



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

**Case reference** : **LON/00AH/HMF/2021/0187**

**HMCTS code** : **P:PAPER**

**Property** : **Flat 6, 51 Fox Hill, London SE19 2NE.**

**Applicants** : **Noah Campeau  
Charlotte Stapleton  
Delilah Campeau**

**Representative** : **Justice for Tenants**

**Respondent** : **Bostall Estates Limited.**

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

**Type of application** : **Application for costs under Rule 13 of  
the Tribunal Procedure (First-tier  
Tribunal )(Property Chamber) Rules  
2013, following a withdrawal of an  
application in respect of a Rent  
Repayment Order under the Housing  
and Planning Act 2016.**

**Tribunal members** : **Judge Pittaway  
Mr A Parkinson MRICS**

**Date of decision** : **7 April 2022**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote hearing on the papers. The form of remote hearing was P:PAPERREMOTE, A face-to-face hearing was not held because the tribunal considered that the application might be determined by summary assessment, pursuant to rule 13(7)(a), without a hearing, on the basis of the written submissions from the parties unless any party requested a hearing and neither party did.

In reaching its decision the tribunal had before it the respondent's application for costs (34 pages) and the applicants' response (4 pages).

The decision made and reasons are set out below.

## **Decision of the tribunal**

The tribunal makes no order for costs under either rule 13(1)(a) or rule 13 (1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

## **Background**

- (1) By an application dated in June 2021 the applicants applied for a Rent Repayment Order under s.41 Housing and Planning Act 2016 on the basis that the respondent had committed the offence of having control of, or managing an unlicensed house under section 95(1) Housing Act 2004 which application was withdrawn in January 2022.
- (2) Following that withdrawal, by a letter dated 25 January 2022 the respondent seeks an order for costs under rule 13(1)(a) and/or rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the '**Rules**').
- (3) The costs' application is made within the time limits prescribed by rule 13(5).
- (4) Rule 13(1)(a) provides that the tribunal may order the legal or other representative of a party to meet the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
- (5) Rule 13(1)(b) provides that the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case.
- (6) The total costs sought are set out in the respondent's application. They claim costs of £5,571.30 incurred in connection with the RRO application that was withdrawn by the applicants, and anticipated costs in connection with a costs hearing of £5,049 plus VAT. It is not clear from

the information provided to the tribunal by the respondent by whom these costs were incurred.

- (7) Rule 13(6) provides that 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. The tribunal requested such a response from the applicants by e mail on 1 February 2022 and received a reply from them on 15 February 2022, which was copied to the respondent.
- (8) A letter from the tribunal of 2 March 2022 sent to both parties stated that the tribunal would determine the costs application on paper on 5 April 2022 and that the parties did not need to attend a hearing. Rule 13(7)(a) permits the tribunal to determine matters on the basis of written submissions from the parties and neither party objected to this approach.

### **The respondent’s case**

1. The respondent’s application is made against the applicants. The respondent is seeking costs under both Rule 13(1)(a) and Rule 13(1)(b)
2. In its application for costs the respondent states that it is making an application under Rule 7 and Rule 13 for the applicant to pay the costs incurred by the respondent. The respondent submits that the applicants had acted unreasonably in bringing and conducting an application for a Rent Repayment Order. The application was made by the applicants on the basis that the property is in the L B of Croydon, and that it required a licence under that borough’s selective licensing scheme. The respondent submits that the property is in L B of Bromley and that this was the basis for the applicants withdrawing their application. The respondent submits that it should have been easy for the applicants to ascertain the correct London borough in which the Property is situated and that their representative acted unreasonably in not undertaking appropriate due diligence.

### **The applicants’ case**

3. The applicants submit that when they made their application they believed that it could be proved beyond reasonable doubt that the respondents had committed an offence by failing to comply with the selective licensing scheme operating in L B of Croydon. The basis for this submission is set out in detail in their case and they do not accept that it is beyond doubt that the property is in the L B of Bromley. As soon as they became aware, from the respondent’s bundle, that the Property might be in L B of Bromley they made further enquiries of both councils. When it became clear to them that both councils considered the Property to be in their licensing area the applicants concluded that it would be difficult to prove beyond reasonable doubt that an offence had been committed and withdrew their application. In doing so they submit that they acted responsibly.

4. The applicants submit that if the respondent had alerted them at an earlier date that it believed the Property to be in L B of Bromley the issue could have been addressed four months earlier than it actually was.
5. The applicants submit that it is not appropriate for the respondent to make an application for costs as the applicants did not act unreasonably in making the application or conducting the proceedings
6. The applicants referred the tribunal to the high threshold for awarding costs set out in *Willow Court Management Company Ltd v Mrs Ratna Alexander* [2016] UKUT (LC) (**'Willow'**) and submitted that the applicants' conduct in this case did not pass this threshold.

### **Reasons for the tribunal's decision**

7. It is clear that there is some confusion as to which London borough the Property is located in. If it is in L B of Croydon it required a selective licence. If in the L B of Bromley it would appear to the tribunal from the information available to it that the Property did not require such a licence.
8. The tribunal consider that the reference to Rule 7 in the respondent's application must be a mistake as that Rule relates to the procedure for applying for and giving directions.
9. Rule 13 provides,
  - 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.
10. Section 29 Tribunals, Courts and Enforcement Act 2007 provides
  - (1)The costs of and incidental to—
    - (a)all proceedings in the First-tier Tribunal, and
    - (b)all proceedings in the Upper Tribunal,
 shall be in the discretion of the Tribunal in which the proceedings take place.

(2)The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.

(3)Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.

(4)In any proceedings mentioned in subsection (1), the relevant Tribunal may—

(a)disallow, or

(b)(as the case may be) order the legal or other representative concerned to meet,

the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.

(5)In subsection (4) “wasted costs” means any costs incurred by a party—

(a)as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or

(b)which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.

(6)In this section “legal or other representative”, in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

11. Justice for Tenants is a ‘legal or other representative’ but the respondent has not made an application against them. Its application is against the applicants. Accordingly Rule 13 (1)(a) is not relevant as it only contemplates costs being awarded against a ‘legal or other representative’.
12. Even if the respondent had made an application against Justice for Tenants it would have to show that Justice for Tenants had acted unreasonably and the tribunal do not find that it so acted.
13. For the respondent to succeed in an application under Rule 13(1) it must show that the applicants acted unreasonably in making the application and then withdrawing it. On the evidence before it the tribunal does not find that the applicants acted unreasonably.
14. The three stages that the tribunal need to go through when considering whether a costs order should be made under Rule 13 are set out in *Willow* at Paragraphs 27 and 28 which are set are below.

*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.*

15. On the facts of this case the tribunal finds that there was a reasonable explanation for the conduct of the applicants and their representative, set out in the applicants' case above. The applicants believed that the property was in L B Croydon. The respondent believes that it is in L B Bromley. Once this difference in opinion became clear to the applicants their representative considered that it might not be possible to prove beyond reasonable doubt that the offence had been committed. It was therefore a reasonable course of action for the applicants to withdraw the application at that stage.
16. In light of the tribunal's finding in relation to the first stage set out in *Willow* the tribunal do not need to consider the second and third stages set out in *Willow*.
17. The tribunal therefore makes no order for costs, under either Rule 13(1)(a) or 13(1)(b).

**Name:** Judge Pittaway

**Date:** 7 April 2022

## **Rights of appeal**

**By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.**

**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.**

**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.**

**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.**

**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.**

**If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).**