FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/26UB/HMH/2022/0001**
HMCTS code (audio, video, paper)	**:**	**F2F**
Property	**:**	**97 Whitefields Road, Cheshunt Waltham Cross EN8 0EL**
Applicants	**:**	**1. Mr Grzegorz Oleszczuk** **2. Mrs Agnieszka Oleszczuk**
Respondent	**:**	**Mrs Irena Druce**
Type of application	**:**	**Application by tenants for a rent repayment order** - ss 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Judge David Wyatt** **Miss M Krisko BSc (Est Man) FRICS**
Date of decision	**:**	**22 December 2022**

DECISION

Description of hearing

This has been a face to face hearing. The documents we were referred to are described in paragraph 4 below. We have noted the contents.

Decision

The tribunal orders the Respondent to pay £4,500 to the Applicants.

Reasons for the decision

Basic details

1. On 9 June 2022, the tribunal received an application under section 41 of the Housing and Planning Act 2016 (the "**2016 Act**") from the Applicant tenants for a rent repayment order ("**RRO**") against the Respondent landlord in respect of the Property.

2. The Property is an end-terrace house with three bedrooms. Originally, the Respondent let it to the Applicants on an assured shorthold tenancy for a term of 12 months from 16 February 2013 at a rent of £1,150 per month. The only other tenancy agreement provided to us is for a term of 12 months from 15 April 2016 at a rent of £1,190. Following the expiry of that fixed term, a statutory monthly periodic tenancy continued until July 2022.

Procedural history

3. On 26 July 2022, a procedural judge gave case management directions. The parties exchanged documents pursuant to those directions. The judge later gave permission to rely on videos produced by the Applicants with accompanying translations, having directed that the Respondent provide any objections to the videos or translations by 19 October 2022.

4. Ultimately, the documents to which we were referred (as summarised in the further directions given in advance of the hearing) were: (a) the Respondent's main bundle of documents (hard copy received on 2 September 2022); (b) the Respondent's additional bundle of documents (hard copy received on 5 September 2022); (c) the Applicants' bundle of documents, including those provided with the original application (received on 9 September 2022); and (d) the Applicants' e-mail of 30 September 2022 with links to videos and the Applicants' translations of what was being said in Polish in those videos. The Respondent did not object to these videos or translations. We took them into account and they were discussed at the hearing. On 25 November 2022, the tribunal received an e-mail from the Respondent attaching a letter from an officer of the local housing authority (Borough of Broxbourne) dated 9 September 2022 and photographs, saying these showed damage caused to the Property when the Applicants left. At the hearing, Mr Oleszczuk confirmed there was no objection to these being taken into account.

5. At the hearing on 1 December 2022 at Romford County Court, Mr Oleszczuk represented the Applicants, speaking largely through the interpreter arranged by the tribunal office. The Respondent was mainly represented by her husband, Mr Wiesiek Druce, making some additional representations herself. There was no inspection; we were satisfied that an inspection was not necessary. At the hearing, Mr Druce said he was the co-owner of the Property with the Respondent. Mr Oleszczuk said

only the Respondent was the landlord, as set out in the tenancy agreement, and he did not seek to add Mr Druce to the proceedings.

Power under the 2016 Act to make a RRO

6. Chapter 4 of Part 2 of the 2016 Act confers power on the tribunal to make a RRO (here, an order requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant) where a landlord has committed any of the offences specified in section 40 of the 2016 Act. By section 41, a tenant may apply for a RRO only if the offence relates to housing that, at the time of the offence, was let to that tenant, and the offence was committed in the period of 12 months ending with the day on which the application was made. By section 43, the tribunal may make a RRO if it is satisfied, beyond reasonable doubt, that the landlord has committed the alleged offence.

The alleged offences (unlawful eviction or harassment of occupiers)

7. In the earlier stages, the Applicants had seemed to be making allegations of offences under section 6(1) of the Criminal Law Act 1977, section 30(1) of the Housing Act 2004 and sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (the "**1977 Act**"). The first two fell away for the purposes of section 40 of the 2016 Act because no-one was present at the house on 7 February 2022 when Mr Druce broke in (as described below) and no rent was paid during the period when the improvement notice had become operative.

8. Mr Oleszczuk confirmed the Applicants were alleging that the Respondent had committed offences under sections 1(2), (3) or (3A) of the 1977 Act:

> *"…(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.*
>
> *(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 calculated 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 in question 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.

Background

9. The Applicants occupied the Property as their family home. They said that from the beginning of the tenancy in 2013 they had complained about a smell of gas, gas hob rings not working, kitchen drains blocking, no gas or electrical safety certificates, smoke detectors not working and broken window fittings. They said that in February 2016 the boiler had broken and taken "many" weeks to be replaced. They said that in 2019 they had reported a broken fence but this was not repaired and in April 2020 a bicycle was stolen through the broken fence, and they had paid £625 to repair the fence. The Applicants produced a complaint letter dated 27 July 2020, which was their first written complaint. They said that, from November 2021, they had stopped payment of rent until repairs were done. The Applicants said that on 20 November 2021 Mr Druce had given them a "Notice of Eviction".

10. The Applicants alleged that on 22 November 2021, 18 December 2021, 13 January 2022 and 7 February 2022 the Respondent and/or Mr Druce had attended the Property and harassed the Applicants and/or their children. They said that on 7 February 2022 Mr Druce had waited in his van parked around the corner until the Applicants had all left the Property, then broken into the Property to evict and/or harass the Applicants and continued when Mrs Oleszczuk returned until the police arrested him. They said that on 28 February 2022 the gas was turned off and on 15 April 2022 Mr Druce spat at the Applicants' son. These allegations are considered in detail below.

11. On 25 February 2022, the Respondent's solicitors sent a notice under section 8 of the Housing Act 1988 seeking to terminate the tenancy for alleged rent arrears and alleged breaches of obligation. On 18 March 2022, having inspected on 3 March 2022, the local housing authority wrote to the Respondent about the Property, noting that the gas supply had been disconnected by an engineer as a result of leaks and the Applicants said they had refused access to the person who attended with the landlord (on 13 March 2022) to seek to rectify this because they had not been able to show appropriate Gas Safe Register identification.

12. Possession proceedings were issued on 19 April 2022. On 25 April 2022, the local authority served an improvement notice on the Respondent. The Applicants said no steps had been taken to carry out any of the remedial works set out in the improvement notice.

13. The Applicants left the Property between 7 and 9 July 2022 without informing the Respondent. Mr Oleszczuk said that because of the alleged harassment they had avoided contact with the Respondent until they had left the area. The Respondent said the Applicants had left the door open and rubbish at the Property, so she had been advised to leave the Property empty with a notice in the window for a reasonable period in case the Applicants intended to return. Two weeks later, the Applicants sent the door key to the Respondent in the post.

Alleged unlawful eviction/harassment

14. The Applicants said that on 22 November 2021 (following the "Notice of Eviction" on 20 November 2021) Mr Druce, accompanied by two other men, had forced his way past the Applicants' 17-year-old daughter, entered the Property and taken photos. Mr Oleszczuk said he had reported this to the police on 24 November 2021 as harassment. The Respondent relied on a letter from estate agents from Christopher Stokes asserting that on 22 November they (Ms Ellis and Mr Forecast) had been invited to value the Property for rental, met the landlord at the front door, a young woman had opened the door and allowed them in and they walked around with the landlord while the tenant remained downstairs. Another letter, apparently signed by Ms Ellis, said they had visited again on 27 November 2022 (obviously meaning 2021) but the tenant had refused access, opening the door but not allowing anyone in.

15. On the evidence produced, we are not satisfied these matters were an offence under section 1(3) or (3A). It is likely that no-one forced their way in. The visit may have been sly, having been refused access for a similar visit in 2020, but it would have been natural for the Applicants' daughter to let the landlord and estate agents in (she had attended the same school as the Respondent's children). However, since the visits in November 2021 with estate agents were only shortly after the rent payment for that month was not made and Mr Druce gave the Applicants his "Notice of Eviction", we take them into account in relation to the following events.

16. On 18 December 2021, Mr Druce cut the padlock on the side gate at the Property (apparently with bolt cutters), walked away, then returned with a measuring tape, which he conspicuously held up to the windows, and walked around the perimeter of the garden making notes, with Mrs Oleszczuk coming out and arguing with him, talking about repairs and saying that she was not willing to leave until all repairs were done. This is recorded in the videos labelled exhibits 9 and 25. At the hearing, Mr Druce confirmed he had broken in, saying there had been messages asking for repair but the Applicants had refused to allow access to the house and it had always been the arrangement that Mr and Mrs Druce would have copies of keys and access to the shed in the garden. We asked the Respondent twice whether she had known Mr Druce would be breaking in. She did not answer beyond saying she knew he was going. The Applicants' translations of what was said by Mr Druce to Mrs Oleszczuk in the videos had not been disputed. These included comments from Mr Druce that: "*it should be empty a long time ago*" and "*It's very unpleasantly because you're taking subsidies and listen you don't pay money, services are informed, you are doing in the direction you will be thrown away* (sic)", Mrs Oleszczuk saying she was waiting for roof and other repairs, Mr Druce saying that he would not do anything at the Property and saying during exchanges between them: "*I just want you to move out*" and "*you will spend Christmas at the street* (sic)". At the hearing, Mr Druce said this translation was not perfect and they spoke to each other as they did because they knew each other very well, but he went on to confirm the same general meaning of what he had said: he would not carry out any repair works because the Applicants were not paying rent and he wanted them out.

17. We are satisfied beyond reasonable doubt that the acts on 18 December 2021 were an offence under section 1(3) of the 1977 Act. They followed the "Notice of Eviction" and two visits with estate agents in November 2021, and were just after a second monthly rent payment had fallen due but not been paid. In the circumstances, breaking into the garden through the side gate and the essence of what was said by Mr Druce (even if we assume that he was responding to outraged or inflammatory argument from Mrs Oleszczuk) on 18 December 2021 was calculated to interfere with the peace or comfort of the Applicants, with intent to cause the Applicants to give up occupation of the Property. Those acts were not really (or not only) about repairs or inspecting to plan repairs. They were caused (or assisted or encouraged) by the Respondent. Even if we are wrong and this was not an offence under section 1(3), for essentially the same reasons we are satisfied that this would have been an offence under section 1(3A); there were no reasonable grounds for the relevant acts. If landlords want tenants to give up occupation against their will, they must bring possession proceedings in court, however badly or otherwise those tenants are behaving.

18. The Respondent had produced a video from 13 January 2022 showing the Respondent ringing the doorbell at the Property. Mr Oleszczuk said for the first time at the hearing that the Respondent had pressed the bell

repeatedly and had made accusations to Mrs Oleszczuk when she opened the door. There had been no suggestion of this in the documents. We do not make any findings about this allegation because, as we said at the hearing, that would not be fair. Despite the case management directions, the allegation was made far too late and Mrs Oleszczuk did not attend the hearing.

19. The Applicants had produced a set of short videos of particular times on 7 February 2022, taken using a camera mounted high on the front elevation of the Property. The video labelled exhibit 14 shows Mrs Oleszczuk leaving the Property, with Mr Druce's van parked around the corner, up the street behind another vehicle. Exhibit 14A [15:41] shows an individual in a high-visibility jacket ringing the doorbell holding a parcel. Exhibit 14B [15:47] shows Mr Druce rushing to drill the front door lock, running back to his van, then appearing at the side with a long rod, with the same individual (who had in exhibit 14A apparently been pretending to be a courier to check no-one was inside the Property) coming to talk to him. Exhibit 14C [15:49] shows the "courier" trying the door and Mr Druce moving his van up alongside the Property, then emerging with a longer rod and going to the side. In Exhibit 14D [15:51], Mr Druce discards that rod, tries to force the door and handle, goes back to his van, gets a crowbar and levers the door frame, kicking the door, and ultimately breaks in.

20. At this point, Mrs Oleszczuk drives up and starts filming using her mobile phone. The Respondent then also appears and starts filming on her mobile phone, then goes into the Property. In the Applicants' translations, as she goes into the Property the Respondent says to Mrs Oleszczuk "*you don't pay to me*". Again, that translation had not been disputed before the hearing. At the hearing, the Respondent told us she had not said anything like this, but had referred to fixing a leak. In exhibit 14E [15:44], Mr Druce picks up the discarded parcel from outside, and the "courier" goes in with a small case and a tool. The Applicants' translations indicate that Mr Druce said to Mrs Oleszczuk: "*good bye madam get out of here*". Mr Druce said he did not remember whether he had said anything like that. In the video, Mrs Oleszczuk tries to follow Mr Druce into the Property. Mr Druce blocks the doorway with his arm to stop her and shuts the front door, leaving her outside.

21. In exhibit 14F [16:02], the first police officer arrives, having been called with a report of a burglary. Mr Druce opens the door, confirms he is the landlord and says (in English) he has got a new tenant because "*they are over two months, three months, what is it…*". When we asked about this, Mr Druce said the point of breaking in had been to try to stop damage from a leak which had been reported by the Applicants when they would not let them in to do work. In exhibit 14G, the police officer talks to each side separately. Mr Druce comes out, gets a tool box from his van and goes back in. Ultimately, in exhibit 14K [17:00], Mr Druce is taken away in handcuffs. After various discussions when the Applicants cannot get back into the Property, in exhibit 14N the police officer arrives with a

bunch of keys, saying he found them in Mr Druce's pocket. The Applicants say it is their set of keys which had been hanging up in the Property, identifying what they say are a bike lock key and other keys.

22. We are satisfied beyond reasonable doubt that the acts on 7 February 2022 were an offence under section 1(2) of the 1977 Act. The Respondent caused (or assisted or encouraged) Mr Druce to unlawfully deprive the Applicants of their occupation of the Property or attempt to do so. Given the events detailed above, particularly what was said by Mr Druce to the police officer, the Respondent's evidence that they had been acting only to carry out emergency works to the Property was not credible. There was no real suggestion that Mr and Mrs Druce wanted to carry out emergency works. On the contrary, Mr Druce appeared to be saying to the police officer, and the police officer obviously understood him to be saying, that he was a landlord in possession of the Property following a lawful eviction for non-payment of several months' rent.

23. We are not satisfied that the other matters referred to by the Applicants, as summarised below, were offences under section 1 of the 1977 Act. However, we take these into account as part of our overall assessment, later in this decision, of the conduct of the parties.

24. On 28 February 2022, the gas supply had been turned off by an engineer whose visit had been arranged with notice from the Respondent's solicitors, but this appears to have been the result of safety concerns.

25. On 13 March 2022, Mr Druce had attended the Property with "Hubert" and another individual, asking for access to carry out work. In the relevant video, Hubert briefly shows the Applicants a card and in the Applicants' translations they say this was not Gas Safe Register identification. When we asked about this, Mr Druce said he knew all the rules and regulations because he is a builder who builds houses himself. He agreed any work on gas fittings or checks of appliances must be carried out by someone on or authorised through the Gas Safe Register. Particularly in view of the events on 7 February 2022, when Hubert had apparently pretended to be a courier to check whether anyone was in the Property before Mr Druce broke in, we consider it was reasonable for the Applicants to insist on seeing Gas Safe Register identification, but we are not satisfied that this was harassment. It was probably Mr Druce attempting to arrange repair work as cheaply as possible.

26. Exhibit 22 was a video apparently taken on 15 April 2022, showing Mr Druce looking over the side gate at the Property. The Applicants' son accuses Mr Druce of spitting at him. Mr Druce tells him to stop filming him and appears to pick something up from the ground outside, as if threatening to throw it. Exhibit 24 shows Mr Druce removing a notice stuck by the Applicants to the front of the house and pushing it into vegetation in the front garden. We consider it likely (or at least we have a reasonable doubt to the effect) that on 15 April 2022 Mr Druce was looking over the fence to inspect the garden following pressure from the

local authority to carry out works (there had been a complaint about a fallen tree) and that as Mr Druce told us at the hearing the video was a selective recording of what happened in between less than constructive behaviour by both sides.

Whether to make a RRO

27. It is clear from the 2016 Act that the tribunal has discretion as to whether to make a RRO if satisfied beyond reasonable doubt that the relevant offence(s) have been committed. The tribunal must in determining the amount of a RRO take into account, in particular, the matters set out in section 44 of the 2016 Act. In Williams v Parmar & Ors [2021] UKUT 0244 (LC), the Chamber President noted [at 43] specific factors which appear appropriate to take into account when deciding whether to make a RRO and describes [at 50 to 53] the type of exercise to be undertaken, noting that the reasons for introduction of the broader regime of RROs in the 2016 Act will: "*…generally justify an order for repayment of at least a substantial part of the rent*".

28. In view of the nature of the offences which have been proven, we have decided to make a RRO against the Respondent. Our reasons are explained below as (with the guidance mentioned above in mind) we consider the stages suggested by the Upper Tribunal in Acheampong v Roman & Ors [2022] UKUT 239 (LC) at [20-21].

The whole of the rent for the relevant period; no utilities

29. By section 40 of the 2016 Act, the amount of the RRO must relate to rent paid during the period in the table at section 40(2), which indicates that for these offences the amount must relate to rent paid by the tenant in respect of the period of 12 months ending with the date of the offence. From August 2020, the Applicants had paid the rent of £1,190 each month until October 2021, but had then from November 2021 stopped paying any rent except for a payment of £11.90 in March 2022. Accordingly:

    (i) the whole of the rent for the relevant period in relation to the first offence, on 18 December 2021, would be £11,900 (the ten monthly payments from the payment on 18 January 2021 to the payment on 18 October 2021; the payment on 16/17 December 2020 falls just outside the 12-month period);

    (ii) the whole of the rent for the relevant period in relation to the second offence, on 7 February 2022, would be £10,710 (the nine monthly payments from the payment on 16 February 2021 to the payment on 18 October 2021).

30. There was no suggestion that we should make any deduction for utilities. In the usual way for this type of tenancy, these appear to have been the responsibility of the Applicants.

Starting point: the severity of the offences

31. By section 1(4) of the 1977 Act, summary conviction for any offence under section 1 may result in a fine or imprisonment for up to six months and conviction on indictment may result in a fine and/or imprisonment for up to two years. That is substantially higher than the maximum sentences for the other types of offence in respect of which a RRO may be made. But this is a relatively broad category, including unlawful eviction under s. 1(2) and less direct harassment under s.1(3A).

32. The offence on 7 February 2022 was a moderately serious offence of this type, and the offence on 18 December 2021 was less serious, compared to other examples of the same type of offence. There was no violence to people, but the offence on 7 February 2022 was planned and persistent, damaging the Property. This was a concerted effort unlawfully to evict the Applicants which was stopped only when the police intervened. Based solely on the severity of the two offences added together, as an appropriate proportion of the rent paid for the relevant periods our assessment is that the starting point for the penalty to be imposed by the RRO is £8,925. Simple proportions are misleading in this case because the periods (as set out above) mainly overlap, but as a cross-check this would be 75% of the rent paid for the relevant period for the offence on 18 December 2021 and over 83% of the rent paid for the relevant period for the offence on 7 February 2022.

Other matters relating to the conduct of the landlord and the tenants

33. The Applicants said that on 2 February 2013 they had paid a deposit of £1,150. The Respondent denied this; they said they had not insisted on payment of the deposit because this was a young family with children, expecting them to pay it later, and had asked a few times but the Applicants had always been unable to pay it. The Applicants had not produced a bank statement or the like to show payment, but this was more than nine years ago. On the balance of probabilities, we accept the evidence of the Applicants that this deposit was paid because that is consistent with the only contemporaneous documents produced by the parties. The £1,150 deposit is specified in the 2013 tenancy agreement, which confirms that it will be registered with one of the tenancy deposit protection schemes. The 2016 tenancy agreement, with a higher rent, simply specifies the same £1,150 deposit and gives the same deposit protection confirmation; there is no suggestion in the contemporaneous documents that this deposit from 2013 is still to be paid.

34. The Applicants sent their first complaint letter to Mr Druce and the Respondent on 27 July 2020, listing problems with the Property which included the complaints noted earlier in this decision. The letter refers to Covid work difficulties, suggests 80% rent, and claims £625 for costs of repairing the fence. The Respondent said they had asked for a receipt for this cost but none had been provided and they believed the fence had not been repaired. The parties produced copies of various messages about

access arrangements. For example, a reply from the Respondent on 27 October 2020 said that Mr Druce had wanted to inspect the house on Sunday but had been refused access, insisting on being allowed to inspect within the next three days. The Applicants responded and repeated that they would only be available on Saturdays. Mr Druce said he often worked away for weeks at a time and needed to have access to the Property when he was home at weekends to carry out any necessary works but from 2019/2020 the Applicants began to be obstructive about access.

35. The Applicants probably did not make any serious complaints about the Property until 2020. Having heard from both parties, we consider it likely that Mr Druce had put the Property in at least fair condition to let it out in 2013. It is very unlikely that the Applicants would have made no real complaints about a smell of gas or similar serious concerns in their family home if those had been a problem ever since they moved in. The allegation that it had taken "weeks" to replace the boiler in February 2016 was vague but not seriously contested and is consistent with the economical way that Mr Druce dealt with repairs, so we take it into account. We consider it likely that the relationship broke down from 2019 or early 2020 because (as they said) Mr and Mrs Druce told the Applicants they wanted to increase the rent or sell the Property and it appears the Applicants were then, at least by the time of the start of the Covid pandemic in 2020 were, suffering financial difficulties. We had no evidence of rent payments in 2019, but the Applicants made various irregular rent payments between January and July 2020. The parties agreed at the hearing that the remaining unpaid rent in respect of that period totals about £850 (based on the documents produced, it appears the figure is £854).

36. There was no suggestion that the Respondent was responsible for the cost of the stolen bike and no evidence of the £625 costs said by the Applicants to have been paid to repair the fence in 2020. Mr Oleszczuk confirmed this figure had largely been for his time working on the fence. In the absence of any real evidence to show what was said to have been wrong and what was done to repair the fence we are not satisfied that he did anything substantial to the fence or that this is a substantial negative factor against the Respondent. Mr Oleszczuk said the Applicants had stopped paying rent from November 2021 when water had started dripping into a bedroom from the leaking roof, after they had been reporting the problem with the roof for over a year (it was mentioned in their letter of 27 June 2020).

37. As noted above, the gas supply had been turned off by an engineer on 28 February 2022 for safety reasons. The individual attending the Property with the landlord and another person on 13 March 2022 was unable to provide Gas Safe Register identification. The e-mail on 18 March 2022 from the local authority warned the Respondent that the gas problem needed to be resolved and explained it was reasonable for the tenants to ask to see Gas Safe Register identification, offering to attend with a

professional gas engineer instructed by the Respondent to try to avoid any further problems. Despite this, it appears no real progress was made and the local authority served an improvement notice dated 25 April 2022. This required that by 23 May 2022 the gas boiler be brought back into operation by a gas safe engineer, that new front and back door handles be fitted, that all broken window mechanisms be repaired, that the drain be unblocked, that hand rails be fitted on the stairs, that electrical remedial work (set out in an electrical installation condition report from 28 February 2022) be carried out and that any necessary work in respect of any gas appliances be carried out.

38. The Respondent said, in essence, that the Applicants had not given access for these works and in effect they were not free to start work until late July or early August 2022 when it became clear the Applicants had left. The letter from the local authority records the main outstanding problems when they inspected again on 19 August 2022. The Respondent blamed the Applicants for the damage/problems referred to in the letter from the local authority and shown in the photographs provided. Some of these (such as holes for cables, pieces cut out of internal door frames, a damaged fridge/freezer dumped in the garden and marks caused by bonfires in the garden) were probably caused by the Applicants. However, many of them were matters for which the Respondent was probably responsible (such as the damaged front door, damp on ceilings which is likely to have been caused by water leaking through the roof, and the defective cooker), including matters which had been specified in the improvement notice.

39. In our assessment, the conduct of all parties in relation to these matters was poor. The Applicants should obviously not have been exposed to the gas and other disrepair problems, the harassment, the attempted eviction or the other matters summarised earlier in this decision. These had significant impact on their living conditions and peace of mind while living at the Property. We note that their bundle includes a record of time spent by counsellors assisting each Applicant. The Respondent failed to arrange gas and electrical safety check inspections at appropriate intervals. The engineer inspecting on 28 February 2022 turned the gas off, leaving the Applicants living without heating while the Applicants reasonably insisted that the Respondent use a Gas Safe Register engineer to carry out necessary works in relation to the gas piping/appliances. Following the deterioration in the relationship, the Respondent had made attempts (without any real vigour or possibly, from November 2021, without substantial funds to do so while rent was not being paid) to carry out overdue works as cheaply as possible. But any repair efforts they did make were probably similar to those shown in the videos, with Mr Druce seeking to attend on short notice with or without builders/friends and others. Given the events described above, it was not unreasonable for the Applicants to be careful about access arrangements from November/December 2021. Further, as Mr Oleszczuk observed and was not disputed by Mr or Mrs Druce, internal access would not have been needed for the roof repairs.

40. However, the Applicants lived at the Property for nine years. They knew that the Respondent wanted to increase the rent from the increased level agreed in 2016 and chose to stay at the Property. From 2020, the Applicants became obstructive about times for access, making it more difficult for the Respondent to carry out repairs in the way they had in the past. The Applicants knew that the Property was subject to a mortgage and the Respondent needed to pay their mortgage lender, because the Respondent had told them that. In addition to the £854 unpaid from 2020, they paid no rent for their use of the Property between November 2021 and July 2022 apart from their token payment of £11.90. In our assessment, that was a choice; they had some financial difficulties at the time of the start of the pandemic in 2020 but there was no suggestion that they could not afford to pay substantially all of the rent. Facing the proceedings eventually issued in April 2022 for possession and rent arrears, the Applicants then disappeared in July 2022 without notifying the Respondent, leaving the Property in a poor state (even disregarding the matters for which the Respondent was responsible), with the door open or at least unlocked and returning the keys only two weeks later.

41. Looking broadly at the rent, since 2020 the Applicants paid a little over 11 months' worth for 2020, 10 months' worth for 2021 and almost nothing for the seven months in 2022 (in total, a little over 21 of 31 months, about 70%). However, we were told that the Respondent is still suing the Applicants in the county court for the unpaid rent. The figures were not confirmed but it appears this is likely to be the £854 from 2020 plus about nine months' rent from November 2021 to July 2022, less the £11.90, which would be about £11,500, plus any other claims. That will be subject to uncertain factors such as any defences or other claims the Applicants may have, any question of how the £1,150 deposit has been applied or is to be accounted for, whether the RRO we make is set off against any unpaid rent otherwise payable and whether the Applicants satisfy any award; we make no comment or finding about any such matters.

Other circumstances

42. There was no suggestion that the Respondent or Mr Druce had at any time been convicted of any offence. They own their home and own the Property as an investment; they had not been landlords before and do not own any other properties. Both properties are subject to mortgages. Mr Druce works as a builder on a relatively modest scale, building houses and carrying out other building work. We accept their evidence, which was not challenged by the Applicants, that they have limited resources and have had to live economically to meet their mortgage payments and keep both properties, particularly when rent was not being paid.

Conclusion

43. But for the seriousness of the relevant offences, we might not have made a RRO in this case. In all the circumstances, we have decided to reduce the starting point to impose a penalty of £4,500. We consider that is the appropriate amount to punish the Respondent, deter them from further offences and dissuade other landlords from breaking the law. There was no financial benefit from the relevant offending.

44. A RRO of £4,500 is low for offences of this type and the offences in this case (representing just over half of the starting point). The poor conduct of the Applicants means that it would be inappropriate to impose a higher penalty, but the penalty should not be further reduced. The Respondent and Mr Druce may have acted out of desperation, finding it difficult to pay the mortgage or carry out repairs without rent payments, but that is no excuse for the offences which were committed. The Respondent, Mr Druce and any landlord must know that however badly tenants behave and however desperate the landlord is, tenants cannot be evicted except pursuant to a court order. They also need to properly understand such matters as the responsibilities of the landlord to keep a privately rented property in good repair and ensure that they can show compliance with the relevant gas and electrical safety requirements. Their failure to do so was poor conduct and left them exposed when the Applicants became less friendly, then difficult about access for works, and then stopped paying rent.

Comments

45. While this does not form part of our decision and we cannot advise, we encourage the parties to attempt mediation or the like to seek to settle their remaining dispute(s). If the RRO for £4,500 and the deposit of £1,150 are deducted from any amounts otherwise owed by the Applicants to the Respondent, mediation may help the parties to resolve their dispute about any balance remaining after such deductions. However, the parties must take their own independent legal advice.

Name: Judge David Wyatt **Date:** 22 December 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).