



**Case Reference** : **LON/00AZ/HMB/2019/0001**

**Property** : **7 Stillness Road, Honor Oak,  
London SE23 1NG**

**Applicant** : **Ms Dayna Edwin**

**Representative** : **N/A**

**Respondent** : **Ms Christalla Harris-Jones**

**Representative** : **Ms Sara Jabbari Counsel**

**Type of Application** : **Application for a Rent Repayment  
Order by Tenant – Sections 40, 41,  
43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Member** : **Judge Carr  
Mr P. Roberts Dip Arch RIBA**

**Date and Venue of  
Hearing** : **11<sup>th</sup> November 2019 continuing 20<sup>th</sup>  
January 2020  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **27<sup>th</sup> February 2020**

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**DECISION**

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## **Decision of the Tribunal**

1. **The Tribunal dismisses the application for a Rent Repayment Order.**
2. The reasons for that decision are set out below.

## **The application and procedural history**

3. The Tribunal received an application under section 41 of the Housing and Planning Act 2016 ('the 2016 Act') dated 20<sup>th</sup> May 2019. It concerns 7 Stillness Road, Honor Oak, SE23 1 NG('the Property'), which is a two bedroom flat in a house converted into two flats.
4. The Applicant alleges that the landlord committed the offence of harassment under the Protection from Eviction Act 1977. She seeks the maximum rent repayment order which is 4 months rent at £1150 per month, totalling £4,600.
5. The Tribunal issued directions on 9<sup>th</sup> July 2019. The directions made it clear that the Tribunal has to be satisfied beyond reasonable doubt that the landlord has committed the alleged offence.
6. The relevant legal provisions are set out in the appendix to this decision.

## **The background**

7. The Property comprises a two bedroom flat in a converted house. The Applicant lived in the property with her sister, Malayna Sargeant from the 17<sup>th</sup> December 2018 until 16<sup>th</sup> April 2019. The other flat in the house, 7A Stillness Road, was, and continues to be, occupied by the Respondent.
8. The property was managed by a managing agent, Sebastian Roche, throughout the Applicant's tenancy.
9. The parties completed an assured shorthold tenancy agreement prepared by the Managing Agents. It was for a fixed term of 12 months commencing on 17<sup>th</sup> December 2018. The agreement included a 6 month break clause which allowed both the Landlord and Tenant to terminate the agreement at the end of 6 months from the commencement of the tenancy. If the tenant was to exercise the break clause the agreement required at least two months notice. The rent payable was £1,150 per month.
10. The Applicant and her sister terminated the agreement by way of notice to quit in an email to the managing agents dated 27<sup>th</sup> March 2019. On 29<sup>th</sup> March 2019 the managing agents informed the Applicant that the Respondent had agreed that she and her sister could vacate the Property prior to the expiry

of the 2 month notice period. The Applicant vacated the Property on 16<sup>th</sup> April 2019.

### **The hearing**

11. The hearing took place 11<sup>th</sup> November 2019 when it was part-heard. The hearing was reconvened on 20<sup>th</sup> January 2020. The Applicant attended and represented herself. The respondent appeared and was represented by counsel, Ms Sara Jabbari. The Respondent's partner, Mr Alan Punt also attended the hearing and gave evidence.
12. The Tribunal heard evidence and submissions on the RRO application.
13. In summary the Tribunal considered that, whilst there was clearly a fraught relationship between the parties, and the Respondent did not always behave in a professional manner, the Applicant has not shown beyond reasonable doubt that the Respondent's actions were sufficient to constitute an offence

### **The argument of the Applicant**

#### *Events/incidents during the course of the tenancy.*

14. The Applicant had attached to her application a table of incidents relating to the alleged offence which was copied in the hearing bundle at pages 12 – 17. The table commences with an incident on 12<sup>th</sup> February 2019 and concludes with an incident dated 22<sup>nd</sup> May 2019.
15. For the purposes of the Rent Repayment Order, only those incidents which took place before the end of March 2019 are relevant, because after that time the tenancy had been terminated.
16. The incidents prior to the end of March 2019 include ( in summary) the following allegations:
  - (a) On 12<sup>th</sup> February 2019 the Respondent knocked on the Applicant's door complaining that the Applicant had failed to post mail addressed to her and delivered to the Respondent's property quickly enough. The Applicant was concerned that the Respondent was noting when she left and arrived at the property.
  - (b) Following the Applicant's complaints made about disrepair problems in the property, the Respondent, on 13<sup>th</sup> March 2019 was waiting for the Applicant to arrive from work and knocked the door unannounced to ask when she could bring a workman around.
  - (c) On 15<sup>th</sup> March 2019 the Respondent knocked on the door when the Applicant had arrived back from work. There was no warning of this

visit. The Applicant let her into the property. She had a pull cord in her hand and she tried to fix the broken light switch in the bathroom herself. She complained about the costs of carrying out repairs, the reduction of rent that the agents had negotiated with the Applicant and the failure of the agents to carry out works of repair. There was also a discussion about whether there were mice in the flat which the Respondent refused to accept. She suggested that the Applicant and her sister were not sufficiently clean. She also said that she would get the agents to inspect the property and her partner or her son to review the property. The Applicant viewed this as a threat.

- (d) On 18<sup>th</sup> March 2019 the Respondent walked around the flat taking pictures of the property without the permission of the Applicant when the Respondent was at the property with the workman who was attending for the disrepair.
- (e) The Respondent made several unfounded complaints about the Applicant smoking. The Applicant does not smoke and suggests that the smell of smoke and the existence of cigarette butts were probably the result of the Respondent smoking.
- (f) On 19<sup>th</sup> March 2019 the Applicant heard aggressive knocking and ringing at the doorbell. When she answered the door there was no-one there. The Applicant then heard shouting and loud traditional Greek music coming from the flat. The Applicant was scared and shaking. The Applicant complained to the agents that she was being harassed by the Respondent. She also complained to the police via the 111 line.
- (g) On the 21<sup>st</sup> March 2019 the police attended the Applicant following up a complaint from the Respondent about noise. The police asked the Applicant to keep the noise down. The Applicant explained that she kept the radio on during the day when she went to work as she did not feel safe with the Respondent living below her.
- (h) On 25<sup>th</sup> March 2019 the agents carried out an inspection of the Applicant's flat in the presence of the Respondent. The Respondent and the agent arrived later than the agreed time and the Respondent behaved in a distressing manner, looking under the Applicant's bed and in her cupboards. The Respondent glared at the Applicant's friend who was there to support her.
- (i) On 27<sup>th</sup> March 2019 the Respondent knocked on the door to complain about noise. The only noise was the Applicant's sister getting ready to leave for a flight to the USA at around 6.00 in the morning.
- (j) On 28<sup>th</sup> March the Applicant returned home from work to find that the food delivery had items missing from it. This had never happened

before. The radio was on loudly in the Respondent's house throughout the night.

- (k) When the Applicant arrived home from work at 18.28 on 29<sup>th</sup> March 2019 the door bell rang. She looked through the spy hole and didn't see anyone there. She assumed it was the Respondent. The bell rang again 2 minutes later. When the Applicant opened the door the landlord was there and began shouting at her. She swore at her and said she could not wait to get rid of her. She also said that the Applicant had hurt her dog. She threatened the Applicant by saying that she knew where she worked and knew all about her. The Respondent also said that she knew that there was a camera in the house. She threatened that the Applicant would not get any deposit back. She claimed that the Applicant had thrown eggs and told the Applicant to turn her music down. She swore and shouted. The Respondent said that she had all the notes that the Applicant had been sending and she would not be writing her a reference. She also accused the Applicant of having an extra tenant in the property. The Applicant reported her to the police online via the 111 form.
- (l) On 30<sup>th</sup> March 2019, when the Applicant had around 5 friends at her house after midnight, the Respondent repeatedly rang the doorbell even though the Applicant and her friends were being respectfully quiet. The Respondent took pictures of the guests and they left because they felt uncomfortable.

#### *The argument of the Respondent*

- 17. The Respondent strongly denies the allegations of the Applicant. She states that most of the incidents referred to above did not take place and any incidents that did have been very much exaggerated. She did not glare at the Applicant's friend in the course of the inspection. The friend towered over her and was aggressive. She did not tamper with the Applicant's food delivery. She did not take photographs inside the Applicant's flat.
- 18. In response to the most serious allegation made by the Respondent, the incident on 29<sup>th</sup> March 2019, the Respondent says this is a complete fabrication.
- 19. She gave evidence about the Applicant's conduct. She alleges that she has been subject to horrible verbal abuse by the Applicant. She also says that the Applicant played loud banging music all the time. Any confrontations between the Respondent and the Applicant have been in connection with noise.

20. She also stated that she had been let down by the letting agents who were supposed to be looking after the property. The Respondent stated that she has done her best to ensure that repairs have been carried out and her partner's evidence supported her in this.
21. Counsel for the Respondent argues that the Applicant failed to make out the grounds for the Rent Repayment Order. She argues, and the Tribunal agrees, that the only relevant basis for the application is that the Respondent is guilty of an offence under ss1(3) and 1(3A) of the Protection from Eviction Act 1977. In particular the Tribunal would need to be satisfied that the Applicant has proved beyond reasonable doubt that the Respondent (a) carried out acts which were likely to interfere with the peace or comfort of the Applicant or members of her household, and (b) that those acts were carried out either:
  - (i) with the intent of causing the Applicant or
  - (ii) in the knowledge (or with reasonable cause to believe) that the conduct was likely to cause the Applicant to either give up her occupation of the premise or to refrain from exercising any right of pursuing a remedy in respect of the premises.
22. Counsel suggests that there is a lack of evidence to support the very serious allegations made against the Respondent.
23. She also argues that the only two allegations which are of sufficient seriousness to warrant consideration under the statute are those on 28<sup>th</sup> and 29<sup>th</sup> March 2019. Not only does the Respondent strenuously deny that these incidents took place, Counsel would also argue that, even if they had taken place, they were after the Applicant had served a notice to quit and therefore the requirements of the statutory offence could not be met.

### **The Tribunal's decision**

24. The Tribunal determined on the basis of the evidence and argument before it that it was not appropriate to make a Rent Repayment Order and determined to dismiss the application.

### **The reasons for the Tribunal's decision**

25. The Tribunal is not satisfied beyond reasonable doubt that the Respondent has committed an offence to which the legislation applies.
26. The Applicant did not produce evidence to substantiate her allegations, even though it would have been possible to do so.

27. The Tribunal also is persuaded by the argument of Counsel, that (i) most of the allegations are insufficient to demonstrate an offence under the Protection from Eviction Act 1977 and (ii) that those that may be sufficiently serious relate to dates after the service of a notice to quit by the Applicant.

**Name:** Tribunal Judge Carr

**Date:** 27<sup>th</sup>  
**February 2020**

### **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **80 Designation of selective licensing areas**

- (1) A local housing authority may designated either –
  - (a) the area of their district, or
  - (b) an area in their district,as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

...

#### **95 Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.
- (2) A person commits an offence if –
  - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6); and
  - (b) he fails to comply with any condition of the licence.

...

- (4) In proceedings against a person for an offence under subsection (1), or (2) it is a defence that he had a reasonable excuse –
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for failing to comply with the condition,as the case may be.

...

### **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 and 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 to that landlord.

	<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

- (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).

#### **41 Application for rent repayment order**

- (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.

...

### **43 Making of a rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond, a reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
  - (a) section 44 (where the application is made by a tenant);
  - (b) section 45 (where the application is made by a local housing authority);
  - (c) section 46 (in certain cases where the landlord has been convicted etc).

### **44 Amount of order: tenants**

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
- (a) the rent in respect of that period, less
  - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (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,
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

28.