



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

Case Reference : CHI/24UL/HMB/2022/0007

Property : 13 York Road, Aldershot, Hampshire GU11
3JG

Applicant : Zdena Dvorakova

Representative : Adam Bernard Solicitors

Respondent : Mr Phil Curran

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 : D Banfield FRICS (Chairman)
Judge Tessa Hingston
Mrs J Herrington

Date of Hearing : 10 January 2023 at Havant Justice Centre

Date of Decision : 20 January 2023

DECISION

The Tribunal makes a rent repayment order in the sum of £3,500 for the rent paid for the 12 month period from 20/2/2021.

The Tribunal makes an order that the Respondent shall within 28 days of this Order reimburse the Applicant with the hearing and application fees in the sum of £300.00.

Introduction

1. On 19 August 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. The amount claimed is £6,600 for the period of 12 months commencing 20 February 2021.
2. Directions were issued on 25 October 2022 setting out a timetable for the exchange of documents between the parties and the preparation of a hearing bundle. A hearing date was fixed for 5 January 2023 and subsequently re-arranged for 10 January 2023 at Havant Justice Centre.
3. As directed a hearing bundle was provided comprising 240 pages reference to which will be indicated as [*].
4. The hearing commenced at 10am and was attended by the Applicant, Ms Zdena Dvorakova, her Solicitor Advocate Mr Ehtesham Khan and the Respondent landlord Mr Phil Curran.
5. Mr Curran explained that he had just returned from abroad and had not noticed the Tribunal's letter re-arranging the time of the hearing from 2pm to 10am hence the delay in him arriving. Mr Curran did not appear to have the electronic bundle with him but had a sheaf of papers to refer to. Mr Curran accepted Mr Khan's offer to share his electronic bundle.

The alleged offence

6. The application to the Tribunal alleges that Ms Dvorakova was illegally evicted contrary to the Protection from Eviction Act 1977, failed to provide a Gas safety Certificate, interfered with her quiet enjoyment by carrying out building works and failed to protect her deposit as required by Section 213 of the Housing Act 2004. In addition to the claim for rent a further claim was made for damages of £1,890 and £900 as a penalty for not protecting the deposit. The total claimed was therefore £9,390.
7. In defence the Respondent says that the room was let under the Government's Rent a Room scheme which did not have the same protection as an Assured Tenancy.

Relevant Law

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

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 2 refers to eviction or harassment of occupiers and offence no 5 refers to Control or management of an unlicensed HMO

9. Section 44 sets out the amount of the order being “the period of 12 months ending with the date of the offence” for offence nos. 1 or 2 and “a period not exceeding 12 months, during which the landlord was committing the offence” for offence nos. 3 to 7.
10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

The accommodation

11. On the ground floor there is a self-contained studio of 2 rooms, kitchen and shower/WC with direct access to the garden and a shared kitchen. On the first is a front bedroom, room to the rear and a shared bathroom. On the top floor is a large bedroom.

The Hearing

The Applicant

12. Mr Khan helpfully confirmed that the only determination sought from the Tribunal was the recovery of £6,600 rent. Damages and rent deposit claims were therefore no longer under consideration.
13. Mr Khan said that the Applicant entered into an Assured Shorthold Tenancy for 6 months from 20 February 2021 [31] which contains both parties’ signatures and indicates that the Landlord’s address is 119 Lower Weybourne Lane. A letter from the Respondent dated 6 February 2021 confirmed receipt of the deposit and the rent of £550 per calendar month payable on the 1st of each month.[65].
14. Proof of rent paid is provided by way of bank statements totalling £6,600. [33-58]. The letter from the Respondent’s solicitors dated 6 July 2022 [59] by referring to taking “Court Action for an Order for Eviction” confirmed that this was not an Excluded Tenancy under the Rent a Room Scheme as such action was unnecessary if that was the case.
15. In her witness statement [22] the Applicant explained how she came to take up the tenancy and that the Respondent visited the property every

week to change the toilet paper and clean the house without any previous written notice being given. She had asked permission for a friend to stay but accepted the Respondent's refusal due to Covid rules.

16. From 2/7/21 to 25/7/21 the Respondent moved in and used the bathroom and kitchen without knocking and dressed in his underwear. He left used clothes randomly in the kitchen.
17. On 1 October 2021 the Applicant met the Respondent going to the bathroom without any previous notice after which she showed him the AST agreement to remind him of her rights and requiring 1 week's written notice of visits.
18. Due to the disturbance from the construction works the Applicant returned to the Czech Republic on 5 June 2022 during which time she heard from one of the other tenants, Kripa that she was to get 3 months' notice.
19. On returning on 16 June 2022 the Applicant found the front door open and the Respondent hoovering the bathroom and on 24 June there was a painter coming inside the property.
20. Following further attempted correspondence on 14 July 2022 the Respondent said that he had changed the locks and he would call the police if the Applicant attempted to enter. Her property would be put into bags and kept safe until she arranged to collect them.

The Respondent

21. Mr Curran explained that this was a 3 bedroom house on three floors that he had bought 30 years ago. He had let rooms on the Rent a Room scheme for a number of years and did not provide written tenancy agreements. The Applicant had asked for one however and to be helpful he had obtained a blank form from WH Smith and given it to her. The address he gave was his girlfriend's.
22. The room was advertised on My Spare room.Co.uk [165] and referred to as a "Rent a Room" by his accountant on 17 May 2022 [212] and Tax Return [214].
23. There had been issues with the Applicant over her breaking Covid Rules and he decided that he no longer wished to rent out rooms. He gave the Applicant notice to quit on 19 June 2022 effective on 14 July 2022 at which point he changed the locks.
24. The Respondent accepted that at the time the Applicant entered into the tenancy he was not resident in the property with Mr Ryan on the top floor and Deepika in the ground floor studio.
25. In a letter from the Respondent to the Applicant's solicitors dated 7 November 2022 [207] the Respondent stated that;

- The Applicant had already removed her belongings (It is presumed that this refers to the damages claim)
- The Applicant disregarded Lockdown rules and refused to answer his text regarding her voting rights
- The only work carried out was cosmetic with the outside painted in June
- He had never lived at Lower Weybourne Lane which is “simply made up” He had his own bathroom, kitchenette, sitting room and bedroom whilst the 1 or 2 lodgers used the kitchen, bathroom and sitting room.
- Trouble started when the Applicant refused to show any identification and Ryan moved out due to her behaviour.

26. From the bundle the Tribunal noted the following key dates;

20/2/21	Applicant moves in
28/5/21	Ryan moves out of top floor
2/7/21	Respondent moves into top floor
25/7/21	Respondent moves out of top floor, Kripa moves in
1/6/22	Respondent moves into studio and starts “works”
19/6/22	Notice to quit given
July 22	Kripa moves out of top floor
4/7/22	Stepson moves into top floor
14/7/22	Locks changed

27. The date when Deepika moved out is disputed. The Applicant suggests May 2022 whereas the Respondent says he last received rent in May 2021 subsequent to which she stayed on an ad-hoc basis if the accommodation was free.

28. In summary, the Respondent says that this is a Rent a Room tenancy and the Applicant was an Excluded Tenant not entitled to the same procedures as a assured Shorthold Tenant. The Applicant simply rented a room in his house as a lodger and his visits were to maintain the common parts and garden for which no notice was necessary.

29. In answer to the Tribunal’s question the Respondent said that his costs were £1,700 Council Tax, about £100 per month for water and £175 per month each for gas and electricity.

30. Mr Khan said that the issue involved the Protection from Eviction Act and operating an unlicensed HMO.

Decision

31. The first task for the Tribunal is to determine whether or not the Applicant was an Excluded Tenant under the Rent a Room scheme. If she was then the Respondent may not have committed an offence in the way he brought the tenancy to an end. Likewise if he had been a resident landlord as he claimed then his use of the bathroom and kitchen and regular visits without notice would have been acceptable.
32. The Respondent insists that he was a resident landlord and that 13 York Road was his only or main residence, a requirement of the Rent a Room Scheme. The evidence however suggests otherwise. The signed tenancy agreement refers to it being an Assured Shorthold Tenancy and another address is given as that of the Landlord. The Respondent describes the suggestion that this was his residence at the time as being “simply made up” and that 13 York Road was his home.
33. In referring to York Road as his home he somewhat confusingly also accepts that at the time the Applicant entered into her tenancy all of the three lettable units were occupied by tenants.
34. The Tribunal has no hesitation in finding that on the evidence before it 13 York Road was not the Respondent’s sole or main residence and that the Applicant was an Assured Shorthold Tenant and thus covered by the Protection from Eviction Act 1977 section 3 which prohibits eviction without due process of law.
35. The means employed by the Respondent in obtaining possession are not in dispute and the Tribunal determines that in not obtaining an Order of the Court **offence 2 has been committed as referred to in S.40(3) of the 2016 Act.**
36. Mr Khan accepted that given the changes in occupation of the various rooms the assessment of when or if the property was an HMO would be difficult to pursue and was content to rely on the eviction without due process of law issue. The Tribunal therefore make no determination as to whether offence 5 “Control or Management of an Unlicensed HMO” has been committed.
- 37. The Tribunal also determines that the application was made within the time limit prescribed.**
38. Turning now to the amount of the order the Tribunal reminded itself of the Upper Tribunal’s decision in *Acheampong v Roman* [2022] UKUT 239 (LC) where Judge Cooke gave the following guidance: a. “20. The following approach will ensure consistency with the authorities: Ascertain the whole of the rent for the relevant period. Subtract any

element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available and experienced tribunal will be able to make an informed estimate. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment made by made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors, but it may be higher or lower in light of the final step. Consider whether any deduction from, or addition, to that figure should be made in the light of the other factors set out in section 44(4).

39. Following this guidance the whole of the rent for the period is £6,600. The Respondent says that his costs were £1,700 Council Tax, about £100 per month for water and £175 per month each for gas and electricity a total of £7,100 per annum for the whole house.
40. There is no calculation available to the Tribunal to ascertain an accurate proportion for the Applicant's room but doing the best it can determines that £1,600 is the costs applicable to the room that should be deducted from the rent paid.
41. Mr Khan disagreed with making any deduction as the costs the Respondent had incurred could be met from the rent the Applicant has paid and is unable to reclaim. This is an interesting argument but is not accepted by the Tribunal.
42. After deduction of costs the amount of potential rent repayment is therefore £5,000 and the Tribunal must decide whether any further deductions should be made.
43. In considering the Respondent's conduct we take into account his uninvited intrusions into the property albeit to carry out cleaning or maintenance. The photographic evidence we have seen suggests that the works carried out were decoration rather than any major refitting and as such, whilst a disturbance, were not a serious disturbance.
44. In changing the locks the Respondent acted illegally but there was no suggestion of violence and the video clips we have seen suggested that both parties retained control.
45. Other than the actions of the landlord there were no complaints about the standard of accommodation which from the photographic evidence appeared comfortable and well decorated.
46. In terms of conduct we find no evidence of any bad conduct on behalf of the applicant.

47. Taking all of the above into account we determine that the percentage to be the subject of the Order is 70% and accordingly, the Tribunal makes a rent repayment order in the sum of £3,500 for the rent paid for the 12 month period from 20/2/2021.
48. The Tribunal makes an order that the Respondent shall within 28 days of this Order reimburse the Applicant with the hearing and application fees in the sum of £300.00.

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 to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.