



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

**Case reference** : **CAM/22UD/HMK/2020/0014**  
**HMCTS Code** : **V: CVPREMOTE**

**Property** : **1 Sandringham Road, Pilgrims  
Hatch, Brentwood, Essex CM15 9PH**

**Applicant** : **Ellis Denton-Cox**

**Respondent** : **Michael Richard Allen**

**Type of application** : **Application for a Rent Repayment  
Order – section 40 of the Housing  
and Planning Act 2016**

**Tribunal member(s)** : **Judge Ruth Wayte  
Tribunal Member Chris Gowman  
MCIEH**

**Date of hearing** : **16 February 2021**

**Date of decision** : **17 February 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote video hearing (V:CVPREMOTE) A face-to-face hearing was not held because it was not practicable given the pandemic and limited access to court buildings. Both parties had provided a bundle of documents in advance of the hearing, which have been taken into account. The order made is described below.

**Decision of the tribunal:**

**The tribunal does not make a rent repayment order.**

## **The application**

1. By an application dated 10 November 2020, the applicant sought a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 (“the 2016 Act”) of £2,240 paid in respect of his occupation of the property from 8 June 2020 to 14 October 2020.
2. Directions were ordered on 13 November 2020. Those directions noted that the applicant appeared to be relying on offences in respect of a lack of licensing of the property, failure to comply with an improvement notice or an offence under section 1(3) or 3A of the Protection from Eviction Act 1977 (specific types of harassment).
3. Both parties filed their hearing bundles in accordance with the directions. The respondent’s bundle included an email from David Carter of Brentwood Borough Council dated 13 January 2021 confirming that as far as he was aware none of the relevant housing offences had been committed by the respondent. In particular, no licences were required (the property being occupied by a maximum of 4 people during the relevant period) and no improvement notice had been issued. In respect of any offence under the Protection from Eviction Act 1977 (“the 1977 Act”), the council was unaware of any report from any occupiers of harassment by the respondent.
4. The application was listed for hearing by CVP remote video platform at 10am on 16 February 2021. Both parties dialled into the hearing personally. The respondent had previously indicated that he intended to call witnesses to support his case but admitted that he had not sent any summary of that evidence to the applicant as required by the directions. In the circumstances the tribunal refused permission for those witnesses to appear.

## **The law**

5. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence, including the offences identified in the application. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.
6. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO 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. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:

- the conduct of the landlord and the tenant;
- the financial circumstances of the landlord and
- whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

### **Background**

7. In 2020 the respondent undertook works to convert the property, a two-storey former council house, into four self-contained studio apartments. His statement confirmed that he was following the standards set out in a document called “The Essex HMO Amenity Standards”. The work started in February but the first builder was unable to complete them due to the first Government lockdown. A second builder completed the works but as the respondent was unable to personally supervise them, his requirements were not met or in some cases ignored. As far as he was aware, the property was ready for occupation in or about the end of May 2020, although it subsequently transpired that significant works were required to the electrics and plumbing.
8. The property was advertised on the “Spareroom” website and the applicant viewed his room on 29 May 2020. He paid a deposit of £250 that day and entered into an assured shorthold tenancy agreement for 6 months from 8 June 2020 at a monthly rent of £600 inclusive of bills.
9. Shortly before the applicant viewed the property, one of the downstairs studios was vandalised by persons unknown. The respondent provided photographs of the damage in his bundle. He was able to make good the visible damage before the tenant for that room moved in but he then discovered that the macerator toilet had also been damaged beyond repair. Sorting that issue out took most of his focus for June which meant that other work he admitted needing doing took a back seat.
10. The respondent had included a copy of all the text messages between the parties in his bundle, which provided dates for the various issues at the property as well as the actual conversation. The applicant first advised the respondent of various problems at the property on 17 and 30 June. Problems with both plumbing and electricity persisted throughout the first half of July, leading to a lack of hot water and electricity on occasion.

11. On 9 August 2020 there was an altercation between the applicant and another tenant, which resulted in a message from the applicant saying that he'd like to leave before the expiry of his tenancy. In fact, that tenant left shortly afterwards. It appears that the applicant subsequently reported issues at the property to Brentwood Borough Council who carried out an inspection on 25 August 2020 and found various breaches of the HMO management regulations, requiring further works to be carried out at the property before the end of September 2020.
12. Following that inspection, the respondent asked for access to the applicant's room for an electrician to do work in his room. The following day there was no hot water for a couple of days.
13. In September 2020 the respondent asked for access to the applicant's room for more works. Electrical works took place during the first week and on one occasion the applicant's room was left without power altogether. Persistent problems with a leak from the applicant's shower resulted in the applicant's bathroom being removed for almost a week. The respondent allowed the applicant to use the bathroom in a vacant studio during that period and agreed to a £300 rent rebate for the month in recognition of the inconvenience.
14. At the end of that month the applicant made a further request to end his tenancy early and finally gave his notice on 1 October 2020, citing the issues with the ongoing works, unauthorised entry to his room and continuing issues with the hot water. He moved out on 14 October 2020 and agreed with the respondent that he could inspect the room on 18 October 2020 for the purposes of releasing the deposit.
15. Another tenant, Jason Adams, had left the property on 9 October 2020. It would appear that Mr Adams held himself out as the landlord of the property and "re-let" the applicant's room to a third party, taking a cash deposit and £500 "rent" into his bank account. The third party moved into the room on 17 October 2020 and was discovered by the respondent on 18 October, who reported the matter to the police. The respondent believes that the applicant was implicated in this fraud and has therefore refused to release his deposit.
16. On 10 November 2020 the applicant applied for an RRO in respect of the rent paid from 8 June to 14 October 2020, a total of £2,240.

**Had the respondent committed a relevant housing offence?**

17. As set out in paragraph 5 above, the tribunal only has the power to make an RRO where the landlord has committed a relevant offence. In the light of the facts as set out in this decision and Brentwood's email to the respondent dated 13 January 2021, the only possible relevant

offence would appear to be one under the 1977 Act and, in the absence of obvious evidence of harassment, section 1 (3A) which reads:

*“Subject to section (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 the 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.”*

18. Section 3B provides that a person shall not be guilty of an offence under section 3A if he proves that he has reasonable grounds for doing the acts or withdrawing or withholding the services in question.
19. The tribunal explained that the applicant would need to prove this offence beyond all reasonable doubt, whereupon the applicant’s connection was terminated at approximately 10.20am. The hearing was paused while the clerk attempted to contact the applicant by telephone and email but his telephone appeared to be switched off. The tribunal reconvened the hearing at 11am and in the absence of the applicant the hearing was brought to an end.
20. In the circumstances the applicant has failed to prove that a relevant offence was committed by the respondent. Even if he had continued the hearing, the evidence in the bundle and in particular the copy text messages did not support any claim that the problems with the property were part of a plan to cause the applicant to give up occupation or pursue any other remedy. It would also appear that in any event the respondent had a reasonable excuse due to the issues with the property and the builders he had instructed in good faith.
21. That said, the respondent accepted that there were problems at the property and the text messages themselves illustrate a continuing saga of disruption during the months the applicant occupied his room. However, without establishing that a relevant offence has been committed, the tribunal has no power to make an RRO.

**Name:** Judge Ruth Wayte

**Date:** 17 February 2021

## **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).