



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

**Case Reference** : **BIR/00FK/HMK/2018/0005**

**Property** : **39 Drewry Lane, Derby, DE22 3QS**

**Applicant** : **Mr Ugochukwu Anosike**

**Representative** : **None**

**Respondents** : **Mr James Imrie (1)  
Mr Donald Imrie (2)**

**Representative** : **None**

**Type of Application** : **Application by a Tenant for a Rent  
Repayment Order under the Housing  
and Planning Act 2016**

**Tribunal Members** : **Judge C Goodall  
V Ward FRICS  
A Lavender BSc CMCIEH**

**Date and venue of  
Hearing** : **1 November 2018 at Derby Magistrates Court**

**Date of Decision** : **19 November 2018**

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**DECISION**

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## **Background**

1. On 26 June 2018 Mr Ugochukwu Anosike (“the Applicant”), applied for a rent repayment order for £3,900 from Mr James Imrie (“the First Respondent”) arising from his tenancy of 39 Drewry Lane, Derby (“the Property”).
2. On 23 August, the Tribunal directed that Mr Donald Imrie (“the Second Respondent”) should be added as a Respondent.
3. In accordance with directions, the parties provided written statements of their cases. The Tribunal conducted a short inspection of the Property on the morning of 1 November 2018. It is a two storey three-bedroom terraced house, let to three individual tenants, with a communal lounge and kitchen. Later that day, the Tribunal held an oral hearing at Derby Magistrates Court. The First Respondent did not attend. The Applicant represented himself. The Second Respondent attended as the First Respondent’s representative and on his own behalf as Second Respondent.

## **The Facts**

4. The Applicant took a six-month assured shorthold tenancy of Room 3 on the first floor of the Property, which is dated 16 December 2016. The tenancy was renewed on 1 July 2017 for a further 6 months, therefore expiring on 31 December 2017.
5. The First Respondent is the landlord of the Property; the Second Respondent is the First Respondent’s father and he acts from time to time as the First Respondent’s agent.
6. The rent was £325.00 per month payable on 7<sup>th</sup> day of each month. In March, August, September, October and November 2017, the rent was late, but never by more than 14 days. The rent for December 2017 was never paid and the First Respondent had to deduct it from the Applicants deposit after the tenancy ended.
7. There were communications from the Applicant to the First Respondent from July to November 2017 regarding negotiation of an early end to the tenancy. Some of the Applicant’s communications indicated he did want to leave the Property, and some went back on that and said he wanted to stay. The First Respondent’s position was consistently that he would not agree to an early termination.
8. However, for whatever reason (and the reasoning is irrelevant anyway), the First Respondent decided not to retain the Applicant as a tenant after the end of his contractual term at the end of 2017, so he served a notice on 9 November 2017 under section 21 Housing Act 1988 bringing the tenancy to an end on 10 January 2018.

9. On 10 December 2017, the Second Respondent was visiting the Property. An altercation between him and the Applicant occurred in the kitchen. The precise facts are disputed, but for the purposes of this decision, the Applicant's version is that the Second Respondent informed him of the fact that his December rent payment was outstanding and that he demanded that it should be paid. The Second Respondent is alleged to have said that failure to pay rent was an issue of "probity" (meaning honesty or integrity) and that failure to pay could damage the Applicant's career as a nurse, the implication being that the Second Respondent might bring non-payment of rent to the attention of the authorities, as he apparently gives advice "to doctors about this sort of thing". The Second Respondent is alleged to have murmured "do not mess with us" before leaving the kitchen.
10. The Applicant says he "called out" the Second Respondent about his comments and that the Second Respondent returned to the Property to continue the discussion. The Tribunal considers that it was the Applicant who wished the discussion to continue rather than the Second Respondent. This second part of the discussion was recorded by another resident of the Property. Both parties produced transcripts of the conversation and the Tribunal has listened to the original recording. Suffice it to say that in that conversation, the Tribunal did not hear anything from the Second Respondent that was aggressive or could be regarded as harassment towards the Applicant. It was the Applicant who was the more aggressive of the two.
11. Emails have been exchanged between the parties concerning the incident on 10 December 2017 which do not advance the factual analysis, save to say that both parties say they reported the incident to the police. The Tribunal was not informed of any subsequent activity by the police or any other external body resulting from the incident.
12. The Applicant vacated the Property on 6 January 2018 in compliance with the section 21 notice. He said at the hearing that he had made his own decision to leave, as he thought it was important for him to comply with the section 21 notice.

### **The Law**

13. Section 40 of the Housing and Planning Act 2016 ("the Act") Act gives the First-tier Tribunal the power to make a rent repayment order (requiring a landlord to repay rent to a tenant) if the landlord has committed any of the offences listed in a table of offences set out in that section.
14. Subsection (3) of section 40 says that:

"A reference to "an offence to which this chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord."

15. One of the offences set out in the table of offences is an offence under sections 1(2), 1(3), or 1(3A) of the Protection from Eviction Act 1977 (“the 1977 Act”). The relevant text of section 1 is:

“1 Unlawful eviction and harassment of occupier.

(1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

(a) to give up the occupation of the premises or any part thereof; or

(b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.”

16. The Tribunal may make a rent repayment order against the landlord if it is satisfied beyond reasonable doubt that a landlord has committed an offence to which the rent repayment provisions of the Act apply, whether or not the landlord has been convicted (see section 43 of the Act).
17. If the Tribunal decides to make a rent repayment order in favour of a tenant, the maximum sum that may be ordered to be repaid, for the offence being considered in this case, is the rent paid (less any universal credit received by the tenant) for the 12 months preceding the commission of the offence.
18. Where an act which is alleged to be an offence under the 1977 Act is committed by an agent or employee of the landlord, it cannot be treated as if it were an offence of the landlord unless it is proved that the landlord himself takes part in, or authorises, the act. The landlord would have to have been a participant in, or orchestrated, or controlled, or authorised, the act of the agent or employee, to have committed the offence (see *R v Stephens (1866) LR 1 QB 702*; *Hardcastle v Beilby [1892] 1 QB 709*; *R v Quereshi [2011] EWCA Crim 1584*).

## **Discussion**

19. The Applicant must satisfy the Tribunal that the landlord (i.e. the First Respondent) has committed an offence under section 1 of the 1977 Act. The standard of proof is the criminal standard; that the evidence shows the commission of the offence “beyond reasonable doubt”.
20. In discussion with the Tribunal Chair, as identified in paragraph 12 above, the Applicant accepted that he had made his own decision to leave, and he had not been evicted through the physical acts of either of the Respondents. There is no evidence therefore upon which the Tribunal can determine that any offence under section 1(2) of the Act has been committed.
21. The Tribunal is therefore concerned with the possibility of any offence under sections 1(3) or 1(3A). The Applicant was not able to help the Tribunal to select which of these sub-sections he was relying upon, so the Tribunal has considered both. One component of both offences is “persistent withdrawal of services”. There was no allegation by the Applicant that there had been any withdrawal of services and the Tribunal did not therefore consider this element of the offences.
22. The sub-sections therefore require some “act” on the part of the person committing the offence. The Applicant has not relied on or brought to the Tribunal’s attention, any direct acts by the First Respondent at all. The basis of the Applicant’s case is that the Second Respondent’s behaviour on 10 December 2017 was in effect the act of the First Respondent, so that the First

Respondent should be considered to have committed an offence under the 1977 Act through the behaviour of the Second Respondent.

23. In responding to questions from the Tribunal, the Applicant accepted that he had no knowledge of any conversations between the two Respondents regarding the incident on 10 December 2017.
24. In the Tribunal's opinion, the Applicant has failed to establish any participation or involvement of the First Respondent in the Second Respondents actions on 10 December 2017, and consequently, even if the Second Respondents actions on that day were criminal under the 1977 Act, the offence (whether under section 1(3) or 1(3A)) would not have been committed by the First Respondent, who is the landlord, and so no rent repayment order can be made. On that basis alone, the Tribunal must dismiss the application.
25. If the Tribunal is wrong on this point, we would not have found that the Second Respondent's actions on 10 December 2017 amounted to a criminal offence, even if we accept the Applicant's version of events in its entirety. The reason is that an offence under section 1(3) or 1(3A) requires that the behaviour complained about was for the purpose of causing the Applicant to give up possession of the Property. On the very best version of the Applicant's case, it seems clear to the Tribunal that all the Second Respondent was doing was discussing the Applicant's failure to pay his December rent. A section 21 notice, entitling the First Respondent to lawfully regain possession of his Property provided he followed correct procedures, had already been served. Continued occupation beyond the expiry of the section 21 notice was not in issue on 10 December 2017.
26. The Applicant was vexed that he had to have any discussion with the Second Respondent, as he had previously told the First Respondent that he did not wish to deal with him. He was also upset that he had not been given notice of the attendance at the Property on 10 December 2017 by the Second Respondent, pointing out that this was a Sunday and he should not have his weekend disturbed. His case was that these issues contributed to the harassment.
27. The Tribunal sees no merit in these points. There was no suggestion by the Applicant that the Second Respondent had sought to access the Applicant's room, which was the only area of which he had exclusive occupation; the altercation took place in the communal kitchen. The Second Respondent, as agent for, and father of, the landlord, had a right to be in the communal areas of the Property, and no obligation to give notice of his visits to these areas. The Applicant was not compelled to talk to the Second Respondent if he did not want to.
28. For completeness, the Tribunal records that it did not require or request the Second Respondent, who was also acting as the First Respondent's representative, to respond to the Applicant's case. The Tribunal did not

consider, at the conclusion of the Applicant's evidence and submissions, that there was any case for the Respondents' to answer.

29. The Tribunal's determination is therefore that the application for a rent repayment order is dismissed.

### **Appeal**

30. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall  
Chair  
First-tier Tribunal (Property Chamber)