



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

**Case Reference** : **VG/LON/00AE/HMK/2020/0027**

**HMCTS Code** : **HMCTS: Remote**

**Property** : **1 Walrond Avenue, HA9 7EL**

**Applicant** : **Mr. Mohammed Omar**

**Respondent** : **Mr Zahir Uddin**

**Type of Application** : **Applications for Rent Repayment Orders by Tenants  
Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**

**Tribunal Members** : **Judge Daley  
Mr T Sennett FCIEH  
Ms Rachel Kershaw MCIEH**

**Date of Hearing** : **6 May 2021**

**Date of Decision** : **17 June 2021**

---

**DECISION**

---

This has been a remote video hearing. The form of remote hearing was **V:CVPREMOTE**. A face-to-face hearing was not held because it was not practicable, and all issues could be determined at a remote video hearing. The documents referred to are within the electronic bundle, the contents of which have been noted and taken into account by the Tribunal.

## **Decision**

The Tribunal is not satisfied on the evidence before it that grounds exist to make a rent repayment order.

## **Introduction**

1. This is an application by Mr Mohammed Omar for a Rent Repayment Order under section 41 of the Housing & Planning Act 2016, on the grounds that he was unlawfully evicted from the property known as 1 Walrond Avenue by his landlord Mr Zahir Uddin, the Landlord.
2. The Tribunal issued Directions on 18 December 2020, under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6(3)(b). These Directions set out how the Applicant should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.

## **Property Inspection**

3. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a 3 bedroomed semi-detached house, with an additional box room with shared facilities. The Applicant rented a room within the premises. At a monthly rent of £620 PCM.
4. The Tribunal makes no further assumptions regarding the accommodation.

## **The Hearing**

5. The hearing of this matter was held remotely due to the Coronavirus Pandemic. All parties were given a letter inviting them to attend the hearing with the relevant login details. The hearing was attended by Mr Zahir Uddin, the Respondent Landlord. The Tribunal was informed by the HMCTS hearings officer, that Mr Mohammed Omar, was attempting to login into the hearing, however he was having difficulties.

## **Preliminary Matters**

6. The hearing platform was HMCTS. However, prior to the start of the hearing, it became evident that Mr Omar was unable to login and although assistance was provided by the hearings officer, could not secure his attendance by Video link.
7. The Tribunal made further enquiries of the hearings officer as to whether Mr Omar could attend by telephone, however this was not supported on this platform. The Tribunal adjourned to allow the hearing officer to make further attempts to assist Mr Omar in attending. The Tribunal was then informed that the hearing officer had been unable to support Mr Omar's attendance. The Tribunal then proceeded to consider whether to adjourn this matter or to proceed without the attendance of Mr Omar.
8. The Tribunal heard representations from Mr Uddin, who informed us that that he had taken time off work to attend, and that he had been very concerned about this hearing, and if at all possible, he wished for this matter to be decided today.
9. The Tribunal considered the Tribunal procedural rules, in particular we considered rule 3, the overriding objective, rule 6 (j) adjourn or stay a hearing. Rule 6 (i) decide the form of any hearing.
10. The Tribunal noted that this hearing was not unduly complicated, and that both Mr Omar and Mr Uddin had provided bundles, and the issues were whether Mr Omar had been unlawfully evicted by Mr Uddin, and if so whether a rent repayment order ought to be made. The Tribunal considered that in dealing with this case fairly and justly, Mr Omar would be at a disadvantage, if he was not able to attend the hearing, and oral representations were made solely by Mr Uddin. The Tribunal reminded itself, that it was required to act proportionately having regard to the issues in the case, the complexity, also, to ensure that the parties were able to participate, and to avoid cost and delay.
11. The Tribunal decided that it would cause unfairness if Mr Uddin was in attendance in the absence of Mr Omar. However, the Tribunal was satisfied that it would be disproportionate to adjourn the hearing, as written representations and evidence had been provided by both parties. The Tribunal decided that it was satisfied that there was sufficient evidence before it in the hearing bundle upon which it could reach a decision in the absence of the parties. The Tribunal decided subject to both parties consenting, that it was possible to reach a determination on the bases of the written evidence before it.
12. Mr Uddin, asked questions, about what this would entitle, whether the Tribunal would contact the parties if it needed clarification. The Tribunal explained that it would adjourn the hearing if it considered that there was insufficient evidence or

ambiguous evidence upon which clarification was needed. He also asked whether he would have a right to appeal against the decision. The Tribunal informed him that the right to appeal applied to paper determinations in the same way as oral hearings.

13. The Tribunal received oral consent from Mr Uddin, and written consent from Mr Omar, by an email dated 06.05.2021, (which was sent to the case officer and forwarded to the Tribunal), agreeing for the matter to proceed as a hearing on the basis of written evidence only (that is: a paper determination).
14. Mr Uddin then terminated his login, and left the Video call. The Tribunal proceeded to deal with the matter as a paper determination. The Tribunal were satisfied during the course of its determination, that there was sufficient evidence before it upon which it could reach a decision without the need for further oral submissions or clarification from the parties.

## **Relevant Law**

Section 41 of the Housing and Planning Act 2016 (the 2016 Act) provides:

- (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.

.....

Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 2 refers to Protection from Eviction Act 1977 section 1(2), (3) or (3A) and no 3 to Section 30(1) of the Housing Act 2004 (the 2004 Act) describing the offence as:  
*'Failure to comply with Improvement Notice.'*

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act 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).

Section 44 of the 2016 Act sets out the amount of order:

- (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.

## **The Applicants' Submissions**

15. The Applicant provided a copy tenancy agreement referred to as a "Room Rent Contract" that ran from 20 November 2019, the tenancy agreement was for a room within a shared house, at a rent of £620.00.PCM, with a two weeks deposit payable. The two-page agreement was signed by the landlord and the tenant, Mr Omar, provided that either party could terminate the agreement on the giving of two weeks' notice.
16. Mr Omar's case is set out in an email to councillor Muhammed Butt, in which he set out the alleged difficulties which he had experienced since moving into the property, he set out that he had originally not received a tenancy agreement despite requesting an agreement from his landlord. He stated that his deposit had not been protected by being deposited in accordance with the rent deposit scheme. He set out that his main area of difficulty had been that the landlord had informed him of his intention to undertake improvement works to the kitchen, which involved the tiling and install a new shower, to what had been part of the kitchen and connect the shower and toilet to the soil pipe and nearby manhole. The other works comprised of plastering the ceiling, changing the flooring, and installing a new kitchen and utilities. He stated that this had deprived him of access to the kitchen.
17. He stated that the work started on 14 February 2020, and was not completed until 21/03/2020. Mr Omar stated that the work started at 7am each working day, and was on-going until 6pm. He stated that during that period he had no access to the sink, the cooker, the washing machine and the garden.
18. He further complained about the numbers of people within the property (two families with children, and two single men. He was concerned that the number of occupants and failure to wear masks had caused a potential breach of health and safety due to covid. He also cited that one of the tenants, a single man who was an alcoholic, had also caused a nuisance and he had called the police due to this tenant's behaviour on more than one occasion.
19. The Landlord was alleged to have attended the property on at least three occasions without notice, and to have failed to comply with the requirements to provide details of the gas safety certificate and the energy performance certificate, as well as information about tenants' rights. On 14.04.2020, the Landlord gave Mr Omar what was purportedly, a hand written notice to quit which did not comply with the formalities of Section 21. Mr Omar also provided the Tribunal with copies of police reports that he had made concerning the behaviour of the tenant Mr Leonard Velasquez. He further complained that the room rented to Mr Velasquez was a box room (room No 5) and that the landlord had been prohibited from renting the room out by the Local authority.
20. He considered that Mr Velasquez, was harassing him on Mr Uddin's behalf. He had complained to Mr Uddin, and he had done nothing about the harassment and had indicated that they should leave it to the police. He also complained that Mr Uddin had interfered with the boiler denying him access to hot water. Mr Omar provided a video which depicted the kitchen. This showed that some of the main work had been undertaken such as the tiling and the installation of the shower room, however at the time the Video was taken the work was incomplete.
21. In his written submission to the Tribunal he stated that he was provided with a further Section 21 notice on 10.08.2020 asking him to leave the property on

20.11.2020. He stated that as a result of the harassment from Mr Uddin he suffered from high blood pressure. He applied for a rent repayment order for the period of 14.2.20 to 21.03.2020 that he was unable to use the kitchen. On the grounds of unlawful eviction and protection from harassment under the Protection from Eviction Act 1977, and Section 30 (1) failure to comply with an improvement notice.

22. The Applicant provided bank details of his rent payments to the Respondent for 12 payments.

### **The Respondent's Submissions**

23. The Respondent in the hearing bundle provided the Tribunal with written submissions. In respect of alleged failure to comply with the Improvement Notice, he asserted that no improvement notice had been served on him and that he had decided to carry out the work in order to improve the kitchen and to install a further shower for the benefit of the tenants.
24. He accepted that work was carried out, however, he disputed the duration of the work, stating that he had been advised by his builder that the work had commenced on 17 February 2020.
25. He stated that the hob in the kitchen had been unusable for 1 day. He also accepted that the washing machine had not worked for another day as the builder had accidentally closed the water inlet. He stated that he had a text from one of the tenants confirming that the washing machine had worked. Mr Uddin relied on a statement from his builder, confirming the date of the works. He also produced a text from his tenant Mr Velasquez confirming that the tenants had been able to use the kitchen and had access to a microwave and sink as well as use of the bathroom throughout the period that the work was being undertaken.
26. Mr Uddin in his statement accepted that there had been difficulties between Mr Velasquez and Mr Omar, however, he stated that they were caused in part because of Mr Omar's provocation of Mr Velasquez. He also admitted that he had not deposited Mr Omar's rent as required, however he stated that he had returned the deposit to Mr Omar, and that Mr Omar had previously been a tenant of his, and he had also on that occasion returned the deposit. He also denied interfering with the boiler, although he accepted that he had set it to a timer, (with times agreed with the tenants) and had controlled the settings. He stated that in the past, he had difficulties caused by tenants interfering with the boiler and causing it to break down.
27. Mr Uddin referred the Tribunal to the video of the kitchen in which Mr Omar is speaking in Egyptian. He stated that he asked an Egyptian translator to translate what was being said by Mr Omar. Mr Uddin claimed that in the video, Mr Omar is being complimentary about the work.
28. Mr Uddin also referred to the work that was undertaken. In recognition of the inconvenience, he had given the tenants a 10% discount of their rent during the period of the works. He had given due notice to the tenants that the work was to start and had advised of what was intended. However, from texts that were provided, Mr Omar appeared to believe that some occupants had received a 50% discount and as a result he had queried this with Mr Uddin, given the lower 10% discount that he had received.

29. The Tribunal are however mindful that due to the hearing being made on the documents before it, Mr Omar has not been able to question this account.
30. He accepted that he had served the Section 21 notice on Mr Omar and the other tenants within the premises as he had wanted to take the premises back as he no longer wanted to rent the property as an HMO, but to a single family.

## **Tribunal Decision**

31. The Tribunal in reaching its decision applied a four-stage test, it decided that to make an order it would have to satisfy itself of 4 matters –
  - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 1(2) (3), or (3A) of the Protection from Eviction Act 1977, and/or whether the Landlord had failed to comply with an improvement notice.
  - (ii) Whether the Applicants were 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.
33. The Tribunal firstly considered the evidence before it in relation to the Protection from Eviction Act 1977, in relation to his being deprived of the property or part of the property or being evicted unlawfully without an order of the court.
34. Both parties agreed that work was carried out to the kitchen and that during the period that this occurred, this meant that Mr Omar was not able to enjoy the full use of the kitchen. However, the Tribunal noted that this was planned maintenance work; Mr Uddin had informed his tenants about this work before hand, and in recognition of the inconvenience that it would cause, he had agreed a discount to the rent.
35. The Tribunal noted that there was some dispute concerning the size of this discount, and whether the size of the discount was uniformly applied. However, there is no information before the Tribunal upon which it can be satisfied that Mr Omar was deprived of the kitchen, within the meaning of Section 1(2) of the PEA 1977. The tribunal considered whether there was evidence before it that Mr Uddin had harassed Mr Omar, or otherwise attempted to deprive him from occupying the premises.
36. The Tribunal accepted that there was some evidence of actions which may constitute harassment from Mr Velasquez, however there was no information before the Tribunal on which it could be satisfied that Mr Velasquez had acted as an agent of Mr Uddin. The Tribunal has considered the other allegations which relate to Mr Uddin's attendance at the property, and to the alleged interference with the boiler. Mr Uddin accepts that he attended the premises, in order to serve notice on Mr Omar, this was documented in photographs provided by Mr Uddin. In relation to the boiler, there was no information that Mr Uddin had deprived Mr Omar of hot water and heat as part of a campaign of harassment.
37. The Tribunal in reaching this decision, have noted that the burden of proof for the allegations, are with Mr Omar as Applicant, and that as such the standard to be

applied is the criminal standard, which is proof beyond a reasonable doubt, and in all the circumstances, the Tribunal cannot be satisfied on the evidence before it that Mr Uddin in his conduct is in breach of Sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.

38. Accordingly, the Tribunal has found that Mr Omar is not entitled to a Rent Repayment Order, given this the Tribunal has not applied the other elements of the test.
39. There is no evidence before the Tribunal that the Respondent has been served with an Improvement notice or has failed to comply with such a notice (Section 30(1) of the 2004 Act). In reaching this decision we noted that the Tribunal was not provided with a copy of any notice served by the local authority, neither was there any information before the Tribunal such as correspondence between either the tenants or the local authority concerning the service of a notice. Given this, the Tribunal could not be satisfied to the required standard that any offence had been made out. Accordingly, the Tribunal makes no order for a repayment on this ground, and given this, the Tribunal has not considered it necessary to apply the rest of the tests set out.
40. The Tribunal is not satisfied beyond a reasonable doubt that grounds exist to make an order. The Tribunal accordingly makes no order in respect of reimbursement of the hearing and application fees.

### **Right to Appeal**

41. 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.
42. 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.
43. 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.
44. 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.

**Signed:** Judge Daley

**Dated:** 17 June 2021



