



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

Case Reference : **LON/00BB/HMB/2021/0006**

HMCTS Code : **HMCTS: Remote**

Property : **147 Barrier Point Road, London E16 2SE**

Applicants : **Emmanuel Yamson and Ken Uzuegbuna**

Respondent : **Mr Kayode Clement Ayotunde
Ms Lucy Nana Yaa Barnes**

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
Mrs Louise Crane MCIEH**

Date of Hearing : **28 October 2021**

Date of Decision : **25 November 2021**

DECISION

Decision

1. The Tribunal is satisfied on the evidence before it that grounds exist to make a rent repayment order.
2. The Tribunal makes an order in the sum of £8400.00.
3. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £200.00

Introduction

1. This is an application by Mr Emmanuel Yamson and Mr Ken Uzuegbuna for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that Section 6 of the Criminal Law Act 1977 and Section 1 of The Protection from Eviction Act 1977.
2. The Tribunal issued Directions setting out how the parties should prepare for the hearing. This matter was set down for hearing by video link on 28 October 2021.

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 2-bedroom flat in a purpose built flat with concierge services. There is a dispute between the parties concerning the rent which is payable, however the rent currently paid by the Applicants is £1200 PCM.
4. The Tribunal makes no further assumptions regarding the accommodation.

The Hearing

5. The hearing of this matter was held remotely. All parties were given a letter inviting them to attend the hearing with the relevant login details. The hearing was attended by Mr Yamson, the Second Applicant, Mr Uzuegbuna did not attend due to ill health. The first Respondent did not appear, however he was represented by Ms Lola Odunsi, who was the managing agent appointed by the First Respondent. Ms Lucy Nana Yaa Barnes the Second Respondent attended.,
6. Also in attendance was Ms Agnes Barrie.

Preliminary Matters

7. There was an issue between Ms Lucy Nana Yaa Barnes and Ms Odunsi as to who was managing the property at the time, however on the information before the Tribunal, Ms Barnes was responsible for receiving the Rack Rent at the time, and Ms Odunsi, had been appointed by Mr Kayode Clement Ayotunde to manage the property, and as such she had his ostensible authority.

8. Ms Odunsi sought permission for Agnes Barrie to give evidence on her behalf. However, the Tribunal decided not to permit her to give evidence, as no witness statement had been provided by her. Ms Odunsi, stated that the relevance of her evidence was that Ms Odunsi had been talking to Ms Barrie on the mobile during her visit to the property. The Tribunal decided that Ms Barrie was not a direct witness to any of the events which are the subject of this application.

Relevant Law

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

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 and 3 A

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

9. The Tribunal was informed by the Applicant that a rent repayment order was made on 23 March 2021, (in claim no LON/00BB/HMF/2020/0115). As, the property had not been licensed. The property had been managed by Ms Barnes at that time. The Applicant stated that they had come to an arrangement with Ms Barnes to offset the future rent against the sum of £6400.00, which had been made by the Tribunal as a rent repayment order. The sum was off-set for the rental period January 2021, to August 2021.

10. On 1st May 2021, the Applicants received a note from Ms Odunsi to say that she was the co-owner and co landlord of the property, and that she wanted to meet the Applicants at the property, to discuss the tenancy with them.
11. The First Applicant, Mr Yamson, stated that he contacted Ms Barnes the Second Respondent, who informed him that she was unaware of this and had Power of Attorney which had not been revoked.
12. On 3 May 2021 Ms Odunsi came to the flat to meet with them, as they were unaware of any change in ownership, they asked for documentation to prove her ownership and identity. Mr Yamson told us that Ms Odunsi had used her mobile phone and contacted someone. Mr Yamson stated that she had invited him to speak to the person on the phone who informed him that he was the landlord.
13. Mr Yamson stated that he was informed that Lucy (Ms Barnes) did not have the right to rent the property. However, as Mr Yamson had had no prior dealings with the landlord and had only ever dealt with and discussed the tenancy with Lucy, Mr Yamson asked for confirmation in writing that he had revoked Ms Barnes' power of attorney.
14. Mr Yamson stated that when he had indicated to Ms Odunsi that he did not know who she was and that he was not prepared to discuss the tenancy with her. He told us that Ms Odunsi had stated that if he was not ready to discuss the tenancy with her, she was going to change the locks, she had then tried to push past him to gain access to the property, in the process, she had bruised his hand and neck.
15. This formed the basis of one of the allegations. She had also threatened to evict them and change the locks.
16. Ms Odunsi had then called a locksmith, who had attended the property, Mr Yamson had taken a video of the Locksmith and also had provided us with an audio recording. He stated that the locksmith had declined to become involved, and as a result the locksmith had left the property.
17. Mr Yamson had called the police and had a CAD No. (3498/3/May 2021). The police had confirmed that Ms Odunsi had no right to change the locks.
18. Mr Yamson referred to the bundle, in particular Ms Odunsi defence to his claim in the county court, in which she accepted that she had called the locksmith.
19. Mr Yamson stated that she used force to try to gain access to the property. Accordingly, he stated that the landlord Kayode and his agent Ms Odunsi had used threats of violence to secure entry and had committed or attempted to commit an illegal eviction or had used harassment in breach of the Protection from Eviction Act 1977.
20. The Tribunal was provided with a video of the locksmith who had come to change the locks.
21. The Tribunal was referred to the bank statements and the schedule of payments which confirmed that the sum of £8,400.00 had been paid between 16 June to December 2020. One of the payments was for the sum of £1086.00 as the tenants had deducted a sum of money to pay for a bed.
22. Mr Yamson had discussed the matter with Lucy. She said that she was sorry for what had happened, and that she was unaware of Ms Odunsi's role. She advised him that she still had power of attorney.
23. He informed the Tribunal, that he had received a series of emails, text and voice messages from the landlord, and Ms Odunsi which were contradictory about their respective roles.
24. Mr Ayotunde had reiterated his claim that Lucy did not have the right to rent the property. He also claimed that they were living in his property without paying rent.

The Respondent's Submissions

Ms Barnes-Second Respondent

25. The Tribunal briefly heard from Ms Barnes, it was apparent that there was unresolved business between Ms Barnes and the First respondent, Mr Ayotunde. Ms Barnes had been given power of attorney on behalf of the First Respondent. In this capacity, she had taken out loans on the first respondent's behalf. Ms Barnes had been unaware that the landlord had asked Ms Odunsi to act on his behalf, she had been in receipt of the rent, prior to the set off, of rent pursuant to the Rent Repayment order.

Ms Odunsi

26. The Tribunal heard from Ms Odunsi. Who gave evidence to the Tribunal, she explained that she had been asked to manage the property by Mr Ayotunde, with a view to becoming the co-owner. She explained that she supported landlords. She also brought properties on finance and refurbished them. She had been recommended to Mr Ayotunde, and had met with him on Zoom. He told her that he had been unaware of the rent repayment order, and the court case, however he had financial difficulties as the property was about to be repossessed.

27. She had described herself as a co-owner, Ms Odunsi referred to the note which she had left at the property, in which she stated:- "... I will need to go through your tenancy and see how I can assist you. I will be coming to the property on Monday between 12 pm to 6pm..."

28. There was a series of WhatsApp messages re-setting the time for the meeting. Ms Odunsi accepted that she did not show any documents to the Applicants which confirmed her role prior to the meeting.

29. She stated that a letter had been sent to the Applicants on 10 May 2021 by the landlord. In the letter the landlord stated that he had recently appointed Ms Lola Odunsi "...as the letting agent and Manager..."

30. Ms Odunsi stated that she had gone to the property on 1 May 2021 to introduce herself and had met Ken, as Emanuel had not been at the property, she had left a note for Emanuel. Ms Odunsi stated that she had been late to the property on 3 May 2021, and when she attended the property at 2pm, Ken had already left the property. She denied that she had not properly introduced herself, she had shown her provisional license, her passport, the Land Registry and management agreement.

31. Ms Odunsi stated that she had gone to the property to find out why the tenants had stopped paying rent, as the first respondent's property was in danger of being repossessed. He was not aware that the tenants were setting off the rent against a rent repayment order.

32. Ms Odunsi had asked Emanuel to call Ken and asked him to return to the property. However, after Emmanuel called Ken, Ken stated that he could not return to the property. Ms Odunsi said that she offered to wait for Ken to return, however, Emanuel refused her suggestion and asked her to come back on another occasion, as he could not see her today.

33. Ms Odunsi stated that she had been planning to change the locks as a fresh start, as she did not want Lucy Barnes to harass them. She also stated that the landlord had a right to have a set of keys. She stated that it had come to light that the

Applicants were subletting the premises. As a result, she had served a Notice of Seeking Possession on behalf of the landlord on the grounds of subletting.

34. Ms Odunsi denied that she had pushed Mr Yamson, she stated that he had denied her access to the premises, and had pushed her.
35. The Tribunal noted that this was the subject of a separate claim within the county court.
36. Mr Yamson accepted that he had rented a room within the house. He stated that there were three rooms within the premises, and he had asked Ms Barnes whether he could sublet, a room within the house, and it had been agreed to.
37. Mr Yamson stated that he had objected to letting Ms Odunsi into the property, as she had not provided any proof of her role, and her relationship to Mr Ayotunde. Even though she had claimed to be a co-owner of the property, he was concerned, as the information which was provided from both Ms Odunsi and Mr Ayotunde, was contradictory. He had also not been provided with information that Ms Barnes role as property manager with power of Attorney had come to an end.

Tribunal Decision

38. 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, and 3 A of the Protection from Eviction Act 1977
 - (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.
39. The Tribunal considered the evidence before it in relation to the Criminal Law Act 1977, and the Protection from Eviction Act 1977, in relation to the entry to the property being secured by violence and or eviction or harassment of the occupiers.
40. During the course of the evidence, we were referred by Mr Yamson that Ms Odunsi in her claim before the county court had admitted attempting to change the locks. The Tribunal also heard evidence from Ms Odunsi that this had occurred.
41. The Tribunal is satisfied that Mr Yamson refused to consent to the lock change, in circumstances where this had not been agreed in advance. Further he had no evidence that she was entitled to carry this out. The Tribunal accepted that Ms Odunsi, despite this, persisted in calling out the locksmith to change the locks.
42. The Tribunal finds that this amounted to harassment under the Protection from Eviction Act 1977.
43. The Tribunal heard from both parties that they had been assaulted, and also heard the disputed account concerning the alleged assault. Mr Yamson relies on this as a

breach of section 1 of the Criminal Law Act. The use of violence for securing entry to the property.

44. The Tribunal noted that Ms Odunsi denies assaulting Mr Yamson, and states that he assaulted her. The Tribunal on the evidence before it cannot be satisfied beyond a reasonable doubt as to what occurred. Further the Tribunal noted that entry to the property was not secured.
45. Accordingly, we were unable to find on the evidence before us that a breach of the Criminal Law Act 1977 occurred.
46. The Tribunal considered the email of 10 May 2021, which made it clear that Ms Odunsi, attended the property on 3 May 2021, as an agent of the landlord.
47. This was supported by the subsequent text messages between the Applicant and the Second Respondent. The Tribunal considers that Ms Odunsi's attempting to change the locks, amounted to harassment of the tenants, especially as she appeared to be motivated by Mr Yamson's refusing her access to the property. The Tribunal heard and accepted that he did not know who Ms Odunsi was, and that he wanted proof of her identity and role before providing her access. The Tribunal find this entirely understandable.
48. The Tribunal finds that as this act was carried out in the course of her duties, Ms Odunsi was acting as the agent of Mr Ayotunde. Accordingly, the Tribunal finds the allegation of breach of the Protection from Eviction order proved beyond a reasonable doubt.
49. The Tribunal finds that the Applicants are entitled to a rent repayment order against the Respondents.
50. The Tribunal then considered the sum of the Rent Repayment Act 1977. In doing so the Tribunal considered that the intention of Parliament was for such an order to have a punitive effect.
51. The Tribunal noted that a rent repayment order has previously been made by the Tribunal in relation to these parties, and that the previous order has not served as a deterrent, given this the Tribunal considers that the maximum order should be made.
52. Accordingly, the Tribunal makes an order in the sum of £8,400.
53. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £300.00.

Signed: Judge Daley

Dated: 25.11.2021

Right to Appeal

54. 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.
55. 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.

56. 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.
57. 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.