



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

**Tribunal Reference** : **LON/00BG/HMF/2021/0144**

**HMCTS Code** : **Paper Remote**

**Property** : **169 Wheat Sheaf Close, London E14 9UZ**

**Applicant** : **Vanessa Breuer**

**Representative** : **in person**

**Respondent** : **Mr Christiern Dart and Mrs Katherine Richardson**

**Representative** : **Lightfoots LLP - Solicitors**

**Type of Application** : **Costs pursuant to rule 13 of the Tribunal Procedure (First-Tier Tribunal) (Property Chamber) Rules 2013**

**Tribunal Members** : **Tribunal Judge Dutton  
Ms S Coughlin MCIEH**

**Date of Decision** : **30 September 2021**

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**DECISION**

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## **COVID-19 PANDEMIC: DESCRIPTION OF HEARING**

This has been a paper determination which has been consented to by the parties. A face-to-face hearing was not held because it was not practicable, and no-one requested same and further that the issues could be determined on the papers.

The documents that we will refer to were in a bundle of some 34 pages which have been noted by us in making this determination. The order is as described at the end of these reasons.

### **DECISION**

**The Tribunal determines that the applicant has acted unreasonably within the provisions of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 and awards that the respondent costs in the sum of £ 1942.50.**

### **BACKGROUND**

1. On 29 June 2021 the Tribunal issued a Consent to Withdraw following the applicants notice of her wish to do so. This was followed by a letter dated 23 July 2021 from Lightfoots solicitors on behalf of the respondents seeking an order for costs under rule 13(1)(b) of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 (the Rule).
2. On 28 July 2021 Judge Vance issued directions indicating that the matter would be determined on the papers unless either party requested a hearing. The applicant has not taken any part in this application dealing with the costs. Although she does not appear to be represented. The respondent has filed a bundle of documents including a statement of case and a statement of costs in form N260.
3. Briefly for the respondent it is submitted that the applicant is liable to pay the costs of the respondent under the provisions of rule 13 of the Tribunal Procedure (First-Tier Tribunal)(Property Chamber) Rules 2013 (the Rule) as a result of alleged unreasonable conduct as set out in full in the statement of case, the contents of which we have carefully noted.
4. It is said that the applicant wrongly indicated that the property at 169 Wheat Sheaf Close, London E14 9UZ (the Property) would be occupied by a family and that the provisions of the Housing Act requiring an HMO licence would not be required. This proved to be false, and it is alleged that the applicant intended to cause the respondents to obtain an HMO licence so that she could illegally sublet the Property. It also transpired that the applicant had issued another application for an RRO in respect of a property 33 Jamestown where dates of occupancy overlapped, and she indicated that she was the tenant of both. This was put to her in a letter from the tribunal dated 14 June 2021 and shortly thereafter the application in respect of the Property was withdrawn.

5. With the statement we were provided with a statement of costs in form N260. This showed that two fee earners had been involved, Mr Norman a grade A solicitor charging an hourly rate of £225 and Asmah Rasool, a grade C solicitor/legal executive charging an hourly rate of £185. The total sum sought for the costs occasioned by the conduct of the applicant was £2,151,50, to include the fee of an advocate for a CMH on 29 June 2021 in the sum of £300 inclusive of VAT.
6. As we have indicated above the applicant has played no part in this application.

## **FINDINGS**

7. In deciding this matter, we must bear in mind the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT 290 (LC)*.

8. The relevant section of the judgment are as follows:

*"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. With these points in mind, we suggest that a systematic or sequential approach to applications made under the rule should be adopted.*

*28. At the first stage the question is whether a person has acted unreasonably. A decision that the conduct of a party has been unreasonable does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed. A discretionary power is then engaged, and the decision maker moves to a second stage of the inquiry. At that second stage it is essential for the tribunal to consider whether, in the light of the 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.*

*29. Once the power to make an order for costs is engaged there is no equivalent of CPR 44.2(2)(a) laying down a general rule that the unsuccessful party will be ordered to pay the costs of the successful party. The only general rules are found in section 29(2)-(3) of the 2007 Act, namely that "the relevant tribunal shall have full power to determine by whom and to what extent the costs are to be paid", subject to the tribunal's procedural rules. Pre-eminent amongst those rules, of course, is the overriding objective in rule 3, which is to enable the tribunal to deal with cases fairly and justly. This includes dealing with the case "in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal." It therefore does not follow that an order for the payment of the whole of the other party's costs assessed on the standard basis will be appropriate in every case of unreasonable conduct.*

*30. At both the second and the third of those stages the tribunal is exercising a judicial discretion in which it is required to have regard to all relevant circumstances. The nature, seriousness and effect of the unreasonable conduct will be an important part of the material to be taken into account, but other circumstances will clearly also be relevant; we will mention below some which are of direct importance in these appeals, without intending to limit the circumstances which may be taken into account in other cases."*

- 9 The question we must consider is whether the Respondent acted so unreasonably as to fall within the ambit of the Rule. We accept that she appears to be unrepresented but as we indicated above the applicant issued two applications for RRO's in respect of separate properties and appeared to be familiar with the provisions of the 2016 Act. She has not engaged in this application.
- 10 Having noted all that was set out in the respondents' statement of case and reviewing the tribunal papers it is clear to us that the applicant set about potentially unlawfully occupying the Property and making an application for an RRO when it would seem she did, or should have known that such an application was, at best misconceived. Accordingly, we have no hesitation in finding that the applicant has acted unreasonably in bringing the proceedings for an RRO under the provisions of the Housing and Planning Act 2016. Our discretion is invoked when we consider stage two and in exercising that we find that an order for costs should be made against her for the reasons sent out in the respondents' statement of case and the tribunal papers, in particular the lack of response to the letter sent on 14 June 2021 seeking an explanation as to the two applications she made for an RRO in respect of separate properties.
- 11 We then move to consider the level of costs that we consider should be awarded by way of Summary Assessment. We have carefully considered the Statement of Costs dated 5 August 2021.
12. The first issue is the hourly charging rate. These exceed, but not to any great degree, the Guideline rates, which are themselves somewhat dated. We consider that the rates charged for Mr Norman of £225 per hour to be reasonable. The Guideline figure is £217. For the reasons we shall turn to the charges involving Asmah Rasool are not relevant.
13. We find no reason to reduce the sums claimed in respect of attendances involving the parties, totalling some £675.00 In respect of the attendances on others, we assume this will be on the advocate and the tribunal. The costs of attendances on the tribunal are not ordinarily recoverable. We would propose to reduce the sum claimed for this element of £337.50 to £202.50, being 9 units.
14. The only other area we would seek to review is the schedule of work done and in particular the reviewing of the application and considering issues. We do not see the need for the involvement of Asmah Rasool and would disallow the fee of £74 in that regard, leaving £292.50 payable.

## **Summary**

15. (a) On page one of the Statement of costs we allow £675
  - (b) On page two we allow £202.50 instead of £337.50 and £765 instead of £839.00
  - (c) The fee claimed for the advocate, supported by a fee note form LPC Law is allowable in full.
16. Accordingly, the total sum allowed for costs under the provisions of the Rule is £1942.50. There does not appear to be a claim in respect of VAT.

**Tribunal Judge Dutton**

**30 September 2021**

### **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 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 to 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 (ie 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.