



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

Case Reference : LON/00AG/HMB/2022/0009

Property : Room 23, Third Floor, 16 Brooke Street,
London EC1N 7RB

Applicant : Kenneth Togher

Respondent : Origin Housing Ltd

Type of Application : Application for a rent repayment order
by tenant

Tribunal : Judge Nicol
Mrs L Crane MCIEH

**Date and Venue of
Hearing** : 9th March 2023
10 Alfred Place, London WC1E 7LR

Date of Decision : 13th March 2023

DECISION

- 1) The application for a Rent Repayment Order is dismissed.**
- 2) The Tribunal makes the following orders as to costs:**
 - (a) The Respondent shall reimburse the Applicant his Tribunal fees totalling £300.**
 - (b) The Respondent has behaved unreasonably in failing to participate in these proceedings and shall pay the Applicant his further costs of £19.95.**
 - (c) To the extent that the Respondent has incurred any legal costs arising from these proceedings, those costs are not to be regarded as relevant costs in determining the amount of service charge payable by any tenant.**

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. On 23rd September 2022 the Applicant applied to the Tribunal for a Rent Repayment Order (“RRO”) alleging that the Respondent was guilty of 2 relevant offences:
 - (a) Using violence to secure entry to a property under section 6 of the Criminal Law Act 1977; and
 - (b) Unlawful eviction or harassment contrary to section 1 of the Protection from Eviction Act 1977.
2. The hearing of this matter took place on 9th March 2023. The Applicant was the only attendee. The Tribunal had the following documents:
 - A bundle of 92 pages consisting mostly of written submissions and correspondence from the Applicant;
 - A Further Submission from the Applicant dated 7th February 2023;
 - The originating application form (not in the bundle);
 - A copy of the Land Registry entry for the freehold of the property (not in the bundle);
 - A copy of the Respondent’s Anti-Social Behaviour Policy (not in the bundle); and
 - A further note of submissions from the Applicant.

The landlord

3. In 2017 the Applicant was granted an excluded licence of Room 23, Third Floor, 16 Brooke Street, London EC1N 7RB. The property is managed by St Mungo’s, the homelessness charity, as agent for the landlord. The licence agreement sets out the following matters, amongst others:
 - (a) The aim of the project is to provide “A Hotel style service for people who have been working with Street Outreach services and who do not want to access more traditional supported housing services.”
 - (b) The accommodation comprises a room with communal facilities consisting of Reception, Dining Area, Guest Kitchens and Communal bathrooms.
 - (c) The licensee is licensed to occupy the premises as part of a move-on resettlement programme and not as a long-term home.
 - (d) Guests can stay for up to 2 years (subject to review) and during this time it is expected that individuals continue to work with their outreach worker to explore resettlement options.
 - (e) The weekly payment of the premises includes an occupancy charge and a personal service charge which totalled £233.73 at the commencement of the agreement. It was payable in advance on the Monday of each week.
 - (f) Clause 2.1 expressly states that the licensee does not have exclusive possession of their room.

4. The copy of the licence agreement provided by the Applicant is undated and is blank where the number of the relevant room is supposed to be. It also gives the landlord's name as "SPH Housing". The Applicant has complained that this is not the correct name of any registered social landlord and has suggested that some kind of fraud is involved. If there were any breach of the regulations concerning registered social landlords, that is not a matter for this Tribunal.
5. However, according to the [website](#) of the local authority, the London Borough of Camden, the Respondent used to be known as SPH Housing or the St Pancras and Humanist Housing Association. Over the last couple of decades or more, there have been a large number of examples of housing associations changing their names and merging or taking over other similar organisations. In such circumstances, it is not unknown for documents to be issued in an old name. It is not ideal but it is not significant or material to the current case.
6. The Land Registry has the freeholder as the Official Trustee of Charity Lands of the Charity Commission on behalf of the charity called St Ursula's Homes. They granted a lease to the Respondent, on the basis of which they have the power to grant tenancies. The Applicant asserted that the Respondent is his landlord and the Tribunal agrees.
7. It would have been useful to have the Respondent's view on this issue but, unfortunately, the Respondent has seen fit not to participate. The Tribunal found this unusual for a social housing provider and checked carefully whether the Respondent had been properly notified by the Tribunal of these proceedings and of the hearing.
8. The Tribunal has sent a number of emails and letters to the Respondent, including to a postal address at 110 Eversholt Street and to the email address for an individual named Leor Klier. The address is revealed by a Google Street View search to be an office of the Respondent. Both the address and Mr Klier are named on documents displayed on the Respondent's website involving another Tribunal case. No correspondence has been returned undelivered.
9. Further, the Applicant told the Tribunal that he had recently received documents from the Respondent following a data subject access request. In amongst those documents was his Tribunal application.
10. The Tribunal is satisfied that the Respondent has had full notification of the proceedings and the hearing and has had a full opportunity to participate. There is no apparent reason why they should fail to have taken that opportunity and that failure is extremely disappointing.
11. The Tribunal may make a RRO when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The two alleged offences are dealt with below. The Applicant is required to prove to the criminal standard, beyond a reasonable doubt, that the Respondent committed each offence.

12. The Applicant relied on a number of matters which he asserted constituted harassment:
 - (a) When he took up occupation, he was presented with the licence agreement referred to above. He refused to complete it because SPH Housing were named as the landlord, despite no longer existing. As already referred to above, the Tribunal does not regard this as significant and there is no evidence that it was intended as an act of harassment, let alone being proved beyond a reasonable doubt to be one.
 - (b) In the past the Applicant has suffered what he regards as an abuse of process and a severe invasion of his privacy by a government agency. He now jealously guards his privacy. When moving in, he made it clear that he wanted to be left alone. When staff nevertheless knocked on his door, for example, to check on him or ask him if he wanted an apple, he objected and asked everyone to stop talking to him. However, it did not stop. A Spanish man, whose name the Applicant does not know but who has been an assistant manager for St Mungo's at the property for around 4 years, continued to knock on his door, purportedly to ask if he was OK. The Applicant believes this was done in retaliation for complaints he made about disrepair.
 - (c) The Applicant is a qualified electrical engineer. He identified some electrical faults at the property. He also complained about disrepair, including the mixer tap in his room not working for some time despite its importance for washing his hands during the COVID pandemic. The Respondent failed to fix such problems within a reasonable time or at all.
 - (d) The nameless Spanish manager was prone to shouting at the Applicant in the communal areas, saying he was going to evict him. This was embarrassing and intimidatory, severely limiting the Applicant's ability to make use of or enjoy the communal facilities.
13. The Tribunal is not satisfied that the Applicant has established beyond a reasonable doubt that these matters amount to the commission of any offence under section 1(3) or (3A) of the Protection from Eviction Act 1977:
 - (a) Simply because the Applicant unilaterally demanded that everyone should leave him alone does not make it an act of harassment if he is not left alone. The building is used as a project for housing vulnerable people temporarily in order to relieve homelessness. There are likely protocols for checking up on residents which the staff are obliged to follow. There is no reason why staff should be upset by complaints about disrepair which are a normal part of a job for a housing officer, let alone that they should carry out retaliatory activity in breach of every objective of the project and their job. There is not enough evidence that any particular knock on the door was an act of harassment as opposed to a staff member doing their job. It may well have been insensitive and frustrating but it is not a criminal offence.
 - (b) The Respondent's failure to address various items of disrepair is a failure of service for which the Applicant does have legal remedies

elsewhere. However, again there is no evidence that such failures constituted acts of harassment.

(c) In particular, under section 1(3) or (3A) of the Protection from Eviction Act 1977 it is necessary to show that there was intent to cause the Applicant to give up the occupation of the premises or to refrain from exercising any right or pursuing any remedy or knowledge that the harassment would have that effect. The Applicant said he had found emails that the Respondent was discussing how to evict him for some two years. However, he has an excluded licence which means that the Respondent can evict him relatively easily, without a court order or formal notice. There is no reason why they should run a campaign of harassment to achieve what can be done quite easily. There is nowhere near enough evidence to establish beyond a reasonable doubt that the Respondent had the requisite intent or knowledge.

14. On 16th May 2022 the Applicant returned home to find that his door lock had been changed so that he could not get in. His neighbour in Room 24, Mr Graham Betts, said that the nameless Spanish manager had done it. The Applicant phoned the Respondent and they said that they would send a carpenter to change the lock back. When the carpenter did not appear by the evening, the Applicant arranged his own and had the lock changed. He told the Respondent the following day – there was no objection.
15. However, on 17th May 2022 the nameless Spanish manager came to the Applicant's door beating on it and trying to kick it down, shouting that he would evict the Applicant. The Applicant was in his room and the nameless Spanish manager would have known this from the CCTV system. The nameless Spanish manager called the police but the two attending policemen, one of whom was PS Kenneth Clarke, rather than taking his side, cautioned him against further action and advised the Applicant on how to protect himself from such actions in future. According to the Applicant, matters have improved since, with no more threats of eviction and an improved service.
16. As described by the Applicant, the nameless Spanish manager's behaviour was reprehensible and he himself may well have committed offences under section 6 of the Criminal Law Act 1977 and section 1 of the Protection from Eviction Act 1977. However, the issue before the Tribunal is whether the Respondent committed those offences.
17. In *R v Quereshi* [2011] EWCA Crim 1584; [2011] HLR 34 the Court of Appeal held that a person cannot be guilty of an offence under section 1(3A) of the Protection from Eviction Act 1977 on the basis that he is vicariously liable for another person's actions – a landlord may be found guilty of an offence under s.1(3A) only if he aids, abets, counsels or procures his agent to commit criminal acts or if the agent acted in conspiracy with the landlord.
18. In this case, the nameless Spanish manager is an employee of St Mungo's, the Respondent's agent. While the Applicant said there is

evidence in emails which he had not included in the bundle that the Respondent desired his eviction, there is no evidence that the nameless Spanish manager was acting with the Respondent's authority, knowledge, consent or encouragement on 16th and 17th May 2022. On the contrary, as soon as the Respondent was informed of the lock change, they undertook to reverse it. Further, since that time matters have actually improved with no more attempts to evict the Applicant and no further allegations of harassment.

19. In the circumstances, the Tribunal cannot be satisfied so that it is sure that the Respondent aided, abetted, counseled or procured St Mungo's or the nameless Spanish manager to commit criminal acts or acted in conspiracy with him.
20. Therefore, the Applicant has not established beyond a reasonable doubt that the Respondent committed any relevant offences. That is not to say that the Respondent did not breach the licence agreement but, if they did, the Applicant's legal remedies lie elsewhere and the Tribunal would recommend his taking legal advice if he wants to pursue them.
21. The Applicant sought reimbursement of his Tribunal fees, £100 for the application and £200 for the hearing, under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. He also sought recovery of the Land Registry fee of £19.95 which he incurred in obtaining a copy of the freehold title of the property. The Tribunal has limited powers in relation to costs and could only order the Respondent to compensate the Applicant for the Land Registry fee if satisfied that the Respondent had behaved unreasonably under rule 13(1).
22. Normally, the fact that his application has been unsuccessful would count against any costs orders in favour of the Applicant. However, the Tribunal is in no doubt that the Respondent's failure to participate in the proceedings may be properly characterised as unreasonable. It is clear that they knew about the proceedings and the only motive apparent to the Tribunal for not responding to either the Applicant or the Tribunal is to try to avoid the litigation and hinder its resolution. If they didn't want to participate for any reason, it would have been the simplest possible action just to write in and briefly say so. Further, as referred to above, the Applicant was a victim of reprehensible conduct and it is understandable that he sought a legal remedy. In the circumstances, the Tribunal is satisfied that the Respondent should reimburse the Applicant for his entire costs of £319.95.
23. The Applicant was also concerned that the Respondent might add any costs they had incurred in the proceedings to the service charge and sought an order under section 20C of the Landlord and Tenant Act 1985 prohibiting them from doing so. Given the Respondent's complete failure to engage with the Tribunal, the Tribunal seriously doubts whether they have incurred any relevant costs but, in case they did, and

for the same reasons as those in the preceding paragraph, the Tribunal is satisfied that it is just and equitable to grant such an order.

Name: Judge Nicol

Date: 13th March 2023

Appendix of relevant legislation

Criminal Law Act 1977

Section 6 **Violence for securing entry**

- (1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—
 - (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
 - (b) the person using or threatening the violence knows that that is the case.
- (1A) Subsection (1) above does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.
- (2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.
- (3) ...
- (4) It is immaterial for the purposes of this section—
 - (a) whether the violence in question is directed against the person or against property; and
 - (b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale or to both.
- (6) ...
- (7) Section 12 below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a displaced residential occupier of any premises or of any access to any premises and section 12A below contains provisions which apply for determining when any person is to be regarded for the purposes of this Part of this Act as a protected intending occupier of any premises or of any access to any premises.

Protection from Eviction Act 1977

Section 1 **Unlawful eviction and harassment of occupier**

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in

occupation or restricting the right of any other person to recover possession of the premises.

- (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 likely 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.
- (3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—
 - (a) the residential occupier's right to remain in occupation of the premises, or
 - (b) a restriction on the person's right to recover possession of the premises,would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (4) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.
- (5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was

purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “*an offence to which this Chapter applies*” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

- (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.
- (3) A local housing authority may apply for a rent repayment order only if—
- (a) the offence relates to housing in the authority's area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order 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).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).