



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

**Case reference** : **LON/00BC/HNB/2019/0004**

**Property** : **19d Argyle Road, Ilford, Essex IG1  
3BH**

**Applicant** : **Mr Nadeem Ahmad**

**Respondent** : **London Borough of Redbridge**

**Type of application** : **Rule 13 cost applications**

**Tribunal member** : **Judge P Korn**

**Date of decision** : **10<sup>th</sup> October 2019**

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**DECISION**

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## **Decisions of the tribunal**

The tribunal refuses both of the Applicant's cost applications.

The refused applications are (i) an application pursuant to paragraph 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**") for the reimbursement by the Respondent of fees paid to the Applicant's solicitor and (ii) an application pursuant to paragraph 13(2) of the Tribunal Rules for the reimbursement of the £100 application fee paid to the tribunal.

## **Background**

1. The Applicant originally appealed against the imposition of a financial penalty by the Respondent under section 249(a) of the Housing Act 2004. The financial penalty notice was subsequently withdrawn and the Applicant consequently withdrew his appeal against it.
2. The Applicant now seeks a determination pursuant to paragraph 13 of the Tribunal Rules ordering the Respondent to reimburse to him (i) the fees paid by him to his solicitor to advise him on the – now withdrawn – original application and (ii) the application fee paid to the tribunal in respect of that application.
3. In its directions dated 4<sup>th</sup> July 2019 the tribunal stated that the cost applications would be determined without a hearing on the basis of written submissions alone unless either party requested a hearing. Neither party has requested a hearing. Those directions also set out how and by when the parties should make written submissions in support of their respective positions.

## **Applicant's case**

4. In his letter of 18<sup>th</sup> January 2019 to the Respondent he states that he was shocked to receive the Respondent's letter of 28<sup>th</sup> November 2018 advising that the Property needed to be licensed under section 85 of the Housing Act 2004 and its follow-up letter of 19<sup>th</sup> December 2018 enclosing a notice of intent to issue a financial penalty for non-compliance. He states that he does not live at the address to which these letters were sent and only saw them when he was visiting family.
5. He also states that he did not know about the new regulations and that – even if it right to impose a financial penalty – this should be £250 at most. In addition, he refers to a letter of advice from his solicitor setting out other possible mitigating factors, including volunteering complete information once he knew about the notice, following the Respondent's advice on making representations and appealing,

applying for a licence as soon as he reasonably could, the Respondent's calculations for the penalty appearing to be grossly mechanistic and the procedure itself being comparatively new.

6. In an email to the tribunal dated 28<sup>th</sup> June 2019 he reiterates his concerns. He then goes on to state that the Respondent has acted unreasonably and that an order should be made under paragraph 13 of the Tribunal Rules as the Respondent is very experienced and powerful and should in his view have been more responsible.

### **Respondent's case**

7. In response Mr Kashef Hameed, a Housing Enforcement Officer with the Respondent, sets out the chronology of the case as he understands it.
8. On 26<sup>th</sup> June 2018 the Respondent received information that the Property was possibly being rented out without an appropriate licence. Mr Hameed duly made investigations and then on 16<sup>th</sup> October 2018 he visited the Property to speak to the occupiers but there was no answer. After leaving a calling card he then wrote to the Applicant on 19<sup>th</sup> October 2018 at the address stated on council tax records. He continued to make checks, visited the Property again (again with no response) and was then finally contacted by one of the occupiers on 7<sup>th</sup> November 2018. Having made specific arrangements with that occupier he then visited the Property on 12<sup>th</sup> November 2018 and obtained from that occupier a statement and a copy tenancy agreement. The occupier also told him that the only contact address that the Applicant had provided was the address on the tenancy agreement (15b Grove Park, Wanstead, London E11 2DN), which was the same address to which Mr Hameed had already written.
9. Mr Hameed then carried out an up-to-date Land Registry check on 15b Grove Park, which revealed that the Applicant was named on the Land Registry document for this address. He also re-checked council tax records. He then wrote to the Applicant at that address on 28<sup>th</sup> November 2018 and 19<sup>th</sup> December 2018, as stated by the Applicant. No response was received until 15<sup>th</sup> January 2019 when the Applicant telephoned Mr Hameed, confirming that he was the landlord but stating that he was unaware that the Respondent was trying to contact him and that he only went to 15b Grove Park to visit family. Mr Hameed told him that if his family lived there they could have forwarded the letters on to him. Mr Hameed then advised the Applicant that he had until 21<sup>st</sup> January 2019 to apply for a licence.
10. After receiving written representations from the Applicant on 18<sup>th</sup> January 2019 and liaising with the Respondent's Licensing and Enforcement Panel he sent the Applicant a final notice on 25<sup>th</sup> February 2019.

11. The tribunal then decided to conduct a preliminary hearing on 13<sup>th</sup> May 2019. Although Mr Hameed does not state this, the preliminary hearing was to deal with the following questions: (i) was the Respondent's penalty notice valid, (ii) was the Applicant's appeal out of time and (iii) if the appeal was out of time, should time be extended? In the event, although again he does not state this, neither party attended the preliminary hearing.
12. Mr Hameed goes on to state that the Respondent then decided to withdraw the penalty, and the reason that he gives is that the Respondent did not have time to instruct Counsel to attend the preliminary hearing.
13. Mr Hameed submits that the Respondent acted reasonably in issuing the financial penalty and that in any event the tribunal is generally a no-costs jurisdiction. He also submits that *"no hearing took place because of the Local Authority withdrawing the notice. Also, in light of this, the Tribunal cannot impose costs outside of this remit and therefore any other costs such as solicitor's costs ... should not be admissible"*.

### **Tribunal's analysis**

14. The Applicant seeks reimbursement of the fees paid by him to his solicitor and reimbursement of the £100 application fee paid to the tribunal. No hearing fee was paid. The solicitor's fees are covered by paragraph 13(1)(b) of the Tribunal Rules and the application fee is covered by paragraph 13(2) of the Tribunal Rules. I will deal with them in turn.

### **Solicitor's fees**

15. Under paragraph 13(1)(b)(ii) of the Tribunal Rules, 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"*. "Proceedings" in this context means the tribunal proceedings themselves, starting with the tribunal application and continuing with the dealings between the parties and with the tribunal itself up to – in this case – the withdrawal of the appeal. It does not include the parties' conduct prior to the date on which the Applicant's appeal was lodged, although in appropriate cases that conduct might serve as relevant context for the primary submissions being made about the parties' conduct following the date on which the Applicant's appeal was lodged.
16. The Applicant's complaints focus on whether the Respondent should have issued the penalty notice and on the amount of the penalty notice, and these points are not by themselves a proper basis for making a cost

award under paragraph 13(1)(b) of the Tribunal Rules. In any event, I do not consider that the conduct complained of by the Applicant meets the test as to what constitutes acting unreasonably as set out by the Upper Tribunal in its decision in *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander (2016) UKUT (LC)*.

17. In conclusion, therefore, I decline to order the Respondent to reimburse the Applicant's solicitor's fees or any part of them.

#### Application fee

18. Under paragraph 13(2) of the Tribunal Rules, the tribunal "*may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor*".
19. Based on the written submissions received, I am satisfied that the Respondent took reasonable steps to ascertain the Applicant's current address. In addition, I note that the address in question was a property which throughout this process was occupied by members of the Applicant's family. It is, in my view, a weak argument for the Applicant simply to say that his correspondence was never forwarded to him; he should have made arrangements for post to be forwarded to him, and no explanation has been provided by him as to why he could not at the very least have asked his family to alert him to the existence of correspondence addressed to him rather than just leaving that correspondence lying around for several weeks.
20. I note that three specific questions were due to be determined at a preliminary hearing which in the end did not take place. One of those questions was to be whether the penalty notice itself was valid. If the preliminary hearing had taken place and if a determination had been made that the notice itself was invalid then – notwithstanding the other points noted above – this could well have been sufficient reason to require the Respondent to reimburse the Applicant's application fee, albeit that the consideration of the validity of the notice would have been at the tribunal's instigation and not as a result of anything contained in the Applicant's appeal. However, as the preliminary hearing did not take place no determination has been made on this point.
21. In conclusion, therefore, and using the discretion afforded to me by paragraph 13(2) of the Tribunal Rules, I decline to order the Respondent to reimburse the application fee.

**Name:** Judge P Korn

**Date:** 10<sup>th</sup> October 2019

## **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).