



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

Case Reference : **CHI/43UD/HMB/2022/0010**

Property : **2 Guildford Park Avenue, Guildford
Surrey, Gu2 7NJ**

Applicant : **Bernie and Clarice Boateng
(In person)**

Respondent : **Sareen & Co Limited**

Representative : **Mr McCauley
(Counsel instructed by
Clifton Ingram LLP)**

Type of Application : **Rent Repayment Order
Housing and Planning Act 2016**

Tribunal Members : **Judge Dovar
Nigel Robinson FRICS
Jane Herrington**

**Date and venue of
Hearing** : **30th March 2023, Remote**

Date of Decision : **11th May 2023**

DECISION

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Introduction

1. This is an application for a rent repayment order under s.41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. The Boatengs made their application on 24th October 2022 claiming £15,418 being the full amount of rent that they paid in the 12 month period up to 20th September 2022; the date upon which they say they were unlawfully evicted, contrary to s.1 of the Protection from Eviction Act 1977 ('the 1977 Act'). It is that eviction which they rely on to base their claim as both an unlawful eviction and the circumstances surrounding that eviction as amounting to harassment.
3. In addition they claim a return of their deposit in the sum of £1,875.
4. The Tribunal received witness statements from both Applicants and for the Respondent from: Michael Sareen (a director of the Respondent landlord company), Joanne Kay (Head of Property Management at Prospect Holdings (Reading) Limited ('Prospect'), the managing agents for the Property), Melissa Fisher (Senior Property Manager at Prospect) and Mark Towell (Managing Director of Prospect).
5. A few days before the hearing the Respondent made an application to rely on the evidence of Ms Munro. That was not objected to by the Applicants and was permitted. Likewise a late application for permission to adduce further evidence from the Applicants was not object to and was permitted.

6. The Tribunal heard oral evidence from the Applicants, as well as for the Respondent, Ms Munro, Ms Kay and Mr Pullinger. The latter being a heating engineer who attended the Property on the day to carry out a gas safety check.

Rent Repayment Orders

7. A Rent Repayment Order may be made under s.43 of the 2016 Act where the Tribunal is satisfied beyond reasonable doubt that a relevant offence has been committed.
8. In this case the relevant offences arise under ss.1(2), (3) and (3A) of the 1977 Act, namely unlawful eviction or harassment of occupiers.

Section 1

*(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 ...

9. There is an issue in this case as to whether a landlord can be subject to a Rent Repayment Order if the acts relied on were not carried out by them, but by their agents. In this case, the Landlord is a limited company and the acts relied on are those of the staff of the managing agent.
10. In that regard the Respondent relied on *R v. Qureshi* [2021] 1 WLR 694, CA in which it was held that a landlord could not be vicariously liable for the conduct of his sons, who had harassed the landlord's tenants. Laws LJ in considered that

'It seems to us to be clear that on its true construction section 1 (3A) requires actual participation of the defendant and in that case there is no room for vicarious liability.'

However, he did go on to comment that

'We desire to make it crystal clear however that nothing in this judgment, ... is intended to suggest that an offender may not, on appropriate evidence, perfectly properly be convicted under section 1 (3A) as a secondary party where his guilt would fall to be established on the footing of a joint enterprise, or incitement, or indeed ... as a co-conspirator.'

11. Sub-section 1(2) and (3) are worded slightly differently in that they do not refer to a landlord, but to 'any person', however as with *Qureshi* the wording is clear in that it is the person who commits that conduct that is guilty of the offence. It cannot be committed vicariously, including through agents, unless they are guilty as a secondary party.
12. Therefore in this case, for the Applicants to establish an entitlement to an Order, they must show not only that an offence was committed under the 1977 Act, but that either that it was the landlord who committed the offence or that the landlord is liable for the offence as a secondary party through joint enterprise, incitement or co-conspiracy.

Background

13. The Boatengs lived at the Property from 23rd February 2018 until 20th September 2022. Whilst they had a number of issues with their tenancy from the outset, regarding items of disrepair, they are not material to the decision which this Tribunal has to consider, which is whether there was an unlawful eviction and/or harassment for the purposes of the 1977 Act. Indeed, although there are complaints of disrepair from time to time, not only was the tenancy formally renewed but concessions were made to the rental.
14. There is however, one aspect of the earlier period of their tenancy that is relevant, and that is that initially the individual assignment

to them from the managing agents, was Carla Munro, who plays a significant role at the end of their occupation. The Applicants did not have a good opinion of her and were not happy with the manner in which she treated them.

Lead up to 20th September 2022

15. In December 2021, the Respondent served a notice under s.21 of the Housing Act 1988, as a prelude to terminating the Applicants' tenancy and requiring possession after 23rd February 2022. After discussions with Prospect on 15th February 2022, an addendum agreement was entered into extending the term to 30th August 2022 at an increased rent of £1,350 per month; prior to that it had been £1,275. It seems that around this time, no doubt because of their concerns over the condition of the Property, the Applicants began looking to purchase their own home.
16. On 28th June 2022, a second s.21 notice was served, dated 28th June 2022 requiring possession after 30th August 2022.
17. Whilst the Applicants had found a property to purchase, delays with that purchase meant that they looked for an alternative place to rent when their tenancy ended in August.
18. Whilst they had agreed to move out on 30th August, that became problematic. They therefore wrote the day before they were due to leave, on 29th August, stating that *'Unfortunately, the earliest date they can allow us to move in is from 19th Sept ... Therefore, we*

kindly ask if we are allowed to remain till 19th Sept whilst paying the pro-rata amount ...' This request was acceded to and a new exit date was set for 19th September.

19. In oral evidence, Mr Boateng asserted that they were not saying that they were going to move out on 19th, but that was the earliest date they could move out. He suggested that this was not any form of agreement to move out on that day. This was not a particularly convincing piece of evidence from Mr Boateng. It was clear from the correspondence that he had set the new date for leaving and that it was understood by all that he would leave on that date, not any later. The Tribunal formed the impression that the Applicants were overall unhappy about the fact that the Respondent was able to terminate their tenancy through the section 21 process.

20. On 15th September 2022, Ms Fisher of Prospect, emailed the Applicants setting out the arrangements for handing the keys over on 20th September. The intention being that they having moved out on 19th, they could hand the keys back on 20th. No issue was raised at that time by the Applicants with moving out, although they there was a suggestion in their oral evidence that they had never agreed to moving out on this day. This followed on from their assertion that on 29th August, when they said they needed until 19th September, that was not any agreement to move out on that day. Again the Tribunal found this aspect of their evidence unconvincing. From the Respondent's point of view, everything

was in order for the tenancy to end and for them to move out on 19th.

21. It is in relation to the events that occurred on 20th September 2022, the parties are at odds as to the tone and actions on that day; principally with what Ms Munro of Prospect did and said when she attended in the afternoon. Before dealing with the oral evidence, there is some contemporaneous correspondence to consider.
22. There is an email from the Applicants to Ms Fisher dated 20th September 2022, timed at 21.48 in which it is said

“Thank you for allowing us to move the things out today Melissa. Obviously it was later than 5pm as my husband was trying to do everything by himself as our removal guy was delayed and ended up showing up 7 hours later ...

However, whilst this has placed both parties in a difficult position, I must advise the way Carla Munro spoke to my husband was extremely disrespectful! And to state that we were trying to do something dodgy and insinuating that we were lying about hiring the man & the van or trying to continue to stay there is extremely disgusting treatment but not out of character for Ms Munro. ...

Please take this email as confirmation that we quite happily waive our deposit ... we will also arrange a faster payment to

be made to you for the final 19 days, on the morning of 23rd September 2022.

Thank you kindly to the landlord and to Prospects for letting number 2 Guildford Park Avenue to my family and me.'

23. There is an email in response from Ms Fisher dated 21st September in which she states

"... I appreciate that the Monday ended up being a bank holiday due to the Queen's funeral however we were advised of this 10 days prior therefore alternative arrangements should and could have been arranged in advance.

Once informed that keys were not handed back on the 19th and that there were still many belongings in the property I did speak to Bernie on a few occasions yesterday to advise that I was happy for you both to have until 5:00 pm to remove all belongings from the property which was agreed over the phone by Bernie, I then as you know tried contacting Bernie a couple of times again from 16.18pm ... I then spoke with yourself at 16:44pm and you had advised me that Bernie was already on his way back to the office with the keys, which we learnt was not the case when my manager Carla Munro turned up to see all the belongings still in the property. I also reiterated on each phone call that we had tenants due to move in today ...

The cleaners will be attending tomorrow to carry out a deep end of tenancy clear, they are happy for you to attend at 10:00 am for a maximum of 1 hour to collect any left belongings, once the hour is up the cleaners will be removing the items from the property. Please make sure you are there for 10:00 am no early no later.”

24. It is difficult to discern from that exchange any offence under the 1977 Act. Rather that matters got stressful given the logistics of moving home with delayed transport. However, the Applicants contended that they are not confrontational people and that the content of their email does not properly reflect what occurred on the day. It was written by Mrs Boateng in order to bring some peace to the situation, she said it was ‘*more a peace making email.*’ Having seen both Applicants give evidence and present their case, the Tribunal can readily to accept that that is indeed a possibility. The Tribunal bears that in mind when it comes to assess the oral evidence as to what occurred on the day. Further, it would be wrong for the Applicants to be disadvantaged solely because they wrote a courteous letter to mark the end of their tenancy at the Property.
25. On the morning of 20th September, the Applicants say they left early with their children and went to church and moved as much as they could out of the property in their car. Mr Boatang returned to the property to continue the moving out, whilst Mrs Boatang took their children to their new property. Although they had been

delayed in obtaining the keys to that new property, they had them then and were moving in.

26. Mr Boateng was waiting at the Property for a 'man and a van' to attend to remove their goods. That man had been severely delayed.
27. He said that Ms Munro arrived at 5pm and knocked persistently at the door. When he answered, she pushed past him and was verbally aggressive and abusive for not having left, for refusing to leave and for the poor state the property was in. She then began to move the Applicants' belongings outside. Mr Boateng says '*In all of this, I was at the mercy of their coercion and abusive treatment, and I felt mentally and physically drained.*' He also then started to remove his belongings. He was then told that he could return in a few days to collect any remaining items from the garage. An email followed a couple of days later giving them 1 hour to collect the rest of their belongings.
28. In oral evidence Mr Boateng claimed that he had asked for more time on the day, as he was not ready to move out, but that he was turned down. He was told he had to be out, that a new tenant was moving in that week and that he could not stay any longer. He said he received a number of calls '*bordering on harassment*'. When Ms Munro arrived she even co-opted Mr Pullinger to move his items out, but he was not ready to leave. Whilst it was clear they were not ready to move, she forced him out. Then, when his van arrived, Ms Munro took the keys off him.

29. Mrs Boateng stated in oral evidence that they had wanted to keep both properties for a while to make it easier to move their belongings between the two. They only had one bed moved out by the morning of 20th and some of their childrens' toys.
30. Mr Pullinger stated he had attended that afternoon to carry out the gas safety check. He hadn't expected to find anyone there and that Mr Boateng was stressed moving his belonging he asked him for help moving items, which he did. He did not recall Ms Munro moving any items.
31. Ms Fisher set out in her witness statement that Ms Munro had called her whilst she was at the property and that *'I clearly heard over the phone how the male tenant was shouting and I am also aware that Ash, who was attending the Property to carry out a gas safety certificate for the incoming tenant was asked and suggested that he 'stick around' given the tenants aggression towards Carla. ... I recall speaking to the tenant on the telephone and he appeared to be changing his story on multiple occasions as to when he was able to leave. This became increasingly frustrating for both Carla and I, particularly at a time we were simply trying to help the tenant and it was also after working hours.'* Ms Fisher did not give oral evidence and so the Applicants were not able to challenge her on her statement. The version of events set out above was not corroborated by any of the witnesses we heard evidence from and although we consider that understandably Mr Boateng was stressed, having seen his

demeanour when giving evidence, we find it is highly unlikely that he would have shouted or acted in such an aggressive fashion that Ms Munro felt that Mr Pullinger was needed to assist her.

32. Ms Munro states that on the morning they were supposed to have left, she received a call from the inventory agents saying that the Property was still occupied and that there was someone there packing up bags and so the check out inventory was aborted. She says that Ms Fisher had agreed with the Applicants that they could remain to 5pm. When the heating engineer, Mr Pullinger, attended at 5.15pm he reported that the Property was still occupied. She arrived at 5.30pm and was refused access at first. Mr Boateng told her that the removal van had been delayed until 7pm and so she remained there to take the keys. She said that they had been very accommodating but that the landlord wanted possession and he had had plenty of notice of when the tenancy was ending.
33. She stated that *'The Applicant was co-operative in handing the keys over. I did not take possession of the keys until the removal van had arrived at the Property and the Applicant had made it known he was ready to leave. ... the Gas Engineer, Ashley Pullinger, and I actually helped the Applicant to remove some of his belongings. The Applicant at no point stated that he did not intend to vacate the Property on this date or that he would refuse to do so.'*

34. When asked what she would have done if Mr Boateng had refused to hand over the keys or vacate, she said she would have walked away.
35. Both parties were agreed that once Mr Boateng had left, some of the Applicants' belongings remained at the Property which were collected the next day.

Unlawful eviction

36. The Housing Act 1988 permits a tenant to remain in occupation until either they chose to go voluntarily or their landlord obtains a possession order and then enforces the same through court appointed officials. The landlord is not entitled to remove a tenant otherwise; the 1977 Act makes it a criminal offence for them to do so or attempt to do so (s.1(2)). It is also an offence if a person interferes with the peace of comfort of the occupier with an intention to make them give up occupation (s.1(3)). It is also an offence for a landlord to interfere with the peace and comfort of the occupier if they know that that is likely to make them give up occupation (s.1(3A)).
37. As part of that process of a lawful eviction, the landlord needs to serve a section 21 notice. That gives the tenants at least two months to vacate, after which the landlord can commence court proceedings to evict them.

38. This case concerns a situation where the landlord, having served a section 21 notice, insists that the tenants leave on the day that the notice expires and after which they can bring eviction proceedings.
39. It was clear from the evidence that not only had the Applicants agreed to move out by 20th September, but that they were in the process of moving out. They had already taken possession of the property they were going to move into. There had been some delay in obtaining that, but they had the keys on the morning of 20th. Indeed they had taken a number of items over to that property. Their plans had been complicated by problems with getting transport for their belongings, but had that gone smoothly they would have vacated by the morning.
40. The Tribunal has no doubt that Mr Boateng was under a lot of stress on 20th. He was supposed to have moved out, but he had problems with transport. When Ms Munro arrived, their already strained relationship would only have added to his stress. It is far from clear that he asked for more time that afternoon. Whilst he said he did in evidence, he did not mention that either in his witness statement, nor was it raised in the email that evening. Ms Munro's assertion that she was initially refused access is a possible indication that he did not want to leave.
41. However, even if he had asked for more time, Ms Munro was entitled to refuse that request. That of itself, in our view does not amount to an unlawful eviction. If it did, then no tenant could ever

be removed, they would simply ask for more time. As set out above, under the present Housing Act 1988 regime a landlord is entitled to seek to terminate a tenancy without cause under section 21. If they were compelled by reason of the 1977 Act to accede to any request to remain, they would never be entitled to possession.

42. Likewise attending on the day to oversee the change over is not a matter that amounts to an unlawful eviction. We consider that when Ms Munro attended she was genuinely and reasonably of the view that the Applicants were vacating and that the vacating had been delayed through transport difficulties. We also readily accept that she may not have been sympathetic and may have been short with Mr Boateng, but she was confronted with a stressful situation where a tenant who had said they had moved out or were moving out, but had not.

43. That tensions were high is not of itself in these circumstances sufficient in the Tribunal's view to amount to an offence under either of the three sub-sections. Even if Ms Munro told Mr Boateng, in strong terms, that he needed to move out by 5pm as had been discussed earlier, that was not, in our view, sufficient to amount to a criminal offence under the 1977 Act. It neither deprived him of occupation nor attempted to do so, she was reinforcing the Respondent's position that that was the date that had been agreed that they would vacate and that they did not want them to remain any longer. She understood that he was going to go

that day and had he said he was not going, she said she would have walked away.

44. The Tribunal must be satisfied beyond reasonable doubt that an offence has occurred. In the circumstances, the Tribunal is far from climbing that evidential height.
45. Further, even if Ms Munro had overstepped the line so that her conduct was conduct which unlawfully deprived the Applicants of their occupation or attempted to do so, there is no evidence that the Respondent was in any way complicit with this.
46. Prior to Ms Munro attending, it seems that Prospect were not sure whether or not the Applicants were still in occupation; it seemed that they were not. Mrs Boateng appears to have been confused at one point and said that Mr Boateng was on his way with the keys.
47. The events that unfurled at the Property over the course of the afternoon were not ones that had been co-ordinated with the Respondent. As far as the Respondent was aware this was simply a change over day. Whilst they had authorised Prospect to manage the change over, there is no suggestion that they had sanctioned, approved, encouraged, directed or joined in with any attempt to cause the Applicants to move out.

Conclusion

48. There being no underlying offence committed, there is no basis for a Rent Repayment Order to be made. The application is dismissed.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application 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.