



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

Case reference : LON/00AW/HMF/2022/0101

Property : Unit 120, Residence Inn, 181-183
Warwick Road, London, W14 8PU

Applicant : Ms Laura Hawes

Representative : In person

Respondent : SOF-10 Starlight Operations 12
Limited

Representative : Mr Adam Boyd
(Freeths Solicitors)

Type of application : Respondent's application for rule 13
Costs
Rule 13(1)(b) Tribunal Procedure (First Tier
Tribunal) (Property Chamber) Rules 2013

Tribunal : Judge N Carr

Date of Decision : 3 October 2022

DECISION AND REASONS

ORDER

1. The application for costs against the Applicant for unreasonable conduct is refused.

BACKGROUND

(1) By application dated 30 April 2022, the Applicant Ms Hawes sought a rent repayment order. In her application, she set out that she was staying at Residence Inn in Warwick Road, London, where she occupied a self-contained studio unit with her dog. She described herself as an 'essential

stay' occupant during the relevant covid-19 lockdowns. She sought an order for rent repayment on what she alleged were harassment and illegal eviction grounds under section 1 of the Protection from Eviction Act 1977.

- (2) To understand the quality of her tenure, and what was meant by 'essential stay', the Tribunal called a case management conference by video conferencing at which both parties were invited to attend. Ms Hawes was only able to attend by telephone as her device would not work for video.
- (3) On 31 May 2022 at a case management conference, I asked the parties to address me on the jurisdiction of the Tribunal to accept the application. The key issue was whether Ms Hawes was a tenant or licensee of the apart-hotel room she was occupying at the Residence Inn on Warwick Road, W14 8PU for the purposes of section 56 the Housing and Planning Act 2016 ('the 2016 Act'), entitling her to a rent repayment order pursuant to sections 40 – 44.
- (4) I noted that the County Court, in the concurrently extant trespass proceedings, was seized of the question of the quality of Ms Hawes' tenure, which was likely to be key to the determination of the application in the Tribunal. To avoid conflicting decisions, expense, and the giving of evidence twice on the same issue, I therefore stayed the Tribunal application. The Respondent was directed to provide an update to the Tribunal once the County Court hearing on 8 June 2022 by 16 June 2022.
- (5) I further directed the parties to a body of authority that might support or undermine their respective positions, as set out in paragraph 8 of my preamble, and strongly recommended Ms Hawes obtain independent legal advice.
- (6) On 8 June 2022 the Respondent's solicitor confirmed that District Judge Avent made an order for immediate possession on 8 June 2022, finding that (i) Ms Hawes was not a tenant; and (ii) Ms Hawes was not a protected licensee under the Protection from Eviction Act 1977. He also gave money judgment for arrears of use and occupation charges in the sum of £12,309. A copy of the Respondent's Counsel's note of the decision was provided, as was a copy of the Order.
- (7) The Respondent sought that that application to the Tribunal be dismissed, and an order for costs pursuant to rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 ('the Rules').
- (8) On 16 June 2022, Ms Hawes emailed the Tribunal to state that she was unfit to respond. She did not copy her email to the Respondent as required by the Tribunal's standing directions, and when asked by the case officer to do so, refused.

- (9) The Respondent has confirmed that there had been no appeal against Judge Avent's Order, and that Ms Hawes gave up possession on the property on 12 June 2022. On 20 July 2022 I issued a decision to the parties refusing jurisdiction and striking out the application pursuant to rule 9(2)(a) of the Rules, on grounds that Ms Hawes could not bring herself within the definitions of the Protection from Eviction Act 1977 as the County Court had found that she was not a residential occupier of the premises and thus excluded from the section 1 protections. Ms Hawes' application for a rent repayment order was wholly reliant on an offence that she could not, in consequence, rely on.
- (10) On 20 July 2022 I gave directions for the Respondent's costs application, requiring both the Respondent and the Applicant to take further steps. The Respondent in particular was required to provide a statement of case setting out:
- (a) The reasons why it is said that the Applicant has acted unreasonably in bringing, defending or conducting proceedings and why this behaviour is sufficient to invoke rule 13(1)(b), dealing with the issues identified in the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), with particular reference to the three stages that the tribunal will need to go through, before making an order under rule 13;
 - (b) Any further legal submissions;
 - (c) Full details of the costs being sought, including:
 - A schedule of the work undertaken;
 - The time spent;
 - The grade of fee earner and his/her hourly rate;
 - A copy of the terms of engagement with respondent;
 - Supporting invoices for solicitor's fees and disbursements;
 - Counsel's fee notes with counsel's year of call, details of the work undertaken and time spent by counsel, with his/her hourly rate; and
 - Expert witness's invoices, the grade of fee earner, details of the work undertaken and the time spent, with his/her hourly rate.
- (11) The Respondent provide its bundle on 7 September 2022. It appears that the Applicant has taken no steps to comply with those Directions, in which she was to provide her reply, save to write an email to the Tribunal reiterating the allegations of criminal conduct and effects on her health. She did not copy that email to the Respondent, but the information contained in the email raises nothing new.

DECISION

The Tribunal's approach to the costs application

- (12) The Respondent relies on rule 13(1)(b)(ii) of the Rules in that it asserts that Ms Hawes has acted unreasonably in bringing, defending or conducting proceedings in a residential property case.
- (13) The framework for considering whether or not to order costs under rule 13(1)(b)(ii) is provided by the decision in *Willow Court*, on which the tribunal specifically requested the applicant's submissions. In particular, the tribunal has to deal with the costs application in three stages, as set out in paragraph 28 of that decision:

“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 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 stage it is essential for the tribunal to consider whether, in light of the unreasonable conduct it has found to be 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 the order should be.”

Stage 1: Objectively unreasonable conduct?

- (14) The Respondent's statement of case does not specifically identify *Willow Court*, but in paragraph 14 it is clear that what Mr Boyd has in mind is at least a narrow part of that stage 1. He does not go on to consider 'step back' as an objective observer, and does not address stages 2 and 3.
- (15) In paragraph 14 of its statement of case, the Respondent asserts that in the context of the Applicant being a hotel guest, and the history of the parties as set out, including a notice to vacate given on 4 April 2022 and a letter of claim dated 14 April 2022, in which the Respondent strongly suggested that Ms Hawes obtain independent legal advice, Ms Hawes *“knew full well she was a hotel guest properly so-called (i.e. bare licensee only) and the Application was therefore wholly vexatious, designed to harass the Respondent and cause disruption and inconvenience to it whilst proceeding with its objective of obtaining possession of Room 120 from the Applicant”*.
- (16) At the date that Ms Hawes made her application to the Tribunal, the Respondent had not made its claim for possession in the County Court. It

did so some weeks later, on 27 May 2022. It has not exhibited its letter of claim to its statement of case.

- (17) While I accept that Ms Hawes must have known that the Respondent's *position* was that she was only a hotel guest, that does not automatically mean that she had to accept that assessment.
- (18) It was not established as fact that Ms Hawes was no more than a bare licensee until District Judge Avent made his decision granting possession on 8 June 2022, which decision was reliant on *Luganda v Service Hotels Ltd* [1969] 2 Ch 209 and *Mohamed v Manek* (1995) 27 HLR 439 (CA). The Respondent therefore asks me to find that Ms Hawes' application was a deliberate attempt to mislead the Tribunal as to the status of her occupation.
- (19) In paragraph 20 of *Willow Court*, the Upper Tribunal set out that the acid test, derived from *Ridehalgh v Horsefield* [1994] Ch 205 (itself dealing with wasted costs), is whether the conduct complained of permits of a reasonable explanation. In particular, "*...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.*" At paragraph 24 the Upper Tribunal went on:
- "... An assessment of whether behaviour is unreasonable requires a value judgement 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?"*
- (20) Does Applicant's application for a rent repayment order in the circumstances objectively permit of a reasonable explanation? It is clear that there was a difficult relationship between the parties. She appeared to believe that because she stayed during covid-19 lockdown, an 'essential stay' was of a different character to straightforward hotel accommodation because the Respondent couldn't accommodate hotel guests on a 'normal' business basis. As recounted in the preamble to the Directions of 31 May 2022, she said she was advised by Shelter that she was a tenant or licensee on the basis of the conditions she set out to them.
- (21) I am satisfied that though the argument would have been a difficult one (as I outlined to her at the case management conference), and it proved to be hopeless following Judge Avent's decision, making the Application was not, at the stage it was made, objectively unreasonable. I do consider that there may have been something to explore in circumstances in which the Respondent had accepted Ms Hawes on an 'essential stay' basis. That

is, after all, the reason that the case management conference was called, and the reason that I was proposing Ms Hawes' tenure be decided as a preliminary issue. While it is right to say that an initial assessment of the caselaw I recorded in the preamble to my order of 31 May 2022 pointed against Ms Hawes, none of that caselaw was decided in the extraordinary circumstances of covid-19 and the unprecedented operating constraints placed on the hospitality industry.

- (22) The point at which that possibility evaporated was not until after a decision had been made in the possession proceedings that post-dated Ms Hawes' application to the Tribunal.
- (23) For that reason I do not accept that the Application to the Tribunal was "*wholly vexatious, designed to harass the Respondent and cause disruption and inconvenience to it whilst proceeding with its objective of obtaining possession of Room 120 from the Applicant*".
- (24) As I set out in my Directions of 20 July 2022: "*The parties are reminded that the threshold to engage the Tribunal's jurisdiction is a high one. There is currently no indication of what the Respondent's costs might be in the Tribunal proceedings, which have been struck out at a very early stage. It is clear that the first matter that needs to be addressed is how the threshold has been met.*"
- (25) The Respondent complains about no other conduct.
- (26) I am satisfied therefore that the making of the Application to the Tribunal by the Applicant does not amount to unreasonable conduct, sufficient to engage stages 2 and 3 of the *Willow Court* test. The application under rule 13 is therefore refused.

Name: Judge N Carr

Date: 3 October 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).