



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

Case Reference : CHI/00ML/HMB/2022/0006

Property : Room 4, Top Floor Flat, 48 Lansdowne Place, Hove BN3 1HH

Applicant : Alex Swartz

Representative :

Respondent : Mr Shadi Baja

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
Mr J Reichel BSc MRICS
Mrs J Herrington

Date of Hearing : 20 October 2022

Date of Decision : 18 November 2022

DECISION

Decision

The Respondent shall repay rent in the sum of £5,600 to the Applicant and also reimburse Tribunal fees in the sum of £300 giving a total to be paid by the Respondent to the Applicant of £5,900 within 28 days.

Reasons

Background

1. On 14 July 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.
2. Various sets of directions were issued. The matter was listed for hearing at Havant Justice Centre on 20th October 2022. The Respondent made a brief written response.
3. On the day of the hearing the Applicant via family members indicated he would be late arriving. At the time given for the hearing to commence the Respondent was not in attendance. The Tribunal were satisfied he had been notified of the time and location of the hearing and deliberately choose not to attend.
4. To provide both parties with opportunity to attend the Tribunal delayed the start of the hearing until 1pm and the Tribunal case officer notified the Respondent by email that the hearing would not commence until 1pm.
5. The Applicant attended with his witness Mr McNamee and various observers. The Respondent did not attend the hearing.
6. The Tribunal had before it a written bundle and references within this decision in [] are to pages within that bundle. Also a supplementary bundle was produced and references A[] are to pages within that bundle. The Tribunal had also seen various video and audio clips supplied by the Applicant.
7. The hearing was recorded.

Law

8. 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.
9. 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.

10. 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).

11. 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.

12. 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

13. We are satisfied that Mr Swartz was a tenant of the Property pursuant to a written tenancy agreement dated 9th July 2020 between himself and Overseas Company Rentals [14-51].
14. We record that Companies House shows that a limited company with this name was dissolved on 6th October 2022 following an application made by its sole director Mr Shadi Al-baja dated 15th April 2020. We are satisfied that this is the Respondent to this application.
15. Mr Baja suggests that there was a contract between Overseas Company Rentals and Sol Y Mar. Mr Baja suggests he should not be the Respondent. In the alternative if not Sol Y Mar he suggests then S B Lets Limited should be the Respondent [112-137]. We are satisfied that Overseas Company Rentals was a trading name for Mr Baja. He is also we note from Companies House records the sole director and principal shareholder of S B Lets Limited. Whilst it may be that Sol Y Mar had a lease of the whole of the Flat in which the Property was situated it was Mr Baja who let out individual rooms and was, we find, on the evidence before us the person receiving the rent or the benefit of the same and the person whom is liable to pay any rent repayment order we may make.
16. We make such findings having regard to the documents produced by both parties and also noting it was Mr Baja who appears in the audio and videos produced by the Applicant plainly acting as the person responsible for the letting of the room to the Applicant. Taking account of all such matters we are satisfied that the Respondent is the correct person to be named as the Respondent in these proceedings.
17. We find that Mr Swartz had held negotiations with S B Lets Limited seeking to enter into a new tenancy agreement together with other persons to take a tenancy of the whole flat. This did not come to fruition and S B Lets Limited advised Mr Swartz it would not renew his tenancy.
18. We find a notice pursuant to section 8 of the Housing Act 1988 was served which was invalid seeking to determine the tenancy [88-94].
19. We accept the evidence of the Applicant that the Flat had 6 rooms all let on separate contracts and occupied by separate people. The occupants had use of 2 communal kitchens and various bathrooms. The Flat as a whole was a House in Multiple Occupation.
20. We find that Mr Baja entered the Flat on various dates without prior notice. Further we accept the unchallenged evidence of the Applicant that on 4th September 2022 he awoke to find the Respondent in his bedroom with a third party discussing work he wished to undertake to the room. No prior notice had been given to the Applicant of this visit.

21. We find that the Respondent adopted a course of conduct designed to force the Applicant to vacate the Property. The Respondent wished to re-let the whole of the Flat on a single tenancy agreement and could only do so upon the Applicant providing vacant possession. We find the fixed term of the Applicants tenancy did not end until 19th September 2021 [18]. It is clear from the evidence contained within the bundle that the Respondent wished the Applicant to vacate the Room sooner.
22. We accept the evidence of the Applicant that he vacated the Property on 14th September 21022 following a further unannounced visit to the Flat by the Respondent.
23. Further we find that the Respondent threatened and instituted proceedings against the Applicant's Guarantor and such proceedings were dismissed by the County Court [107].

Has an offence been committed?

24. The Applicant submitted that the Respondent had unlawfully harassed the Applicant in 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;
25. We are satisfied beyond reasonable doubt that Mr Baja committed an offence pursuant to Section 1(3) of the Protection from Eviction Act 1977.
26. We find that the deliberate unauthorised entering of the room occupied by the Applicant on 4th September 2021 by the Respondent with another person was designed to harass the Applicant so that the Respondent could obtain vacant possession. We are satisfied having heard the evidence of the Applicant and Mr McNamee which was unchallenged by the Respondent that the Applicant believed the Respondent was harassing him to ensure he vacated the Property and the Applicant was in fear of the Respondent and his actions.
27. For completeness we record we do not find that the service of an invalid notice by the Respondent or the issuing of proceedings against the Claimants Guarantor amount to a breach of the Protection of Eviction Act 1977. Such actions may be unreasonable but this does not in our judgment satisfy us that an offence has been committed.

Has the application been made in time?

28. The Application was made by Mr Swartz on 14th July 2022. The application was made within 12 months of the offence which we have found was committed on 4th September 2021 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?

29. We considered the decision in The London Brough of Newham v John Francis Harris [2017] UKUT 264 (LC). We have found that an offence has been made out. Further the Respondent has chosen not to attend or challenge the evidence of the Applicant save as to his being named as the Respondent. 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?

30. The Applicant commenced his tenancy on 20th July 2022. During the 12 months prior to the offence the Applicant was required to pay rent totalling £7,140. The Applicant has produced evidence of payments [52-55] showing payments totalling £6595. The supplementary bundle contains evidence that the Applicant agreed with S B Lets he would pay the costs of topping pre paid utility “keys” and deduct the cost from his rental payments. Copies of the receipts for such payments are within the supplementary bundle. We are satisfied on the evidence that the Applicant did effectively pay the whole rent required of him.
31. Given the sum included utilities, including internet, from which the Applicant benefitted, some deduction to allow for the same is justified. Mr Swartz paid for utilities for the whole of the flat totalling £545. His share of that sum would be 1/6th. It is likely certain other utilities would have been paid by the Respondent and doing the best we can we assess the rent net of utilities to be £7,000.
32. We must now consider the particular circumstances of this case and the conduct of the parties.
33. We are satisfied that the offence we have found to be committed is a serious offence. The Applicant awoke to find the Respondent, with whom he was in dispute, and an unknown person in his bedroom where he had been asleep. In our judgment this is exceptionally poor conduct by a landlord and someone who is a director of a letting agency.
34. The Respondent has not attended the hearing and we have no knowledge as to the financial circumstances of the Respondent. The Respondent could have submitted the same as part of his response which was within the bundle. He did not. We assume that he would be able to pay any amount which we should award.
35. It is not suggested that the Respondent has any relevant criminal convictions which we should take account of.
36. We also take account of the Applicant’s conduct. We find there is no negative conduct on his behalf. He was clearly upset that his attempts to re-new the tenancy had failed but was entitled to remain in the

Property at the very least until the end of his fixed term and even after unless and until the Respondent obtained a court order.

37. We do note that within the videos and audio it is clear the parties were trying to see if they could agree some sort of financial resolution to allow the early termination. Both sides were entitled to have such negotiations.
38. Overall we are satisfied the offence we find proved is serious and the conduct of the Respondent was poor. We assess he should reimburse 80% of the net rent being a sum of £5,600. Such sum should be paid within 28 days of this decision.
39. 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. The Applicant has been successful and we are satisfied we should do so and so the Respondent should also pay the sum of £300 within 28 days in addition to the rent we have found should be repaid..

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
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 penalty¹ 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?²
- (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:

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

² 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.