FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AM/HMK/2019/0020**
Property	**:**	**Flat 14, Caliban Towers, Arden Estate, London N1 6PW**
Applicant	**:**	**Ms Frida Ravn Abildgaard**
Representatives	**:**	**Ms Rachel Coyle of Counsel**
Respondents	**:**	**Mr Aribibia Johnson**
Representative	**:**	**Not known**
Type of Application	**:**	**Application for a rent repayment order by the tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal Members	**:**	**Judge N Hawkes** **Mr M Cairns MCIEH**
Date and venue of hearing	**:**	**8 August 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**28 August 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £5,000.

(2) The Tribunal orders the Respondent to reimburse hearing fees paid by the Applicant in the sum of £300.

The application

1. By an application dated 12 March 2019, the Applicant tenant (Ms Abildgaard) applied for a rent repayment order against the Respondent landlord (Mr Johnson).

2. On 23 April 2019, the Tribunal issued Directions leading up to a final hearing which took place on 8 August 2019.

3. The Applicant attended the hearing in person and she was represented by Ms Coyle of Counsel. The Tribunal waited until 10.15 am before starting the hearing, in case the Respondent had been delayed. However, the Respondent failed to attend.

4. No reason was provided by the Respondent for his absence. The Respondent had also failed to comply with the Tribunal's Directions.

5. The Tribunal heard oral evidence from the Applicant and from her witness, Ms Elisa Muraro. Ms Muraro is described on the tenancy agreement as a "permitted occupant" and she resided at the property together with the Applicant.

The Tribunal's determinations

6. Section 40 of the Housing and Planning Act 2016 ("the 2016 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.

7. Statutory guidance for local housing authorities concerning rent repayment orders under the 2016 Act was published on 6 April 2017 ("the Statutory Guidance"). The Tribunal has had regard to the Statutory Guidance in determining this application.

8. Section 41 of the 2016 Act provides:

> *(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."

9. Section 43 of the 2016 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.

10. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 1 of the Protection from Eviction Act 1977 ("the 1977 Act") of unlawful eviction. It is the Applicant's case that she was unlawfully evicted from the property on 29 June 2018.

11. The Applicant seeks a rent repayment order ("RRO") in respect of sums which she states that she paid to the Respondent in the period of four months ending on 29 June 2018.

12. In respect of the offence of unlawful eviction, the amount of any RRO must relate to rent paid by the tenant in respect of the period of 12 months ending with the date of the offence (see section 44(2) of the 2016 Act).

13. By section 44(3) of the 2016 Act, the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid to any person in respect of rent under the tenancy during that period.

14. Having heard oral evidence from the Applicant and from Ms Murano, and having considered the documents to which it was referred during the course of the hearing, the Tribunal makes the following determinations. The Tribunal has considered each of the issues which were identified to the Annex to the Tribunal's Directions in turn.

Whether the Tribunal is satisfied beyond reasonable doubt that the Respondent has committed a relevant offence?

Unlawful eviction

15. The Tribunal found the Applicant and Ms Murano to be clear and credible witnesses and the Tribunal has no hesitation in accepting their evidence.

16. Section 1 of the 1977 Act includes provision that:

> *(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.*

17. The Tribunal has been provided with a copy of the tenancy agreement and is satisfied beyond reasonable doubt that the Applicant and Ms Muraro were, on 29 June 2018, residential occupiers of the property. It is clear from his correspondence, which will be set out below, that the Respondent did not believe that the Applicant and Ms Muraro had ceased to reside at the property.

18. The Applicant gave oral evidence that, when she and Ms Murano moved in, the property was very dirty. Accordingly, they spent two days cleaning in order to make the property habitable. They also spent time and money redecorating the property and they bought furniture. In particular, Ms Muraro purchased a brand new bedframe and mattress.

19. Although the washing machine at the property stopped working and the shower had no hot water, both the Applicant and Ms Muraro liked the area and the rent was just what the Applicant could afford.

20. When the washing machine broke down, on 1 May 2018, the Applicant emailed the Respondent to report the fault. The Respondent failed to repair the washing machine and instead he purported to serve a notice pursuant to section 21 of the Housing Act 1988 on the Applicant.

21. On 26 June 2018, the Applicant travelled to Denmark in order to attend her brother's graduation ceremony, leaving Ms Muraro alone at the property. The Respondent then sent emails to Ms Muraro seeking to cause Ms Muraro and the Applicant to vacate the property.

22. By a final email to Ms Muraro dated 28 June 2018, the Respondent stated:

"Lol. Your [sic] funny and rude. You don't know me. Be careful.

I will be at the flat tomorrow lunchtime as agreed. If there is no key I will have the locks changed on the spot.

Anything in the flat that doesn't belong to me. I will throw out

I hope you understand ☺"

23. Both the Applicant and Ms Muraro gave evidence, which the Tribunal accepts, that this email caused them both to be fearful that that, if they did not leave, Respondent would force entry and physically take possession of the property. They feared for Ms Muraro's personal safety and the Applicant stated, *"At worst I imagined that he was going to be violent"*.

24. As a result of these serious concerns, Ms Muraro cleaned and vacated the property. Insofar as she was able to, she took her possessions and those of the Applicant with her. She was unable to take her new bedframe and mattress with her and she did not feel that it was safe to return to the property due to the threats which the Respondent had made. Accordingly, Ms Muraro has never recovered these items. Both she and the Applicant are students with very limited financial resources.

25. The Tribunal is satisfied that the Respondent's email, in which the Respondent states that he will "have the locks changed on the spot" and warns Ms Murano to "be careful" because she does not know him, was intended to be threatening and intimidating. This correspondence reasonably caused the Applicant and Ms Muraro to be fearful for Ms Muraro's physical safety and to rapidly vacate the property.

26. The Applicant then failed to return Applicant's deposit, which has caused her financial hardship. Without the funds to pay for a new deposit, the Applicants had to ask her parents whether she could stay with them immediately after this incident and she lost her personal independence.

27. On the basis of the evidence of the Applicant and Ms Muraro, the Tribunal is satisfied beyond reasonable doubt that, by sending Ms Muraro threatening and intimidating correspondence, the applicant unlawfully (that is without a court order) deprived the Applicant and Ms Muraro of their occupation of the property.

28. The Tribunal is therefore satisfied beyond reasonable doubt that an offence under section 1(2) of the 1977 Act was committed by the Respondent on 29 June 2018.

Did the offence relate to housing that, at the time of the offence, was let to the tenant?

29. The Tribunal has been provided with a copy of the Applicant's tenancy agreement and evidence of rent payments. The Tribunal is satisfied on the basis of the Applicant's oral and documentary evidence that the offence of unlawful eviction related to a property that, at the time of the offence, was let to the Applicant.

Was an offence committed by the landlord in respect of the period of 12 months ending with the date the application was made? What is the applicable 12 month period?

30. The application was made in March 2019 and the offence was committed in June 2018. Accordingly, the offence was committed by the Respondent within the period of 12 months ending with the date the application was made.

31. The applicable period is the period of 12 months ending with the date of the offence (that is, 12 months ending on 29 June 2018). The Applicant gave evidence that she paid four month's rent in the sum of £5,200 to the Respondent during the relevant period. As stated above, the Tribunal accepts the Applicant's evidence.

The exercise of the Tribunal's discretion

32. Subsection 43(1) of the 2016 Act gives the Tribunal a discretion as to whether or not to make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a relevant offence.

33. In the present case, given the nature and seriousness of the offence, it is clearly appropriate for the Tribunal to exercise its discretion to make an RRO.

The maximum amount of the rent repayment orders

34. The Applicant confirmed that she was not in receipt of universal credit during the applicable period. The Tribunal is therefore satisfied that the maximum amount of the RRO is £5,200.

The amount of the RRO in the present case

35. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that, in certain circumstances, the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.

36. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

37. During the course of the hearing, reference was made to two decisions of the Upper Tribunal, namely, *Parker v Waller [2012] UKUT 301 (LC)* and *Fallon v Wilson [2014] UKUT 0300 (LC)*. These decisions concern the amount of a rent repayment order under the provisions of the 2004 Act which apply when a relevant offence started to be committed before 6 April 2017.

38. The Tribunal considers that *Fallon v Wilson* and *Parker v Waller* remain relevant authorities under the 2016 Act and the Applicant did not seek to disagree as a matter of legal principle.

39. Accordingly, the Tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made, (ii) the benefit obtained by the tenant in having had the accommodation is not a material consideration (iii) the Tribunal has a general discretion which must be exercised judicially and (iv) the net benefit received by the landlord from the letting is a material consideration.

40. The Respondent has not sought to engage with these proceedings and has provided no evidence. The Applicant stated that her rent was inclusive of gas, water and internet bills. However, the Applicant and Ms Muraro were in occupation during a time of year when heating bills were likely to have been modest. No evidence of his expenses having been put forward by the Respondent, the Tribunal has deducted a nominal sum of £200 from the rent which has been paid on account of expenses.

41. In determining the amount of the RRO in this case, the Tribunal has had regard to the oral and written evidence which it has received and, in particular, to the matters set out above. The Tribunal placed significant weight upon:

(i) the nature and seriousness of the offence of unlawful eviction which caused the Applicant and Ms Muraro to be fearful for Ms Muraro's physical safety and to rapidly vacate the property;

(ii) the failure of the Respondent to return the Applicant's deposit;

(iii) the absence of any remorse or engagement with these proceedings on the part of the Respondent; and

(iv) the financial hardship resulting from the Respondent's actions.

42. In all the circumstances, the Tribunal determines that it is appropriate to make an RRO in favour of the Applicant in the sum of £5,000, representing the entirety of the net rent, and to make an order requiring the Respondent to reimburse Tribunal fees which have been paid by the Applicant in the sum of £300.

Name: Judge Hawkes **Date:** 28 August 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).