



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

Case Reference : CHI/00HE/HMB/2021/0001

Property : Curnack Cottage, Higher Tretharrup,
Lanner, Redruth, Cornwall, TR16 6BS

Applicants : Mrs Susan Williamson

Representative :

Respondent : Miss Janis Bowerman

Representative :

Type of Application : Application for a rent repayment order by
Tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal Member : Judge D R Whitney
Mr R Brown FRICS
Mr E Shaylor MCIEH

Date of hearing : 11th May 2021 by CVP

Date of Determination : 25th May 2021

DETERMINATION

Background

1. On 30th December 2020 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the Act”) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord.
2. Various sets of directions were issued which listed the matter to be heard remotely by video. The Tribunal had a bundle prepared by the Tribunal and references in [] are to pages within that bundle.

The Law

3. The relevant law is contained within the Act. The relevant sections are set out in Annex A.
4. The alleged offence committed was pursuant to Section 1 of the Protection from Eviction Act 1977:

Section 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.

(3B)A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

(3C)In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—

(a)the residential occupier’s right to remain in occupation of the premises, or

(b)a restriction on the person’s right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

(4)A person guilty of an offence under this section shall be liable—

(a)on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5)Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6)Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Hearing

5. Below is a summary of the hearing and should not be considered a transcript of all that was said at the hearing. The purpose is to record the matters which the Tribunal considered most important and significant in reaching its determination.
6. Mrs Williamson and Miss Bowerman attended the hearing which convened by CVP Video hearing.

7. Initially Miss Bowerman, who joined using her smartphone, experienced some difficulties in hearing the Tribunal. These were resolved by her using headphones.
8. The Tribunal confirmed to all that the hearing was being recorded and that the parties must not record the hearing.
9. Miss Bowerman had made, prior to the hearing, an application to adduce certain late evidence including a video. The Tribunal had indicated that this would be determined immediately prior to the start of the hearing. Miss Bowerman explained she had not thought she had retained a copy of the video. She thought it was important.
10. Mrs Williamson suggested the video produced was not a complete copy but only part. She objected to the inclusion of such evidence.
11. The Tribunal declined to allow the late submission. No good reason was advanced by Miss Bowerman as to why the same could not have been included within her original submissions. Further it seemed to this Tribunal that the further evidence was not strictly relevant to the issues which the Tribunal would have to address.
12. Miss Bowerman confirmed she agreed that the payments had been made by Mrs Williamson and confirmed there was no dispute as to the amount paid. Both parties confirmed that save for themselves no other witnesses would be attending. Miss Bowerman had included a statement from her son, Josh Bowerman, [95 and 96] and also Ken Powell, her fiancée, [99 and 100] and various character references.
13. The Tribunal explained that if they did not attend and were not cross examined the Tribunal may place lesser weight on their testimony.
14. Mrs Williamson presented her case.
15. She explained that in essence she was suggesting that she believed she was a tenant since moving in on 22nd March 2019 and was unlawfully evicted and subjected to harassment. She explained she believed she was lucky to have found an alternative cottage to move to through a friend of her daughter, at the end of September 2020.
16. Mrs Williamson relied upon her statement and documents [46 to 87 and 121 to 130]. She received a text on 31st July 2020 asking her to leave by 1st September 2020 [40]. She spoke to the council who advised that the minimum notice period was at that time 6 months. She explained that the most significant incidents were when she believes that Josh Bowerman assaulted her verbally and an incident when Miss Bowerman was driving her Land Rover on 14th September 2020. She explained that she had no correspondence from the police. She had tried to obtain copies of the reports she made but was told there was a three month back log. Police attended once, when she called them on moving out day, 26th September 2020.

17. Miss Bowerman did not seek to cross examine Mrs Williamson.
18. On questioning by the Tribunal Mrs Williamson described the subject property. She explained it was a long low cottage. At one end was an area occupied by Josh Bowerman and his girlfriend. In the middle was a single storey area in which Miss Bowerman's late father and Miss Bowerman lived. She occupied a two storey cottage at the end. This had its own entrance door although there was an interconnecting door to the rest of the building. She believed that this was locked by Miss Bowerman.
19. Mrs Williamson explained all of the furnishings within the cottage were hers save for a small dresser. She explained that the Respondent did retain the second bedroom, which was locked. The Respondent never slept in this room, used the bathroom or anything else. The Applicant suggested the Respondent used the room for storage and whilst she would enter the cottage to access the room the Respondent would text her to say she was coming in.
20. Mrs Williamson explained that in March 2019 she had been living in Lanner. She knew the Respondent and they had discussions and the Respondent suggested she came to live in the cottage.
21. Mrs Williamson explained when she received the text on 31st July 2020 she did not think she would have to leave as it was not a proper notice. She took advice from the council on this and followed that advice.
22. She looked for an alternative property but there were not many available in her price range. She explained that on top of the rent she paid to the Respondent the only outgoings for the cottage were the electric meter and wood for the log burner. The background heating, Wi-Fi and water were all included within the rent she paid. She agreed to pay £400 per calendar month and provide some help with decorating the cottage which was needed.
23. Mrs Williamson confirmed she had nothing in writing in respect of her occupation of the cottage, although she said she had purchased a rent book but Miss Bowerman declined to use it.
24. Mrs Williamson explained that Miss Bowerman did raise the rent from April 2020 supposedly due to the Council Tax increasing. Whilst she paid this increase subsequently she was advised the rent had not been properly increased and so she no longer paid the increased amounts and offset the increase she had paid against rent she had to pay for September 2020.
25. Mrs Williamson said she believed the part she occupied was Curnack Cottage and the remainder of the building was called Higher Tretharrup.
26. Mrs Williamson explained that the rent was not cheap but reasonable for the state of the cottage. She did not believe she was sharing with the Respondent and would not have done so. It was her home.
27. Mrs Williamson accepted that whilst some incidents were distressing, many of the incidents on their own were not more than irritating. She found an

incident where a parcel was not delivered to her to be serious. She explained she had a message that a parcel for her had been delivered to the part of the cottage occupied by Miss Bowerman. She explained that she texted Miss Bowerman in respect of the parcel but got no reply. She called the courier company and they had to go and pick it up and then deliver it to her. She explained she did not go and knock on the adjoining door. She explained she was not sure if Miss Bowerman's elderly father was on his own and did not wish to distress him. The package was delivered to her by the courier company either on the same day or the next.

28. Mrs Williamson explained on the day she was moving out she called the police after an altercation. She explained she was upset and distressed and just wanted to get away. She stated she told the police to tell Miss Bowerman to leave her in peace. She confirmed as far as she was aware no action was taken by the police, although in her opinion they did not seem to grasp the importance of illegal eviction.
29. Mrs Williamson explained that she reported to the Police the incident when Miss Bowerman drove at her and her dogs. They did not attend, just gave her a crime reference number and she is not aware that they took any action.
30. In closing Mrs Williamson stated she believed she was unlawfully evicted and so entitled to a rent repayment order. She believed the amount she was entitled to would be £2,000 being rent paid during May to September 2020.
31. Miss Bowerman in response stated that there is just one property and there are interconnecting doors between all the various parts. She explained the whole area is called Higher Tretharrup and the name Curnack Cottage applies to the whole property.
32. She explained she always had a key to the property occupied by the Applicant. This was because she shared occupation as she wanted access to the spare room where she kept her belongings including clothes. She stated she was in the room quite often. She accepted she did not sleep in the room as she wanted to be close to her late father who was over 100 years old. She had a bed in the front room of the part of the cottage he lived in so she could care for him.
33. Miss Bowerman stated there was no rent book or tenancy agreement and denied being offered the use of a rent book by the Applicant. She accepted she received the email from the council about notice periods but did not think there was any need to reply because she did not think the information in the email was relevant. She didn't think that Miss Bowerman would move out following the text due to the pandemic. She explained she was shocked to receive this application, there had been no contact before about the same and she had found the whole process very stressful.
34. Miss Bowerman relied on her statement within the bundle [88-94]. She confirmed the same was true and accurate.

35. She explained save for the incident on the occasion of Mrs Williamson vacating on 26th September 2020 she had no idea that the police had been notified about any incidents. On that occasion she said the police were sympathetic to her situation.
36. She explained in her opinion the rent paid was “mates rates”. She did this to help out Mrs Williamson who was someone she knew. She explained that there was a connecting door and generally when she wanted to access her bedroom in the property she would text out of politeness.
37. She explained when she sent the text on 31st July 2020 asking Mrs Williamson to leave she did not think this was anything formal.
38. Miss Bowerman categorically denied doing anything to harass Mrs Williamson.
39. Mrs Williamson did cross examine Miss Bowerman.
40. Miss Bowerman explained she had the only key for the interconnecting door. She explained she had a bed in her father’s part of the property and she slept in there so she could care for her father, as she had done for a number of years.
41. On questioning by the Tribunal Miss Bowerman explained that her parents bought the property in 1974 and it was just one dwelling. There had always been interconnecting doors. The internet router was located in the part of the property occupied by Mrs Williamson and it served the whole property.
42. Miss Bowerman stated that she did not think Mrs Williamson would be able to go because of Covid and also she thought she might struggle to afford to rent somewhere else. She explained she had taken initially a deposit of £400 in case of damage (possibly by pets and visiting children) but had allowed Mrs Williamson to use this towards her rent following a request from her to do so. She thought taking a deposit was what you were meant to do, and that she was generous in agreeing to return it during the period of occupation.
43. Miss Bowerman in closing said she was saddened by this application.
44. Mrs Williamson in closing indicated she tried to approach Miss Bowerman to discuss the claim before issuing the same.
45. Both parties confirmed they had an opportunity to make all the submissions they wished to make.

Determination

46. The Tribunal thanks both parties for the considered and measured way they conducted themselves given the circumstances of the case. The Tribunal has considered all of the documents within the bundle and the evidence given at the hearing.

47. The Tribunal finds that Miss Bowerman was a resident landlord. It was clear that Curnack Cottage, as occupied by Mrs Williamson, formed part of a larger residential property. This property consisted of the adjoining property in which Miss Bowerman and her father resided and also another joined property occupied by Miss Bowerman's son and his girlfriend. Further we find Miss Bowerman retained the right to use and occupy a bedroom within the accommodation of Mrs Williamson.
48. We find as a matter of fact that in practice Miss Bowerman did not ever sleep in the bedroom within the cottage occupied by Mrs Williamson and generally as a matter of courtesy she would notify Miss Bowerman before entering the cottage. We find that the bedroom was retained for the purpose of storage of belongings of Miss Bowerman.
49. We are satisfied that as a resident landlord the Housing Act 1988 did not apply to the occupation by Mrs Williamson of part of the property. We are, however, satisfied that she was a tenant occupying the cottage and paying rent for the same.
50. Mrs Williamson has suggested that Miss Bowerman has breached the terms of the Protection from Eviction Act 1977 by herself or others carrying out acts either likely to or intended to cause Mrs Williamson to give up occupation of the cottage. We remind ourselves we must be satisfied beyond reasonable doubt that an offence was committed. We are not satisfied beyond reasonable doubt that any of the various incidents amounted to unlawful eviction or harassment pursuant to Section 1 of the Protection from Eviction Act 1977, for the following reasons.
51. Mrs Williamson referred to the text message [40] asking her to leave by 1st September 2020. In her evidence she stated she knew this text was of no legal effect and that she was not required to leave. She relied upon the advice given to her by the local authority which said the notice was of no effect. The Tribunal finds that the advice of the local authority was not correct given that it did not appear to appreciate the precise nature of the tenancy, namely that there was a resident landlord. The Tribunal attaches no fault to the local authority which may not have been in possession of all the relevant facts at the time the advice was given. Mrs Williamson's evidence was that she found through her daughter alternative accommodation and left at the end of September 2020.
52. Mrs Williamson referred to various incidents that took place. What is clear is that originally herself and Miss Bowerman were friends. For reasons which we as a Tribunal do not know this friendship broke down over the summer of 2020.
53. It is clear that both parties were affected by the breakdown of the relationship. This is amply demonstrated by the note [84] in which Miss Bowerman asks Mrs Williamson to direct all "cottage related issues" to Josh Bowerman. We find such a note is not harassment, it is simply the Respondent indicating she now wishes her son to act as effectively her agent in these matters. This is

perfectly reasonable given the breakdown in the relationship which was apparent at the hearing.

54. Mrs Williamson in her evidence said she found the incidents on their own irritating and sometimes distressing. We were not satisfied beyond reasonable doubt that any one incident or even taking them together were such that they caused her to leave the cottage. Mrs Williamson knew that Miss Bowerman wished her to leave for legitimate reasons. She found alternative accommodation and left. Her leaving certainly suited both parties but in our judgment nothing done or not done by the Respondent or on her behalf can amount to a breach of the Protection from Eviction Act 1977.
55. We do specifically deal with the incident on the date when Mrs Williamson was moving out of the cottage on 26th September 2020. It is plain from the evidence of both that tensions were high between the parties at that time. It was the case that the Applicant had already decided to leave and go. Taking account of the evidence we heard we find that nothing that took place on that day amounts to harassment by the Respondent of the Applicant. The same is true of each and all of the other incidents referred to within her evidence.
56. We have considered whether taking the incidents together may amount to harassment. Firstly we should state we do not accept on the evidence that there was any link between the incidents to make them a campaign of harassment. In our judgment they are all individual incidents. As the Applicant herself accepted they were irritating. We are not satisfied they amount to any campaign of harassment. We are satisfied that Mrs Williamson accepted her relationship with Miss Bowerman had broken down and she chose to move out on a date and time of her choosing.
57. It follows therefore that the claim for a rent repayment order must fail as no offence has been committed.

Conclusion

58. The Tribunal declines to make a rent repayment order on the basis it was not satisfied beyond reasonable doubt that any relevant offence had been committed by the Respondent.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking