



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

Case reference	:	LON/OOAL/HMB/2019/0004
Property	:	Outbuilding at the rear of 4 Brookhill Road London SE18 6UF
Applicant	:	Oluwasegun Michael Bourdillon
Representative	:	Patricia Gravell of Greenwich Council
Respondent	:	Tosin Kale
Representative	:	Gafar Gbadamosi; Solicitor
Interested person	:	-
Type of application	:	Application by Tenant for a rent repayment order under the Housing and Planning Act 2016
Tribunal members	:	Judge Professor Robert Abbey Mr Chris Gowman MCIEH
Venue and date of hearing	:	10 Alfred Place, London WC1E 7LR 16 January 2020
Date of decision	:	24 January 2020

DECISION

Decision of the tribunal

- (1) The tribunal finds that a rent repayment order be made in the sum of £6000 in favour of the applicant, the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to

s.40 of the Housing and Planning Act 2016. This section confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this section applies. A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in a table in the Act found in this section and that is committed by a landlord in relation to housing in England let by that landlord. The first two lines of the table list as follows the following two offences: -

- 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.

The applicant seeks a rent repayment order based on these two offences.

Reasons for the tribunal’s decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **Outbuilding at 4 Brookhill Road London SE18 6UF**.
2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination particularly as the Tribunal had been supplied with several large-scale colour photographs.
3. The hearing of the application took place on Thursday 16 January 2020. Both parties appeared and were represented as listed above.
4. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

The law

5. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence described in section 40 of the Act and in that regard section 6 of the Criminal Law Act 1977 states

6 Violence for securing entry.

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

(4) It is immaterial for the purposes of this section—

(a) whether the violence in question is directed against the person or against property; and

(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

Similarly, section 1 of the Protection From Eviction Act 1977 provides that:-

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.

6. Under section 41 (2) (a) and (b) of the 2016 Act 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. The alleged unlawful eviction and violent entry was said to have taken place on Friday 28 September 2018 and the application to the Tribunal was made on 6 September 2019. Accordingly, from the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal. Therefore, the offence or offences relate to violent entry and unlawful eviction.

Background

7. The property is a small shed in the rear garden of 4 Brookhill Road London SE18 6UF. This was described in the trial bundle as a one-bedroom property with a toilet and shower area accessed from the bedroom and a kitchen living area accessed from the front entrance door. There are steps up to the front entrance door. The applicant and his partner Funmilayo Alimi and their three children lived in this shed having commenced occupation on 20 February 2017. He paid £750 per month to the respondent, usually in cash, and enjoyed the exclusive possession of the shed having received a key to the front entrance door. The solicitor for the respondent asserted that there was no tenancy

because it was a mere licence allowing in a lodger for a short stay only with payments made for use and occupation. However, the Tribunal decided that the occupancy had all the characteristics of a tenancy as set out in the Case of *Street v Mountford* [1985] AC 809 in that it granted exclusive possession of the shed, for a fixed term, (a monthly tenancy), at a rent, (agreed by the parties to the agreement and being £750 per month).

8. The solicitor for the respondent also asserted that the tenancy was a nullity because of the effect of section 22 of the Immigration Act 2014. This section provides that a landlord must not allow an adult to occupy property under a residential tenancy agreement if they are a disqualified person. A disqualified person is one who does not have proper immigration approval/status by way of leave to remain in the UK. The respondent confirmed that at the start of the tenancy he did not have leave to remain and was therefore in effect an illegal immigrant. However, he now has leave to remain.
9. Notwithstanding the above assertion on closer examination of this section the Tribunal noted that subsection (9) of section 22 confirms that the restriction set out in the section is not intended to affect the validity or enforceability of any provisions of a residential tenancy agreement. A breach of the restriction will not impact on a landlord or tenant's ability to enforce any provision in the agreement that they have entered into. Accordingly, this immigration provision has no consequence or effect in this dispute and can safely be discounted from the Tribunal's deliberations.

The Offences

10. The applicant alleged two offences set out above, violent entry and unlawful eviction. Each will now be determined by the Tribunal.

The tribunal's determination

11. Dealing first with the violent entry, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence provided that there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and the person using or threatening the violence knows that that is the case. The Tribunal heard extensive evidence of the circumstances of the alleged violent entry and were provided with photographs of the front entrance door. These showed that there was no door on hinges and that there were visible splinters of wood on the floor from the door or door frame. The Tribunal were also shown a transcript of an interview taken under caution by the Local Authority of the respondent where he was questioned about had happened at the shed on 28 September 2018. The Tribunal also heard evidence from the

respondent's partner and had the benefit of statements from the applicant and the applicant's partner.

12. The Tribunal preferred the evidence from the applicant and in particular from the statement transcription mentioned above. This was a clear rendition of what the respondent had said in reply to questions from the local authority about the circumstances of this letting. In the transcription the respondent says he barged into the shed and that as far as the entrance door was concerned he "barged it through". When asked what happened to the door when he barged it the respondent replied, "It got damaged and then it opened". He went on to say that he hit the door twice and that as it was broken he took the door off its hinges. He admitted that the door was splintered by his actions. The respondent also admitted he was carrying a screwdriver and a portable drill at the time the door was damaged. The Tribunal understood "barging" to mean moving roughly including colliding with people or objects such as a door.
13. Prior to the door incident there had been a conversation between the respondent and the applicant's partner through the window in the front of the shed. In the statement transcription the respondent confirmed that the applicant's partner has said to him that "We're not moving, we're not going anywhere". Clearly the respondent knew that the occupants did not want to go and that they were opposed to the entry. In these circumstances there is evidence beyond a reasonable doubt that an offence of violent entry had been committed by the respondent. He knew the occupants opposed entry; nevertheless he broke the door by barging it and then removed the door.
14. With regard to unlawful eviction and harassment if a party does acts likely to interfere with the peace or comfort of the residential occupier or members of his household then this amounts to an offence. The respondent barged and removed the front entrance door. He then removed the cooker the fridge and the sink and the electrics were disconnected. The Tribunal were satisfied beyond a reasonable doubt that this conduct was clearly in breach of section 1 of the Act and amounted to unlawful eviction or harassment.
15. Because the rent was paid in cash and no receipts were issued neither party could provide good evidence of the amount of rent paid by the applicant to the respondent. The applicant was claiming the full year (12x£750=£900) while the respondent admitted under questioning by the Tribunal that he had received £6000 being net of payments made to reduce arrears which he placed at £3000. Accordingly, the Tribunal accepted that the rental monies at issue were not less than £6000 and not more than £9000.
16. Furthermore, the tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to

what should the tribunal consider a reasonable order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the respondent was a professional landlord. Indeed, the respondent himself confirmed in reply to an enquiry from the Tribunal that the respondent owned six properties and that they were let to residential tenants.

17. There is no presumption of a starting point of a 100% refund being made. (In the *Parker* case mentioned above an award at 75% was considered reasonable). In *Fallon v Wilson and Others* [2014] UKUT 300 (LC) it was confirmed that the tribunal must take an overall view of the circumstances in determining what amount should be reasonable. The Upper Tribunal here supported the view set out in *Parker* that this Tribunal “*must take an overall view of the circumstances determining what amount would be reasonable*”.
18. The Applicant and his family had been on the wrong end of some regrettable behaviour by the respondent. The breaking of the door, the removal of items from the shed to make it uninhabitable and being excluded from his tenancy were all factors to be taken into consideration when coming to a rent repayment order. The respondents conduct had caused major problems for the tenant and his family. The fact that the Council had made the shed the subject of a stringent prohibition order speaks for itself.
19. Consequently, the Tribunal concluded that a rent repayment order be made in the sum of £6000 the tribunal being satisfied beyond reasonable doubt that the landlord has committed offences as detailed above. Taking into account all the above mentioned judicial guidance and the circumstances of the claim, the tribunal considered that for the period in question an appropriate amount should be £6000. Accordingly, it is this amount of £6000 that should be the amount of the rent repayment order. The rent repayment monies are to be paid by the respondent to the applicant within 28 days of the date of this decision.

Name: Judge Professor Robert Abbey Date: 24 January 2020

Annex

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).

Appendix of relevant legislation

Sections 40 and 41 Housing and Planning Act 2016

40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) 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.

	Act	section	general description of offence
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

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Application for rent repayment order

41 (1) A tenant or a local housing authority 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.

(3)A local housing authority may apply for a rent repayment order only if—

(a)the offence relates to housing in the authority's area, and

(b)the authority has complied with section 42.

(4)In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.