



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

**Case Reference** : **BIR/00FY/HMK/2020/0047**

**Subject Property** : **35A Hucknall Road  
Nottingham  
NG5 1BJ**

**Applicants** : **Mr Malgorzata Niedzielska**

**Representative** : **None**

**Respondent** : **Mr Dexter Blackstock**

**Representative** : **Mr N Grant - Counsel**

**Type of Application** : **Application under sections 40, 41, 43 and  
44 of the Housing and Planning Act 2016  
for a rent repayment order**

**Date of Hearing** : **14<sup>th</sup> October 2020. The matter was dealt with by  
a paper determination**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Mrs K Bentley**

**Date of Decision** : **21 October 2020**

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**DECISION**

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## **INTRODUCTION**

1. This is a decision on an application for a Rent Repayment Order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. Part 1 of the Housing Act 2004 ('the 2004 Act'), provides for Local Housing Authorities to enforce housing standards in their areas and section 5 of Part 1 permits them to take enforcement action including Prohibition Orders.
3. The 2016 Act provides for tenants (or former tenants) of a property where a landlord has failed to comply with a Prohibition Order to apply for a Rent Repayment Order whether or not the landlord has been convicted.

## **BACKGROUND**

4. The Applicant, Mr M Niedzielska, is the former tenant of 35A Hucknall Road, Nottingham, NG5 1BJ. The Respondent was the owner of the subject property on the date the alleged offence took place.
5. By Application dated 11<sup>th</sup> June 2020 and received by the Tribunal on 16<sup>th</sup> June 2020 the Applicant referred to above applied for a Rent Repayment Order under section 41 of the 2016 Act. The Applicant alleges that the Respondent was controlling or managing the subject property and had failed to comply with a Prohibition Order.
6. The Tribunal issued Directions on 18<sup>th</sup> June 2020. Further Directions (2) were issued on 20<sup>th</sup> July 2020 and Further Directions (3) were issued on 7<sup>th</sup> August 2020. Following the Directions written submissions were received from the Respondent. The Applicant did not provide further detailed submissions but had provided details on his Application Form. The Tribunal accepted this, and other information provided by him as being the Applicant's case.
7. It is apparent from the documentation received from the Applicant that the property was occupied by him and Miss Malgorzata Kornak on an Assured Shorthold Tenancy dated 10<sup>th</sup> February 2017 for an initial period of twelve months commencing on the same date at a rental of £350.00 per calendar Month exclusive.
8. The Application is unclear, but the Tribunal deduces that the Applicant is seeking a Rent Repayment Order amounting to £4200.00, being twelve months rent. The Tribunal assumes that this is for the twelve-month period expiring on 15<sup>th</sup> October 2019 when it appears that the Applicant vacated the property.

## **THE LAW**

9. The relevant provisions of the 2004 Act, so far as relevant are as follows –

### **5 Category 1 Hazards: general duty to take enforcement action**

- (1) If a local housing authority consider that a category 1 hazard exists on any residential premises, they must take the appropriate enforcement action in relation to the hazard.
- (2) In subsection (1) "the appropriate enforcement action" means whichever of the following courses of action.....

.....

- (e) making an emergency prohibition order under section 40;

#### **40 Emergency remedial action**

(1) If –

- (a) The local housing authority are satisfied that a category 1 hazard exists on any residential premises, and
- (b) They are further satisfied that the hazard involves an imminent risk of serious harm to the health or safety of any of the occupiers of those or any other residential premises, and
- (c) No management order is in force under Chapter 1 or 2 Part 4 in relation to the premises mentioned in paragraph (a).

The taking by the authority of emergency remedial action under this section in respect of the hazard is a course of action available to the authority...

(2) “Emergency remedial action” means such remedial action in respect of the hazard concerned as the authority consider immediately necessary in order to remove the imminent risk of serious harm...

10. The relevant provisions of the 2016 Act, so far as relevant, are as follows –

#### **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 ...

(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
4		Section 32(1)	Failure to comply with prohibition order etc

#### **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.

#### **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.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

...

#### **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 the table.

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

(a) the rent paid 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, and

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

### **THE PROPERTY INSPECTION**

11. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the Application Form understands that it comprises of a self-contained one bedroom flat in a house which has been converted to three self-contained flats.

12. The Tribunal makes no further assumptions regarding the accommodation.

### **THE APPLICANT'S SUBMISSIONS**

13. In his written submission the Applicant submitted that he was seeking a Rent Repayment Order as the landlord (Respondent) had failed to comply with a Prohibition Order.

14. In his original Application the Applicant submitted that during his tenancy there was a lack of contact with the Respondent. In the opinion of the Applicant the property did not comply with Health and Safety Regulations and all requests for repairs were delayed by the Respondent. The Applicant was further of the opinion that the repairs were reported to the Respondent by his agent but were ignored by him. Towards the end of the tenancy the Respondent refused to carry our repairs because he was selling the property.

15. In particular, the Applicant submitted that the floor in the bathroom was rotten having been recovered by workmen carrying out repairs to the shower and was in danger of collapse. A hole had also appeared in the garden where the soil collapsed, and rats were seen which prevented the Applicant and his

partner being able to play with their young daughter in the garden. The Respondent was asked to carry out repairs several times, but nothing was done. The Tribunal noted that there was no evidence of any Notices being served by Nottingham City Council in respect of these complaints prior to the Prohibition Order being served.

16. The Applicant submitted in support of his Application a copy of a letter from Nottingham City Council Environmental Health Community Protection dated 24<sup>th</sup> September 2019 enclosing a Prohibition Order of the same date and effective from 29<sup>th</sup> October 2019. The Order contained details of Category 1 and Category 2 Hazards.

17. The Hazards referred to in the Order were:

Category 1 Hazard – Structural collapse and falling elements

Category 2 Hazard – Damp and Mould

Category 2 Hazard – Falling on level surfaces

18. The Applicant also submitted copies of some receipts in respect of rental paid. The Applicant confirmed that rent was paid in cash and although receipts were not submitted to cover all payments made the Tribunal accepted that they had been made. The Tribunal noted that there was no submission by the Respondent that rent had not been paid by the Applicant as and when due.

#### **THE RESPONDENT'S SUBMISSIONS**

19. The Respondent submitted, through his Representative, that the Applicant held an Assured Shorthold Tenancy of the property commencing on 10<sup>th</sup> February 2017 for an initial term of 12 months at a rental of £350.00 per calendar month.

20. It was further submitted that on 19<sup>th</sup> August 2019 the Respondent's agent served a section 21 Notice requiring possession on or after 22<sup>nd</sup> October 2019. Following service of this Notice the Applicant left the property on 15<sup>th</sup> October 2019.

21. The Respondent submitted that on 24<sup>th</sup> September 2019 Nottingham City Council served a Prohibition Order effective from 29<sup>th</sup> October 2019. As the Applicant left the property on 15<sup>th</sup> October 2019, he was not residing in the flat on the date the Order came into effect.

22. The Respondent's Representative also submitted a witness statement from the Respondent which together with other details not directly relevant to this application, confirmed the above.

#### **DETERMINATION OF THE TRIBUNAL**

23. The Tribunal considered the application in four stages –

(i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 32(1) of the 2016 Act in that at the relevant time he was a person who controlled or managed a property and had failed to comply with a Prohibition Order.

(ii) Whether the Applicant was entitled to apply to the Tribunal for a Rent Repayment Order.

(iii) Whether the Tribunal should exercise its discretion to make a Rent Repayment Order.

(iv) Determination of the amount of any Order.

*Offence under section 95(1) of the 2004 Act*

24. In accordance with sections 43(1) of the 2016 Act, the Tribunal was not satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 32(1).

The reason for this is that at the date that the Prohibition Order became effective on 29<sup>th</sup> October 2019 and as a consequence of the Section 21 Notice and the vacation of the property by the tenant “at the time of the offence” the property was not “let to tenant”. As no offence could have been committed until 29<sup>th</sup> October 2019 the Application did not satisfy the requirement of Section 41 (2)(a) of the Act namely:

*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...*

At the time any offence was (or could) have been committed (29<sup>th</sup> October 2019) the property was not let to the Applicant.

*Entitlement of the Applicants to apply for a Rent Repayment Order*

25. The Tribunal therefore determined that the Applicant was not entitled to apply for a Rent Repayment Order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was not committing the relevant offence on 15<sup>th</sup> October 2019 when the Applicant vacated the property.

*Discretion to make a Rent Repayment Order*

26. The Tribunal was satisfied that there was no ground on which it could be argued that it was appropriate to make a Rent Repayment Order in the circumstances of the present case.

**APPEAL**

27. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Graham Freckelton FRICS  
Chairman  
First-tier Tribunal (Property Chamber)