



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

Case Reference : **LON/00AX/HMB/2020/0007**

HMCTS code (paper, video, audio) : **VIDEO**

Property : **Flat 4, 5 Grove Road, Surbiton, Surrey KT6 4BS**

Applicant : **Mrs F Farzad**

Representative : **Not represented**

Respondents : **Ms D Zhang and Mr H Yang**

Representative : **Mr A Maddan of Counsel**

Type of Application : **Application for Rent Repayment Order under the Housing and Planning Act 2016**

Tribunal Members : **Judge P Korn
Ms R Kershaw**

Date of Hearing : **27th August 2021**

Date of Decision : **13th September 2021**

DECISION

Description of hearing

This has been a remote video hearing which (subject to the request to withdraw the application referred to below) has been consented to by the parties. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decision made is set out below under the heading “Decision of the tribunal”.

Decision of the tribunal

The Respondents have not committed an offence and therefore no rent repayment order is made.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that the Applicant alleges that the Respondents harassed the Applicant and her family and that such harassment constitutes an offence under section 1(3) and/or section 1(3A) of the Protection from Eviction Act 1977 (“**the 1977 Act**”). The Applicant’s claim is for repayment of rent in the sum of £14,287.09.
3. The Respondents were both present at the hearing and were represented by Mr Maddan of Counsel. The Applicant was not present and is not represented.

Applicant’s requests for postponement and then withdrawal

4. The Applicant made an application for postponement or withdrawal just before midnight on 25th August 2021 with the hearing set down for 27th August 2021. By way of background, this case had been listed for a hearing on four occasions and had been postponed on three previous occasions. The last postponement was made on 15th July 2021 by Judge Carr and was made the day before the then scheduled hearing date. At that time, Judge Carr indicated that the issue of a postponement was finely balanced. However, because of the evidence of a cardiologist and a clinical psychologist that the Applicant was medically unable to participate in the hearing Judge Carr made an order for postponement. She did, though, indicate that in any other application for postponement the background would tip the balance towards the Respondents who were entitled to have finality in relation to this matter.

5. In connection with this extremely late application, the only new evidence as to the Applicant's medical circumstances is a document dated 20th July 2021 that sets out her mental condition and a recommendation that the Applicant should not attend any work meetings. However, there is no further evidence about her current ability to participate in a hearing. In her correspondence, the Applicant seeks to withdraw her case but sets out her position that she considers that she has a strong case and that she is only withdrawing due to her medical issues. She makes a request for the tribunal to stay her case but if the case is not stayed then she wishes to withdraw. Reference is also made to the Breathing Space programme.
6. The Respondents have opposed what they state is principally a request for an adjournment. They have argued that, given the history of this case, there is now no coherent explanation why the request has been made just one day before the hearing, especially given the clear warning given by Judge Carr. They have also commented that the Breathing Space programme is not relevant as this case is not about a debt but is about an order for the repayment of rent, and they have requested that the hearing proceed.
7. Ms Bowers, a Procedural Chair, has refused the late application for this case to be stayed and/or for the hearing to be postponed and/or for the application to be withdrawn, although she has done so on the basis that the Applicant could renew her application for a stay, postponement or withdrawal at the hearing itself.
8. The Applicant has chosen not to attend the hearing to renew her application for a stay, postponement or withdrawal, despite the fact that all she needed to do was to connect into the video hearing from home. We have seen no indication from her that there were technological impediments preventing her from doing so.
9. At the start of the hearing her request was nevertheless considered again. To the extent that it is a request for yet another stay or postponement, we are satisfied that it would not be appropriate to grant the request for the reasons previously articulated by Judge Carr and Ms Bowers. To the extent that it is, in the alternative, a request to withdraw, the position in our view was deserving of further consideration.
10. However, one difficulty for the tribunal was ascertaining the Applicant's exact intentions in her absence. If she had attended the video hearing to clarify those intentions then it is possible that she would for example have made a clear offer to withdraw her application coupled with an undertaking not to renew her application at a later date. Such a position might at least have been worth exploring. Yet the Applicant chose not to attend to explain her position, and therefore this option could not be explored.

11. In any event, this tribunal has gone out of its way on previous occasions to accommodate the Applicant's requests, and there comes a point where this starts to be unfairly prejudicial to the Respondents. The Respondents have had this claim hanging over them for a considerable period of time. The matters complained of would, if proven, amount to a criminal offence. Some of the allegations are very serious, and the Respondents are entitled to be given an opportunity to try to clear their name if it is their wish – which it strongly is – to proceed with the hearing. In addition, the Respondents have incurred legal costs in putting together their defence and have previously been ready to have these allegations adjudicated on only to find that the hearing has been postponed at short notice.
12. There seems to be no good reason why the Applicant's latest application for a stay/postponement/withdrawal was made quite so late, and if she is genuine in her wish to withdraw her application she has failed to articulate why she would be prejudiced by the tribunal making a determination on that application.
13. The application for a stay/postponement/withdrawal is therefore refused.

Relevant legislation

14.

Protection from Eviction Act 1977

1 Unlawful eviction and harassment of occupier

(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 likely 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 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.*

Housing and Planning Act 2016

Section 40

- (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 ...*
- (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
1	<i>Criminal Law Act 1977</i>	<i>section 6(1)</i>	<i>violence for securing entry</i>

2	<i>Protection from Eviction Act 1977</i>	<i>section 1(2), (3) or (3A)</i>	<i>eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>section 30(1)</i>	<i>failure to comply with improvement notice</i>
4		<i>section 32(1)</i>	<i>failure to comply with prohibition order etc</i>
5		<i>section 72(1)</i>	<i>control or management of unlicensed HMO</i>
6		<i>section 95(1)</i>	<i>control or management of unlicensed house</i>
7	<i>This Act</i>	<i>section 21</i>	<i>breach of banning order</i>

Applicant's case

15. As noted above, the Applicant was not present or represented at the hearing so as to enable her to present her case orally. It also follows that she was not available to be cross-examined on her evidence by the Respondents' representative or by the tribunal.
16. As the Applicant made a late application to withdraw her application it is unclear to what extent she still stands behind her previous written submissions, but I will briefly summarise them nevertheless.
17. The Applicant states that the rent repayment application has been made due to ongoing harassment of the Applicant and her family by the Respondents. She states that the Respondents were warned several times that their behaviour would constitute harassment under the legal definition thereof in the 1977 Act yet the Respondents continued to behave in the same manner despite further warning of potential legal action.
18. Specifically, the Applicant complains of the Respondents breaking in to the Property in February 2020, insisting on coming to the Property in

April 2020 during the full national pandemic lockdown, sending her a number of emails in April 2020, attending the Property in August 2020 accompanied by police officers in connection with a water leak, sending several messages in connection with the leak, making a request in September 2020 regarding immigration status and for identity documents to be provided, and also (in the case of one of the Respondents) asking in September 2020 to shake hands with the Applicant's son despite the pandemic.

Respondents' case

19. In written submissions the Respondents deal with the allegations in turn. In relation to the February 2020 incident, the Respondents accept that they gained access to the Property and that the Applicant was not present. The reason for the visit was to carry out a gas safety check with two engineers. This is a legitimate reason, and under clause 6.1.4 of her tenancy agreement the Applicant was under an obligation to grant access for such a purpose. The Respondents gave notice of the intended visit by sending three emails over the course of seven days but received no response. The Applicant raised no objection at the time and the Respondents do not accept that their email stating that they would gain access using their own key was a threat; they were merely informing the Applicant as to what would be happening. The Respondents neither moved nor removed any of the Applicant's possessions on gaining access to the Property.
20. Regarding the emails sent in April 2020, Ms Zhang's evidence is that these were part of an attempt to discuss rent arrears. This is perfectly lawful and does not constitute harassment. As there were rent arrears it was a reasonable course of action. As regards the request to meet at the Property, in her witness evidence Ms Zhang states that, English not being her first language, she wanted to make sure that there were no misunderstandings arising out of email correspondence.
21. Regarding the August 2020 leak, the Respondents deny that there was any improper conduct, and two police officers were present the whole time. The leak required urgent inspection. As regards the shaking hands incident, the offer to shake hands was simply a friendly gesture, not harassment.
22. In relation to the request for identity documents, the Respondents state that it is entirely normal for landlords to request such information in respect of occupiers of their property. It is also a requirement under the Immigration Act 2014 for a landlord to be satisfied regarding its residential tenants' immigration status.
23. The Respondents note that the Applicant has not served any witness statements or provided any witness evidence from her son despite the

fact that in her written submissions she was relying on incidents which took place when she was not present but her son was.

24. The Respondents deny harassing the Applicant or members of her household and state that they have reason to believe that the Applicant either does not live at the Property at all or at least did not live there at the times at which the various incidents are alleged to have taken place. The Applicant's response to the Respondents' attempts to seek clarification of the position have been, according to the Respondents, evasive and defensive.
25. At the hearing, Counsel for the Respondents summarised the evidence and also made submissions as to the legal position.

Witness evidence

26. Ms Zhang has given a witness statement setting out at length her response to the various allegations made by the Applicant. She was cross-examined on her evidence at the hearing by the tribunal.
27. Witness statements were also given by Mr D Paton and by Mr J Hitchmough. Mr Paton is the landlord of Flat 3, jointly with his wife, and Mr Hitchmough was the owner of Flat 2 up until 5th March 2021. The evidence of each of them relates to what they heard and saw in connection with the August 2020 leak incident. Mr Paton was asked about his witness statement; Mr Hitchmough was available to be cross-examined in principle but there was a problem with his video connection.

Tribunal's analysis

28. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of eviction or harassment of occupiers under the 1977 Act is one of the offences listed in that table. It is therefore necessary to establish whether the Respondents have committed the offence in question.
29. The Applicant was not present at the video hearing and was therefore unable to present her case. However, she has made written submissions regarding specific incidents and regarding various exchanges of correspondence.
30. The first thing that has to be stated, the tribunal having reviewed her evidence, is how very weak that evidence is. Even making generous allowances for the fact that the Applicant was not present at the hearing

to argue her case orally, it is striking how little substance there is to her allegations.

31. In connection with the Respondents accessing the Property in February 2020 without the Applicant's prior permission, the Respondents have provided a convincing explanation as to why they needed to do this and the Applicant has offered nothing of substance in response.
32. The events of April 2020 seem to be connected to the issue of rent arrears. The Applicant claims that she felt harassed by the correspondence regarding rent arrears and by Ms Zhang's wish to meet at the Property to discuss the position, but in our view there is no credible basis for her complaints. It is legitimate to want to discuss rent arrears and we do not accept that the correspondence from Ms Zhang was at all inappropriate either in tone or in substance. We also consider that it was understandable that Ms Zhang wanted to meet the Applicant, particularly in the light of Ms Zhang's explanation that as English was not her first language she wanted to make sure that there were no misunderstandings arising out of email correspondence.
33. In relation to the August 2020 water leak incident, in addition to Ms Zhang's evidence we have evidence from Mr Paton and Mr Hitchmough. Mr Paton came across well in cross-examination whilst Mr Hitchmough did not have the opportunity to be cross-examined due to a faulty connection. The witness evidence of each of them is persuasive, and we have no reason to believe that they are lying. Ms Zhang herself also came across well in cross-examination on this issue and on other issues, and her evidence was tested with some quite tough questions from the tribunal. Furthermore, on the evidence before us there is good reason to believe that the Applicant was not even present at this incident.
34. Specifically as regards Ms Zhang's attempt to take a photograph of the Applicant's daughter, Ms Zhang has provided an explanation which we consider to be very plausible and the Applicant has failed to explain how this action could have amounted to harassment of the Applicant on the facts of the case.
35. Regarding the request for identity documents, the Respondents have provided a good and plausible explanation for the request and the Applicant has again offered nothing of substance in response.
36. Regarding the offer of a handshake to the Applicant's son, it is self-evident that the existence of a pandemic does not by itself make such an action an act of harassment. Whilst in principle it is possible that even an offer of a handshake can be made in an intimidatory manner, there is no credible evidence that this is the case here.

37. In addition, even if there had been more substance in the Applicant's claims, there is still the important hurdle to clear of showing beyond reasonable doubt that the Respondents committed a criminal offence under section 1(3) or 1(3A) of the 1977 Act. It is only possible to be guilty of an offence under section 1(3) if the acts complained are done "*with intent to cause the residential occupier ... to give up the occupation of the premises or any part thereof; or to refrain from exercising any right or pursuing any remedy*" and there is no credible evidence before us that any of the acts complained of were committed with that intent.
38. In relation to section 1(3A), intent does not necessarily have to be proved. However, the Applicant still needs to prove that the perpetrator "*knows, or has reasonable cause to believe*" that the conduct in question is likely to cause the 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. Based on the evidence before us, we do not accept that the Respondents believed this to be the case or had reasonable cause to believe this to be the case. In any event, section 1(3B) goes on to provide that "*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*". We accept, on the basis of the evidence before us, that the Respondents had reasonable grounds for all of the actions complained about by the Applicant.
39. In addition, the application has been made by the Applicant on the basis that she was the one being harassed. However, sections 1(3) and 1(3A) of the 1977 Act relate to the harassment of a residential occupier and there is significant reason to doubt that the Applicant was in occupation at the relevant times or even at all.
40. The Applicant has made serious allegations against the Respondents, and for the reasons summarised above we consider all of these allegations to be baseless. The Applicant's written submissions are weak and rambling. Instead of offering serious evidence the Applicant has simply made a series of unsubstantiated assertions. Whilst there is agreement between the parties that certain incidents (such as the leak incident) did actually take place, the allegations made by the Applicant in connection with these incidents are not remotely credible. By stark contrast, Ms Zhang came across very well at the hearing and she should take comfort from the fact that this tribunal considers all of the allegations of harassment against the Respondents to be wholly without foundation.

Cost applications

41. No cost applications were made at the hearing but the Respondents reserved the right to make a cost application after considering the tribunal's decision.
42. Any cost applications must be made by email within **14 days** after the date of this decision, with a copy to the other party. Any response to any cost application must be made by email within **28 days** after the date of this decision, again with a copy to the other party.

Name: Judge P Korn

Date: 13th September 2021

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.