



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

Case Reference : **LON/OOAX/HMB/2021/0013**

HMCTS : **V: CVPREMOTE**

Property : **83 George Road, New
Malden, Surrey, KT3 6BT**

Applicants : **Madanmohan Nanoopillai**

Respondent : **Xiong-Jie Quan**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Shepherd
Chris Gowman MCIEH
Jayam Dalal**

Venue of Hearing : **On line**

Date of Decision : **29th June 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

Decision:

The Application for a Rent Repayment Order is dismissed.

Reasons:

1. In this case the Applicant, Madanmohan Nanoopillai (“The Applicant”) is seeking a Rent Repayment Order against the Respondent, Xiong-Ji Quan (“The Respondent”). The Applicant was represented by John -Luke Bolton of Safer Renting
2. The Applicant was in occupation of premises at 83 George Road, New Maldon, KT36BT, (“The premises”) as an Assured Shorthold Tenant. The Respondent was his landlord. The Respondent claimed he was in occupation throughout the Applicant’s occupation but there was no real evidence to substantiate this. . The premises consist of a five - bedroom shared house. The Applicant shared the premises with other occupiers that were not members of his household. The occupiers shared facilities but had exclusive possession of their rooms. Accordingly, they were assured shorthold tenants pursuant to s.3 Housing Act 1988. The Applicant was given a “license agreement”. It is tolerably clear that in fact he had a tenancy.
3. The Applicant moved into the premises on 18th March 2018 and vacated on 1st September 2021. The relevant offence of harassment ended according to the Applicant on 2nd June 2021. He seeks an order under s. 40 of the Housing and Planning Act 2016 (see below).He seeks repayment of rent amounting to £6000 constituting 12 months rent.
4. The Applicant alleges that the Respondent breached section 1 (3) and (3A) of the Protection from Eviction Act 1977. These provisions state the following:

(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.

5. The Applicant says that the Respondent and his agents sustained a campaign of harassment with the intent of causing the Applicant to leave the premises. The Respondent's agents are said to be Maria who was a housekeeper and her husband. It is said that Maria turned off the boiler and light when the Applicant was showering or working. It is said that this lasted 2 years. It is then alleged that in the summer of 2021 the harassment escalated and the Applicant was prevented from leaving the kitchen by the Respondent. Then on 2nd June 2021 the Applicant was assaulted by Maria and her husband. The degree to which the Respondent had knowledge of much of this alleged harassment is in question.
6. The Applicant says that he was told to leave by the Respondent in November 2018 because someone had made a complaint to the council. The Applicant did not leave. Soon after that Maria started to turn the lights and boiler off. The Applicant complained to the Respondent who asked him to leave in a month. The Applicant did not leave.
7. On 31st May 2021 there was an altercation between the Applicant and the Respondent. The Applicant says the Respondent raised his hand as if to hit him. He says the Respondent detained him in the kitchen for 30 minutes.
8. On 2nd June 2021 Maria and her husband came to the premises. The husband demanded that the Applicant turned off the boiler. Then the husband and Maria began hitting the Applicant. The Applicant filmed the assault on his phone. The husband is seen on the video pushing and slapping the Applicant. Maria also wades into the assault. The husband says something about "two weeks". The Applicant says this was telling him he had two weeks at the property. The police were called. Maria and her husband were arrested and the Applicant went to hospital. In the event the Applicant remained at the premises until September and there were no further serious incidents.
9. For his part the Respondent says that the Applicant kept interfering with Maria's cleaning. He prevented other occupiers using the kitchen he says. He accepts that he asked the Applicant to leave and that his notice was not valid. He says he did give notice of two months on 5th November 2019. After which the Applicant made complaints about another occupier.

10. With regard to the incident on 31st May 2021 the Respondent says there was an argument between him and the Applicant after he had thrown Maria's toothbrush (used for cleaning) away. He denies that he harassed the Applicant.
11. He says he was not present on 2nd June 2021.
12. Soon Hee Kim (Maria) and her husband gave witness statements but did not attend the hearing. The Tribunal gives no weight to their evidence. We had the benefit of a video filmed by the Applicant on 2nd June 2021 and their account and excuses ring hollow in light of the video.

The hearing

13. Mr Bolton explained that there had been a consent order in parallel County Court proceedings. This did not affect our jurisdiction as the RRO element was not settled. He went through the chronology of events as described above. The Applicant said that on 31st May 2021 the Respondent had put his head against his during the discussion. He described the altercation with Maria and her husband on 2nd June 21. He said he suffered injury . He had pain in his chest and head and went to hospital.
14. The Respondent said that the Applicant had harassed Maria and had touched her breast. This was denied by the Applicant. The Respondent denied that he had harassed the Applicant. He said the Applicant had caused problems with other occupiers. He said he had met Maria at church and she helped him out. He denied she was his agent and that he hadn't asked her to harass the Applicant. He admitted he had taken no legal steps to evict the Applicant, He gave evidence as to his outgoings at the premises. He accepted that the Applicant had paid his rent.

The law on Rent Repayment Orders

The Housing and Planning Act 2016 (“the 2016 Act”)

15. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
16. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However,

section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

17. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016 Act. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

18. Section 40 provides (emphasis added):

"(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."

19. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (see above); (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

20. Section 41 deals with applications for RROs. The material parts provide:

“(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.

21. Section 43 provides for the making of RROs:

“(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).”

22. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

23. Section 44(4) provides:

“(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.”

24. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

25. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the “purposes intended to be served by the jurisdiction to make a RRO” (at [41] and [43]).

26. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional “rogue” landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

27. In *Acheampong v Roman* [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

“20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. 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 an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of 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:

d. 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).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

Application to the present case

28. The Tribunal have to be satisfied beyond reasonable doubt (the criminal standard of proof) that the Respondent committed the offence under s. 1(3) or (3A) of the 1977 Act. We saw a video of the incident on 31st May 2021 between the Applicant and the Respondent. It was apparent there was an argument and both people were contributing to that argument. There was no evidence of the Respondent harassing or threatening the Applicant never mind using this conduct to get him to leave the premises either directly or indirectly. We also saw a video of the incident on 2nd June 2021. The Respondent was not present. It is clear that the Applicant was assaulted by Maria and her husband. They pushed him, slapped him and shouted in his face. This was undoubtedly a serious incident but we could not be satisfied that the Respondent was even aware of it. Maria's role at the premises was unclear. She may have been the Respondent's agent but this does not mean that he is responsible for all of her actions. In particular if he had not told her to threaten or assault the Applicant he can't be held responsible for such a serious criminal offence.

29. Accordingly we don't consider that either of the principal incidents on 31st May 2021 or 2nd June 2021 showed proven harassment such that the Respondent would be guilty of the criminal offence under the PEA 1977. The other matters relied upon – namely the instructions by the Respondent to the Applicant to leave and the actions of Maria in turning off the lights and the boiler would also be insufficient to prove a breach of s.1(3) or (3A). The Respondent's misguided attempts to get the Applicant to leave showed more his ignorance of the law than criminal intent. The actions of Maria were also probably short of true harassment (she had a misguided view of how the Applicant was using fuel at the premises) and again could not be connected directly to the Respondent himself.

30. In summary the application for a Rent Repayment Order is dismissed.

Judge Shepherd

29th June 2023

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.