



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

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Case reference : **LON/00AL/HMB/2022/0006.**

Property : **6 Wilberforce Court, Byron Close,
Thamesmead, London SE28 8AB.**

Applicant : **Mr. Ighodalo Oscar
Mr. Innocent Akowuibe.**

Representative : **Mr Ali/Mr Andrew Zalewski**

Respondent : **Esther Makinde**

Representative : **Yinka Adedeji of Counsel**

Interested person : **-**

Type of application : **Application by Tenant for a rent
repayment order under the Housing
and Planning Act 2016**

Tribunal members : **Judge Professor Robert Abbey
Tribunal Member Mr. A. Fonka MCIEH,
CEnvH, M.Sc.(Professional Member)**

**Venue and date of
hearing** : **10 Alfred Place, London WC1E 7LR
20 March 2023**

Date of decision : **27 March 2023**

DECISION

Decision of the tribunal

- (1) The tribunal finds that a rent repayment order is not payable and as such the applicant's application is refused. The tribunal was not satisfied beyond reasonable doubt that the landlord had committed an offence pursuant to s.40 of the Housing and Planning Act 2016.
- (2) Section 40 confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this section applies. A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in a table in the Act found in this section and that is committed by a landlord in relation to housing in England let by that landlord. The first two lines of the table list as follows the following offence: -

2 Protection from Eviction Act 1977, section 1(2), (3) or (3A)
eviction or harassment of occupiers.

The applicant sought a rent repayment order based on this one specific offence and sought a repayment of £35760 for the full period of occupancy. The Tribunal pointed out to the applicant that the law only allows a maximum possible rent repayment order representing twelve months rent. The sum claimed was therefore more than this and as such erroneous. The maximum possible Rent Repayment Order amounts to 12 months at £600 per month being £7200 for the first applicant and 12 months at £480 being £5760 for the second applicant.

Reasons for the tribunal's decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **6 Wilberforce Court, Byron Close, Thamesmead, London SE28 8AB**.
2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.
3. The hearing of the application took place on Monday 20 March 2023. Both parties appeared and were represented as listed above. Mr Andrew Zalewski withdrew from representing the applicant once it was clear that the matter was to proceed on the basis of the details set out above and without reference to a possible claim in regard to an unlicensed house in multiple occupation.
4. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

The law

5. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence described in section 40 of the Act. Section 1 of the Protection From Eviction Act 1977 provides that:-

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 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.

6. Under section 41 (2) (a) and (b) of the 2016 Act 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. The alleged unlawful eviction was said to have taken place on 1 June 2022 and the application to the Tribunal was made on 23 July 2022. Accordingly, from the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal. Therefore, the offence related to a possible unlawful eviction and harassment.

Background

7. The property is a two-bedroom flat located at 6 Wilberforce Court, Byron Close, Thamesmead, London SE28 8AB. The respondent rented the property in February 2009. About a year later the property was sold at auction to a Mr Robert Harrison (hereinafter referred to as “Mr Harrison”). The respondent said that Mr Harrison and the respondent agreed that he would give her first refusal if he decided to sell the property in the future. The respondent also asserted that they agreed the same terms that she had with her former landlord about the respondent paying for any repairs/home improvements and letting out rooms in the property. The respondent went on to say that in 2013, her Aunt came to live with her. She informed Mr Harrison and the respondent asserted that he had no objections.
8. The respondent says she met Oladapo Odebunmi, her husband, in 2014 and he moved in with her and lived in the property until they moved into a bigger property in Dartford in August 2019. Again, Mr Harrison was informed. She said she agreed with Mr Harrison that she would continue to rent the property from him and could let the other room to a lodger in order for her Aunt to remain at the property. It was further agreed that the respondent would continue to be personally responsible for all the outgoing utility bills.
9. To that end the First Applicant moved in on 11 September 2019 at an agreed rental of £600 which was inclusive of all utility bills. He took occupation of the living room/dining room which was upstairs. The Second Applicant moved into the property on or around 28 September 2019. He took occupation of the second bedroom. The parties agreed a monthly rent of £480.
10. On 17 May 2022 the First Applicant messaged the respondent regarding an eviction notice instituted by Peabody Trust. The letter was addressed to Mr Harrison and all other Occupants. Judgement had been granted in favour of the Peabody Trust and the Property was being repossessed and all occupants had until by 1 June 2022 to vacate the Property. Prior to this date, the respondent asserted that she had no knowledge that Peabody Trust had commenced proceedings against Mr Harrison for his failure to pay ground rent and other charges from when he purchased the Property in 2010.

11. The respondent says she was distressed by this information and in order to assist immediately offered to give the applicants their deposits back. The respondent's Aunty was also still residing at the property, so the respondent says she had to seek alternative accommodation for her too.
12. The respondent says she made several attempts to contact Mr Harrison but to no avail. These attempts were made by email and telephone. The respondent drove to his last known address, but it appeared to be vacated and there was an eviction notice on the door.

The Offences

13. The applicant alleged one offence set out above, namely unlawful eviction and harassment. Each will now be determined by the Tribunal.

The tribunal's determination

14. With regard to unlawful eviction and harassment if a party does acts likely to interfere with the peace or comfort of the residential occupier or members of his household then this amounts to an offence.
15. Dealing first with harassment what might constitute such conduct by the landlord. Harassment can be anything a landlord does, or fails to do, that makes you feel unsafe in the property or forces you to leave. Harassment can include stopping services, like electricity. withholding keys, for example there are 2 tenants in a property, but the landlord will only give 1 key. Similar acts of harassment could be refusing to carry out repairs anti-social behaviour by a landlord's agent, for example a friend of the landlord moves in next door and causes problems or threats and physical violence.
16. In this case there was simply no evidence of any such conduct on the part of the respondent. Indeed, in cross examination the applicant admitted that he was only aware of one act of possible harassment being the eviction. The Tribunal was therefore of the view that the absence of any evidence of harassment meant that the Tribunal could not find for the applicant in this regard.
17. Turning to the eviction, the process of the eviction was made and continued by Peabody against Mr Harrison which the respondent had no control over. The notice of eviction issued by the County Court at Bromley was clearly obtained for the benefit of the Peabody Trust and was addressed to Mr Harrison and all other occupiers. It clearly stated that the eviction was to take place at 1 June 2022 at 9.45am and that the addressees should arrange to leave the property with all belongings before this date and time.
18. The chronology of the eviction seems to be that the Peabody Trust took proceedings and on 17 May 2022 the applicants became aware of the notice of eviction and sent a copy to the respondent by a WhatsApp message. There was then an exchange on WhatsApp as follows-

17/05/2022, 19:43 - Estee: Hello all, I am surprised and so sorry that you got cut up in this issue . I will advise my lawyer immediately, but in order for you not to be in an unbearable position I will return your deposit as soon as possible so you can make alternative arrangements . Once again I am so sorry. 17/05/2022, 19:44 - Oscar: What?

17/05/2022, 19:47 - Oscar : Noo this is a joke . We will have to take this up and do what we need to do.

17/05/2022, 19:55 - Estee: You are free Oscar, You can do what you feel is right by you . This is a court order which I have no power over it.

19. This exchange makes it clear that the respondent was not responsible for the eviction and indeed was sympathetic to the plight of the applicant. The possession order and eviction notice were promulgated by the Peabody Trust and not the respondent who is therefore not culpable of this offence. She was as surprised by the eviction notice as the applicant. She tried to find Mr Harrison but without success. She had not received any Court paperwork in the same way as was the situation for the applicant. She did not use any physical force to make the applicant leave the property. The first and second applicants moved out by their own arrangements. They did try to suspend the Order by an application to the Court, but this was not successful. The respondent was joined into this application and she asserted that the County Court Judge rejected the whole application as being without merit.
20. In all these circumstances, the Tribunal were not satisfied beyond a reasonable doubt that there was any conduct on the part of the respondent that was clearly in breach of section 1 of the Act that might amount to unlawful eviction and or harassment.
21. Consequently, the Tribunal concluded that a rent repayment order should not be made the tribunal not being satisfied beyond reasonable doubt that the landlord has committed offences as detailed above.

Name: Judge Professor Robert
Abbey

Date: 27 March 2023

Annex

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).

Appendix of relevant legislation

Sections 40 and 41 Housing and Planning Act 2016

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).

Application for rent repayment order

41 (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.