



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

**Case reference** : **LON/00AY/HML/2020/0023  
FVHREMOTE**

**Property** : **41 Valley Road, London SW16 2XL**

**Applicant** : **Kevin Cadogan**

**Representative** : **In person**

**Respondent** : **London Borough of Lambeth**

**Representative** : **Richard Davies of Counsel**

**Type of application** : **Appeal in respect of an HMO  
licence - Section 64 & Part 3 of  
Schedule 5 to the Housing Act 2004  
– Rule 13 costs application**

**Tribunal members** : **Judge Professor Robert Abbey**

**Video Based Hearing  
date** : **18 May 2021**

**Date of Costs Decision** : **22 June 2021**

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**COSTS DECISION**

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**Application for costs**

1. An application was made by the Respondent under Rule 13 of the Tribunal Rules, (The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)), in respect of the Respondent's legal costs. The Tribunal subsequently received a schedule of costs totalling £600. This is the amount listed by the Respondent and consists of Counsel's fees. The details of the provisions of Rule 13 are set out in the appendix to this Decision and rights of appeal made available to parties to this dispute are set out in an Annex.
2. Before a costs decision can be made, the Tribunal needs to be satisfied that there has been unreasonableness. At a second stage it is essential for the Tribunal to consider whether, in the light of unreasonable conduct (if the Tribunal has found it 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.
3. The Respondent filed with the Tribunal the Respondent's written costs application dated 10 June 2021 and comments/observations thereon were requested of the Applicant and these were forthcoming on the 14 June 2021.
4. It now falls to me to consider the costs application in the light of the written submissions before the Tribunal. I do this but in the context of the circumstances of the original decision and also in the light of Upper Tribunal decision affecting costs applications.

## **DECISION**

1. This Tribunal's powers to order a party to pay costs may only be exercised where a party has acted "unreasonably". Taking into account the guidance in that regard given by HH Judge Huskinson in *Halliard Property Company Limited v Belmont Hall & Elm Court RTM, City and Country Properties Limited v Brickman LRX/130/2007, LRA/85/2008*, (where he followed the definition of unreasonableness in *Ridehalgh v Horsefield* [1994] Ch 205 CA), the Tribunal was not satisfied that there had been unreasonable conduct so as to prompt a possible order for costs.
2. The Tribunal was also mindful of a fairly recent decision in the case of *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander* [2016] UKUT 0290 (LC) which is a detailed survey and review of the question of costs in a case of this type. At paragraph 24 of the decision the Upper Tribunal could see no reason to depart from the views expressed in *Ridehalgh*. Therefore, following the views expressed in this case at a first stage the Tribunal needs to be satisfied that there has been unreasonableness.

3. At a second stage it is essential for the Tribunal to consider whether, in the light of any 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.
4. In *Ridehalgh* it was said that *"Unreasonable" also 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"*.
5. The *Willow Court* decision is of paramount importance in deciding what conduct might be unreasonable. I have mentioned the approach of the Upper Tribunal in this decision but I think it appropriate to quote the relevant section of the decision in full: -

*"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....."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?"*

6. In relation to unrepresented parties the Upper Tribunal noted that:

*"In the context of rule 13(1)(b) we consider that the fact that a party acts without legal advice is relevant at the first stage of the inquiry. When considering objectively whether a party has acted reasonably or not, the question is whether a reasonable person in the circumstances in which the party in question found themselves would have acted in the way in which that party acted. In making that assessment it would be wrong, we consider, to assume a greater degree of legal knowledge or familiarity with the procedures of the tribunal and the conduct of proceedings before it, than is in fact possessed by the party whose conduct is under consideration. The behaviour of an unrepresented party with no legal knowledge should be judged by the standards of a reasonable person who does not have legal advice. The crucial question is always whether, in all the circumstances of the case, the party has acted unreasonably in the conduct of the proceedings.*

*We also consider that the fact a party who has behaved unreasonably does not have the benefit of legal advice may be relevant, though to a lesser extent, at the second and third stages, when considering whether an order for costs should be made and what form that order should take. When exercising the discretion conferred by rule 13(1)(b) the tribunal should have regard to all of the relevant facts known to it, including any mitigating circumstances, but without either “excessive indulgence” or allowing the absence of representation to become an excuse for unreasonable conduct.”*

7. In *Laskar v Prescott Management Company Ltd* [2020] UKUT 241 (LC) the Upper Tribunal clarified the decision in *Willow Court* as follows:

*“in Willow Court the Tribunal suggested an approach to decision making in claims under rule 13(1)(b) which encouraged tribunals to work through a logical sequence of steps, it does not follow that a tribunal will be in error if it does not do so. **The only “test” is laid down by the rule itself, namely that the FTT may make an order if is satisfied that a person has acted unreasonably in bringing, defending or conducting proceedings.** The rule requires that there must first have been unreasonable conduct before the discretion to make an order for costs is engaged, and that the relevant tribunal must then exercise that discretion. Whether the discretion has been properly exercised, and adequately explained, is to be determined on an appeal by asking whether everything has been taken into account which ought to have been, and nothing which ought not, and whether the tribunal has explained its reasons and dealt with the main issues in such a way that its conclusion can be understood, rather than by considering whether the Willow Court framework has been adhered to. That framework is an aid, not a straightjacket.”* [emphasis added]

8. It seems to Tribunal that therefore the bar to unreasonableness is set quite high in that what amounts to unreasonableness must be quite significant and of serious consequence. This being so the Tribunal must now consider the conduct of the parties in this dispute given the nature of the judicial guidance outlined above.
9. The respondents say there are two important features that they say demonstrate the Respondents unreasonableness in both his bringing and conduct of these proceedings.
10. Firstly, Lambeth say that the Appellants pursuit of these proceedings was driven by his animus towards his tenant (the Licensee, TLK Property and Investments Limited) and his unconnected legal difficulties with them. This the Council say is evidenced and neatly summarised at paragraph 6 of the judgement which quotes the Appellants view thus: “The Council is encouraging an unfit commercial tenant to enjoy a licence beyond the time that the tenancy agreement has expired.” On several occasions before and

during these proceedings, the Respondents say they explained at length to the Appellant that the difficulties he had with the Licensee and the separate litigation he was/is pursuing with them were not properly matters the Respondent (or Tribunal) could have regard to in its decision making and that should the latter be resolved in his favour that would result in the Licence falling away and his appeal rendered otiose. Yet despite these explanations and reassurances the Appellant persisted with his pursuit of this appeal.

11. Secondly, the respondents say that at the time the Appellant made his application he indicated that he was content to have the matter determined on the papers. Had that been the case the respondent's costs of these proceedings would they say have been limited. Lambeth say they wrote to the Appellant on 10th May 2021 to remind him of this including a snip of his declaration on the application. Despite this they say the Appellant still elected for a remote hearing of this matter.
12. On the other hand, the applicant responded by saying *“Any reasonable homeowner would make an application to appeal in the circumstances. The people who are suffering the most from the ongoing conduct of the Licensee are their sub-tenants. The council not having managed to check/improve their plight, it says, due to the pandemic, probably albeit inadvertently saving the Respondent money. The Appellant asking the sub-tenants their view on the hearing type was giving them a voice in the interests of justice. Therefore, the Appellant has not been unreasonable seeking the Tribunal's determination and invites the Tribunal to reject the councils' application for costs.”*
13. It is apparent from the above exchange that there were serious differences that existed between the parties and that this plainly necessitated careful review by the parties involved in the appeal. This was evidenced by the documentation issued by the applicant and by his detailed work throughout. Whilst this could be seen as zealous, it seemed to the Tribunal that the applicant's conduct in this regard cannot be considered vexatious such that it could give rise to a successful Rule 13 application.
14. Taking into account all that the parties have said about the case and the actions of the parties involved, the Tribunal cannot find evidence to match the high bar of unreasonable conduct set out above. The Tribunal was therefore not satisfied that stage one of the process had been fulfilled in that it had not found there has been unreasonableness for the purposes of a costs decision under Rule 13 on the part of the applicant. The conduct may have been mistaken but it was not vexatious or such that following the legal tests the tribunal might consider such conduct unreasonable. As was said above in relation to a legal definition of what might be unreasonable it makes no difference that the conduct is the product of excessive zeal as may well have been the driving force in the appeal.

15. In the circumstances the Tribunal determines that there be no order for costs payable by the Applicant pursuant to Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8).

**Name:** Judge Professor Robert  
Abbey

**Date:** 21 June 2021

## **Appendix**

### **The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)**

#### **Orders for costs, reimbursement of fees and interest on costs**

13.

(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.



## **ANNEX - RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.