



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

Case reference : **LON/00AG/HMG/2020/0007**

HMCTS Code : **Face to Face Hearing**

Property : **Flat 12, Newton House, Abbey Road, London NW8 0AH**

Applicant : **Miss Iwona Barbara Pokrzywka**

Representative : **In person (assisted by Mr Aron Pahghi)**

Respondent : **Mr Reza Razaghkarimi**

Representative : **Mr Samil Ramon Patel (Solicitor)**

Type of application : **Application for a rent repayment order by tenant - sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**

Tribunal : **Judge Robert Latham
Mr Antony Parkinson MRICS**

Date and Venue of Hearing : **8 November 2022 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **14 November 2022**

DECISION

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £3,700.
2. The Tribunal determines that the Respondent shall further pay the Applicant £100 in respect of the tribunal fees that she has made.
3. The Tribunal does not make any order for the time in which the said sums should be paid. The Tribunal has determined that at 5 November 2022, the Applicant owed the Respondent £19,840.55 in respect of arrears of rent. The Respondent is entitled to set off its liability of £3,800 against these arrears.
4. The Tribunal records that the Respondent did not oppose the making of the Rent Repayment Order in the sum sought. Without making any admission in respect of his liability, he has taken a commercial decision not to oppose the application.

The Application

1. There is a complex history to this application. On 24 January 2020, the Applicant issued this application against London Bright Homes Limited seeking a Rent Repayment Order ("RRO") in the sum of £3,700, namely 5 months' rent at £740 per month. The grounds for making the application were:
 - (i) control or management of an unlicensed HMO, namely an offence under section 72(1) of the Housing Act 2004; and
 - (ii) harassment of occupiers, namely an offence under section 1 of the Prevention of Eviction Act 1977. No adequate particulars were provided of the allegations of harassment.

The Applicant stated that a RRO had only been claimed for a period of five months as she had been unemployed and in receipt of universal credit. The period over which she was seeking a RRO was not clear.

2. On 29 January 2020, Judge Tagliavini gave Directions. On 28 February 2020, Judge Powell issued further Directions joining Mr Masoud Naghavi and Mr Reza Razaghkarimi (the current Respondent) as respondents. It is to be noted that these directions were made before the Higher Courts gave guidance on the law in (i) *Global 100 v Jimenez* [2022] UKUT 50 (LC) and (ii) *Jepson v Rakusen* [2021] EWCA Civ 1150.
3. On 12 March 2020, there was a mediation hearing at which the following attended: (i) the Applicant; (ii) London Bright Homes Limited and (iii) Mr Naghavi. London Bright Homes Limited and Mr Naghavi agreed to pay the Applicant £1,400 within 21 days and a further sum of £1,400 were the

Applicant to surrender her keys to the flat within 60 days of the agreement. These respondents did not comply with the agreement. The Applicant did not leave the flat. Mr Razaghkarimi did not attend the mediation. The agreement records that the Applicant confirmed that she was happy to proceed with the Settlement Agreement without Mr Razaghkarimi being a party to it.

4. On 17 May 2022, Judge Latham conducted a Case Management Hearing which was attended by the Applicant who was assisted by Mr Aron Pahghi. Miss Pokrzywka stated that she was dyslexic and that English was not her first language. However, the Tribunal was satisfied that her command of English was good and that an interpreter was not required. The Respondent did not appear, but was represented by Ms Byroni Klepa (Counsel) instructed by JPC Law, Solicitors. There was no appearance from London Bright Homes Limited or Mr Naghavi.
5. The Applicant confirmed that she no longer wishes to proceed with her application for a RRO against either London Bright Homes Limited or Mr Masoud Naghavi. The Tribunal therefore removed them as parties to the application. Thereafter, the applications proceeded against only Mr Razaghkarimi (“the Respondent”). The application was set down for hearing on 25 August 2022.
6. The Tribunal directed the Applicant to file her Bundle of Documents by 14 June 2022. The Directions specified the material that the Applicant was to include in her bundle. This included: (i) evidence of payment of rent; (ii) an expanded statement of case addressing the issues which are to be determined. In particular, the Applicant was required to specify why she alleged that the Respondent was “the landlord” against whom she was entitled to seek a RRO; and (iii) full details of the alleged offences. The Applicant was to provide full particulars of any allegations of harassment and specify the period of time over which the RRO was sought, together with full particulars of any payments of universal credit that she had received.
7. The Applicant did not file her Bundle as directed. On 8 June, she applied to stay the proceedings. This was opposed by the Respondent. On 16 June, the Tribunal directed the Applicant to file her Bundle by 28 June. On 28 June, the Applicant filed a Notice to withdraw. However, this seemed to be made on a conditional basis. The Tribunal set this down for a further Case Management Hearing on 25 August. On 24 August, the Applicant indicated that she wished to withdraw her application to withdraw and proceed with her application for a RRO against the Respondent in the sum of £3,700.
8. On 25 August, Judge Tagliavini conducted a further Case Management Hearing and gave Directions. She set the matter down for hearing today.
9. On 26 September 2022, the Applicant filed her Statement of Case which extended to 24 pages and a Bundle extending to 226 pages. She provided details of the rent which she had paid between 6 September 2018 and 20 January 2020. She did not provide any adequate particulars of (i) the period

of time over which the RRO was sought, (ii) the particulars of harassment; or (iii) her payments of universal credit.

10. On 20 October 2022, the Respondent filed his statement of Case. This included a Schedule of Rent Arrears which showed that rent arrears of £20,979.02 subsisted on 25 October 2022. The Respondent stated that he had taken a commercial decision, without making any admission of liability, not to oppose the RRO sought in the sum of £3,700. However, this sum would be credited to the rent account, and would reduce the sum to be sought by the Respondent in the County Court.
11. The Applicant was not willing to withdraw her application on this basis. She rather sought an order that the RRO should be paid immediately and that the Respondent should also reimburse her the tribunal fees of £100 which she has paid. The Respondent accepted that he should pay the tribunal fees of £100. However, he stood by his insistence that any sum should be set off against the rent arrears.

The Hearing

12. The Applicant appeared in person. She was again assisted by Mr Aron Pahghi in presenting her case. The Tribunal is satisfied that the Applicant was able to fully participate in the proceedings and that there were no language difficulties.
13. The Respondent did not appear. He was represented by Mr Sunil Raman Patel, a Solicitor with JPC Law. The Applicant has suggested that the Respondent does not exist. The Tribunal is satisfied that JPC Law have carried out all appropriate checks relating to the identity of their client, before accepting instructions from him.
14. The Tribunal indicated that we would first hear evidence about the current state of the rent account. Having heard such evidence and found that rent arrears of £19,840.55 subsisted, the Tribunal indicated to the parties that the Respondent would be entitled to set off the sum of £3,800 (a RRO of £3,700 and tribunal fees of £100) against these arrears. The Applicant agreed to accept the sum offered. The Tribunal indicated that had we proceeded to determine her application for a RRO, the maximum award would have been £3,700 (the sum claimed), but any award could be lower.
15. The Tribunal granted a number of short adjournments to enable Mr Patel to take instructions and for the Applicant to review her position with Mr Pahghi.

The Background

16. On 8 August 2018, the Respondent acquired the leasehold interest in the flat 12 Newton House. This is a three bedroom flat, with the living room let as a fourth bedroom.

17. On 14 August 2018, the Respondent leased the flat to "Mr Masoud Naghavi of London Bright Homes Limited". Mr Naghavi was the director of London Bright Homes Limited.
18. On 5 September 2018, London Bright Homes Limited signed a tenancy agreement with the Applicant granting her a six month Assured Shorthold Tenancy of a room in the flat at a rent of £740 per month. The Applicant paid her rent to London Bright Homes Limited.
19. On 15 January 2020, an officer from the London Borough of Camden ("Camden") inspected the flat. On 22 January, Camden notified the Applicant that the flat required a licence under their additional licensing scheme. On 18 June 2020, The Respondent obtained a licence in respect of the HMO. The Tribunal notes that the fact that Camden considered that Mr Razaghkarimi was the most appropriate person to hold an HMO licence does not mean that he was the "landlord" against whom the Applicant could seek an RRO.
20. On 8 August 2021, a deed of surrender was executed whereby London Bright Homes Limited surrendered their leasehold interest in the flat to the Respondent. Any arrears of rent owed by the Applicant were assigned to the Respondent.
21. There have been a number of proceedings in the County Court. In particular, on 23 August 2022, DDJ Rozario dismissed a claim for rent arrears and possession in H03CL026 on the ground that the Respondent had not complied with the statutory requirements of section 47 of the Landlord and Tenant Act 1987. The Respondent was ordered to pay the Applicant's costs.
22. There have also been separate proceedings between London Bright Homes Limited and the Applicant (HOPP8584); the Applicant and Mr Naghavi (H00CL308) and the Applicant and Mr Ismail Haqani (G03CL235). It was suggested that there are further proceedings pending in the County Court between the Applicant and the Respondent. However, the Tribunal is satisfied that no County Court Judge has made a determination on the issues which we are required to consider.

The Arrears of Rent

23. The Tribunal heard evidence and submissions from the Applicant and submissions from Mr Patel. The Applicant was reluctant for the Tribunal to make a finding on the current rent arrears, albeit that the Tribunal had directed her to provide evidence of her payments of rent on both 17 May and 25 August 2022.
24. Mr Patel had filed a Rent Statement covering the period 5 September 2018 to 5 November 2022. This recorded arrears of £21,719.02. The Applicant referred the Tribunal to a rent statement dated 3 August 2022 which had been provided to the County Court, which recorded arrears of £9,620 on 5 July 2022. However, this only covered the period 5 July 2021 to 5 July 2022.

The claim had been issued on 17 June 2021, when arrears of £9,555.76 were claimed.

25. The Tribunal had regard to the Schedule of Payments which the Applicant had included in her bundle (at p.50-51) which covered the period 6 September 2018 to 20 January 2020. The Tribunal noted that all these payments had been recorded in the Respondent's Rent Statement. The Tribunal also permitted the Applicant to rely on an updated Schedule of Payments covering the period 6 September 2018 to 7 June 2021. The Tribunal noted that a total of 11 payments of £170.77 had not been credited to the Rent Statement. These payments had been made in February and June 2021. Mr Patel was unable to explain why these sums had not been credited. This was a time when rent was being collected by London Bright Homes Limited. The Tribunal noted that a schedule attached to their claim HoPP8584 (at p.138 of the Applicant's Bundle) had included a credit of £1,544.24. This confirmed our view that an adjustment of £1,878.47 (11 payments of £170.77) needed to be credited to the rent account.
26. Mr Patel stated that the Applicant had paid no rent since 7 June 2021. The Applicant suggested that she had made further payments. She was unable to adduce any evidence of such payments. She had filed her bundle on 26 September 2022. She had been directed to provide evidence of all rent payments that she had made. The Applicant stated that her bank had frozen her account on 7 November 2022 and attributed this to fraud by her landlord. She was therefore unable to obtain an up-to-date statement from her bank. Mr Pahghi suggested that the Applicant had not provided an up-to-date schedule of payments in her Bundle as the Applicant had thought that she had only been required to provide evidence of rent relevant to the RRO that she was seeking. The Tribunal does not accept this explanation. She provided no evidence of the universal credit that she had received which would have been relevant to the RRO.
27. We accept the Respondent's case that no rent has been paid since 7 June 2021. We therefore find that arrears of £19,840.55 were payable on 5 November 2022, namely the sum of £21,719.02 less the credit of £1,878.47. In the light of this finding, the Applicant accepted that the Respondent's offer in respect of the RRO and tribunal fees.

Judge Robert Latham
14 November 2022

RIGHTS OF APPEAL

1. 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.

2. 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.
3. 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.
4. 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.