



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

Case Reference : **LON/00AX/HMB/2020/0007**

Property : **Flat 4, 5 Grove Road, Surbiton,
Surrey KT6 4BS**

Applicant : **Mrs F Farzad**

Representative : **Anthony Gold Solicitors**

Respondents : **Ms D Zhang and Mr H Yang**

Type of Application : **Supplemental cost application
following an application for a rent
repayment order**

Tribunal Member : **Judge P Korn**

Date of Decision : **14th December 2021**

SUPPLEMENTAL DECISION ON COSTS

Description of type of determination

This has been a determination on the papers (without an oral hearing).

Decision of the tribunal

The tribunal makes an order under paragraph 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”) that the Applicant is required to pay £10,255.20 (£8,546.00 + VAT) towards the Respondents’ costs.

The background

1. This application is supplemental to an application (the “**Main Application**”) made by the Applicant for a rent repayment order on the alleged ground that the Respondents harassed the Applicant and her family and that such harassment constituted an offence under section 1(3) and/or section 1(3A) of the Protection from Eviction Act 1977.
2. In its decision dated 13th September 2021 the tribunal found the Applicant’s allegations to be unproven and declined to make a rent repayment order.
3. The Respondents have now made a cost application against the Applicant pursuant to paragraph 13(1)(b) of the Tribunal Rules.

Respondents’ written submissions

4. The Respondents note that rule 13(1)(b) of the Tribunal Rules provides that in a residential property case the tribunal may make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings. They submit that an order should be made under rule 13(1)(b) in this case requiring the Applicant to pay their legal costs on the ground that she acted unreasonably both in bringing and in conducting the proceedings relating to the Main Application.
5. The Respondents refer to the three-stage test set out by the Upper Tribunal in *Willow Court Management (1985) Ltd v Alexander [2016] 0290 UKUT (LC)*, stage 1 being whether the other party acted unreasonably in bringing and conducting the proceedings. They state that the tribunal did not merely find the Applicant’s allegations disproved but comprehensively rejected them as lacking substance and credibility. They note in particular that the tribunal described the Applicant’s evidence as “very weak”, stating at paragraph 30: “*Even making generous allowances for the fact that the Applicant was not present at the hearing to argue her case orally, it is striking how little substance there is to her allegations.*”
6. The Respondents note that several core elements of the alleged offence were not proven and comments these were not all technical matters. Failing even to satisfy the tribunal that the Applicant was in occupation of the Property at the relevant times was in the Respondents’ submission a staggering failure, even for an unrepresented party.
7. The Respondents submit that it is unreasonable for any party, even an unrepresented one, to bring an application for a rent repayment order on the basis of such baseless allegations. The application should never

have been brought and it was unreasonable to make the application for a rent repayment order. They note that the tribunal stated at paragraph 40: *“this tribunal considers all of the allegations of harassment against the Respondents to be wholly without foundation”* and argue that this goes far beyond simply rejecting the allegations as unproven. In their submission it was unreasonable for the Applicant to make untrue allegations and misleading distortions in support of her application.

8. The Respondents also assert that the Applicant was unreasonable in the manner in which she conducted the proceedings and should have withdrawn her application at an early stage. The Respondents themselves provided a detailed witness statement and a statement of reasons for opposing the application in March 2021, and the arguments relied on by the Respondents were set out very clearly such that it should have been obvious to the Applicant that her application had no real prospect of success. However, instead of withdrawing the application at that stage the Applicant continued to pursue the application, producing a 25-page reply. The Applicant also increased the Respondents’ costs by making several late adjournment applications. All but the last of these applications resulted in an adjournment, but the late manner in which they were made increased costs and inconvenience to the Respondents and to their witnesses and to the tribunal. No good reason was ever supplied for the repeated applications being made so late.
9. Fortunately, the Respondents were able to agree a generous fee structure with Counsel which meant they were not charged repeated brief fees, despite the late adjournments. However, the repeated adjournments did increase costs as on each occasion the Respondents were required to consider and respond to the applications, and to make new arrangements for the rearranged hearings. Before the hearing on 27th August 2021 Counsel was fully prepared and a full brief fee would have been incurred even if the hearing had not proceeded.
10. It is accepted by the Respondents that seeking an adjournment because of ill health is not itself unreasonable conduct, but the tribunal’s willingness to grant the adjournments only offers a partial defence as adjournments were sought on the basis of incomplete reasons. On 9th May 2021 the Applicant emailed the tribunal asking for an adjournment. She cited her ill health and her husband’s death: *“I am writing to respectfully ask the Tribunal to exercise its discretion to adjourn the hearing because of my ill health and my husband of 50 years having tragically passed away due to complication from Covid. I as a result of this event and a history of a heart condition have relapsed and am unwell and incapable of appearing at the hearing without worsening my condition. I am both physically incapable and psychologically devastated by grief.”* The Applicant did not respond to a request for clarification about when her husband had died. Later, in another adjournment application made on 14th July 2021, in respect

of a hearing scheduled for 16th July 2021, the Applicant attached a translation of her late husband's death certificate which recorded that her husband had died on 14th March 2021. The failure to mention that her husband had died two months earlier was in the Respondents' submission an improper failure to give clear information about why the adjournment was sought.

11. Shortly before the hearing in August, the Applicant wrote to the tribunal and with her final adjournment/withdrawal application. The application was made so late that only a minimal cost saving would have been made by the Respondents agreeing to the withdrawal of the application (that being the cost of a paralegal attending the hearing). The brief to Counsel had been delivered and Counsel was fully prepared. The Applicant's written submission to the tribunal on 24th August 2021 requesting the adjournment/withdrawal contained on page 14 a copy of an email sent by the Applicant to the Respondents' solicitor. That email stated the following: *"My testimony at the hearing on Friday will be extremely emotional, descriptive and graphic and will include all the reasons why the judge should favour my application. I will, due to my ill health and to spare myself the emotional turmoil of having to describe the tragic circumstances to the court, consider withdrawing the Rent Repayment Order application if your client withdraws all applications for costs. If we do not reach an agreement I will make it an absolute mission of my life to ensure that your client does not benefit in any way from having, what I believe to be, responsibility for my husbands' death. Your client put me and my family through hell and if they do not take the opportunity, as was already given by me and declined by your client several times in the past, I assure them that legal consequences of this matter have just began for them."* This email, which the Applicant chose to disclose to the tribunal, contains in the Respondents' submission a baseless and scandalous accusation that the Respondents were responsible for the Applicant's husband's death and a threat (if the Applicant's preferred settlement terms were not met) that *"legal consequences of this matter have just began for them"*. This conduct was unjustifiable.
12. The Respondents submit that no reasonable person would have made an application for a rent repayment order on the basis of such flimsy allegations. No reasonable litigant would have continued to pursue the application without any proper evidence. No reasonable litigant would have repeatedly made late applications to adjourn the case or made threats and further baseless allegations in correspondence. These points are not overly technical, and it is no defence for the Applicant that she was an unrepresented party. The Applicant cannot in this case defend her conduct by simply asserting that she misjudged the strength of her case, because her allegations were found to lack any substance at all. There can be no reasonable explanation for the Applicant's behaviour and the threshold for unreasonableness is met.

13. Stage 2 of the test in *Willow Court* is: should an Order be made? The Respondents submit that the tribunal should have regard to the serious nature of the allegations made by the Applicant. The Applicant claimed that she had been harassed and that the Respondents were guilty of serious criminal offences. Opposing the application, and seeking specialist professional assistance to do so, was reasonable and proportionate. It would be fair for the Respondents to have their legal costs paid by the Applicant when they have been incurred entirely as a consequence of the baseless allegations made against them. Failing to make a cost order in these circumstances would mean there was no real sanction on an Applicant who has made an entirely baseless rent repayment order application and pursued it in an unreasonable manner.
14. The application was not just misconceived – it was found to be “wholly without foundation” and it was pursued in an unreasonable manner. The application also took place in the context of significant rent arrears. The arrears totalled £25,132.91 on 5th September 2021, with no further payments having been made by the Applicant.
15. The Applicant’s adjournment/withdrawal application referred to a moratorium under the Debt Respite Scheme commencing on 27th July 2021, but under regulation 26(2) of the Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 the maximum duration of a breathing space moratorium is 60 days.
16. In conclusion the Respondents submit that this case is a rare example of one where the tribunal should exercise its discretion to make a costs order against an unsuccessful applicant for a rent repayment order.
17. Stage 3 of the test in *Willow Court* is: what should the order be? The Respondents submit that the tribunal is not limited to ordering the Applicant to pay costs attributable to the unreasonable conduct, but in any event the Respondents submit that in this case all costs incurred by the Respondents were caused by the unreasonable conduct of the Applicant. It was also reasonable for the Respondents to incur the cost of instructing solicitors in this matter since the allegations made against them were serious.
18. As regards the amount of the costs, the Respondents submit that the rates claimed are reasonable; it was proportionate for the Respondents to instruct London solicitors who are specialists in housing and property law given the nature of the issues in dispute. Most work was done by a Grade D fee earner and Counsel’s involvement was proportionate.
19. The Respondents have provided a schedule of costs incurred, including a breakdown and narrative, and they seek a cost award in the sum of

£11,546.00 + VAT (total £13,855.20) against the Applicant, that sum representing the costs incurred by the Respondents in connection with these proceedings as a whole including the cost application itself.

Applicant's position

20. The Applicant has submitted a 30-page response to the Respondents' cost application. It is neither practical nor useful to summarise every point made by the Applicant, and this decision will just summarise those of the key points which are clear.
21. The Applicant states that she is a litigant in person and has adhered in a timely manner to the directions set by the tribunal without ever missing any deadlines set in the directions. She submits that she had the right to make the rent repayment application and did so because she believed that the relevant legislation applied to her circumstances and existed for her and for other tenants' protection.
22. The Applicant states that she conducted the case while being in the extremely vulnerable person category under the Covid regulations definition and during the period of her husband's illness and death and while her own health condition deteriorated as attested by medical reports. The Applicant also believes that the tribunal made its decision without having had sight of certain submissions sent by the Applicant to the tribunal.
23. The Applicant states that the Respondents and the Applicant differ in their characterisation of the relevant events and of the consequential effect on the Applicant and her family. The Applicant adds that her testimony in writing was substantial and credible running to 77 pages with 33 pages of pleadings and 14 email exhibits.
24. She adds that the problem with the Respondents' assertion that the Applicant was lacking credibility is that the Applicant was not at the hearing to show whether she was or was not credible.
25. The occurrence of the events as headlined by the Applicant were in the Applicant's submission mostly agreed upon by the Respondents. The Respondents agreed, for example, that they did break into the Property without the Applicant's permission.
26. Ms Zhang does not deny that she tried to shake the Applicant's son's hand; she simply states that it was okay in her opinion to do so. Also, Ms Zhang does not deny that she took photos of the Applicant's daughter; again she simply says that she thinks it was okay to do so.
27. The Applicant states that the fact that she says that she felt harassed 14 times in her communications and emails seems to be ignored.

The tribunal's analysis

Paragraph 13(1)(b) of the Tribunal Rules

28. The Respondents' cost claim has been made under paragraph 13(1)(b) of the Tribunal Rules, the relevant part of which states as follows: "*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*".
29. As noted by the Respondents, in its decision in *Willow Court Management Ltd v Alexander [2016] UKUT 290 (LC)* the Upper Tribunal gave some guidance on the application of paragraph 13(1)(b) of the Tribunal Rules and established a three-stage test. The first part of the test, which is a gateway to the second part, is whether the party against whom the cost application is made has "acted unreasonably".
30. As to what is meant by acting "unreasonably", the Upper Tribunal in *Willow Court* followed the approach set out in *Ridehalgh v Horsfield [1994] EWCA Civ 40, [1994] Ch 205* and stated that "*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*".
31. In *Ridehalgh*, Sir Thomas Bingham MR described the acid test of unreasonable conduct in the context of a cost application as being whether the conduct permits of a reasonable explanation. One principle which emerges from both *Ridehalgh* and *Willow Court* is that costs are not to be routinely awarded pursuant to a provision such as paragraph 13(1)(b) of the Tribunal Rules merely because there is some evidence of imperfect conduct at some stage of the proceedings. Sir Thomas Bingham also said that conduct could not be described as unreasonable simply because it led to an unsuccessful result. The Upper Tribunal in *Willow Court* added that tribunals should also not be over-zealous in detecting unreasonable conduct after the event.
32. The Applicant has responded to the cost application at length. There is much repetition in her 30-page response, but certain themes can be detected. She asserts that the tribunal could not have seen some of her written submissions, but this is incorrect. The position is that the tribunal read her written submissions but found them extremely unpersuasive. Many submissions were so lacking in substance or coherence that it was impractical for the tribunal to try to summarise them in its decision. She also states that her testimony in writing was "substantial and credible". We agree that it was substantial but strongly disagree that it was credible.

33. The Applicant states that the Respondents agree that certain events took place, but in so stating she has either accidentally or deliberately completely missed the point. The issue is whether the events complained of constituted a criminal offence, and in the tribunal's view the evidence to support the Applicant's assertion that a criminal offence had taken place was very weak.
34. As regards the relevance of the Applicant's absence from the hearing, the circumstances of her absence are summarised in the decision on the Main Application and we will not repeat them. In any event, in our view the Applicant has greatly exaggerated the significance of her absence from the hearing. Her written submissions were so weak that it is more likely that those submissions would have been further weakened in cross-examination than been strengthened by being repeated by her. The Applicant also appears to suggest that if a person asserts the belief that harassment has taken place enough times this is sufficient to prove to the criminal standard that it has taken place, but that is very far from being the case.
35. The Applicant does make the better points that she is a litigant in person and that she was suffering from ill health, but the problem with these points is that the tribunal went out of its way to accommodate her concerns on several occasions and to give her the benefit of the doubt and the tribunal clearly warned her as to the consequences of conducting her case in the way that she was conducting it. Ultimately, the fact that a person is a litigant in person and has health issues does not mean that they cannot act unreasonably.
36. We agree with the Respondents that the Applicant should have withdrawn her application at an early stage. The Respondents provided a detailed witness statement and a clear statement of reasons for opposing the application in March 2021, and it should have been obvious to the Applicant at that stage that her application had no real prospect of success. We also agree with the Respondents that the lateness of some of the Applicant's adjournment applications was unreasonable and that the Applicant provided some misleading information. The Applicant's email to the Respondents on page 14 of the Applicant's written submission to the tribunal on 24th August 2021 was both unreasonable and unpleasant.
37. We are therefore satisfied that the Applicant behaved unreasonably in bringing and/or conducting the proceedings.
38. The second part of the *Willow Court* approach is to decide, if the party against whom the cost application is made has acted unreasonably, whether an order for costs be made. The answer to this second part of the test in our view is that an order should be made. The Applicant's claims of harassment were extremely serious and the Respondents needed to defend them, yet the Applicant's claims were based on very

flimsy evidence. Even if, as a litigant in person, the Applicant initially had an honest – albeit a misguided – view that the Respondents had committed a criminal offence, that view became increasingly less plausible in the face of the Respondents’ clear defence on each point. In addition, her behaviour referred to above aggravated the situation further and is not justified simply by her being a litigant in person.

39. The third part of the *Willow Court* approach is to work out, if an order should be made, what the terms of the order should be. The Respondents are claiming the amount of £11,546.00 + VAT and have provided a schedule of costs incurred, including a breakdown and narrative, for this amount.
40. It is clear from *Willow Court* that the correct approach to a Rule 13 cost application is not necessarily to limit the cost award to those costs which have been caused by the unreasonable conduct in question. Equally, it is important to ensure that any cost award is reasonable in all the circumstances.
41. In our view it would be slightly disproportionate in this case to award the Respondents the whole of the costs incurred by them in relation to these proceedings. And whilst the tribunal is not required to limit any cost award to those costs which have been caused by the unreasonable conduct in question, in this particular case our view is that there were two distinct stages and that this is relevant. Prior to the Respondents having provided a detailed witness statement and statement of reasons for opposing the application in March 2021, it is just about possible that the Applicant believed that she had an arguable case in support of her application. We are conscious that she is a litigant in person and that there were health issues which were affecting her, and if she was in an emotionally heightened state it is possible that the application itself was made in good faith.
42. However, once the Applicant saw the Respondents’ defence there is no credible justification for her to have continued with her very serious allegations of criminal behaviour through these tribunal proceedings. In addition, her unreasonable pursuit of this case was coupled with the other unreasonable behaviour referred to above. Therefore, in our view, a proportionate cost order would be one that required her to pay all costs incurred after seeing the Respondents’ defence in March 2021, to the extent that those costs are reasonable in amount.
43. The costs incurred by the Respondents up to and including the date of submitting their defence is £3,000 + VAT, and the balance is therefore £8,546.00 + VAT. We have considered the hourly rates of the various lawyers involved, the hours spent and the amount of time spent by each grade of lawyer. Having been through that exercise we are satisfied that the charges are reasonable.

44. Accordingly, we consider that the Applicant should be required to pay £8,546.00 + VAT (totalling £10,255.20) towards the Respondents legal costs in connection with the proceedings relating to the Main Application and this cost application.

Name: Judge P. Korn

Date: 14th December 2021

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.