



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

**Case Reference** : **MAN/00BY/HIN/2018/0032**

**Property** : **4, Farley Avenue, Manchester M18 7WA**

**Applicant** : **Colin John Napier**

**Respondent** : **Manchester City Council**

**Type of Application** : **Housing Act 2004 – Sections 40-45 and  
Schedule 1 Paragraph 10 (1)**

**Tribunal Members** : **Mr J Rimmer  
Mrs S Hopkins**

**Date of Decision** : **21<sup>st</sup> May 2019**

**Orders** : **(1) The appeal against the improvement notice dated 16<sup>th</sup> November 2018 relating to 4, Farley Avenue is struck out.**  
**(2) The Applicant's application for costs is dismissed**

**A. Applications.**

1. The Appellant issued an appeal under Section 18 and Schedule 1, Paragraph 10 of the Housing Act 2004 ("the Act") against an improvement notice dated 16<sup>th</sup> November 2018 relating to the property at 4, Farley Avenue, Manchester. The property was at that time a house in multiple occupation.
2. Manchester City Council is the appropriate local housing authority (the Authority) for the area in which the property is situated and issued the notice after two inspections of the property had taken place. The notice was made under section 11 of the Act, requiring certain works to be carried out to that flats to remedy hazards referred to in the Notice.
3. 5 days after the notice was issued receivers were appointed to administer the property and subsequently the authority issued a notice on 28<sup>th</sup> January 2019 revoking the notice.
4. The Applicant's appeal against the notice is still extant and requires to be brought to a conclusion within the powers available to the Tribunal.
5. The Applicant also seeks to recover his costs in relation to the Appeal following the withdrawal of the notice. He seeks an order in the amount of £880.40, as detailed in his letter to the Tribunal dated 29<sup>th</sup> January 2019.

**B. Submissions and evidence.**

- 6 It would appear from documents within the bundle of documents submitted by the Applicant that he has sought to withdraw his appeal. This is an appropriate step for him to take in the circumstances as they now stand, the order having been revoked, whatever the reasons may be for that.
- 7 Indeed, there is a completed withdrawal form, signed by the Applicant but not signed on behalf of the Respondent, indicating a wish to withdraw the appeal, but not the application in relation to costs.
- 8 It is not clear to the Tribunal why is has not been signed on behalf of the Respondent, or even if had an opportunity for this to be done. Whatever the case may be, withdrawal requires the written consent of both parties.

- 9 If such consent is not available, it is right that the matter is concluded as there is now no notice for the Tribunal to consider. In such a situation the Tribunal has no jurisdiction because it has nothing to have jurisdiction over.
- 10 It is therefore required to strike out the application under Rule 9(2)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and the Tribunal therefore makes that order.
- 11 Such an order is made without any determination of the issues that arose between the parties and the merits, or otherwise, of the notice that existed prior to its revocation.
- 12 Those merits, or lack of them are, however, what motivates the Applicant in relation to his costs, about which he makes a number of observations:
  - The inspection in October 2018 and resulting notice were motivated by malice towards the Applicant.
  - This arises from the relationship between the Environmental Health Officer involved and the Applicant's estranged partner
  - The findings and assessments upon which the notice is based are seriously flawed and the notice was not merited.
  - There are issues surrounding the professional competence of the officer, as to her qualifications, investigations and her understanding of the circumstances in which the applicant ceased to have control of the property from 21<sup>st</sup> November 2018 onwards.
- 13 He concludes that the effect of these matters was to embroil him in proceedings that have cost him time, effort and stress and need not have come about at all.

### **C. The Law**

- 14 Paragraph 12 of Schedule 13 to the Act provided the tribunal with its jurisdiction in relation to the costs of the proceedings
  - (1) A tribunal may determine that a party to proceedings before it is to pay the costs incurred by another party in connection with the proceedings in any circumstances falling with sub-paragraph (2).
  - (2) The circumstances are where-
    - (a) He has failed to comply with an order made by the tribunal
    - (b) In accordance with regulations made by virtue of paragraph 5(4) the tribunal dismisses, or allows, the whole or part of an application or appeal by reason of his failure to comply with a requirement imposed by regulations made by virtue of paragraph 5
    - (c) In accordance with regulations made by virtue of paragraph 9 , the tribunal dismisses the whole or part of an application or appeal made by him to the tribunal, or

- (d) He has, in the opinion of the tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph must not exceed
  - (a) £500...
  - (b) Or such other amount as may be specified in procedure Regulations
- (4) A person may not be required to pay costs incurred by another person in connection with proceedings before a tribunal except
  - (a) By a determination under this paragraph, or
  - (b) In accordance with provisions made by any enactment other than this paragraph.

15 That jurisdiction is augmented by rule 13 of the tribunal Rules-

- (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— (i) an agricultural land and drainage case,
    - (ii) a residential property case, or
    - (iii) a leasehold case; or
  - (c) in a land registration case.
- (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
- (3) The Tribunal may make an order under this rule on an application or on its own initiative.
- (4) A person making an application for an order for costs—
  - (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
  - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
  - (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
  - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

- (a) summary assessment by the Tribunal;
- (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
- (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.

16 The two provisions are, to the Tribunal’s mind complementary, in that they both address unreasonableness in the way one of the parties conducts itself. Although expressed slightly differently, paragraph 12 of the Act envisages a broad range of unreasonable behaviour.

17 The Tribunal had the benefit of a lengthy submissions from both the Applicant and the Respondent’s solicitor which the Tribunal has taken into account in its deliberations.

18 The application would appear to rely upon either provisions of Rule 13(1)(b), or paragraph 12, whereby a party himself may be responsible for wasted costs under the three heads of behaviour provided there: acting unreasonably in bringing, defending, or conducting proceedings before the Tribunal. It has the very considerable assistance of two cases I particular, the “Willow Court” case determined by the Upper Tribunal (Willow Court Management Company (1985) Limited v Alexander [2016] UKUT 0290 (LC)) and the longstanding case of Ridehalgh v Horsefield [1994] EWCA Civ 40 that has set the benchmark for what amounts to behaviour that might be considered overtly unreasonable.

19 The Tribunal has seen the original improvement notice in this matter. It came about as a result of an inspection by the relevant officer. What might have motivated that inspection can only really be, at best for the Applicant, the basis of conjecture. The findings that resulted in the notice may have been subject to challenge had the appeal proceeded before the Tribunal. It may have been the case that the Tribunal may have found in favour of the Applicant in whole, or in part. It is by no means clear however that the findings of the officer were in any way unreasonable.

- 20 The notice was revoked after the receiver was appointed. The Applicant suggests that this was because the notice was groundless. The Respondent suggests it was because the Applicant no longer had control of the property and was unable to influence the work needed to be carried out. The Tribunal might have been persuaded to consider the Applicant's view as more likely if he had provided a stronger case than appears in his submissions.
- 21 In particular the Tribunal noted:
- (1) A lack of any clear, independent evidence to support the suggestion any improper, or concealed, relationship between the officer and his former partner, in any event denied by the Respondent.
  - (2) The dispute as to the precise qualifications of the Environmental health officer is a red herring. It is her experience in housing standards that are relevant. The Tribunal does note however that in dealing with the Applicant's complaint the council might have avoided some conflict with the Applicant if it had dealt with the issue he raised, which was about her qualifications and institute membership. His points appear not to have been addressed satisfactorily.
  - (3) The issue as to whether the property was repossessed, or a receiver was appointed, could have been avoided if correct terminology had been used, but the Tribunal does not consider this issue to have any merit as a ground for supporting any decision as to unreasonableness. It was the removal of control over the works that may or may not have been required that should have influenced the decision to revoke the notice. The Applicant has not provided sufficient evidence to establish otherwise, in the absence of full consideration of the notice itself.
  - (4) The tests as to unreasonableness referred to in paragraph 18, above, suggest a more thorough examination of the circumstances than is now possible without that consideration.
- 22 In the circumstances the Tribunal declines to make an order in the Applicant's favour.

J R Rimmer  
24 May 2019