



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

Case reference : **LON/00BB/HMB/2022/0017**

Property : **147 Barrier Point Road
London
E16 2SE**

Applicants : **(1) Emmanuel Yamson
(2) Ken Uzuegbuna**

Representative : **Mr Yamson**

Respondents : **(1) Lucy Nana Yaa Barnes
(2) Kayode Clement Ayotunde
(3) Lola Odunsi**

Representative : **Lola Odunsi**

Type of application : **Rent Repayment Order by Tenants s.41,
s.41, s.43 and s.44 of the Housing &
Planning Act 2016**

Tribunal members : **Tribunal Judge Mr I B Holdsworth
Ms Fiona Macleod MCIEH**

**Date and venue of
Hearing** : **27 June 2023
10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 July 2023**

DECISION

Decisions of the Tribunal

- a. The Tribunal is satisfied on the evidence before it that grounds exist to make a Rent Repayment Order.
- b. The Tribunal makes an Order in the sum of £3,737.16.
- c. The Tribunal makes an Order for the reimbursement so the application fee in the sum of £100 of Hearing fee in the sum of £200. The Respondents shall refund to the Applicants the Tribunal fees of £300 within 28-days.

1. **The application**

- 1.1 By an application received by the Tribunal dated 5th December 2022, the Applicants sought a Rent Repayment Order ('**RRO**') pursuant to s.41 of the Housing & Planning Act 2016 ('**the 2016 Act**').
- 1.2 The application was made on the grounds provided in s.6 of the Criminal Law Act 1977 and s.1 of the Protection from Eviction Act 1977 that an offence was committed on 18th November 2022.
- 1.3 The Applicants are currently in occupation of the subject property at 147 Barrier Point Road, London E16 2SE ('**the Property**') pursuant to an assured shorthold tenancy ('**AST**'). The rent payable under the AST is £1,450 per month.
- 1.4 The Tribunal was told that Respondents (2) Mr K C Ayotunde and (3) Ms Lola Odunsi are co-owners of the Property, whilst the rôle of Respondent (1) Ms Lucy Barnes was disputed.
- 1.5 On 18 November 2022 the Applicants allege Ms Odunsi attempted to evict them from the Property and the Applicants seek a RRO for the period 18 November 2021 to 17 November 2022 in the sum of £10,800.
- 1.6 The Property is a three-bedroom flat. The Applicants told Tribunal they paid rent to Ms Lucy Barnes and considered her the managing agent of the property. A copy of a tenancy agreement was presented to Tribunal with Ms Barnes named as Landlord.
- 1.7 Neither the Applicants nor Respondents requested an inspection of the Property and Tribunal did not carry an inspection as it was not considered proportionate to deal with the application.

2. **The Hearing**

- 2.1 Tribunal issued Directions on the application dated 15 February 2023.
- 2.2 The matter was listed for an Oral Hearing which took place on 28 June 2023. The Applicants (1) Mr Yamson and (2) Mr Uzuegbuna appeared in person. Ms Odunsi, the Respondent (3) attended and appeared as a litigant in person.

3. **Applicants' case**

- 3.1 Tribunal heard evidence from the Applicants that at around 5 pm on 18 November 2022, Ms Odunsi together with her brother, a male friend and her two children arrived at the Property. It is alleged they secured entry to the Property following a door being opened by Mr Uzuegbuna. The Applicants said they did not invite Ms Odunsi into the Property or any of the other people who had accompanied her.

3.2 Mr Uzuegbuna. asked Ms Odunsi and all accompanying her to leave, and he claims they refused. He called Mr Yamson requesting he return to the Property and Ms Barnes to come to his assistance.

3.3 The Applicants allege Ms Odunsi told him to leave the Property within one hour.

Video was shown to Tribunal taken from the evening that showed the two Applicants, together with Respondent (1) and Respondent (3) together with her party shouting and behaving in an aggressive manner.

3.4 The Applicants allege Ms Odunsi showed them a forged Notice of Eviction. The Metropolitan Police were called, and two officers attended. A locksmith was also called, and he changed the lock on the door to the Property.

3.5 The police on arrival asked Ms Odunsi whether she had a Court Order to evict the Applicants. She told the police officers that she did not have an Eviction Order and bailiffs had not been called to the Property. One of the police officers told her to pass all keys to the new lock to the tenants This was done.

3.6 Ms Odunsi and all members of her party then left the Property. The Applicants were allowed to remain in the Property without any further harassment.

3.7 The Applicants took Tribunal to evidence in the bundle in respect of their rent payments made to Ms Barnes over the period 18 November 2021 to 17 November 2022. Copies of Bank statements were adduced which showed total rent payments of £10,800 over the 12-month period.

4. Respondents' case

4.1 Ms Odunsi did not dispute the description of events at the Property on the evening of 18 November 2022. She relied on the evidence of three videos submitted to Tribunal. These were viewed by Tribunal jointly with the Applicants and Respondents. They corroborated evidence submitted by the Applicants about the events that had taken place at the property on that evening.

4.2 Ms Odunsi explained she had been made homeless on or around 18 November 2022, as her home had been repossessed. She claimed it was her intention to evict the Applicants at the Property so she and her family could then occupy the flat.

4.3 The Tribunal were told she had forged the Eviction Notice. She admitted using the Eviction Notice issued to her in respect of her own home, subsequently modifying the names and case number so that it appeared to relate to the Property.

- 4.4 Ms Odunsi said that she was the owner of the Property. She took Tribunal to Copy Title HMLR No 407617 in the bundle at P35 to validate this statement. This is dated 23 September 2021.
- 4.5 It was explained to Tribunal that Ms Odunsi had sought to remove Ms Barnes as a managing agent of the Property but had failed. Ms Barnes had been granted Power of Attorney by Mr Ayotunde and she relied upon these powers to manage the Property. There was some dispute between the Applicants and Ms Odunsi about the validity of the Power of Attorney A copy of a revocation of Power of Attorney dated 16th April 2021 is at P 24 of the bundle.
- 4.6 Ms Odunsi claimed she had not received any monies from Ms Barnes as rent during her ownership and the Property had now been repossessed by the bank, as the mortgage payments had not been met. No evidence was offered to Tribunal to substantiate any of these statements.
- 4.7 When questioned Ms Odunsi gave service charge expenditure figures for the Property for the year 2021/22, including property management fees of £868, together with service charges of £4,000.
- 4.8 She also confirmed she did not pay the local water authority charges, nor wi-fi or any other utility bills in respect of the Property.

5. Previous Rent Repayment Order

- 5.1 A previous Order dated 25 November 2021 made against Ms Barnes, Respondent (1) and Mr Ayotunde, Respondent (2) under reference LON/00BB/HMB/2021/006 for the same offence at the Property had determined that a RRO of £8,400 should be made in favour of the current Applicants.
- 5.2 Ms Barnes had set-off the value of this RRO against the rent payable by the Applicants.

6. Decision with reasons

- 6.1 The burden of proof is on the Applicants and the standard of proof is beyond reasonable doubt.
- 6.2 The Tribunal in reaching its decision applied a four-stage test in deciding that, to make an Order, it would have to satisfy itself of four matters, namely:
- i. Whether Tribunal was satisfied beyond reasonable doubt that Respondent (3) had committed an offence under s.1 (2) (3) and (3a) of the Protection from Eviction Act 1977.
 - ii. Whether the Applicants were entitled to apply to the Tribunal for an RRO.
 - iii. Whether the Tribunal should exercise its discretion to make an RRO.
 - iv. Determination of the amount of any Order.

- 6.3 Tribunal considered the evidence before it in relation to the Criminal Law Act 1977 and the Protection from Eviction Act 1977 in relation to entry into the property being secured by violence and/or eviction or harassment of the occupiers.
- 6.4 It was accepted by Ms Odunsi that she gained access to the property against the will of Mr Uzuegbuna then instructed a locksmith to change the locks.
- 6.5 Tribunal is satisfied that both Applicants did not consent to the locks being changed and had not agreed to access by Ms Odunsi.
- 6.6 No evidence was submitted to Tribunal that Ms Odunsi was entitled to carry out the proposed eviction of the Applicants. She accepted the eviction notice was falsified and that she had purported to use this as evidence of her entitlement to affect the eviction.
- 6.7 The Tribunal finds that Ms Odunsi actions amounted to harassment under the Protection from Eviction Act 1977.
- 6.8 The Tribunal viewed video evidence and heard from the Applicants and Ms Odunsi about the events which took place on 18 November 2022.
- 6.9 After careful consideration Tribunal determined that there was no use of violence for securing entry to the property and no assault of either Applicant. Accordingly, Tribunal was unable to find on the evidence before it that a breach of the Criminal Law Act 1977 had taken place.
- 6.10 The Tribunal finds that Ms Odunsi was the owner of the Property when she carried out these actions. She corroborated this by reference to the HMLR Title No EGL 407617.
- 6.11 Tribunal is aware of the rental agreement between the Applicants and Ms Barnes dated 16 July 2020 submitted at P 21-24. Tribunal has had regard to this agreement and decided that it was not effective at the date of the incident. This conclusion relies upon Ms Odunsi's evidence to Tribunal about her relationship with Ms Barnes and Mr Ayotunde.
- 6.12 Ms Odunsi told Tribunal that she was the landlord and had tried for many months to remove Ms Barnes from her rôle as managing agent. She relied on the copy of the revocation of Power of Attorney to confirm she was the controlling interest at the Property.
- 6.13 Tribunal concludes after review of Ms Odunsi's evidence Ms Barnes was not the managing agent of Mr Ayotunde on 18 November 2022 and Ms Odunsi was the owner and landlord to the Property at that date.
- 6.14 The Tribunal finds the Applicants are entitled to a RRO against Ms Odunsi.

7. **Rent Repayment Order**

7.1 The Upper Tribunal in *Acheampong –v– Roman & Ors [2022] UKUT 239 (LC)* approved of the decision of the Upper Tribunal in *Williams –v– Parmer [2021] UKUT 244* finding that the maximum amount of rent should be ordered only when the offence is the most serious of its kind. The Upper Tribunal suggested a four-step approach to determination of a RRO, namely:

7.1.1 Ascertain the whole of the rent payable for the relevant period.

7.1.2 Subtract payments for utilities that benefit the tenant.

7.1.3 Consider the seriousness of the offence. Determine what proportion of the rent after deduction as above is a fair reflection of the seriousness of this offence.

7.1.4 Consider if any deductions or additions should be made to the figure, based on the facts in s.44 of the 2016 Act.

7.2 s.44, subsection 4 of the 2016 Act provides:

'In determining the amount, the Tribunal must, in particular, take into account: -

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

(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.'

7.3 Table 1 shows the calculation of the RRO made by the Tribunal in this matter based upon the relevant guidance.

147 Barrier Point Road, London E16 2SE			
Total rent payment during period prior to offence	£	10,800.00	
Less:			
Service Charges	£	4,000.00	
Managing agents charges	£	868.00	
Sub Total			£ 5,932.00
Less			
Adjustment for seriousness of offence			
at 70% weighting	£	1,779.60	£ 4,152.40
Section 44 adjustments			
Conduct of Landlord and the tenant		-5.00%	
Financial circumstances of Landlord		-15.00%	
Previous conviction for offence under Chapter		10.00%	
Overall change		-10.00%	£ 415.24
Less total			
Balance of RRO			£ 3,737.16

7.4 The maximum amount of rent repayment that can be ordered under s.44 (3) of the 2016 Act is £10,800.

7.5 The property owner paid no utility bills that benefit the tenant, but she did pay £4,000 pa service charge and a managing agents fee of £868 pa.

7.6 In assessing the seriousness of the matter, the Tribunal find this a serious offence of harassment albeit with some mitigation due to her personal circumstance. A weighting of 70% is applied to the net rental sum.

7.7 Further section 44 adjustments are made to reflect the behaviour of the tenant (a 5% reduction in net rent is applied), the previous conviction of the Landlord (15% increase) and financial circumstances of the Landlord (10% reduction). The Tribunal is aware of the difficult financial circumstances of Ms Odunsi, now homeless and reliant upon local authority temporary accommodation. This is reflected in the adjustment the Tribunal makes to the RRO.

7.8 Accordingly, the Tribunal makes an Order in the sum of £3,737.16.

7.9 Tribunal makes an Order in respect of the reimbursement of the Hearing and application fees in the sum of £300.

Name: Ian B Holdsworth **Date:** 20 July 2023

Tribunal Judge

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 (ie, 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.