



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

Case Reference : CHI/29UN/HER/2021/0001

Property : Flat 5, 2-8 Athelston Road, Margate, CT9
2BD

Applicant : Pedram Tamiz

Representative : Stokoe Partnership Solicitors

Respondent : Thanet District Council

Representative : Mr Stephen O'Shea

Type of Application : Unreasonable costs in connection with an
Appeal against Notice of Emergency
Remedial Action S 45 Housing Act 2004

Tribunal : Judge Tildesley OBE

Date of Hearing : 17 December 2021
Cloud video Platform

Date of Decision : Substantive Decision 23 December 2021
Further submissions on costs received 7
January 2022
Costs decision published 3 February 2022

DECISION

Background

1. The Respondent Council applied for an order for costs in the sum of £579.47 against the Applicant on the ground that he acted unreasonably in connection with proceedings which involved the Applicant's Appeal against a Notice of Emergency Remedial Action dated 20 September 2021.
2. The Appeal was listed for hearing on 17 December 2021. On that date the Tribunal struck out the Appeal and announced its reasons at the end of the hearing. The reasoned decision was published 23 December 2021.
3. The Tribunal on 17 December 2021 indicated after hearing from the parties that it was minded to make an unreasonable costs order against the Applicant but decided to give the Applicant a further opportunity to make his case in writing why a costs order should not be made against him.
4. The Applicant supplied his response on 7 January 2022 in accordance with the directions. The Applicant put forward the following reasons why a costs order should not be made against him:
 - a) The Applicant asserted that he did not act unreasonably. He was exercising his right to appeal. When he submitted his Appeal he was not under bail conditions. The Applicant stated that he was now under strict bail conditions which had made it difficult for him to pursue his Appeal. The Applicant asserted that he was put at a disadvantage by the bail conditions because he was unable to obtain important information and evidence that would help his case. According to the Applicant, the bail condition had made it impossible for him to pursue this Appeal.
 - b) The Appellant stated that he and his contractor had not been allowed to inspect the works by Thanet District Council. The Applicant asserted the new Covid-19 variant and the rise of infections had also made matters much more difficult for him.
 - c) The Applicant said that the tenant did not live in the property and that the tenant was only following the instructions of Thanet District Council to occupy this property. According to the Applicant, the Council had re-housed the tenant in Ramsgate, and that he has proof the tenant was claiming universal benefit from a different address.
 - d) The Applicant stated that he had saved costs by withdrawing the Appeal. Finally he argued that the costs claimed were not proportionate and regard should be had to his personal circumstances.

5. Under rule 13(1)(b) of the Tribunal Procedure Rules 2013 the Tribunal may make an Order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings in a residential property case or a leasehold case. Rule 13(1) (b) requires there must first have been unreasonable conduct before the discretion to make an order for costs is engaged, and that the Tribunal must then exercise that discretion.
6. The test for unreasonable conduct 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, Is there a reasonable explanation for the conduct complained of?
7. The Upper Tribunal in Willow Court Management (1985) Limited v Alexander [2016] UKUT 290 (LC) stated:

“Applications under r.13(1)(b) should not be regarded as routine, should not be abused to discourage access to the tribunal and should not be allowed to become major disputes in their own right. They should be dealt with summarily, preferably without the need for a further hearing, and after the parties have had the opportunity to make submissions”.
8. Prior to the hearing on 17 December 2021 the Tribunal had warned the Applicant that it was considering an order for costs against him on the ground of his unreasonable conduct. At the end of the hearing the Tribunal decided to give him a further opportunity to make submissions in writing on the question of costs. The Tribunal considers his further submissions had not addressed the Tribunal’s findings in support of its decision to strike out the Appeal.
9. On receipt of the Appeal the Tribunal had put the Applicant on notice that the grounds of appeal did not address the conditions for the issue of a Notice of Remedial Action. The Tribunal explained the conditions to the Applicant and his solicitor at the case management hearing on 16 November 2021, and expected that the Applicant’s statement of case would address those conditions. The Applicant, however, failed to take the Tribunal’s advice and submitted a brief case which did not deal with the pertinent issues. The Applicant has still given no satisfactory explanation for not disclosing the bail conditions earlier to the Tribunal. The Applicant purported to withdraw the Appeal the day before the hearing on 17 December 2021 after the refusal of his application to adjourn the proceedings. The Tribunal did not consent to the withdrawal because the Applicant asserted that he had no option but to withdraw the Appeal.
10. The Tribunal considers that its findings on 17 December 2021, no reasonable prospect of the Appeal: failure to comply with directions; and failure to be transparent in his dealings with the Tribunal substantiate a finding that the Applicant had acted unreasonably in the conduct of the proceedings.

11. The Tribunal heard from Mr O'Shea of the Council that the costs claimed represented the time charge spent by him and Mr Bray on preparation of the Appeal. The Council had provided a detailed statement of case in accordance with the directions. The Tribunal is satisfied that the amount of costs claimed is reasonable. The Applicant did not provide information on his means and personal circumstances. The Tribunal understands that the Applicant is a professional landlord. The Applicant stated at the hearing that he was also a school teacher.

Decision

12. In view of its findings the Tribunal orders the Applicant to pay costs of £579.47 to the Respondent Council within 28 days from the date of the decision. The order is made under rule 13(1)(b) of the Tribunal Procedure Rules 2013.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making application by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.