



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

<b>Case Reference</b>	:	<b>CAM/OOMD/HMB/2023/0001</b>
<b>Property</b>	:	<b>12 Bank Spur, Cippenham, Slough, SL19JF</b>
<b>Applicants</b>	:	<b>Rajan Singh Sembi</b>
<b>Respondent</b>	:	<b>Elfrida Lushi</b>
<b>Type of Application</b>	:	<b>Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 &amp; 44 of the Housing and Planning Act 2016</b>
<b>Tribunal Member</b>	:	<b>Judge Shepherd Mary Hardman FRICS IRRV (Hons)</b>
<b>Venue of Hearing</b>	:	<b>East Berkshire Magistrates Court</b>
<b>Date of Decision</b>	:	<b>9<sup>th</sup> August 2023</b>

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**DECISION**

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1. In this case the Applicant Rajan Singh Sembi (“The Applicant”) is seeking a Rent Repayment Order against Mrs Elfrida Lushi (“The Respondent”). The Applicant was the former occupier of premises at 12 Bank Spur Cippenham, Slough, SL19JF (“The premises”). He alleges that he and his family suffered harassment from the Respondent including threats of violence and harassment between February 2022 and October 2022. He also alleges that on 21<sup>st</sup> June 2022 the Respondent changed the locks at the premises evicting him and his wife and child from the premises.

The following day it is alleged the Respondent removed the family's possessions from the premises some of which were stolen. The Applicant was forced to obtain an injunction in the County Court to regain readmission.

2. The Applicant seeks a Rent Repayment Order for the repayment of 11 months rent between April 2021 and February 2022. From March 2022 the Applicant stopped paying rent at the premises on the basis that he was suffering harassment. He seeks a Rent Repayment Order of £15400. There are parallel proceedings in the County Court in which the Applicant is seeking damages. It is important to stress that the Tribunal was solely dealing with the Rent Repayment order. All other issues in relation to damages for the alleged unlawful eviction are the domain of the County Court.
3. The Respondent denies the alleged harassment and claims that she received advice from the police and the court that she was entitled to re-enter the premises on 21<sup>st</sup> June 2022. She had obtained a possession order via s.21 proceedings on 20<sup>th</sup> April 2022. The order required possession to be given up on 21<sup>st</sup> June 2022. The following day the Respondent took possession without involving the bailiffs. She accepts that subsequently the Applicant obtained an injunction and was readmitted on 29<sup>th</sup> June 2022. Thereafter the bailiffs carried out the eviction on 28<sup>th</sup> November 2022. She says that the Applicant owes rent arrears of £12061.22. She also says that she incurred costs of £2280 in bringing the premises up to standard after the Applicant and his family left.
4. These are the conflicting accounts in a bitter dispute. It is necessary to record the chronology of events as disclosed by the documents provided.
5. On 17<sup>th</sup> April 2021 the Respondent granted a tenancy to the Applicant and Ms Jasmine Bawa – this is the sister of the Applicant's wife Reema Sembi. In a short statement dated 3<sup>rd</sup> May 2023 Ms Bawa says that Reema was not working and was suffering from pregnancy related issues and she signed the tenancy agreement in her stead. Credit references had been obtained by the Respondent for the Applicant and Ms Bawa. Ms Bawa then left the premises later in 2021.
6. On 17<sup>th</sup> September 2021 the managing agents, Jackson O' Rourke took over management of the premises. Josephine O' Rourke gave evidence to the Tribunal. She says her firm were involved in advertising and letting the premises prior to taking over management. In correspondence leading up to the letting the Applicant claimed his partner was Jasmine Bawa ( see email dated 29<sup>th</sup> March 2021). Ms O'Rourke says that Reema Sembi was not mentioned at the start of the tenancy. Rent arrears started to accrue in October 2021. The Applicant told her he was applying for Universal Credit. She says that on 6<sup>th</sup> January 2022 the Applicant sent an email asking for written confirmation that he and Reema Bawa

lived at the premises. He wanted an amended tenancy agreement. He said that Jasmine had left in the summer and that Reema was his wife. Ms O'Rourke refused to amend the tenancy.

7. On 20<sup>th</sup> April 2022 following non payment of rent possession proceedings were issued.
8. On 7<sup>th</sup> June 2022 a possession order was granted. The Applicant was required to give up possession by 21<sup>st</sup> June 2022.
9. On 21<sup>st</sup> June 2022 the Respondent and her husband took possession of the premises when the Applicant and his family were out. They changed the locks. On 22<sup>nd</sup> June 2022 the Respondent called Ms O'Rourke who attended. A video seen by the Tribunal shows heated exchanges involving the Applicant, his wife, The Respondent, her husband and Ms O'Rourke. It is clear that the Applicant and his family were being refused access to their home. The police arrived and took no action.
10. On 29<sup>th</sup> June 2022 DDJ Lynch granted an injunction requiring the Respondent to readmit the Applicant and his family to the premises, provide keys and return personal possessions. The Applicant was readmitted thereafter.

### **The hearing**

11. The Applicant was represented by his wife and the Respondent was represented by Ben Leb of Counsel.
12. Ms Sembi maintained that the issue of her occupation had been raised with Ms O'Rourke before her husband requested the amended tenancy in January 2022. She said her husband had made a mistake when he referred to Ms Bawa as his partner. She said that there had been unannounced visits by the Respondent on at least 20 occasions between November 2021 and June 2022. On occasions the Respondent and the managing agent had banged on the door and woken her baby up. They came when her husband was out. In relation to disrepair she said that mould was visible on the walls from November 2021. There had been a leak. There was no fan and the windows would not open. She had informed the Respondent and the agent. She said that the window handle was broken but accepted it had been fixed. She said that there had been a leak under the bath which had not been fixed. This leaked downstairs. The landlord's husband said they would have to pay to have it repaired. Eventually they got the Applicant's father to repair it as he was

a plumber. She accepted that no rent had been paid since 17<sup>th</sup> March 2022 . She denied that the Applicant's father threatened the Respondent or her husband with a drill after the unlawful eviction.

13. Ms Drazek of 14 Bank Spur gave evidence and was cross examined about hearing a birthday party at the premises when the family were abroad. She maintained her account.
14. The Respondent gave evidence. She said she had left all matters to her husband. She had not thought of obtaining confirmation from the police and court about the alleged advice she received. Her husband also gave evidence. He repeated that he had asked the advice of the police and told them the possession order had taken effect. He was told he could change the locks. He said he had carried out works at the property including resolving the leak.
15. Ms O'Rourke gave evidence on behalf of the Respondent. She had helped them prepare the possession claim. She said she was not member of a professional association. On 22<sup>nd</sup> June 2022 the Respondent's husband rang her to say that he had been threatened by the Applicant's father in law. She confirmed that she had advised the Respondent to wait for the bailiffs appointment.
16. In closing Ms Sembi said that the Respondent had maintained a campaign of harassment and the premises were in a state of disrepair. They had paid the rent until March 2022.
17. Mr Leb said that the Respondent and her husband had a reasonable belief that they were entitled to change the locks as they were given assurance by the police and the court. He said that the Tribunal should not make a Rent Repayment Order alternatively he made submissions in relation to mitigation. He said his client had two properties which were let out. It was not a large portfolio. He said that the disrepair had been dealt with in good order. He said that there was no evidence of the alleged harassment such as logged allegations. He said that the Applicant had not even put in a witness statement. He said there were substantial arrears.

## **The law**

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

18. 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.
19. 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.
20. 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. 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."
21. 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.”
22. 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; (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. 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.

23. 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).”

24. 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.

25. 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.”

26. 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.

27. 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]).

28. 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%).

29. 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**

30. The primary focus in this Rent Repayment Order application must be on whether there was an offence of eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977. S.6(1) of the Criminal Law Act is unlikely to be relevant. The relevant sections of the PEA 1977 state the following:

*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 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.*

*(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 or withdrawing or withholding the services in question.*

....

### **Was there an unlawful eviction?**

31. It is common ground that the locks were changed at the premises by the Respondent and her husband on 21<sup>st</sup> June 2022. It is also common ground that the bailiffs were not involved in this eviction. Although the Respondent had obtained a possession order the lawful route to possession thereafter was to arrange for the bailiffs to carry out the eviction. She and her husband did not seek to argue that they thought the Applicant and his family has vacated. Instead they argued that they had received advice from the police and the court to the effect that they could change the locks. This is not a defence to the unlawful eviction provision in s.1 (2). Accordingly on any account there was an unlawful eviction. In any event the Tribunal were not provided with any evidence of the alleged advice received from the police or court. It is considered extremely unlikely that such advice would have been given in any event. Indeed it transpired during the hearing that the Respondent's agent, Ms O'Rourke had advised her in writing and verbally to wait for the bailiffs before taking possession.

32. The Tribunal finds beyond reasonable doubt that there was an unlawful eviction contrary to s. 1 (1) of the PEA 1977.

### **Was there harassment intended to cause the Applicant and his family to leave?**

33. The Applicant alleges that there was a course of conduct constituting harassment prior to the unlawful eviction. The conduct alleged was threatening behaviour, banging on the door etc. The evidence in relation these allegations was weak. There were no logs kept of these allegations. There were no regular reports to the police which might have been expected. There was evidence of robust communications from the Respondent's husband in relation to non

payment of rent. This was not harassment however. Neither did it evidence an intention to remove the family from the premises unlawfully.

34. The Tribunal finds that the allegation about harassment is not made out.

### **Penalty**

35. The Applicant seeks a Rent Repayment Order of £15,400

36. At the hearing the Tribunal heard that during the 12 months immediately prior to the offence a total of 9 months rent was paid at £1400 per month – totaling £12,600.

37. There is no deduction for utilities as the rent was exclusive of any such payments

38. The Applicant was in receipt of Universal Credit for 2 months (March 2022 and May 2022). The amount included in this for Housing Benefit was £1000 per month and therefore the Tribunal has made a deduction for Universal Credit of £2000 resulting in a net rent paid of £10,600.

39. This was a serious offence of depriving a family of their home. They remained homeless until they were able to secure an injunction. The Respondent's conduct and indeed the conduct of her husband were reprehensible. They knew they were acting contrary to the law because their agent had advised them that they needed to wait for the bailiff before taking possession.

40. Ms O'Rourke behaved entirely unprofessionally as evidenced by the video seen by the Tribunal. She maintained a robust stance to the effect that the Applicant and his family were not entitled to regain possession even though she knew this was not true. Her evidence to the Tribunal was also unimpressive. She would be wise to carefully consider how she conducts herself in the future particularly in a position when she is managing property and dealing with the welfare of residents under her control.

41. Accordingly it is appropriate to make a Rent Repayment Order in this case but issues of conduct must be considered. Criticism of the Respondent's conduct and that of her husband has already been made.

42. Unfortunately, the Applicant and his wife can also be criticized. It is tolerably clear that there was a misrepresentation at the commencement of the tenancy. The Applicant pretended that his sister-in-law was his partner probably to boost the projected income. In addition, the Applicant's rent payment record was poor. Payments were irregular leading up to the unlawful eviction and after the eviction and reinstatement nothing was paid. He was not excused from making rent payments as a result of the eviction. He paid nothing and accrued substantial arrears. Presumably some reckoning of this will be made in the County Court proceedings. In addition, we consider it is right to make a reduction to reflect the poor conduct in this regard. We reduce the award by 30%.

43. Accordingly, the award made is £7420

44. The Respondent is required to pay the Applicant £7420 within 28 days.

Judge Shepherd

9<sup>th</sup> August 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.