



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

Case reference : **LON/00BG/HMF/2023/0031**

Property : **Flat 12, 26-32 Bacon Street, London E2
6DY**

Applicant : **Garrett Burns**

Representative : **Frances Hall**

Respondent : **Rosemede Homes Ltd**

Representative : **Mr Vasilescu, Counsel**

Type of application : **Application for a rent repayment order
by a tenant
Sections 40,41,43 & 44 of the Housing
and Planning Act 2016**

**Tribunal
member(s)** : **Judge D Brandler
Mr A Fonka FCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **10th July 2023**

Date of decision : **28th July 2023**

DECISION

Decision of the tribunal

- (1) The Respondent shall pay to the Applicant a Rent Repayment Order in the total sum of £7,775.48. This sum to be paid within 28 days of this order.**

- (2) The Respondent is further ordered to repay the Applicant the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. By an application dated 03/02/2023 Garrett Burns (“the applicant”) sought a Rent Repayment Order (“RRO”) in respect of rent paid to Rosemede Homes Ltd (“the respondent”) from 01/05/2022 to 27/01/2023. The amount of rent paid by the applicant for that period is £9,719.35.
2. The application was brought on the following grounds.
 - (a) the property required a selective licence. No application for such licence was made by the respondent until 26/06/2023. This is an offence under section 95(1) Housing Act 2004 (“the 2004 Act”)
 - (b) the respondent attempted to unlawfully deprive the applicant of his occupation of Flat 12, 26-32 Bacon Street, London E2 6DY (“the property”) which is an offence under section 1(2) Protection from Eviction Act 1977 (“the 1977 Act”)
 - (c) the respondent acted in a way likely to interfere with the peace and comfort of the applicant as a residential occupier while knowing or having reasonable cause to believe that conduct was likely to cause the applicant to give up occupation of the property or refrain from exercising a right or pursuing a remedy in respect of the property which is an offence under section 1(3A) of the 1977 Act.
 - (d) both the control or management of an unlicensed house which is required to be licensed and the eviction or harassment of occupiers are grounds for a RRO under section 40 Housing and Planning Act 2016 (“the 2016 Act”)
3. The applicant became a joint tenant at the property when he replaced another tenant named on the AST agreement. He shared the property with one other tenant. The applicant moved in on 01/05/2022. The rent per person for the property was £1,150 per calendar month exclusive of all utilities which were paid by the tenants. The respondent is the landlord and holds the freehold interest in the building known as 26-32 Bacon Street, London E2 6DY.
4. On 02/11/2016 The London Borough of Tower Hamlets (“the Council”) designated Weavers Ward, in which the property is located, as an area of

selective licensing. The scheme came into effect on 01/10/2016. On 28/04/2021 the selective licensing scheme was extended to 01/10/2026. On 23/11/2022 the Council's Environmental Health and Trading Standards Department confirmed in writing that the property had no selective licence.

5. The respondent accepts that they should have obtained a selective licence for the property but say that they have a reasonable excuse because the Council did not inform them of this requirement.

6. In relation to the alleged offences under the 1977 Act, the respondent denies any action capable of being identified as illegal eviction or harassment, and assert that it was the applicant who was rude to their operatives when they tried to attend to remedy reports of a defective window in the applicant's room.

7. In relation to the alleged disrepair of the window, the respondent's position is that they did all they could to remedy the problems, and further that the applicant failed to allow access.

8. The Tribunal issued Directions on 20/02/2023. On 25/05/2023 the respondent's bundle had not been received, and an unless order was made by TJ Daley that "*unless by 5 June 2023 the Respondent file and serve a hearing bundle in compliance WITH direction 5the Respondent shall be barred from taking any further part in these proceedings...*"

THE HEARING

9. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles provided enabled the tribunal to proceed with this determination.

10. This was a face to face hearing at 10 Alfred Place, London WC1E. The applicants' provided a bundle of [181] pages. Any reference to that bundle of documents will appear as [A/page number]. The respondent provided a bundle of [69] pages. Any reference to the contents of that bundle will appear as [R/page number]. The applicants have provided a response bundle of [18] pages. Any reference to documents in that response bundle will appear as [AA/page no].

11. The applicant attended the hearing accompanied by his legal representative, Ms Hall, who had provided a skeleton argument by email in accordance with the Tribunal's directions.

12. The respondent was represented by Mr Vasilescu, of Counsel and was accompanied by Mr Gokul Krishna Thankappan Asari Radhakumari "Gokul Krishna".

PRELIMINARY ISSUES

13. Both parties sought to rely on late witness evidence and the Tribunal heard submissions in this regard.

14. The late witness statement of Gokul Krishna Thankappan Asari Radhakumari (also known as Gokul Krishna in the email correspondence) for the Respondent was filed and served on Friday 07/07/2023. This witness statement is a duplicate of that produced and signed by Mr Rosenberg, the director of the respondent company who was not able to attend the hearing. It was submitted by Mr Vasilescu that the applicant would not be prejudiced by this late evidence as it introduces nothing new, and further it would be unjust not to allow the respondent to give evidence. The alternative he says is to adjourn the hearing. The basis for that adjournment was difficult to consider as no reason for Mr Rosenberg's absence was provided.

15. Ms Hall for the applicant objects to this late statement on the basis that it does prejudice the applicant. This prejudice is on the basis that they prepared to cross examine Mr Rosenberg. It was further submitted that this is not the first time that the respondent has failed to comply with directions, referring to the unless order directed at the respondent for failure to lodge their appeal bundle in time

16. The Tribunal determined that the applicant would not be prejudiced by what was in effect the replacement of the respondent's witness. The replacement witness, Gokul Krishna, is mentioned throughout the applicant's hearing bundle, has been the author of many of the emails of which the applicant complains, and has been managing the subject property for 3 years. Permission granted.

17. In relation to the applicant's late witness statement from Mr John-David Wuarin, included in the applicant's response bundle, the respondent objected to the inclusion of this document as Mr Wuarin occupies another flat in the building, and the document is prejudicial to the respondent. The applicant asserts that the evidence of Mr Wuarin provides evidence of a course of conduct by the respondent's operations manager of claiming racist behaviour, and also demonstrates the respondent's poor history in managing the heating issue in the flats in the building.

18. The Tribunal determined that as Mr Wuarin was not present to have his evidence tested, the witness statement would be allowed but it's weight may be limited.

19. Prior to hearing the applicant's evidence, he sought permission to confirm a statement of truth in relation to his statement of case and that stand as his witness statement. This was not opposed.

20. On the basis that the respondent accepts that they should have licenced the property under the terms of selective licencing and that a RRO must be made against them, the only live issues for the Tribunal to determine were the alleged disrepair of the large window in the applicant's bedroom, and the alleged illegal eviction and harassment claims. The defence of reasonable excuse was not pursued in the hearing.

The evidence

The Bedroom window

21. In oral evidence the applicant confirmed that he had started to complain about problems opening the large floor to ceiling window in his room. This is confirmed by documentary evidence in emails dated May 2022. In oral evidence he conceded that there had been some 7 visits by the landlord and/or contractors to try to resolve the issues. However, he says these attempts were not effective and he says were not resolved whilst he was there.

22. The problems with the window were not entirely clear to the Tribunal. There was an allegation that there was no safety catch, such that the floor to ceiling window would open fully and the applicant would be in danger of falling out. There was also an allegation that the window would neither open or shut and that the applicant had been unable to open the window at all until July 2022. However, the applicant's oral evidence was inconsistent because later in the hearing he said that the window had been 85% shut. He could not elaborate exactly what he meant, and no report was provided to clarify the position.

23. It is not disputed by the respondent that there was a problem with the window, but they too are vague about the problem. There was an allegation made by Gokul Krishna in an email in November that the applicant may have damaged the opening mechanism, but no inspection report clarified this. The respondent was proactive in instructing their contractors to look at the window on at least 7 occasions, but the outcome appears to have been that the whole building would require scaffolding to replace all the windows. No document confirming this was produced.

24. In oral evidence Gokul Krishna confirmed the statements made in his emails in November 2022, that the operatives no longer wanted to attend at the property because, he said, the applicant "looked down" on them due to their ethnicity. This allegation was not supported by the witness statements from the two operatives. In the statement of Liviu Cristea [R/15] he makes not mention of comments about ethnicity. He refers to feeling insulted because he was asked by the applicant if he was a "maintenance" or "furniture" man. The claim that this was an insult was not elaborated in the statement. In the statement of Devendra Singh [R/16] he accuses the applicant of time wasting because he was asked to attend to carry out works, and was not given access. No mention in his statement refers to comments of ethnicity

Illegal eviction and harassment

25. The applicant claims that he felt harassed by the respondent and that the respondent attempted to illegally evict him from the property. He relies on a notice to quit dated 2/11/2022. He claims this was an attempt at retaliatory eviction because he asked the respondent to remedy the defective window in his room. He formed that view after having read information on the Shelter website.

26. He did not leave the property as a result of that notice and did not seek legal advice on this issue until 06/01/2023. Having decided that he would leave because he felt stressed having to go past the respondent's offices on the ground floor of the building, he signed a deed of surrender voluntarily on 13/01/2023 and vacated the property 27/01/2023. His co-joint tenant remained living in the property and has since signed a new agreement with the respondent. Relations between the joint tenants was said not to be good because the applicant owed Mr Berrie money for utility bills.

27. The applicant stated that he left the property because he felt a "harassing atmosphere" in November which was causing him stress and palpitations.

28. When pressed on what the harassment in November had been, the applicant stated that it was between 9-12 November 2022 when Gokul Krishna accused him of deliberately damaging the windows and then sending him a "snippy" email wishing him good luck with finding new accommodation.

29. In oral evidence Gokul Krishna said that the notice served on the applicant was valid because they rely on the break clause in the tenancy agreement. The notice addressed to Andrew Berrie states

"Sub: Official Tenancy Termination Notice

Dear Andrew

As we need to refurbish the flat you are hereby notified and required to vacate the property by 15 JANUARY 2022" [A179].

30. No s.21 or s.8 notice under the terms of Housing Act 1988 were served and when asked about such notices, Gokul Krishna told the Tribunal that they never served such notices when relying on a break clause, and always served notices in the above terms. He could not appreciate the problem with such a notice, and became quite aggrieved, and somewhat aggressively evasive, when asked questions on this issue by the applicant's representative. This despite the fact that he is operations manager for the respondent company who are professional landlords of multiple flats in the building.

31. Having considered the copious email correspondence in the bundle both from the applicant in relation to the window, and the responses from Gokul Krishna, it is clear that Gokul Krishna became aggravated by the ongoing complaints by the applicant, and having to spend time responding to the

emails when he would have preferred to speak to the applicant on the telephone.

32. The tone in the emails from Gokul Krishna, in his apparently aggravated state, appear somewhat rude and bullying. For example, after the applicant has asked for a rent reduction because of the ongoing window problems, rather than escalating this to court action, Gokul Krishna writes in an email on 07/11/2022 [A/121] Gokul Krishna responds within 10 minutes and states that the notice was necessary as all windows need repair, and he writes “it is unfortunate that this happened and we did all in our powers to rectify this as stated in your complaint and we will have to change the windows that needs scaffolding and interior works hence the notice to vacate. Please let us not leave in a bad terms, we will cooperate with the court proceedings. Please give your lawyers our email addresses and once we get the letter from the court we will furnish the details of our legal counsel details. Good luck with your search to find a suitable accommodation” [A123].

33. Thereafter the written communications from Gokul Krishna became more aggressive and stating that the applicant’s failure to want to discuss issues on the telephone, and only wanting to communicate by email is causing Gokul Krishna difficulty as he is always out on the road, not sitting in front of the computer [A/126]

34. In an email dated 10/11/2022 Gokul Krishna states that they need to carry out a survey of the windows in order to establish if the windows “are deliberately tampered” [A131], and going on to accuse the applicant of throwing tantrums, threatening court actions and holding them to ransom. He asserts that they triggered the break clause in the contract so that they could remedy the windows, and “As you’re really unhappy we can terminate your contract today and let you go or you can stay there till the end of the notice period” [A131]. He states that the contractors (Livi and Mohammed) are not willing to attend the property “in your presence as they feel like they been looked down by you as they’re from different nationalities” [A131].

FINDINGS

35. The Tribunal finds beyond a reasonable doubt that the respondent landlord is in breach of the selective licensing requirement for the property for the period claimed by the applicant, that is 01/05/2022 to 27/01/2023.

36. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

37. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord’s financial circumstances and whether the landlord has been prosecuted.

38. There is no evidence to demonstrate that the landlord has been prosecuted.

39. The Tribunal does not find harassment or an attempt to illegally evict the applicant from the property. While an invalid notice was served, the respondents took no further action. The applicant's own conduct further to that notice was to ignore it until some two months later when he sought legal advice, and then deciding to vacate the property voluntarily do not demonstrate that he felt harassed. His evidence about having felt harassed was not persuasive.

40. However, the Tribunal does find that the tone of the emails from Gokul Krishna was somewhat aggressive. In particular in unsubstantiated allegations that the applicant had damaged the windows, the allegation that the applicant had in some way treated operatives badly due to their ethnicity, and generally poor tenant management. It was clear in cross examination, carried out very gently by the representative, that Gokul Krishna had difficulty controlling his responses when asked questions that he didn't like.

41. The Tribunal do not find that the applicant tenant demonstrated poor conduct other than withholding the last half month's rent, but that will be reflected in the RRO award. In relation to the respondent's claims that the applicant complained too much, it cannot be poor conduct to request repairs to be carried out. It is not in dispute by the applicant that he failed to settle the utilities owed to his co-tenant, but he assured the Tribunal that he would resolve that debt.

42. Little evidence was available in relation to the financial circumstances of the respondent, other than they are a freehold owner of a block of flats let out on AST agreements, who has a team including a manager, and contractors he can call on for works to be carried out. This evidence did not suggest, nor was it claimed by the respondent's witness at the hearing that the respondent was in financial difficulty.

43. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21.

- a. The rent paid by Garrett Burns for the period from 01/05/2022 to 27/01/2023 was £9,719.35
- b. Utilities were not part of the rent. These were paid by the applicants and no deductions are made in that regard.
- c. The respondent was a professional landlord having let this property for some years. No licence to date has been provided in evidence, although it is said to have been applied for on 26/06/2023.
- d. However, the respondent has not been prosecuted and there is no evidence before the Tribunal of any previous convictions. Considering the cases cited in paragraph 16 of the *Acheampong*

case cited above, the starting point in this case is 80% and on a par with Williams v Palmer [2021] UKUT 244 (LC)

- e. The respondent has provided no information about his financial circumstances.
- f. The assertion by the respondent that the applicants' conduct was poor is rejected.
- g. The Tribunal consider the bullying emails from the respondent to the applicant to be an aggravating factor. The Tribunal therefore consider that 80% of the net rent for the period is repayable. Accordingly, we find that an RRO be made against the respondent in the sum of **£7,775,48** to be paid within 28 days of this order.

44. The Respondent is also ordered to repay to the Applicant the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Judge D. Brandler **Date:** 28th July 2023

ANNEX - 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

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).

Section 44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (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.
- (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.