



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

**Case Reference** : CHI/00HY/HMC/2023/0001

**Property** : 15 Bremilham Rise, Malmesbury, Wiltshire  
SN16 0DH

**Applicant** : Andrew Dawson  
[andrewdawson71@btinternet.com](mailto:andrewdawson71@btinternet.com)

**Representative** :

**Respondent** : Edmund Dias

**Representative** :

**Type of Application** : Application for a rent repayment order by  
Tenant  
Sections 40, 41, 42, 43 & 45 of the Housing  
and Planning Act 2016

**Tribunal Members** : Judge D Whitney  
Mr B Bourne MRICS  
Ms T Wong

**Date of Hearing** : 15 August 2023

**Date of Decision** : 18 September 2023

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**DECISION**

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## **Decision**

**The Respondent shall pay to the Applicant the sum of £5,000 within 28 days.**

**The Respondent shall reimburse the Tribunal fees paid by the Applicant of £300 to the Applicant within 28 days.**

## **Reasons**

### **Background**

1. On 8 March 2023 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord. The amount claimed was “£500pcm x 12 =£6,000”. The Applicant stated that the Respondent “has failed to comply with the terms of 2 Improvement Notices.”
2. Directions were issued on 8<sup>th</sup> June 2023. The matter was listed for hearing at Havant Justice Centre by video on 15<sup>th</sup> August 2023.
3. On the day prior to the hearing the Respondent had requested whether he could attend the hearing in person. This request was granted although in fact he did attend remotely by video.
4. The Applicant produced an electronic bundle of 51 pages. References in [ ] are to pdf pages within that bundle.
5. The Applicant attended by video from Malmesbury. He was in a room on his own. The Respondent was at his sons house in Bristol and his son was in the same room although he did not appear on camera.
6. The hearing was recorded.
7. Mr Dawson presented his case followed by Mr Dias. Each party was afforded an opportunity to question the other and the Tribunal also asked questions of the parties.
8. The Tribunal at the outset of the hearing reminded Mr Dias that it was being asked to determine that he had committed a criminal offence and so the criminal standard of proof would apply.

### **Law**

9. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.

10. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
11. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
12. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:
  - a) the rent paid in respect of the period in question, less
  - b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
13. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:
  - 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 any of the specified offences.

## **Evidence**

14. Mr Dawson explain that he had been a tenant since 2004. He stated that he had experienced issues with the roof for the last 10 years.
15. In October 2022 matters came to a head when masonry came away from the wall. Mr Dias attended the Property to view but simply suggested that Mr Dawson and his family should vacate. At this point Mr Dawson involved the council who served an Improvement Notice upon Mr Dias [13-22]. This required certain specified works to be completed by 30<sup>th</sup> December 2022 (see [22]).
16. Mr Dawson stated the works were not completed. He further stated that works relating to the roof had even now not been completed.
17. Works to install new heating had been undertaken by the end of January 2023. Mr Dawson stated that this caused his families electricity bill to reduce by about £10 per day. He stated he had not thought the lack of proper heating was costing him that much money.
18. He confirmed he made the application for an RRO on the advice of Wiltshire Council and was seeking an order that the Respondent should repay 12 months rent. The monthly rent being £500 per calendar month.
19. Mr Dawson explained that the rent had remained the same throughout his tenancy. When he first moved in the house had old storage heaters which over the first couple of years had all failed. As a result he had undertaken some repairs himself but the roof works were he felt too big a job. Mr Dawson was very happy with the new heating system which had been installed.
20. Mr Dawson confirmed to the Tribunal the electrical safety certificate had been obtained in November 2022. The other electrical works required by the Improvement Notice had been completed in January 2023.
21. Mr Dawson stated that he considered being told to leave was harassment.
22. Mr Dawson stated that he believed a further notice had been served upon Mr Dias requiring the roof works to be completed by 29<sup>th</sup> September 2023.
23. Mr Dias confirmed he had not appealed the Improvement Notice served upon him. In his words it was obvious the roof needed to be fixed.
24. Mr Dias explained he had struggled to get people to do the works. He said he would make appointments and people would not turn up. He said he had now found a contractor from out of the area who would be undertaking the works.

25. Mr Dias accepted the Applicant had always paid his rent. He confirmed he lived on the same road and managed the tenancy himself.
26. On questioning by the Tribunal Mr Dias confirmed he had approached two roofers only.
27. The roofer tasked to undertake works was going to strip the roof, replace all rotten timbers and re felt the same. He stated the felt had a number of cracks and holes and had not been replaced for many years. He could see no point arranging for temporary repairs.
28. Mr Dias confirmed he owned the subject Property and his home. He received the rent from the Property, his state pension and an occupational pension. He stated that if an order was made “it would be hard, there is no doubt.”
29. Mr Dias stated he had never put the rent up since the tenancy commenced. He believed he had tried to be a good landlord and Mr Dawson had been an ideal tenant.
30. In closing Mr Dawson suggested he had only seen any progress after he had made contact with Mr Dias’ son.

#### **Has an offence been committed?**

31. The bundle contained a copy of the Improvement notice. We also had a statement from Katherine Golledge, Housing Condition Officer Wiltshire Council [49-50]. This was not challenged by Mr Dias. We have taken account of his oral evidence and his statement to the Tribunal [47].
32. Mr Dias acknowledged he had received the Improvement Notice and had not appealed the same. He accepted that he had not undertaken even at the date of the hearing the roof works required by the notice. Other works required by the Notice had been undertaken although a number not until after the date required by the Notice.
33. We have considered whether or not Mr Dias has a reasonable excuse. We are not satisfied he does. His attempts to have the work undertaken were on his own evidence limited. We would have expected a landlord to have made greater efforts to find contractors to undertake works and to be able to evidence those attempts. Mr Dias himself suggested he had contacted only two roofing contractors since receiving the notice.
34. We are satisfied to the criminal standard of proof that Mr Dias failed to comply with the terms of the Improvement Notice served upon him dated 22<sup>nd</sup> October 2022 [14] requiring certain works including roof

works to be undertaken by 30<sup>th</sup> December 2022 being an offence pursuant to Section 30(1) of the Housing Act 2004.

35. We note that Mr Dawson also suggests that Mr Dias harassed him by asking him to vacate being a breach of the Protection from Harassment Act 1977.
36. We find that Mr Dias did suggest that Mr Dawson and his family should vacate. However Mr Dias took no further steps and we are not satisfied beyond reasonable doubt that the Applicant was harassed by this action or that this amounted to a criminal offence. In so determining we take account of the oral evidence we heard and the evidence within the bundle.

### **Has the application been made in time?**

37. The Application was made on 8<sup>th</sup> March 2023. We are satisfied that the application for an RRO was made in accordance with the statutory time limits.

### **Should we exercise our discretion to make an order?**

38. We considered the decision in The London Borough of Newham v John Francis Harris [2017] UKUT 264 (LC). We have found that an offence has been made out. Taking account of all the facts we are satisfied that this is a case where we should exercise our discretion to make an order.

### **What order should we make?**

39. The Respondent accepts that Mr Dawson has been a good tenant and makes no complaint about his conduct.
40. Equally it appears that prior to events last year the parties have had a good landlord and tenant relationship for nearly 20 years. During that period the Respondent has not increased the rent although it would appear the Respondent has relied upon the Applicant undertaking minor repairs and the like.
41. What is plain from the Notice is that the Respondent in managing the Property himself has failed to keep abreast of changes in the law relating to landlord and tenant matters. Further it appears he has failed to take steps to ensure the repair and maintenance of the Property is properly undertaken.
42. We acknowledge that the Respondent tells us he will be 80 next year. He refers to wanting to sell the Property to cover his retirement costs yet he has provided no evidence of his means. For the purposes of this application we presume he would be able to satisfy any order we may make. He said as much himself in his evidence to the Tribunal.

43. It is accepted that the rent has always been paid and that the monthly rent is £500. This means the maximum rent repayment order we can make is £6000 (being 12 months rent).
44. The offence committed is a serious matter. It is plain the property had fallen into disrepair and this would have an adverse effect upon the Applicant, his partner and child. Mr Dawson's evidence was that the installation of the new heating was of itself saving him £10 per day. He told us in his evidence he had not realised that he was incurring such high electric due to the lack of proper heating.
45. Mr Dias plainly made some attempts to remedy certain matters such as the heating but his attempts in respect of the roof were woefully inadequate.
46. We take account of the positive way each party referred to the other.
47. We note that rent repayment orders are meant to be punitive in nature.
48. Taking account of all such matters and the evidence of the parties we consider that we should exercise our discretion and make a rent repayment order in the sum of £5000.
49. We have considered whether or not we should exercise our discretion to order the Respondent to reimburse the Applicants for the fees paid to the Tribunal of £300. The making of such an award is always at the discretion of the Tribunal. In this case we have found for the Applicant. Taking account of our findings and the facts of this case we make an order that the Respondent shall pay to the Applicants representative the sum of £300 within 28 days.

### **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk)
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.





## Explanation of the Tribunal's jurisdiction to make a Rent Repayment Order

1. The **issues** for the Tribunal to consider include:

**Whether** the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

**Or** has a financial penalty<sup>1</sup> been imposed in respect of the offence?

- (i) What was the date of the offence/financial penalty?
- (ii) Was the offence committed in the period of 12 months ending with the day on which the application made?
- (iii) What is the applicable twelve-month period?<sup>2</sup>
- (iv) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (v) Should the tribunal reduce the maximum amount it could order, in particular because of:

<sup>1</sup> s.46 (2) (b): for which there is no prospect of appeal.

<sup>2</sup> s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- (a) The conduct of the landlord?
  - (b) The conduct of the tenant?
  - (c) The financial circumstances of the landlord?
  - (d) Whether the landlord has been convicted of an offence listed above at any time?
  - (e) Any other factors?
2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

**Important Note: Tribunal cases and criminal proceedings**

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.