



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

**Case Reference** : CHI/45UF/HMF/2022/0007

**Property** : 6 Madeira Avenue, Horsham RH12 1AB

**Applicant** : Mr David Soanes

**Representative** :

**Respondent** : Mr Jug Judge

**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 Members** : Judge D Whitney  
Judge M Tildesley OBE  
Miss C Barton MRICS

**Date of Hearing** : 9<sup>th</sup> September 2022

**Date of Decision** : 29<sup>th</sup> September 2022

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**DECISION**

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## **Decision**

**The Respondent shall repay rent in the sum of £5 to the Applicant within 28 days.**

**The Tribunal declines to make any order requiring the reimbursement of the Tribunal fees.**

## **Reasons**

### **Background**

1. On 13 April 2022 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. The matter was listed for hearing at Havant Justice Centre on 9<sup>th</sup> September 2022. No case was advanced by the Respondent.
3. On 31<sup>st</sup> August 2022 further directions were issue by the Tribunal identifying specific issues the Tribunal would invite the Applciant to address as to his conduct. The directions stated as follows:

*“ The Tribunal notes that 3 earlier applications for rent repayment orders have been made by the Applicant:*

*CHI/43UE/HMF/2019/0016*

*CHI/45UE/HMJ/2020/0001*

*CHI/45UG/HMF/2021/0039*

*Copies of these decisions are attached. In all three of the previous cases the allegations advanced by the Applicant bear similarities to those in this case.*

*Further the Applicant is subject to an Extended Civil Restraint Order issued by the Court of Appeal, Civil Division. We have also received correspondence from Horsham District Council dated 5<sup>th</sup> July 2022 written to Mr Soanes and which has already been sent to all parties.*

*All of these documents are matters the Tribunal may take account of in determining the current application being matters of which the Tribunal has notice. The Applicant is reminded that if he satisfies the Tribunal that a relevant offence has been established the Tribunal retains a discretion as to whether not not any Rent Repayment Order should be made. In this case the Tribunal will consider all of the previous decisions, the letter from Horsham Council and the general conduct.*

## ***DIRECTIONS***

*The Applicant should produce evidence at the hearing as to the validity of the postal and email address given for Mr Judge so that the Tribunal can be satisfied that the application has been properly served.*

*The Applicant may be questioned by the Tribunal on matters relating to the documents referred to above and may include:*

- a. How he found the subject Property was available to rent?*
- b. What if any checks he made in respect of the Property and in particular whether he made any checks or searches to establish whether or not the Property held any relevant HMO licence?*
- c. What if any other litigation the Applicant has been involved in in relation to this Property or the Respondent?*
- d. What if any other applications for rent repayment orders the Applicant has made to this or any other Tribunal?*

*At the hearing the Tribunal will invite submissions from the parties as to how it should exercise its discretion as to whether or not a Rent Repayment Order should be made if it is satisfied that a relevant offence has been established beyond reasonable doubt."*

4. The hearing was attended by the Applicant only. The Tribunal had written to the Respondent and emailed him using addresses supplied by the Respondent.
5. The Tribunal considered the following documents in reaching its determination:
  - Hearing bundle of 236 pages. References in [ ] are to pdf page numbers within this bundle;
  - The Applicant's witness statement dated 6<sup>th</sup> March 2022 prepared for proceedings in the Brighton County Court case number H00BN352;
  - Bundle entitled "Appeal DDJ Parsons";
  - Bundle entitled "Injunction application Horsham County Court 1<sup>st</sup> June 2021";
  - Bundle entitled "Bundle B";

- Letter Horsham District Council to the Applicant 5<sup>th</sup> July 2022;
  - Application dated 6<sup>th</sup> September 2022 made by Mr Soanes including “Statement of Case”;
6. The various documents supplied included documents relating to proceedings in the Horsham County Court notably [143] a transcript of a hearing on 10<sup>th</sup> March 2022. Within that transcript the Respondent confirmed his address [160] as being that supplied to the Tribunal. The bundle also contained various emails from and to the Respondent using the address supplied. As a result the Tribunal was satisfied that notice of these proceedings and the hearing had been given to the Respondent whom had chosen not to take any part in the same.
  7. Further the Tribunal exercised its discretion to allow Mr Soanes to rely on his “Statement of case” attached to his application of 6<sup>th</sup> September 2022. Essentially this added nothing new to his case and was a document which Mr Soanes used as an aide memoire to present his case to the Tribunal.
  8. The hearing was recorded.

## **Law**

9. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.
10. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
11. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).

12. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

a) the rent paid in respect of the period in question, less

b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

13. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

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 any of the specified offences.

### **Evidence and Findings of fact**

14. We are satisfied that Mr Soanes entered into a tenancy of 6 Madeira Avenue, Horsham on 11<sup>th</sup> December 2021 [21]. At the time he took up occupation there were two other residents at the house. We find Mr Judge did not live at the house and Mr Soanes was granted exclusive possession of a room subject to paying rent which included an amount for utilities.

15. Mr Soanes found the room after seeing an advertisement on Gumtree [14]. This advert referred to a double room in a shared house, sharing with “3 guys and 1 lady.” It appeared however by the time of the commencement of the Applicant’s tenancy there were only two other occupants whose names Mr Soanes provided.

16. We are satisfied that Mr Soanes paid three rental payments of £475 on 11<sup>th</sup> December 2020, 11<sup>th</sup> January 2021 and 11<sup>th</sup> February 2021. Documentary evidence was adduced by Mr Soanes [17-19]. Mr Soanes stated he made no further payments of rent.

17. We find that on 10<sup>th</sup> January 2021 a fourth tenant moved into the Property and then on 30<sup>th</sup> January 2021 a fifth tenant moved into the property. The Property remained occupied by five tenants until on or about 23<sup>rd</sup> May 2021 when the original lady tenant vacated the Property. Names of all tenants were provided but have not been included within this decision as they have no bearing upon the same.
18. Mr Soanes suggested he ceased paying rent as his relationship with the Respondent soured. His last payment was on 11<sup>th</sup> February 2021 and he became aware the Respondent was looking to switch internet provider and when this happened, he was not provided with the new password. The switch happened at some point after the 11<sup>th</sup> March 2021 being the date when his next rental payment was due. He relied on his agreement [60] to rent a room which referred to internet being provided and a witness statement of Mr Judge in separate County Court proceedings [65] in which Mr Judge stated he had not provided the password as Mr Soanes had refused to pay the rent.
19. Mr Soanes referred to being given notice to leave the Property. He suggested that the form of notice did not comply with the statutory requirements and the protections afforded to tenants at that time due to the Covid pandemic. Further he stated he was subject to intemperate language by Mr Judge who referred to him in emails as “vile”.
20. Mr Soanes suggests he was unlawfully evicted on or about 25<sup>th</sup> May 2021. On the evening of 24<sup>th</sup> May 2021 Mr Soanes was arrested by the police following an altercation with another tenant. Whilst in police custody the locks were changed. Mr Soanes relies on the transcript of the hearing before the Horsham County Court [229] line 15 onwards. We find that Mr Judge did admit to arranging to have the locks changed with the purpose of excluding Mr Soanes.
21. Mr Soanes confirmed that upon release by the police he returned to the Property and attempted to re-enter the same. He was unable to do so as the locks were changed and a workman at the Property would not provide him access. He found some of his belongings in black bags outside the Property but certain items were missing.
22. He explained he issued proceedings in the County Court for an injunction and a claim for damages including for the items he had lost. Copies of certain of the documents relating to these proceedings were in the papers before the Tribunal.
23. Mr Soanes submitted that Mr Judge committed perjury in the County Court. The proceedings in the County Court are ongoing as Mr Soanes is seeking to appeal the final order of Deputy District Judge Parsons dated 24<sup>th</sup> May 2022. We are told by Mr Soanes no decision has been made on his application for leave to appeal. We record that order found as follows:

- “1. Judgment for the Claimant on the issue of unlawful eviction. General damages £550.00.
  2. Judgment for the Defendant on the issues of tenancy deposit and harassment regarding the non provision of the wifi code. Claims dismissed.
  3. Claim for unlawful eviction and harassment under the Protection from Eviction Act 1977 being struck out as totally without merit.
  4. Defendant to pay court fee for trial of £545.00. Total £1095.00 to be paid within 21 days. “
24. We were not provided with a transcript of the judgment, only the hearing itself. It appears Mr Soanes has requested the same but it has not been received by him and he is unclear as to why this is the case.
25. Mr Soanes was referred to [178] line 28 being the transcript of the hearing and Mr Judge’s evidence where he stated:
- “And that’s where – sorry if I can just show, it is in the papers – but that’s why Jackie McGann of Horsham Environmental Health issued a temporary exemption because she understood that there was a lady living there when Mr Soanes moved in, from Hong Kong, she was stuck here as a college student because she couldn’t fly back.”
26. Mr Soanes stated that within the disclosure provided by Mr Judge for the County Court proceedings a document relating to temporary exemption was provided but no copy of this was within the hearing bundle.
27. Mr Soanes confirmed he has no documents or evidence from Horsham District Council confirming there was no HMO licence in place for the Property. He states that the Horsham District Council served an Improvement Notice [22-30] which refers to the Property being occupied by 5 tenants [23] and so it should be inferred there is no licence in place.
28. Mr Soanes stated that prior to taking up occupation he had undertaken no checks to see if the Property required a licence. His evidence was that despite what was said in the Gumtree advert he had not appreciated he would be living in a property which would appear to require an HMO licence.
29. Mr Soanes explained he moved to the current Property after leaving 62 The Warren Burgess Hill. This was a Property for which he had sought a Rent Repayment Order and a decision was made under CHI/45UG/HMF/2021/0039.
30. He explained that about two days after being evicted from the Property he moved into a property 22 Stagelands, Crawley and he was also now pursuing a rent repayment order against that landlord.

31. He had made two earlier rent repayment applications under references CHI/43UE/HMF/2019/0016 and CHI/45UE/HMJ/2020/0001. He had also issued various claims in the civil courts arising from his occupation of various properties including claims against various local authorities and police authorities. He had been made subject to an extended civil restraint order by the Court of Appeal.
32. Mr Soanes stated he does not act in bad faith and does not actively look for properties that fail to comply with HMO licensing requirements or the like. He believes he is tricked by unscrupulous landlords. He stated that people should be punished if they do not abide by the law.

### **Has an offence been committed?**

33. Mr Soanes submits three offences have been committed:
- Breach of Section 72(1) of the Housing Act 2004 in that Mr Judge was running an unlicensed HMO between 30<sup>th</sup> January 2021 and 23<sup>rd</sup> May 2021;
  - Breach of Section 1(2) of the Protection from Eviction Act 1977 in that Mr Judge unlawfully evicted the Applicant;
  - Breach of Section 1(3) and (3A) of the Protection from Eviction Act 1977 in that the Respondent harassed or caused the Applicant to be harassed;
34. We are satisfied beyond reasonable doubt that Mr Judge committed an offence pursuant to Section 1(2) of the Protection from Eviction Act 1977.
35. Whilst giving evidence in the County Court proceedings H00BN352 Mr Judge admits changing the locks with a view to excluding Mr Soanes. Further DDJ Parsons was satisfied that an award of damages should be made for an unlawful eviction. What is said by Mr Judge in his witness statement and the transcript of the proceedings corroborates the evidence of Mr Soanes. We find beyond reasonable doubt the offence was committed on or about 25<sup>th</sup> May 2021.
36. Turning next to the question of harassment we are not satisfied beyond reasonable doubt that Mr Soanes was harassed so as to amount to a criminal offence by the Respondent.
37. Mr Soanes relies on the withholding of the wifi password. The Horsham County Court in applying the civil standard of proof found the allegation not proved. Taking account of this order and having considered the evidence advanced we are not satisfied that the withholding of the wifi password satisfied the criminal standard of proof that Mr Judge harassed the Applicant.



38. The Applicant also relies upon the service of unlawful notices to quit and what he describes as intemperate language. Again we are not satisfied beyond reasonable doubt that an offence has been committed. Mr Soanes knew the notices were of no effect being aware of his rights to receive notices in a prescribed form and that specific time limits had to be adhered to. Further the language used does not in our judgment constitute harassment.
39. Finally we turn to the question as to whether the Property was an unlicensed HMO. We are satisfied that between 30<sup>th</sup> January 2021 and 25<sup>th</sup> May 2021 the Property was occupied by 5 persons consisting of two or more households and so satisfied the requirement to have a mandatory HMO Licence. The Applicant has produced no evidence that there was no HMO Licence in place. He was in contact with Horsham District Council and yet has no evidence that no licence was in place. He invites the Tribunal to infer that there is no licence due to the service of an improvement notice.
40. We are not satisfied beyond reasonable doubt that an offence pursuant to Section 72(1) of the Housing Act 2004 has been committed. We have no evidence that there is not a licence in place. Further within the transcript of the County Court proceedings Mr Judge refers to a “temporary exemption”. Mr Soanes gave evidence that some documents relating to the same had been disclosed within the County Court proceedings. It may be therefore that a temporary exemption notice was granted by the local authority. We do not know. We are satisfied that Mr Soanes is aware of the need to produce evidence that a licence is not in place and the nature of evidence a Tribunal would expect given the previous proceedings he has engaged in. We are however satisfied that there is some doubt in our minds on the evidence presented and so do not find that any offence has been committed.

### **Has the application been made in time?**

41. The Application was made by Mr Soanes on 12<sup>th</sup> April 2022. The application was made within 12 months of the offence which we have found was committed on 25<sup>th</sup> May 2022 and so the application was made within the statutory time of 12 months from the offence.

### **Should we exercise our discretion to make an order?**

42. We considered the decision in The London Borough of Newham v John Francis Harris [2017] UKUT 264 (LC). We have found that an offence of unlawful eviction has been made out. Further the Respondent has chosen to take no part in these proceedings. Taking account of all the facts we are satisfied that this is a case where we should exercise our discretion to make an order.

### **What order should we make?**

43. The Applicant commenced his tenancy on 11<sup>th</sup> December 2020. The offence was committed on 25<sup>th</sup> May 2022. During the 12 months prior to the offence the Applicant paid a total sum of £1425 by way of rent. This sum included the provision of certain utilities.
44. Given the sum included utilities, including internet, from which the Applicant benefitted, some deduction to allow for the same is justified. For the three months for which he paid rent he had the benefit of all the utilities including the internet as it was only after he ceased paying rent that Mr Soanes did not have access to the internet. Exercising our expert knowledge we are satisfied that £25 per calendar month would cover the cost of utilities and so reduce the rent to £450 per month giving a total paid for the three months of £1350. We are satisfied that this is the maximum amount of rent we may award.
45. We must now consider the particular circumstances of this case and the conduct of the parties.
46. We are satisfied that the offence we have found to be committed is a serious offence. The Applicant lost his home- such an offence is serious. We note however that there is no suggestion of any physical violence or other aggravating factor.
47. The Respondent has not taken part and we have no knowledge as to the financial circumstances of the Respondent. We assume that he would be able to pay any amount which we should award.
48. It is not suggested that the Respondent has any relevant criminal convictions which we should take account of.
49. The Applicant invites us to find the conduct of the Respondent to be poor. He refers to perjury in the County Court proceedings, the service of defective notices and the withholding of the wifi code. Set against this is the Applicants conduct in deliberately not paying any rent after the payment in February 2021. The Applicant by his own admission lived in the Property for over 5 months and in fact should have made 6 rental payments.
50. We take account of the County Court proceedings and the decisions made. We have the benefit of the transcript of the hearing. We note the Applicant sought substantial damage including special damages to cover the costs of items he said he lost as a result of his unlawful eviction. It appears on the face of the County Court order the court declined to make such award and awarded very modest damages only. The fact that damages have already been awarded is something we believe we should and do take account of. We note however certain aspects of the case were dismissed.
51. We also take account of the Applicant's general conduct. This is the fourth rent repayment order the Applicant has sought and there is one further application pending. We do not accept the Applicant's evidence

that he did not notice on the Gumtree advert that it made reference to the number of occupants and the fact that on the face of the advert it would be a licensable HMO. Further looking at the decisions in the three cases already determined, the facts of all the cases are similar and we take judicial notice of the same. In all three cases the Applicant appears to fall out with his landlord and other occupants often leading to intervention by the police.

52. The Applicant was placed on notice in advance of the hearing that these were matters the Tribunal wished to consider and raise with him. Mr Soanes denied deliberately seeking out properties without a licence. He expressed the view that landlords who do not comply with the law should be punished. We did not accept his evidence that he conducted no prior checks and find he did actively seek properties without a licence. In our judgment the similarities in the reported cases are such that we conclude this is a deliberate course of conduct on the part of the Applicant. In our judgment the Applicant seeks out property which he believes do not have a licence to enable him to pursue claims such as this.
53. We have taken account of the letter from Horsham District Council and the schedule of cases issued by the Applicant in the court or Tribunal arising from the facts in the cases CHI/43UE/HMF/2019/0016 and CHI/45UE/HMJ/2020/0001. The letter contends the Applicant's conduct is unreasonable and has caused a considerable drain on the resources of the council.
54. But for the evidence of similar fact and the letter from the council we would have made an award £675 being 50% of the rent nett of included utilities balancing the conduct of the relevant parties and the serious nature of the offence. However we do take account of the similar facts between this and the other previous decisions of the Tribunal. Further we take account of the submissions of the council within their letter. Looking at all such factors in our judgment it is appropriate to reduce the amount we award to reflect what we find to be unreasonable and deliberate conduct on the part of the Applicant. We find the Applicant deliberately set out to find a Property and procure circumstances so that he could seek a rent repayment order. We are satisfied that this is a case where it is appropriate having regard to the totality of the circumstances to make a nominal award only. We order that the Respondent shall repay to the Applicant by way of a rent repayment order the sum of £5 within 28 days of this decision.
55. We have considered whether or not we should exercise our discretion to order the Respondent to reimburse the Applicant for the fees paid to the Tribunal. Whereas often if an Applicant has been successful the Tribunal will make such an award it is always at the discretion of the Tribunal. Taking account of our findings and the facts of this case we decline to exercise our discretion and so make no order.

## **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 by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
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.

## Explanation of the Tribunal’s jurisdiction to make a Rent Repayment Order

1. The **issues** for the Tribunal to consider include:

**Whether** the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

**Or** has a financial penalty<sup>1</sup> been imposed in respect of the offence?

- (i) What was the date of the offence/financial penalty?
- (ii) Was the offence committed in the period of 12 months ending with the day on which the application made?
- (iii) What is the applicable twelve-month period?<sup>2</sup>
- (iv) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (v) Should the tribunal reduce the maximum amount it could order, in particular because of:

<sup>1</sup> s.46 (2) (b): for which there is no prospect of appeal.

<sup>2</sup> s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- (a) The conduct of the landlord?
  - (b) The conduct of the tenant?
  - (c) The financial circumstances of the landlord?
  - (d) Whether the landlord has been convicted of an offence listed above at any time?
  - (e) Any other factors?
2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

**Important Note: Tribunal cases and criminal proceedings**

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.