First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/00JA/HMB/2018/0001**
Property	**:**	**49 Fletton Fields, Peterborough, PE2 9DW**
Applicant	**:**	**Sally Mowforth**
Respondents	**:**	**James Michael Turner and Naomi Marie Turner**
Applications	**:**	**(1) For an order that the Respondents' representatives do pay the Applicant's wasted costs pursuant to section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (2) For an order that the Respondents do pay the Applicant's costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("rule 13")**
Application date	**:**	**19th December 2018**
Tribunal	**:**	**Judge Edgington Nat Miller BSc**

DECISION

Both applications are refused

STATEMENT OF REASONS

1. On the 21st November 2018, the Tribunal heard an application by the Respondents, Mr. and Mrs. Turner, for a rent repayment order. The Applicant, Mrs. Mowforth, was the Respondents' landlady and on the 15th October 2017, she served a Notice to Quit on the Respondents. It was an unlawful notice in that it only gave one month's notice rather than the two months which were required.

2. The Respondents alleged that as a result of the unlawful notice, they vacated the property and the Applicant was therefore guilty of an offence under sub-sections 1(2), (3) and (3A) of the **Protection From Eviction Act 1977**.

3. The Respondents therefore asked the Tribunal to make a rent repayment order in the sum of £6,900 as the offence is specified in section 40 of the **Housing and Planning Act 2016**.

4. As is alleged, the Respondents failed to turn up at the hearing but this did not create any extra expense because counsel for the Respondents agreed to proceed with the hearing in their absence.

5. The Tribunal refused to make the rent repayment order ("RRO") stating that "*We conclude that Mrs. Mowforth did not unlawfully deprive or attempt to deprive Mr. and Mrs. Turner of their occupation of the Property, they were leaving anyway and had informed Mrs. Mowforth of this. Therefore, no offence was committed and no RRO can be made*".

6. A Procedural Chair made a further directions order giving time limits for the submission of representations and stating that the Tribunal would deal with the decision on the basis of the evidence filed and any written representations made. It was said that if either party wanted an oral hearing, one would be arranged. No application for an oral hearing has been made.

7. The Tribunal has received a detailed letter dated 15th February 2019 from Legal Road Ltd. on behalf of the Respondents setting out the terms of a complaint against their former solicitors and counsel. The letter does not seek permission to appeal the Tribunal's main decision but asks for an unspecified extension of time to make representations on this costs application only. As the Tribunal is not making any costs order, it does not consider it appropriate or necessary to delay this decision any further.

The application for a wasted costs order

8. This application is in a letter from the Applicant's solicitors, Hegarty LLP. All they say is that they are asking for such an order to be made.

9. The power to make such an order is concerned with the conduct of a "*legal or other representative*" of a party, and not the conduct of the party themselves. It is a distinct power which should not be confused with the power under rule 13. The Respondents were represented by counsel at the hearing who behaved entirely properly throughout. For example, he accepted that his clients should have been in attendance and did not pursue his application for an adjournment.

10. Hegarty LLP do not make any allegations against the solicitors or counsel representing the Respondents. All the allegations are against the Respondents themselves. Accordingly, the Tribunal has no hesitation in refusing a wasted costs order.

The application for an order under rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

11. Such an order can only be made "*if a person has acted unreasonably in bringing, defending or conducting proceedings*" before this Tribunal.

12. The allegations are that the Respondents (a) "*have acted unreasonably in bringing an application with overall limited prospects of success*" and (b) "*failed to attend the hearing as was required of them*".

13. The Tribunal, in its decision, said that if an application for costs under rule 13(1) was to be made, reference should be made to the leading case on the subject, namely **Willow Court Management Co. Ltd. v Alexander plus 2 other cases** [2016] UKUT 0290 (LC). The Applicant's solicitors have referred to that case but they have not quoted from it or set out the criteria which must be applied.

14. In the main case dealt with by the Upper Tribunal in **Willow Court**, the management company lost and the other party felt that costs should be awarded under rule 13. The First-tier Tribunal agreed and made the order. In allowing the appeal against that order, the Upper Tribunal said:

> "*61. In reaching its conclusion on costs we consider that the Tribunal erred in two important respects. Firstly, it accorded too much weight to the fact that the Management Company lost at the substantive hearing. Secondly it applied a standard of unreasonableness which fell well below the threshold that we consider to be applicable in these cases*
>
> *62. Although in some cases, the fact that a party has been unsuccessful before the Tribunal in a substantive hearing might reinforce a view that there has been unreasonable behaviour, that failure cannot be determinative on its own. The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs...*"

15. The first thing to be determined is the nature of the alleged unreasonable conduct. Willow Court confirmed that the definition of unreasonable conduct is still, in essence, that set out by the then Master of the Rolls in **Ridehalgh v Horsefield** [1994] Ch 205. At pages 232 and 233 in that judgment, 'unreasonable' is said to be "*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 cannot be described as unreasonable simply because it leads in the event to an unsuccessful result*".

16. In this case, the Applicant served an unlawful Notice to Quit and the Respondents did vacate. If that had been done on purpose with a view to

obtaining early vacant possession, the Tribunal would probably have made the RRO.

17. Accordingly, there was a case to answer and the Respondents were represented throughout by solicitors and counsel whose conduct has not been criticised by those representing the Applicant. There is nothing in this application to suggest that the conduct of the Respondents themselves in the proceedings satisfied the **Ridehalgh** test.

18. In these circumstances, the rule 13 application is refused.

.....
Regional Judge Edgington
20th February 2019

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/00JA/HMB/2018/0001**
Property	**:**	**49 Fletton Fields, Peterborough, PE2 9DW**
Applicant	**:**	**Sally Mowforth**
Respondents	**:**	**James Michael Turner and Naomi Marie Turner**
Applications	**:**	**(1) For an order that the Respondents' representatives do pay the Applicant's wasted costs pursuant to section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (2) For an order that the Respondents do pay the Applicant's costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("rule 13")**
Application date	**:**	**19th December 2018**
Tribunal	**:**	**Judge Edgington Nat Miller BSc**

DECISION

Both applications are refused

STATEMENT OF REASONS

1. On the 21st November 2018, the Tribunal heard an application by the Respondents, Mr. and Mrs. Turner, for a rent repayment order. The Applicant, Mrs. Mowforth, was the Respondents' landlady and on the 15th October 2017, she served a Notice to Quit on the Respondents. It was an unlawful notice in that it only gave one month's notice rather than the two months which were required.

2. The Respondents alleged that as a result of the unlawful notice, they vacated the property and the Applicant was therefore guilty of an offence under sub-sections 1(2), (3) and (3A) of the **Protection From Eviction Act 1977**.

3. The Respondents therefore asked the Tribunal to make a rent repayment order in the sum of £6,900 as the offence is specified in section 40 of the **Housing and Planning Act 2016**.

4. As is alleged, the Respondents failed to turn up at the hearing but this did not create any extra expense because counsel for the Respondents agreed to proceed with the hearing in their absence.

5. The Tribunal refused to make the rent repayment order ("RRO") stating that "*We conclude that Mrs. Mowforth did not unlawfully deprive or attempt to deprive Mr. and Mrs. Turner of their occupation of the Property, they were leaving anyway and had informed Mrs. Mowforth of this. Therefore, no offence was committed and no RRO can be made*".

6. A Procedural Chair made a further directions order giving time limits for the submission of representations and stating that the Tribunal would deal with the decision on the basis of the evidence filed and any written representations made. It was said that if either party wanted an oral hearing, one would be arranged. No application for an oral hearing has been made.

7. The Tribunal has received a detailed letter dated 15th February 2019 from Legal Road Ltd. on behalf of the Respondents setting out the terms of a complaint against their former solicitors and counsel. The letter does not seek permission to appeal the Tribunal's main decision but asks for an unspecified extension of time to make representations on this costs application only. As the Tribunal is not making any costs order, it does not consider it appropriate or necessary to delay this decision any further.

The application for a wasted costs order

8. This application is in a letter from the Applicant's solicitors, Hegarty LLP. All they say is that they are asking for such an order to be made.

9. The power to make such an order is concerned with the conduct of a "*legal or other representative*" of a party, and not the conduct of the party themselves. It is a distinct power which should not be confused with the power under rule 13. The Respondents were represented by counsel at the hearing who behaved entirely properly throughout. For example, he accepted that his clients should have been in attendance and did not pursue his application for an adjournment.

10. Hegarty LLP do not make any allegations against the solicitors or counsel representing the Respondents. All the allegations are against the Respondents themselves. Accordingly, the Tribunal has no hesitation in refusing a wasted costs order.

The application for an order under rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

11. Such an order can only be made "*if a person has acted unreasonably in bringing, defending or conducting proceedings*" before this Tribunal.

12. The allegations are that the Respondents (a) "*have acted unreasonably in bringing an application with overall limited prospects of success*" and (b) "*failed to attend the hearing as was required of them*".

13. The Tribunal, in its decision, said that if an application for costs under rule 13(1) was to be made, reference should be made to the leading case on the subject, namely **Willow Court Management Co. Ltd. v Alexander plus 2 other cases** [2016] UKUT 0290 (LC). The Applicant's solicitors have referred to that case but they have not quoted from it or set out the criteria which must be applied.

14. In the main case dealt with by the Upper Tribunal in **Willow Court**, the management company lost and the other party felt that costs should be awarded under rule 13. The First-tier Tribunal agreed and made the order. In allowing the appeal against that order, the Upper Tribunal said:

> "*61. In reaching its conclusion on costs we consider that the Tribunal erred in two important respects. Firstly, it accorded too much weight to the fact that the Management Company lost at the substantive hearing. Secondly it applied a standard of unreasonableness which fell well below the threshold that we consider to be applicable in these cases*
>
> *62. Although in some cases, the fact that a party has been unsuccessful before the Tribunal in a substantive hearing might reinforce a view that there has been unreasonable behaviour, that failure cannot be determinative on its own. The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs...*"

15. The first thing to be determined is the nature of the alleged unreasonable conduct. Willow Court confirmed that the definition of unreasonable conduct is still, in essence, that set out by the then Master of the Rolls in **Ridehalgh v Horsefield** [1994] Ch 205. At pages 232 and 233 in that judgment, 'unreasonable' is said to be "*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 cannot be described as unreasonable simply because it leads in the event to an unsuccessful result*".

16. In this case, the Applicant served an unlawful Notice to Quit and the Respondents did vacate. If that had been done on purpose with a view to

obtaining early vacant possession, the Tribunal would probably have made the RRO.

17. Accordingly, there was a case to answer and the Respondents were represented throughout by solicitors and counsel whose conduct has not been criticised by those representing the Applicant. There is nothing in this application to suggest that the conduct of the Respondents themselves in the proceedings satisfied the **Ridehalgh** test.

18. In these circumstances, the rule 13 application is refused.

.....
Regional Judge Edgington
20th February 2019

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/00JA/HMB/2018/0001**
Property	**:**	**49 Fletton Fields, Peterborough, PE2 9DW**
Applicant	**:**	**Sally Mowforth**
Respondents	**:**	**James Michael Turner and Naomi Marie Turner**
Applications	**:**	**(1) For an order that the Respondents' representatives do pay the Applicant's wasted costs pursuant to section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (2) For an order that the Respondents do pay the Applicant's costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("rule 13")**
Application date	**:**	**19th December 2018**
Tribunal	**:**	**Judge Edgington Nat Miller BSc**

DECISION

Both applications are refused

STATEMENT OF REASONS

1. On the 21st November 2018, the Tribunal heard an application by the Respondents, Mr. and Mrs. Turner, for a rent repayment order. The Applicant, Mrs. Mowforth, was the Respondents' landlady and on the 15th October 2017, she served a Notice to Quit on the Respondents. It was an unlawful notice in that it only gave one month's notice rather than the two months which were required.

2. The Respondents alleged that as a result of the unlawful notice, they vacated the property and the Applicant was therefore guilty of an offence under sub-sections 1(2), (3) and (3A) of the **Protection From Eviction Act 1977**.

3. The Respondents therefore asked the Tribunal to make a rent repayment order in the sum of £6,900 as the offence is specified in section 40 of the **Housing and Planning Act 2016**.

4. As is alleged, the Respondents failed to turn up at the hearing but this did not create any extra expense because counsel for the Respondents agreed to proceed with the hearing in their absence.

5. The Tribunal refused to make the rent repayment order ("RRO") stating that "*We conclude that Mrs. Mowforth did not unlawfully deprive or attempt to deprive Mr. and Mrs. Turner of their occupation of the Property, they were leaving anyway and had informed Mrs. Mowforth of this. Therefore, no offence was committed and no RRO can be made*".

6. A Procedural Chair made a further directions order giving time limits for the submission of representations and stating that the Tribunal would deal with the decision on the basis of the evidence filed and any written representations made. It was said that if either party wanted an oral hearing, one would be arranged. No application for an oral hearing has been made.

7. The Tribunal has received a detailed letter dated 15th February 2019 from Legal Road Ltd. on behalf of the Respondents setting out the terms of a complaint against their former solicitors and counsel. The letter does not seek permission to appeal the Tribunal's main decision but asks for an unspecified extension of time to make representations on this costs application only. As the Tribunal is not making any costs order, it does not consider it appropriate or necessary to delay this decision any further.

The application for a wasted costs order

8. This application is in a letter from the Applicant's solicitors, Hegarty LLP. All they say is that they are asking for such an order to be made.

9. The power to make such an order is concerned with the conduct of a "*legal or other representative*" of a party, and not the conduct of the party themselves. It is a distinct power which should not be confused with the power under rule 13. The Respondents were represented by counsel at the hearing who behaved entirely properly throughout. For example, he accepted that his clients should have been in attendance and did not pursue his application for an adjournment.

10. Hegarty LLP do not make any allegations against the solicitors or counsel representing the Respondents. All the allegations are against the Respondents themselves. Accordingly, the Tribunal has no hesitation in refusing a wasted costs order.

The application for an order under rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

11. Such an order can only be made "*if a person has acted unreasonably in bringing, defending or conducting proceedings*" before this Tribunal.

12. The allegations are that the Respondents (a) "*have acted unreasonably in bringing an application with overall limited prospects of success*" and (b) "*failed to attend the hearing as was required of them*".

13. The Tribunal, in its decision, said that if an application for costs under rule 13(1) was to be made, reference should be made to the leading case on the subject, namely **Willow Court Management Co. Ltd. v Alexander plus 2 other cases** [2016] UKUT 0290 (LC). The Applicant's solicitors have referred to that case but they have not quoted from it or set out the criteria which must be applied.

14. In the main case dealt with by the Upper Tribunal in **Willow Court**, the management company lost and the other party felt that costs should be awarded under rule 13. The First-tier Tribunal agreed and made the order. In allowing the appeal against that order, the Upper Tribunal said:

> "*61. In reaching its conclusion on costs we consider that the Tribunal erred in two important respects. Firstly, it accorded too much weight to the fact that the Management Company lost at the substantive hearing. Secondly it applied a standard of unreasonableness which fell well below the threshold that we consider to be applicable in these cases*
>
> *62. Although in some cases, the fact that a party has been unsuccessful before the Tribunal in a substantive hearing might reinforce a view that there has been unreasonable behaviour, that failure cannot be determinative on its own. The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs...*"

15. The first thing to be determined is the nature of the alleged unreasonable conduct. Willow Court confirmed that the definition of unreasonable conduct is still, in essence, that set out by the then Master of the Rolls in **Ridehalgh v Horsefield** [1994] Ch 205. At pages 232 and 233 in that judgment, 'unreasonable' is said to be "*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 cannot be described as unreasonable simply because it leads in the event to an unsuccessful result*".

16. In this case, the Applicant served an unlawful Notice to Quit and the Respondents did vacate. If that had been done on purpose with a view to

obtaining early vacant possession, the Tribunal would probably have made the RRO.

17. Accordingly, there was a case to answer and the Respondents were represented throughout by solicitors and counsel whose conduct has not been criticised by those representing the Applicant. There is nothing in this application to suggest that the conduct of the Respondents themselves in the proceedings satisfied the **Ridehalgh** test.

18. In these circumstances, the rule 13 application is refused.

.....
Regional Judge Edgington
20th February 2019

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.

First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CAM/00JA/HMB/2018/0001**
Property	**:**	**49 Fletton Fields, Peterborough, PE2 9DW**
Applicant	**:**	**Sally Mowforth**
Respondents	**:**	**James Michael Turner and Naomi Marie Turner**
Applications	**:**	**(1) For an order that the Respondents' representatives do pay the Applicant's wasted costs pursuant to section 29(4) of the Tribunals, Courts and Enforcement Act 2007 (2) For an order that the Respondents do pay the Applicant's costs pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("rule 13")**
Application date	**:**	**19th December 2018**
Tribunal	**:**	**Judge Edgington Nat Miller BSc**

DECISION

Both applications are refused

STATEMENT OF REASONS

1. On the 21st November 2018, the Tribunal heard an application by the Respondents, Mr. and Mrs. Turner, for a rent repayment order. The Applicant, Mrs. Mowforth, was the Respondents' landlady and on the 15th October 2017, she served a Notice to Quit on the Respondents. It was an unlawful notice in that it only gave one month's notice rather than the two months which were required.

2. The Respondents alleged that as a result of the unlawful notice, they vacated the property and the Applicant was therefore guilty of an offence under sub-sections 1(2), (3) and (3A) of the **Protection From Eviction Act 1977**.

3. The Respondents therefore asked the Tribunal to make a rent repayment order in the sum of £6,900 as the offence is specified in section 40 of the **Housing and Planning Act 2016**.

4. As is alleged, the Respondents failed to turn up at the hearing but this did not create any extra expense because counsel for the Respondents agreed to proceed with the hearing in their absence.

5. The Tribunal refused to make the rent repayment order ("RRO") stating that "*We conclude that Mrs. Mowforth did not unlawfully deprive or attempt to deprive Mr. and Mrs. Turner of their occupation of the Property, they were leaving anyway and had informed Mrs. Mowforth of this. Therefore, no offence was committed and no RRO can be made*".

6. A Procedural Chair made a further directions order giving time limits for the submission of representations and stating that the Tribunal would deal with the decision on the basis of the evidence filed and any written representations made. It was said that if either party wanted an oral hearing, one would be arranged. No application for an oral hearing has been made.

7. The Tribunal has received a detailed letter dated 15th February 2019 from Legal Road Ltd. on behalf of the Respondents setting out the terms of a complaint against their former solicitors and counsel. The letter does not seek permission to appeal the Tribunal's main decision but asks for an unspecified extension of time to make representations on this costs application only. As the Tribunal is not making any costs order, it does not consider it appropriate or necessary to delay this decision any further.

The application for a wasted costs order

8. This application is in a letter from the Applicant's solicitors, Hegarty LLP. All they say is that they are asking for such an order to be made.

9. The power to make such an order is concerned with the conduct of a "*legal or other representative*" of a party, and not the conduct of the party themselves. It is a distinct power which should not be confused with the power under rule 13. The Respondents were represented by counsel at the hearing who behaved entirely properly throughout. For example, he accepted that his clients should have been in attendance and did not pursue his application for an adjournment.

10. Hegarty LLP do not make any allegations against the solicitors or counsel representing the Respondents. All the allegations are against the Respondents themselves. Accordingly, the Tribunal has no hesitation in refusing a wasted costs order.

The application for an order under rule 13(1) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

11. Such an order can only be made "*if a person has acted unreasonably in bringing, defending or conducting proceedings*" before this Tribunal.

12. The allegations are that the Respondents (a) "*have acted unreasonably in bringing an application with overall limited prospects of success*" and (b) "*failed to attend the hearing as was required of them*".

13. The Tribunal, in its decision, said that if an application for costs under rule 13(1) was to be made, reference should be made to the leading case on the subject, namely **Willow Court Management Co. Ltd. v Alexander plus 2 other cases** [2016] UKUT 0290 (LC). The Applicant's solicitors have referred to that case but they have not quoted from it or set out the criteria which must be applied.

14. In the main case dealt with by the Upper Tribunal in **Willow Court**, the management company lost and the other party felt that costs should be awarded under rule 13. The First-tier Tribunal agreed and made the order. In allowing the appeal against that order, the Upper Tribunal said:

> "*61. In reaching its conclusion on costs we consider that the Tribunal erred in two important respects. Firstly, it accorded too much weight to the fact that the Management Company lost at the substantive hearing. Secondly it applied a standard of unreasonableness which fell well below the threshold that we consider to be applicable in these cases*
>
> *62. Although in some cases, the fact that a party has been unsuccessful before the Tribunal in a substantive hearing might reinforce a view that there has been unreasonable behaviour, that failure cannot be determinative on its own. The residential property division of the First-tier Tribunal is a costs shifting jurisdiction by exception only and parties must usually expect to bear their own costs...*"

15. The first thing to be determined is the nature of the alleged unreasonable conduct. Willow Court confirmed that the definition of unreasonable conduct is still, in essence, that set out by the then Master of the Rolls in **Ridehalgh v Horsefield** [1994] Ch 205. At pages 232 and 233 in that judgment, 'unreasonable' is said to be "*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 cannot be described as unreasonable simply because it leads in the event to an unsuccessful result*".

16. In this case, the Applicant served an unlawful Notice to Quit and the Respondents did vacate. If that had been done on purpose with a view to

obtaining early vacant possession, the Tribunal would probably have made the RRO.

17. Accordingly, there was a case to answer and the Respondents were represented throughout by solicitors and counsel whose conduct has not been criticised by those representing the Applicant. There is nothing in this application to suggest that the conduct of the Respondents themselves in the proceedings satisfied the **Ridehalgh** test.

18. In these circumstances, the rule 13 application is refused.

.....
Regional Judge Edgington
20th February 2019

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.