FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/11UF/HUF/2021/0017** **F2F**
Property	**:**	**11 Ellsworth Road, High Wycombe, Buckinghamshire HP11 2TU**
Applicant	**:**	**Nadeem Hussain**
Respondent	**:**	**Ahmad Younus**
Type of application	**:**	**Application for a Rent Repayment Order – section 40 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge Ruth Wayte** **Tribunal Member John Francis**
Date of hearing	**:**	**10 August 2023**
Date of decision	**:**	**21 August 2023**

DECISION

Decision of the tribunal:

The tribunal does not make a rent repayment order.

The application

1. By an application dated 11 October 2021, the applicant sought a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 ("the 2016 Act") of £4,200 (12 months at £350 pcm) paid in respect of his occupation of the property from 15 June 2019 to 20 October 2020.

2. Directions were ordered on 10 December 2021. Those directions assumed that the applicant was relying on the alleged letting of the property as an unlicensed HMO, as the statement accompanying the application appeared to relate mainly to that offence, although there was some mention of the applicant being asked to leave the property and of builders "stripping all the bedrooms apart from ours".

3. The applicant's hearing bundle was due by 10 January 2022, the directions suggested that he ask Buckinghamshire Council to assist him with proving the offence. It subsequently became clear that they were prosecuting the respondent and they confirmed that they would be unable to provide any documents to assist the applicant until the criminal case was concluded. The case was stayed for some months and then listed for a case management hearing on 13 December 2022.

4. By this time the respondent was represented by solicitors who attended the hearing on his behalf. It was subsequently confirmed that the property had ceased to be an HMO by 2 October 2020, as all the occupants except for the applicant and one other had left the property the previous day. As the application was not made until 12 October 2021, the applicant had left it too late to rely on any HMO offence, as any application must be made within 12 months of the offence being committed.

5. After further correspondence and an appeal, Judge Wayte issued a reviewed decision on 20 April 2023 confirming that the tribunal had jurisdiction to consider the application on the basis that the offence alleged by the applicant was harassment and/or unlawful eviction under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977. This was on the basis that the applicant left the property on 20 October 2020 and alleged that he had been unlawfully evicted or harassed up until that date, which was within 12 months of the date the application was made.

6. The application was listed for hearing on 10 August 2023. On a review of the hearing bundles beforehand, Judge Wayte was reminded of the criminal prosecution and made an order under rule 20 of the Tribunal Procedure Rules 2013 for the respondent to confirm the outcome of the criminal proceedings and produce the certificate of conviction (if any). On receipt of a copy of that order, the applicant contacted Buckinghamshire Council who confirmed that on 6 March 2023 the

respondent had been convicted of 5 offences, including managing an unlicensed HMO and failing to ensure fire safety measures were in place. The Judge concluded that the respondent must have known the house was an HMO. The respondent was fined £5,000, ordered to pay costs of £6,878.96 and a victim surcharge of £190, totalling £12,068.96.

7. The hearing of this application was held in Marlow. Both parties attended to present their case and give evidence, the respondent was accompanied by his wife. He confirmed that he had parted company with his solicitors as he was dissatisfied with the outcome of the magistrates' hearing. In the light of the disclosure of the conviction by the applicant, Judge Wayte set aside her rule 20 order.

The law

8. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence, including the offences identified in paragraph 5 above. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.

9. "Landlord" is not defined in the 2016 Act, which confirms that a tenancy includes a licence. In 2023, the Supreme Court confirmed that a RRO may only be made against an immediate landlord and not a superior landlord (*Rakusen v Jepsen and others* [2023] UKSC 9).

10. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO must relate to rent paid by the tenant in respect of a period not exceeding 12 months, ending with the date of the offence (for eviction/harassment offences). Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:

    - the conduct of the landlord and the tenant;
    - the financial circumstances of the landlord and
    - whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

Background

11. The respondent's statement confirmed that he bought the property on 9 September 2016. He agreed with the vendor that his brother Azhar Hussain and his wife, who were in occupation, could stay there and agreed a rent of £1,440 per month. The rent was paid in cash, in arrears. The respondent also agreed that Mr Hussain's two cousins could stay at the property. He visited the property about once a quarter and although the rent was sometimes late, it was always paid in full. This arrangement continued until June 2019 when Azhar Hussain and his wife started to pay £400 a month by bank transfer and the balance by cash.

12. As stated above, the applicant's statement confirmed that he moved into the property on 15 June 2019. He found the room through a friend and visited the day before when he met Azhar Hussain who showed him an ensuite room on the ground floor, off the kitchen. At the hearing he stated that Azhar confirmed the property was not his but that the rent would be £350 pcm and he would pass it to the landlord. He also confirmed that he met the respondent the following day when he called at the property. Azhar introduced him as the landlord but there was no conversation. He had never received any receipts for the rent or a tenancy agreement, despite repeated requests, mainly through Azhar. The applicant stated that when he moved in, there were 8 other occupants in the property and a 10th joined later, sleeping on the sofa.

13. The respondent's statement confirmed that the rent payments started to become more erratic at this time and, after speaking with a friend, he was advised to formalise his agreement with Azhar Hussain. New terms of £1,550 per month plus council tax and water rates were agreed and a tenancy agreement was signed by Azhar Hussain and his wife on 2 December 2019. A copy of the agreement was in the respondent's bundle. It included a condition that only Azhar Hussain could live in the property, although the respondent accepted that in practice he had agreed to the couple and their two cousins remaining in occupation.

14. The respondent gave evidence that the rent stopped altogether in February 2020 "due to covid" and he stayed away from the property to observe the lock down regulations but also due to his work for the NHS (he is a hospital technician). He received one month's payment in April 2020 and a few direct transfers of £400 but that was it until Azhar and his family moved out.

15. The applicant's income also suffered during lockdown – he works as a mini-cab driver. He signed up for Universal Credit but was unable to get a tenancy agreement or even receipts from Azhar to prove his rent payments.

16. In August 2020, Trevor Charlesworth, an officer of Buckinghamshire Council knocked on the front door of the property. The applicant answered and was handed two letters, one addressed to the occupants

and the other to the respondent. Azhar Hussain took the letters from him and a copy of a letter dated 10 August 2020 was included in the respondent's bundle. That letter stated there would be an inspection on 17 August 2020, following information that the property was being occupied as an HMO.

17. Both the applicant and the respondent were at the property when the inspection was carried out on 17 August 2022. The respondent states that was the first time he met the applicant and that he assumed he was one of Azhar's cousins. Following that visit the council served the respondent with an Improvement Notice, dated 24 August 2020. A copy was included in his bundle which confirmed the works in respect of fire doors and smoke/fire detectors were to start by 21 September and be completed by 2 November 2020.

18. On 24 September 2020 there was a further inspection by the council which is when the respondent states he first became aware the property was occupied by more than 4 people. The applicant's statement records a total of 8 on that day, which the respondent does not deny.

19. The following day, the respondent states that he served a Notice Seeking Possession on Azhar Hussain and his wife. On 1 October 2020 while speaking to David Narek from the council, he was advised that it was unlawful to serve notice once an Improvement Notice has been given and therefore the respondent went round to the property to withdraw it. However, that same day Azhar and his family moved out, leaving the applicant and Nazakat Hussain (presumably no relation) behind. Mr Narek confirmed that no action could be taken against either occupant while the Improvement Notice was in force which would probably mean them both staying there for another 6 months.

20. The parties agree that at that time the respondent had asked the applicant to leave the property so that he could carry out the works. Alternatively, the respondent suggested that the applicant rent the whole house for £1,500, which the applicant was not able to afford. The applicant states that he asked the respondent to give him 4 weeks written notice but he refused. Both mention the applicant threatening to contact the council, albeit the reason for doing so varies.

21. The respondent states that on 2 October 2020 he gave the occupants written notice that the works were due to start on 5 October 2020. The applicant denied receiving the notice and stated that the builders arrived early one morning without warning. The applicant's door was replaced and the new one did not lock, he claimed that as the door was open, dust and debris messed up his room. He also stated that the builders brought down ceilings and broke toilets, which the respondent denies.

22. The parties agree that they spoke on the telephone on or about 20 October 2020. The applicant was going to Pakistan to see his family and offered to leave the property for good if the respondent paid him £2,800. He says that the respondent agreed to pay him when he returned but the respondent said he made no promises during the call, saying he needed to get advice. The applicant left the property on 20 October 2020.

23. The applicant returned to the UK in or about March 2021. He spoke to the respondent on the telephone on 11 April 2021, which was recorded by the respondent without his knowledge. A transcript of that conversation was included in his bundle. The applicant reiterated that he wanted £2,800 or he would apply for a RRO, as advised by the council. That was the last time the parties spoke and the application was eventually made on 11 October 2021.

24. Despite his recent conviction for managing an HMO, the respondent wished to maintain his argument that he was not the landlord, he also disputed that there had been any harassment or eviction by him.

Was the respondent the applicant's landlord?

25. As stated above, the 2016 Act is silent as to the meaning of "landlord", although clear that a tenancy can include a licence.

26. The respondent's argument was that he had never received any rent directly from the applicant and he had only appreciated he was not one of Azhar's cousins at the second inspection on 24 September 2020. He gave evidence that he could not remember meeting the applicant on 15 June 2019 and that as far as he was concerned he had only met him for the first time at the first inspection on 17 August 2020.

27. The applicant was adamant that they had been introduced to each other on 15 June 2019 but agreed that he paid his rent to Azhar Hussain. His evidence was that Azhar had always been clear that the property was not his and referred to the respondent as the landlord.

28. Buckinghamshire Council also referred to the respondent as the landlord and obtained a conviction on the basis that he was the person managing the HMO, defined in section 263 of the Housing Act 2004 as "*the person who, being an owner or lessee of the premises receives (whether directly or through an agent or trustee) rents or other payments from…persons who are in occupation as tenants or licensees of parts of the premises*".

29. The tribunal prefers the evidence of the applicant in respect of the meeting on 15 June 2019. He has been consistent on that point throughout and mentioned it again in the recorded telephone conversation on 11 April 2021 ("*You must know that when I came both me and you had met*"). In those circumstances and taking into account

the conviction on 6 March 2023, the tribunal is satisfied that the respondent was the applicant's landlord for the purposes of the Housing Act 2016, with Azhar Hussain acting as his agent in collecting the rent from the occupants of the property and passing it on.

Had the respondent committed a relevant housing offence?

30. As set out in paragraph 10 above, the tribunal only has the power to make an RRO where the landlord has committed a relevant offence. As the applicant is unable to rely on the proven HMO offence, he needed to prove beyond reasonable doubt that the respondent was guilty of unlawful eviction or harassment under section 1 of the Protection from Eviction Act 1977 which reads as follows:

> 1(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 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 withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.
> (3A) Subject to section (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 the 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 section 3A above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question."

31. Although the applicant had stated he had been unlawfully evicted from the property, there was no evidence of an eviction in terms of unlawfully depriving him of access to his room. His original written statement says that in August 2020 he voluntarily moved rooms to allow some works to be carried out to his room, before moving back. When the builders changed the door to his room in October 2020, his complaint was that the new door had no lock, not that he was locked out. He also left the property on 20 October willingly, albeit on the understanding that he would receive £2,800 on his return to England.

32. In terms of harassment; the applicant gave evidence that the respondent had visited the property to ask him to leave on 12 August, 1 and 2 October 2020. The applicant also spoke to the respondent on the telephone on 20 October, the day he left the property. In addition, the applicant claims that he was harassed by the building work, which lasted about a week from 5-12 October 2020.

33. Of the conversations, the most threatening was on 12 August 2020 when the applicant says the respondent threatened to call his employers to deny he was living at 11 Ellsworth Road. He had recorded this conversation on his mobile phone but it was in Urdu and no translation was available for the tribunal. Permission was refused to allow this new evidence at such a late stage in proceedings.

34. The respondent denied there was a meeting on 12 August 2020. He accepted that he had visited the property on 1 and 2 October 2020 and asked the applicant to leave. As stated above, he also denies that he promised to pay the applicant £2,800 to vacate his room on 20 October 2020, as opposed to saying that he would seek advice from his solicitors. He further denied that the building works were harassment. They were carried out in response to the Improvement Notice and other requests from the council and lasted a short duration only.

35. As had been explained to the applicant throughout the proceedings, it is for him to prove the offence beyond all reasonable doubt. There is no evidence of an actual eviction and no real evidence of harassment. Again, the applicant's account has been the most consistent in terms of meetings, which were recorded in his statement dated 20 October 2020 as well as later emails. However, the requests to leave fall some way short of the behaviour required to prove the offence. There were clearly reasonable grounds for carrying out the building works. The applicant complained they damaged the property but again produced no proof and his original statement refers to the builders having stripped all the bedrooms "apart from ours".

36. In the circumstances the applicant has failed to prove that a relevant offence was committed by the respondent and the tribunal has no power to make a RRO.

Name: Judge Ruth Wayte **Date:** 21 August 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).