



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

Case Reference : **LON/00BJ/HMB/2022/0015**

Property : **37 Montfort Place, London SW19 6QN**

Applicant : **Dincher Abtishev**

Representative : **Safer Renting**

Respondent : **Hakan Yuksel Bal**

Type of Application : **Application for a rent repayment order
by tenant**

Tribunal : **Judge Nicol
Mr SF Mason BSc FRICS**

**Date and Venue of
Hearing** : **21st September 2023;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **22nd September 2023**

DECISION

(1) The Respondent shall pay the Applicant a Rent Repayment Order in the amount of £6,005.

(2) The Respondent shall also reimburse the Applicant his Tribunal fees of £300.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. On 21st November 2020 the Respondent rented a room to the Applicant and his wife, Sezen Abtisheva, at 37 Montfort Place, London SW19 6QN

(“the property”), a four-bedroom flat with bathroom and kitchen facilities shared with other occupants.

2. The Applicant has applied for a rent repayment order (“RRO”) against the Respondent in accordance with the Housing and Planning Act 2016 (“the 2016 Act”).
3. There was an in-person hearing of the application at the Tribunal on 21st September 2023. The attendees were:
 - The Applicant;
 - Ms Kaushalya Balaindra of Safer Renting, representing the Applicant; and
 - The Respondent.
4. The evidence available to the Tribunal consisted of:
 - The Applicant’s bundle of 105 pages of relevant documents;
 - A skeleton argument from Ms Balaindra; and
 - Two videos.

Preliminary issues

Application in time

5. Under section 41(2) of the 2016 Act, a tenant may apply for a rent repayment order only if the offence was committed in the period of 12 months ending with the day on which the application is made. The Tribunal raised concerns as to whether the Applicant had applied in time and a preliminary hearing was held by remote video on 18th May 2023 to look at the issue. Both parties made written representations and attended. The Tribunal decided to leave the issue to this hearing.
6. The Applicant’s principal complaint is that the Respondent changed the locks and thereby deprived him and his wife of their occupation of the property on 24th November 2021. He signed his original application on 23rd November 2022 and the Tribunal received it the following day. A further copy of the application was provided along with some missing information on 12th December 2022 but the original application counts for the purposes of this issue.
7. In calculating the 12 months, the first day is excluded. Even if that is wrong, the exclusion continued beyond 24th November 2022 before the Applicant ceased all efforts to try to get back in. Therefore, the application was made in time.

Application in time

8. The Tribunal issued directions on 18th May 2023. The Applicant complied by filing and serving his bundle of documents. The Respondent was supposed to do likewise by 13th July 2023. He did not comply, even after the deadline was extended to 28th July 2023.

9. Under rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal may bar the Respondent from participation in all or part of the proceedings for his failure to comply.
10. The Respondent's wife is shortly due to give birth. This was the only excuse he proffered for his non-compliance. He also suggested he was advised that he could not seek an extension of time but that is patent nonsense since the time limits in the directions were extended. The Tribunal is satisfied that the Respondent had no meaningful reason for failing to comply with the directions. Further, it would render the proceedings unfair if he were to be permitted to introduce evidence at such a late stage.
11. Therefore, the Tribunal decided to bar the Respondent from giving evidence. He remained able to cross-examine the Applicant, which he did, and to make legal submissions, which he felt unable to do as a non-lawyer.

The offence

12. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicant alleged that the Respondent was guilty of unlawful eviction contrary to section 1(2) of the Protection from Eviction Act 1977.
13. Based on the Applicant's evidence and the documents provided, the Tribunal found the following facts.
14. On 29th October 2021, the Applicant and his wife travelled to Bulgaria to visit their parents who had significant medical problems. He informed the Respondent that they would be going for approximately a month. Most of their belongings remained in their room.
15. On 24th November 2021, at around 1:05pm UK time, whilst the Applicant and his wife were at the airport in Varna in Bulgaria, he received a notification on his phone from the CCTV camera he had installed in their room. In the video footage, he was able to see the Respondent entering their room with a friend, Emre Selim, and another man who the Applicant did not recognise. The Respondent was carrying two rolls of rubbish bags. The men briefly discussed the Applicant's absence and the fact that they intended to clear the room. The Applicant played the video of this event to the Tribunal and to the Respondent.
16. While the men were in their room, the Applicant phoned a friend, Remzi Akin, to go to the property and to contact the police. He did so and took his own video outside the property of the men carrying items out and putting them in cars – again, the Applicant played it to the Tribunal. The police did not ask the Respondent to show evidence that he was the landlord of the property and appeared to treat the incident as a civil matter, rather than a criminal one, so that their involvement

would be limited. Mr Akin has since passed away and so could not give evidence to the Tribunal himself.

17. Not for the first time in an unlawful eviction case, the Tribunal is concerned about the conduct of the police. It is obvious that a number of criminal offences were likely being committed on 24th November 2021, including unlawful eviction and theft, but, rather than try to stop it, they appear to have facilitated it.
18. The Applicant tried to phone the Respondent about 3 times from Varna airport but got no reply. He did not leave a voice message because the option was not available. He later tried to phone and message through WhatsApp but the Respondent never replied.
19. On the same day, the Applicant contacted the London Boroughs of Richmond and Wandsworth because he and his wife, now pregnant, found themselves street homeless. Mr Akin's mother offered the Applicant and his wife temporary accommodation so they initially stayed with her, sleeping on the floor – the only alternative would have been to sleep in their car. Eventually, on 30th November 2021, they were provided with temporary accommodation by the local authority.
20. The Applicant arrived at the property at around 10pm on 24th November 2021. He was not surprised to find the main entrance door to the property had a different colour lock in which his key would not work. Therefore, he and his wife were locked out.
21. The Applicant and his wife had no access to all the belongings they had left behind when going to Bulgaria, including a laptop, an e-scooter, some cushions (which featured in one of the videos, being carried to his car by the Respondent), a large number of clothes, various important documents including the Applicant's wife's medical records, a speaker which cost £300, and the second key for his car. The Applicant went to the police who advised him not to continue phoning the Respondent and to leave it to them to try to make arrangements for him to retrieve their belongings. After this, the Applicant made no further efforts to try to get back in. In the event, despite the Applicant chasing the police about this a number of times, they eventually closed the case without having taken any action.
22. Based on the above findings, the Tribunal is satisfied beyond a reasonable doubt that, on 24th November 2021, the Respondent unlawfully deprived the Applicant and his wife of their occupation of the property by locking them out, contrary to section 1(2) of the Protection from Eviction Act 1977.

Rent Repayment Order

23. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the 2016 Act to make a Rent Repayment Order on this application. The Tribunal has a discretion not to exercise the power. As confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it

will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.

24. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. ...

25. In *Williams v Parmar* [2021] UKUT 0244 (LC) Fancourt J held that there was no presumption in favour of awarding the maximum amount of an RRO and said in his judgment:

43. ... “Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities”, which came into force on 6 April 2017 ... is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless, para 3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.

50. I reject the argument ... that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount, or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

26. In *Acheampong v Roman* [2022] UKUT 239 (LC) the Upper Tribunal sought to build on what was said in *Williams v Parmar*. At paragraph 15, Judge Cooke stated,

it is an obvious inference both from the President's general observations and from the outcome of the appeal that an order in the maximum possible amount would be made only in the most serious cases or where some other compelling and unusual factor justified it.

27. The current Tribunal finds it difficult to follow this reasoning. Although RROs are penal, rather than compensatory, they are not fines. Levels of fines for criminal offences are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. In this way, the courts ensure that there is consistency in the amount of any fine – each person convicted will receive a fine at around the same level as someone who committed a similar offence in similar circumstances.
28. However, an RRO is not a fixed amount. The maximum RRO is set by the rent the tenant happened to pay. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than, say, failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.
29. For example, in *Raza v Anwar* (375 Green Street) LON/00BB/HMB/2021/0008 the Tribunal held that, as well as having control of and managing an HMO which was required to be licensed but was not so licensed, the landlord was guilty of using violence to secure entry to a property contrary to section 6 of the Criminal Law Act 1977 and unlawful eviction and harassment contrary to section 1 of the Protection from Eviction Act 1977. Nevertheless, the RRO was for only £3,600 because the rent was so low at £300 per month. The Tribunal commented at paragraph 57 of their decision:

The maximum amount of the RRO is in no way commensurate with the seriousness of [the landlords'] behaviour. A larger penal sum would be justified, if the Tribunal had the power to make it.

30. In the Tribunal's opinion, there is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO and section 44(3) finds expression in that way. Further, the Tribunal cannot find anything in Fancourt J's judgment in *Williams v Parmar* to gainsay this approach.
31. Judge Cooke went on in *Acheampong* to provide guidance on how to calculate the RRO:

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).
32. The Applicant's rent was £675 per month. However, he did not always pay his full rent, he said as compensation for carrying out repairs in the property. He did not seek to recover any shortfall in the RRO but only the amount he actually paid in rent which amounted to £6,005.
33. In relation to utilities, the Tribunal again finds it difficult to understand Judge Cooke. It is stated in *Woodfall: Landlord and Tenant* at paragraph 7.015 that, "At common law, the whole amount reserved as rent issues out of the realty and is distrainable as rent although the amount agreed to be paid may be an increased rent on account of the provision of furniture or services or the payment of rates by the landlord." The Applicant conceded that gas, electricity and broadband were included in the rent but he had no idea of the use or cost. Having been barred, there was also no evidence on this from the Respondent. In the circumstances, there is no basis for any deduction for the costs of utilities.
34. The next step is to consider the seriousness of the offence. Judge Cooke referred to the maximum fine for any relevant offences but more significant are the various matters referred to in this decision. Under section 44(4) of the Housing and Planning Act 2016, in determining the amount of the RRO the Tribunal must, in particular, take into account the conduct of the respective parties, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of any of the relevant offences.

35. As described above, the Respondent's behaviour has been unacceptable. It is possible he was motivated by the existence of rent arrears and decided to take advantage of the Applicant's absence in Bulgaria. This does not come anywhere close to constituting any kind of excuse. The property was the home of the Applicant and his wife. For any tenant to lose their home in such circumstances would be distressing and beyond inconvenient.
36. The Applicant also complained about the Respondent's conduct during the tenancy:
- (a) Other occupants of the property repeatedly caused a nuisance. The police were called on multiple occasions. The Respondent did not even attempt any action to resolve the problem.
 - (b) The Respondent sought payment of the rent in cash and would not give receipts.
 - (c) As referred to above, the Respondent purported to grant "Lodger Agreements" rather than tenancies, claiming that they were excluded. The Applicant confirmed that, contrary to the Respondent's claim, the Respondent did not live at the property at any time.
 - (d) The Applicant paid a deposit but the Respondent failed to protect it in accordance with the Housing Act 2004.
37. There was no evidence or even suggestion that the Applicant or his wife were guilty of any relevant conduct which could impact on the amount of the RRO. There was also no evidence of the Respondent's financial circumstances.
38. Therefore, there is no basis for making any deduction from the maximum amount and the Tribunal has decided to make a RRO for £6,005.
39. Further, the Applicant sought, and in all the circumstances the Tribunal has decided to order, that the Respondent must reimburse the Applicant his Tribunal fees of £300.

Name: Judge Nicol

Date: 22nd September 2023

Appendix of relevant legislation

Protection from Eviction Act 1977

Section 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.
- (3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—
 - (a) the residential occupier's right to remain in occupation of the premises, or
 - (b) a restriction on the person's right to recover possession of the premises,would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- 4) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.
- 5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.
- 6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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.

If the order is made on the ground that the landlord has committed ***the amount must relate to rent paid by the tenant in respect of***

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.