



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

**Case Reference** : **LON/00AY/HMB/2020/0006**

**HMCTS** : **V: CVPREMOTE**

**Property** : **Flat 24, Purbeck House, Bolney Street,  
London, SW8 1EP**

**Applicant** : **Juan Daniel Alvarez Gonzalez**

**Representative** : **John-Luke Bolton  
(Cambridge House Safer Renting)**

**Respondents** : **1. Santiago Hidalgo Ferrin  
2. Simple Properties London Ltd**

**Representative** : **No appearance**

**Type of Application** : **Application for a Rent Repayment Order  
by Tenant**

**Tribunal Member** : **Judge Robert Latham  
Louise Crane MCIEH**

**Date and Venue of  
Hearing** : **25 February 2020 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **25 February 2021**

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**DECISION**

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

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant has produced a Bundle of Documents which totals 60 pages. Page references in this decision are to the electronic page number in the Bundle.

## **Decision of the Tribunal**

1. The Tribunal accedes to the Applicant's application to remove Santiago Hidalgo Ferrin as a respondent to this application.
2. The Tribunal makes a rent repayment order against the Second Respondent in the sum of £4,620 to be paid by 25 March 2021.
3. The Tribunal determines that the Second Respondent shall also pay the Applicant £300 by 25 March 2021 in respect of the reimbursement of the tribunal fees paid by the Applicant.

## **The Application**

1. By an application, dated 4 September 2020, the Applicant seeks a Rent Repayment Order ("RRO") against the Respondents. He asserts that Simple Properties London Ltd, the Second Respondent, was this landlord, whilst Santiago Hidalgo Ferrin, the First Respondent, was a director of the company. On 6 October 2020, the Tribunal sent a copy of the application to the Respondents.
2. On 26 November 2020, the Tribunal has given Directions. The case was set down for hearing on 25 February. On 26 November, the Tribunal sent a copy of the Directions to the parties. Pursuant to the Directions, the Applicant has filed a Bundle of Documents. By 22 January 2021, the Respondents were directed to file a Bundle of Documents upon which they relied in opposing the application. Neither Respondent has filed a bundle.
3. On 25 January, the Tribunal sent the parties of the joining instructions for the video hearing. On 23 February, Mr Ferrin applied to adjourn the hearing on the ground that he had come into contact with someone who was Covid positive. No medical evidence was provided. On the same day, Judge Martynski refused the application.

## **The Hearing**

4. Mr John-Luke Bolton appeared for the Applicant. He is a case worker with Cambridge House Safer Renting. This is a charity which is appearing for the Applicant for no fee. He was accompanied by the Applicant who uses the name "Mr Alvarez". There was no appearance from either of the Respondents.
5. Mr Alvarez is Spanish. He has been in the UK for 18 months. At the material time, he was working as a bar tender at a pub in Leicester Square. He has provided a witness statement and gave evidence. We have no hesitation in accepting his evidence.

6. At the beginning of the hearing, Mr Bolton applied to discontinue the application against Mr Ferrin, the First Respondent, pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) Property Chamber) Rules (“the tribunal Rules”). He accepted that a RRO could only be sought against a landlord. We acceded to this application.

### **The Law**

7. Section 40 provides:

“(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.”

8. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include an offence of unlawful eviction contrary to section 1(2) of the Protection from Eviction Act 1977. Section 1(2) of the 1977 Act provides:

“(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.”

9. Section 41 deals with applications for RROs. The material parts provide:

“(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.

10. Section 43 provides for the making of RROs:

“(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).”

11. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

12. Section 44(4) 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.”

### **The Background**

13. On 2 May 2008, Brian Parsons was registered as the leaseholder of Flat 24, Purbeck House, Bolney Street, London, SW8 1EP (“the Flat”). On 29 July 2019 (at p.45), the First Respondent wrote to Zoe Twomey, an employee of Mr Parsons, to introduce himself. He stated that in the previous Autumn, the Second Respondent had taken over the PMC portfolio in respect of which it was paying some £657,960 in rent. This portfolio included the Flat.
14. It seems probable that the Flat is in a block owned by the local authority. It had three bedrooms, a living room, a kitchen, shower room and separate toilet. At some stage, stud partitions had divided all the living rooms into two, creating eight lettable rooms.
15. On 18 October 2019, Mr Alvarez was introduced to the property by Bricklane Homes (“Bricklane”). He was so desperate to find somewhere to live, that he signed an agreement without inspecting the Flat. Bricklane told him that no staff member available to show him the property.

16. Mr Alvarez was required to sign a document headed “Booking Terms” (at p.30-38). The “host” was specified as London Homes Property Management Limited. No address was given for the Company. Mr Alvarez was specified as the “guest”. He was required to pay his rent into an account at Lloyds Bank. We are satisfied that this licence agreement was a sham.
17. The substance and reality of the arrangement was for the Second Respondent to grant Mr Alvarez a tenancy. Mr Alvarez was granted exclusive occupation of one room at the flat for a term at a rent (see *Street v Mountford* [1985] AC 818). On 18 October 2019, he paid a deposit of £693 (p.39). On 24 October, he paid £462 for the first month’s rent up to 9 November. The term was stated to be 22 October 2019 to 10 May 2020. All payments were made electronically into the specified bank account at Lloyds Bank. This is an account held by the Second Respondent.
18. Mr Alvarez was provided with a “Guest Platform”, namely an App “Ticket#86709” whereby he could contact his landlord (see p.24). We were shown a number of screenshots (at p.23). The representative of the landlord who responded to any text message did not have the courtesy to identify themselves. Mr Alvarez was unaware that the Second Respondent was his landlord, albeit that he knew that the Lloyds Bank account was in the name of the “Simple Property”. Mr Alvarez did not have any contact with Mr Ferrin.
19. Bricklane gave Mr Alvarez a key and a plan of the Flat which identified his room. Next day, he moved into the Flat with his possessions. He was very disappointed by the condition of the Flat. It was much too small to accommodate eight people who had to share one kitchen, the shower room and the toilet. The Flat was dirty and paint was flaking off the walls. He used his App to register his concerns.
20. Mr Alvarez promptly paid his rent on 10 November, 10 December, 10 January, 10 February and 10 March (see p.40-44). On 23 March 2020, the first Covid-19 lockdown was imposed. Mr Alvarez was unable to work. He informed his landlord that he would be unable to pay his rent which was due on 10 April. On 9 April, the landlord suggested that he should pay £400 and the remaining £300 would be deducted from his deposit (see p.23). Mr Alvarez was unable to pay this. The landlord informed him that if he could not pay the rent, he would be evicted. Mr Alvarez stated that the words used were that “they would send me out”.
21. At 12.00 on 4 May 2021, two men arrived at the Flat. One, who described himself as the landlord’s brother, put all his belongings in a black plastic bag. The second man, who described himself as an employee of his landlord, changed the locks. Mr Alvarez recorded the eviction on his mobile. After the eviction, his landlord texted him a message stating that any attempt to access the room would be trespass and a criminal offence.
22. An Environmental Health Officer at the London Borough of Camden (at p.48) has helped Mr Bolton to identify the chain between Mr Parsons (the leaseholder of the Flat), to the Second Respondent (the tenant of the Flat) and down to Mr

Alvarez (a sub-tenant of a room in the Flat). We accept Mr Bolton's submission that the paperwork was intended to create a smoke screen to conceal the real situation.

### **Our Determination**

23. The Tribunal is satisfied beyond reasonable doubt that the Second Respondent has committed an offence of unlawful under section 1(2) of the Protection from Eviction Act 1977. Mr Alvarez occupied his room as an assured shorthold tenant. He could only be lawfully evicted with a court order.
24. We are also satisfied that the Second Respondent acted in cynical disregard of the rights of its tenant. We are dealing with a large commercial landlord which was deriving a total rent of £5,500 per month (£66,500 per annum) from this three-bedroom ex-council flat. Mr Alvarez had paid his rent promptly. For reasons entirely beyond his control, he lost his job. Covid-19 required all members of the community to stand together to combat the pandemic. The conduct of the Second Respondent in evicting Mr Alvarez and throwing him onto the streets can only be described as outrageous.
25. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months ending with the date of the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that the Applicant was not in receipt of any state benefits and that he paid the rent from his earnings.
26. The Applicant has applied for a RRO in respect of the rent of £4,620 which he paid between 18 October 2019 and 10 March 2020. This includes his deposit which he set-off against his rent for the final month.
27. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
  - (i) The conduct of the landlord.
  - (ii) The conduct of the tenant. There has been no criticism of the conduct of the landlord.
  - (iii) The financial circumstances of the landlord.
  - (iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.
28. Having regard to these factors, and the outrageous conduct of the Second Respondent, we have no hesitation in making a RRO in the sum sought of £4,620. We are also satisfied that the Second Respondent should refund to the

Applicant the tribunal fees of £300 which has paid in connection with this application.

29. Finally, we record our appreciation for the assistance provided by Mr Bolton. Without charities such as Cambridge House Safer Renting, vulnerable applicants such as Mr Alvarez would be unable to seek access to justice in this complex area of law against a landlord which has sought to conceal its identity.

**Judge Robert Latham**  
**25 February 2021**

### **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.