be satisfied that they had acted improperly, unreasonably or negligently.

26. According to the Respondent's letter of 25th June 2018, Justice for Tenants acted improperly by suggesting they were able to advise tenants and due to the confusion with two companies with similar names. Unfortunately, the Tribunal found it difficult to follow this argument. It is true that Justice for Tenants sometimes misunderstood the law but that is a long way from suggesting that it is misleading to say they can advise tenants. The Respondent has made many more errors of law than Justice for Tenants, as detailed above, and yet has no qualms claiming the costs of the legal representation provided by its directors (see further below). The confusion of names appears to have

been entirely generated by the Respondent's companies search when Justice for Tenants have never claimed to be incorporated.

27. Again, there is no basis for claiming that Justice for Tenants have acted improperly, unreasonably or negligently and the Tribunal must equally dismiss the application under rule 13(1)(b).

**Quantum of costs**

28. Even if it could have been said that either or both of the Applicants and Justice for Tenants had behaved unreasonably, the Tribunal would have been minded to disallow the whole of the costs claimed. If the Applicants had engaged in pre-action correspondence, as the Respondent has said they should, the Respondent would have incurred the cost of responding as they did on 12th April 2018. The only additional cost prior to the withdrawal of the application was the preparation, filing and service of the Defence but, as has already been pointed out, that was unnecessary and entirely the Respondent's choice.

29. The Respondent has submitted a revised Statement of Costs, now totalling £5,021.73, an increase of £2,785. As the Tribunal understands it, this is the Respondent's costs bill for pursuing its original costs claim of £2,236.73. There being no basis for the original claim, this only constituted throwing good money after bad. Moreover, the sum involved, being 125% of the original costs, is wholly disproportionate.

30. Further, the sums claimed are based on hourly rates for three directors of the Respondent company. The time of Ms Rhiannon Brewster and Mr Floyd Barnes is each charged at £150 per hour and that of Mr Alex Freeland at £100 per hour. The basis for these figures is not given. As the Tribunal understands it, these people are effectively litigants in person. Their qualifications are not given – Ms Brewster and Mr Barnes appear to have some legal training but neither is a solicitor or barrister. There is no evidence of any service agreement by which they provide representation services to the company at a pre-determined rate. Moreover, based on their numerous legal errors, repeated many times over, and their wholly exaggerated and unjustified claims of improper behaviour against Justice for Tenants, they are not worth the money they charged.

**Conclusion**

31. In the circumstances, the Respondent's application for costs must be refused.

**Name:** NK Nicol **Date:** 6th August 2018