



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

- Case Reference** : **BIR/00CN/HMK/2019/0015**
- Property** : **39 Slade Road, Erdington, Birmingham
B23 7PG**
- Applicants** : **(1) Mr Ionut Danilescu
(2) Mr Alin Stefan Chiper**
- Respondents** : **Mr Constantin Daniel Udubasa and Mrs
Nina Catalina Udubasa**
- Type of Application** : **Application under section 41(1) of the
Housing and Planning Act 2016 for rent
repayment orders**
- Tribunal Members** : **Judge M K Gandham
Mr R Chumley-Roberts MCIEH, JP**
- Date and venue of
Hearing** : **29th May 2019
Centre City Tower, 5-7 Hill Street,
Birmingham, B5 4UU**
- Date of Decision** : **9 July 2019**

DECISION

Decision

1. The application for a Rent Repayment Order under the Housing and Planning Act 2016 is refused.

Reasons for Decision

Introduction

2. By an Application, received by the Tribunal on 26th February 2019, Mr Ionut Danilescu and Mr Alin Stefan Chiper ('the Applicants') applied for an order for the repayment of rent paid, under sections 41(1) and 41(3) of the Housing and Planning Act 2016 ('the Act'), in respect of the property known as 39 Slade Road, Erdington, Birmingham, B23 7PG ('the Property').
3. The Tribunal issued directions on 1st March 2019. The Tribunal received a Statement from Mr Constantin Daniel Udubasa and Mrs Nina Catalina Udubasa ('the Respondents') on 21st March 2019 and a bundle from the Applicants on 8th April 2019.
4. As far as the Tribunal is aware, the Respondents have not been convicted or received a Financial Penalty in respect of any offence detailed in section 40(3) of the Act.

The Law

5. Section 40 of the Act provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

Section 41 of the Act provides:

41 Application for rent repayment order

(1) A tenant ... may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 43 of the Act provides:

43 Making of rent repayment order

- (1) *The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).*
- (2) *A rent repayment order under this section may be made only on an application under section 41.*

The relevant offences are detailed in the table in section 40(3) of the Act as follows:

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Inspection

- 6. The Tribunal inspected the Property on 29th May 2019 in the presence of the Applicants. The Tribunal knocked on the door several times and waited for five minutes, but the Respondents failed to attend.
- 7. The Property is a two storey, semi-detached house on Slade Road in Erdington, just off the Gravelly Hill Interchange in Birmingham. It is of brick construction and has a pitched, tiled roof. There was a small, unkempt, lawned area to the front of the Property with steps to the front door. The Tribunal was unable to carry out an internal inspection of the Property or to inspect the rear of the house.

Hearing

- 8. Following the inspection, a public hearing was held at the Tribunal’s hearing rooms at Centre City Tower, Birmingham, which the Applicants attended. The Respondents had previously notified the Tribunal that they did not intend to appear, or to be represented, at the hearing.

The Applicants' submissions

9. The Applicants, in their bundle, provided: a reply to the Respondent's written Statement of Case; a statement from a witness - Mr Stefan Paun; copies of telephone messages (together with Mr Chiper's English translations of the same); copies of correspondence detailing the Property as the Applicants' correspondence address; copies of bank statements detailing payments of £350 to Mr Udubasa every month from October 2018 to January 2019.
10. The Applicants confirmed that they were both Romanians who had commenced studies at Birmingham City University in September 2018. Mr Chiper had seen an advert for a room to let at the Property (on Facebook) and moved in on 2nd August 2018. Mr Danilescu moved in on 18th September 2018. They confirmed that they both shared the room, which was on the ground floor to the Property.
11. Mr Chiper stated that, on commencement of his occupation, he had paid a deposit and August's rental payment - both being sums of £350 - in cash to the Respondents. He stated that the Respondents had refused to give him a written tenancy agreement, although he had requested the same on multiple occasions. He also did not receive any receipts for the payments, nor details of any rental deposit scheme.
12. The Applicants stated that subsequent rental payments were made through their respective banks and provided copies of their bank statements, which clearly showed that they had made payments of £350 per month to Mr Udubasa from October 2018 through to January 2019.
13. The Applicants stated that, during their occupation, Mr Danilescu had registered to vote and that this had angered the Respondents who had stated that the Applicants should not be using the Property as their correspondence address. The Applicants stated that this is when they started to have doubts regarding the legitimacy of their occupancy.
14. The Applicants had provided within their bundle a statement from Mr Stefan Paun, whom they stated was also occupying the Property until late November/beginning of December 2018, although, they stated, he was also not given a written tenancy agreement. Mr Paun's Statement was by way of an unsigned email, as Mr Paun had returned to Romania.
15. Mr Paun stated that he had been "*kicked*" out of the Property by the Respondents prior to Christmas 2018. He stated that, prior to this, he had been making rental payments of £280 per month for a room. He stated that the Respondents did not allow him to receive correspondence to the address and that, when he left his job, he was given 3 days' notice to vacate and his deposit was not returned to him.

16. The Applicants confirmed that the ground floor of the Property comprised the room which they occupied and a kitchen. They confirmed that the first floor comprised three rooms and a bathroom. They stated that Mr Paun had occupied one of these rooms, with the Respondents occupying the other and the last one remaining vacant. They confirmed that the kitchen contained a single cooker with work units and that both the kitchen and bathroom facilities were shared by all of the occupants. They stated that, in addition to the rent, they would, occasionally, contribute towards the purchase of cleaning products for the Property, but that they did not pay towards the council tax or utility bills.
17. The Applicants stated that, on 18th January 2019, they had informed the Respondents that they wanted to move out of the Property and queried whether they should vacate on 18th February 2019 or 2nd March 2019. In response, they stated that they received a threatening call on 24th January 2018 and were sent threatening messages by the Respondents, who informed them that they must leave on 2nd February 2019, as that was when the rent was paid to.
18. They stated that the text messages in their bundle proved that the Respondents had “*kicked them out*” without giving them a months’ notice. They stated that the text messages also showed that Mr Udubasa had threatened to go to their place of work to complain about them if they did not return their keys, although the Applicants confirmed, at the hearing, that he had not followed through with this threat and that, although the Respondents had raised their voices at the Applicants, no physical violence had ever been used against them.
19. Mr Chiper confirmed that he vacated his room at the Property on 2nd February 2019 and that the Respondents had refused to return his deposit. He confirmed that Mr Danilescu was in Romania at the time and had already removed his belongings. Mr Chiper stated that only Mrs Udubasa was present on the day that he vacated and that she did not interfere with his move. He stated that he had taken the keys to the Property with him as he had been made to pay for the keys by the Respondents at the beginning of his occupation.
20. The Applicants stated that, after they had moved out of the Property, they contacted the Council to inform them of the situation, but that the Council did not take any action and referred them to a helpline, who, in turn, had referred them to the Tribunal. They also stated that they had informed the Police of threats by the Respondents, but again this was after they had already moved out of the Property. They stated that the Tribunal could obtain a copy of the CCTV from the Police as evidence of the fact that they had contacted the Police.
21. They submitted that the Respondents had committed an offence under section 6(1) of the Criminal Law Act 1977, in that the Respondents had threatened violence against them in a telephone call; that the Respondents had committed an offence under the Protection from Eviction Act 1977,

sections 1 (2), (3) or 3(a), in that the Applicants had been unlawfully evicted and harassed by the Respondents as the Respondents had threatened to go to their workplace; and the Respondents had committed an offence under section 72 (1) of the Housing Act 2004 as, based on their evidence, it was clear that the Property was an unlicensed HMO for a few months, as five people had been in occupation - the Applicants, the Respondents and Mr Paun.

22. They confirmed that they had had no evidence that the Property had been served with an Improvement Notice and had failed to appreciate that this was what was required for an offence to have been committed under section 30 (1) of the Housing Act 2004, so withdrew their allegation on that point.

The Respondents' submissions

23. The Respondents provided a short written Statement of Case. They confirmed that they were the sole tenants of the Property and provided a copy of the front page of their tenancy agreement, which detailed that they held the Property under a tenancy for a term of twelve months from 15th February 2018. They stated that the tenancy agreement did not prevent them from allowing persons to stay at the Property but that they did not rent out other rooms.
24. They stated that they had allowed Mr Chiper to stay at the Property to '*help him out*' as he was new to the country. They stated that this was to be a temporary arrangement, for two to three weeks, but that Mr Chiper extended it to a few months as he was unable to afford to rent elsewhere.
25. The Respondents stated that they had informed Mr Chiper that he could not allow anyone else to stay in the Property, but that when they had returned from holiday they found Mr Danilescu had moved in with him.
26. They stated that, whilst they were occupying the Property, the Applicants would contribute fees as they wished and that Mrs Udubasa used to cook and clean after them.
27. They stated that they did not threaten the Applicants or argue with them, they simply wanted to know when the Applicants were going to leave as they kept extending their stay. They queried why, if the Applicants' allegation of threats and violence were true, they had not contacted the Police at the relevant time.
28. They stated that they were not aware of when Mr Danilescu had left the Property and that when Mr Chiper left, Mrs Udubasa was at home alone with him, and that Mr Chiper took the keys to the Property with him.

The Tribunal's Deliberations

29. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted and summarised above.
30. The Respondents stated that the Applicants had not been renting a room at the Property, but that they had simply allowed the Applicants to stay on a temporary, informal basis, with the Applicants making contributions towards fees as they wished. Although the Applicants did not have a written tenancy agreement, the bank statements they provided clearly indicated that they made regular monthly payments of £350 to Mr Udubasa from 2nd October 2018 up to and including 2nd January 2019, and the Tribunal is satisfied, based on the evidence provided, that a tenancy existed and that rental payments were made.
31. Prior to being able to make a rent repayment order under the Act, the Tribunal must be satisfied '*beyond reasonable doubt*' (under section 43) that the Respondents have committed one or more of the offences referred to in section 40(3) of the Act. The Applicants have not submitted that the Respondents have been convicted of any offence under section 40(3), therefore, the Tribunal must firstly decide, to a criminal standard of proof, whether any of the offences listed in section 40(3) have been committed by the Respondents.
32. In relation to section 6 (1) of the Criminal Law act 1977 - the use or threat of use of violence to secure entry into the premises - although the Applicants state that they were threatened by the Respondents, this was disputed by the Respondents, and the Applicants were unable to provide any evidence of the same. In addition, Mr Chiper confirmed that only Mrs Udubasa was present at the Property when he vacated his room, and that she did not interfere with his move. The Tribunal is, therefore, not satisfied beyond reasonable doubt that any offence has been committed by the Respondents under section 6 (1) of the Criminal Law act 1977.
33. In relation to the offence under sections 1 (2), (3) or (3A) of the Protection from Eviction Act 1977, the Tribunal notes that the Applicants do not submit that the Respondents deprived them of their accommodation or required them to vacate immediately after they had informed them of their intention to leave but had, instead, stated to them that they needed to vacate on 2nd February 2019, the date up to which their rent was paid. The Applicants confirmed that they did not contact the Council to confirm whether this was correct, but submit that they should have received a months' notice to vacate. Despite this, Mr Chiper did vacate on 2nd February and it appears that Mr Danilescu had already vacated prior to this date, without any interference by the Respondents.
34. Regarding any harassment, based on the Applicants' translation of the text messages, although Mr Udubasa appeared to have threatened to attend the Applicants' workplace to complain about them if they did not return the keys to the Property, from the Applicants' own admissions, this threat

was not followed through and from the evidence supplied appears to have been sent on 2nd February 2019, after the Applicants had already vacated. The Tribunal is, therefore, not satisfied beyond reasonable doubt that any offence has been committed by the Respondents under sections 1 (2), (3) or (3A) of the Protection from Eviction Act 1977.

35. In relation to section 72 (1) of the Housing Act 2004, the Tribunal notes that from 1 October 2018, under the national mandatory licensing scheme, a property with five or more people in occupation, which is formed of two or more households and fulfils the standard test (as detailed in section 254 of the Housing Act 2004) requires a mandatory HMO licence.
36. Although the Tribunal considers that there is sufficient evidence, and the Respondents do not dispute, that there were four occupants of the Property who shared common facilities, the Respondents dispute, and the Tribunal is not satisfied, that there is sufficient evidence as to Mr Paun's occupancy of the Property during the relevant time period. The statement provided in evidence is an unsigned email and no corroborating evidence in support of the statement has been provided. As such, the Tribunal is not, on the evidence provided, satisfied beyond reasonable doubt that any offence under section 72 (1) of the Housing Act 2004 has been committed by the Respondents.
37. As the Tribunal has not been satisfied, beyond reasonable doubt, that any offence relevant to section 40(3) of the Act has been committed by the Respondents, it is unable to make any rent repayment order.

Appeal Provisions

38. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM

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Judge M. K. Gandham