



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

Case reference : **MAN/00EY/HMB/2022/0001**

Property : **Broomcroft, 10 Palatine Road,
Blackpool, Lancashire, FY1 4BT**

Applicant : **Mrs Susan Graham**
Representative : **In person**

Respondent : **Miss Julia Carmichael**
Representative : **In person**

Type of application : **Housing and Planning Act 2016 –
Section 41(1)**

Tribunal member(s) : **Tribunal Judge L. F. McLean
Tribunal Member Mr J. Faulkner**

**Date and Venue of
Hearing** : **29th August 2023
Prudential House, Topping Street,
Blackpool FY1 3AB**

Date of Decision : **29th August 2023**

DECISION

Decisions of the Tribunal

- (1) The Tribunal refuses the Application for a Rent Repayment Order.**
- (2) Because this decision was made in the absence of the Applicant, the Applicant may apply under Rule 51 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Procedure Rules”) to set it aside, such application to be made in writing and so that it is received by the Tribunal within 28 days after the date on which the Tribunal sent notice of this decision to the Applicant.**

The application

1. The Applicant applied for a Rent Repayment Order (“RRO”) against the Respondent, pursuant to s.41(1) Housing and Planning Act 2016. The Applicant’s case was that on 24th February 2021, the Respondent or her associates had unlawfully evicted the Applicant and her family from Broomcroft, 10 Palatine Road, Blackpool, Lancashire, FY1 4BT (“the Property”), which the Applicant asserted she had been occupying as a residence. The Respondent opposed the application.

Background

2. The Applicant was the tenant of the Property by virtue of a tenancy agreement granted by the Respondent. The nature of that agreement and the circumstances in which it was made are disputed. The Applicant has asserted that she had the benefit of an Assured Shorthold Tenancy (within the meaning of the Housing Act 1988) which was granted from 6th June 2017 for an initial period of 12 months, and which had continued as a statutory periodic tenancy thereafter, but that her copy of that tenancy agreement had been disposed of during or after the aforesaid eviction. The Respondent had produced a copy of short form written commercial lease for the Property signed by both parties on 2nd January 2018 – but the Respondent contested the authenticity of this document and suggested that her signature on it had been forged. The lease dated 2nd January 2018 included a requirement that it “Must only be used as stated purpose and as registered by council i.e. as a hotel”.
3. The Property was, at least at some point in time, a guest house containing 8 guest rooms and communal dining facilities.
4. Pursuant to three sets of Directions issued by the Tribunal, both parties sent statements of case and supporting evidence and documents to the Tribunal office at various points between 9th September 2022 and 30th June 2023.
5. The hearing took place on 29th August 2023 at the SSCS Tribunal Centre in Blackpool. The Respondent appeared in person, accompanied by Mr

Gary Pickett and Ms Debra Thompson. There was no appearance or representation for the Applicant, despite the Tribunal waiting until approximately 10.25am before commencing the hearing. No other members of the public attended.

Issues

6. The issues which the Tribunal had to decide were:-
 - a. Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the offences referred to in s.40 of the Housing and Planning Act 2016?
 - b. Did the offence relate to housing that, at the time of the offence, was let to the tenant?
 - c. Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
 - d. What is the applicable 12-month period?
 - e. What is the maximum amount that can be ordered under section 44(3) of the Act?
 - f. What account must be taken (under section 44(4) of the Act) of:
 - i. The conduct of the landlord?
 - ii. The financial circumstances of the landlord?
 - iii. Whether the landlord has at any time been convicted of an offence shown above?
 - iv. The conduct of the tenant?
 - v. Any other factors?

Relevant Law

7. The relevant sections of the Housing and Planning Act 2016 read as follows:-

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	Section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	Section 1(2), (3) or (3A)	unlawful 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	Housing and Planning Act 2016	Section 21	breach of banning order

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.

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).

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.

8. Section 1 of the Protection from Eviction Act 1977, so far as is relevant, reads as follows:-

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 calculated 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.

9. Section 6 of the Criminal Law Act 1977, so far as is relevant, reads as follows:-

6 Violence for securing entry.

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—

- (a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and
- (b) the person using or threatening the violence knows that that is the case.

(1A) Subsection (1) above does not apply to a person who is a displaced residential occupier or a protected intending occupier of the premises in question or who is acting on behalf of such an occupier; and if the accused adduces sufficient evidence that he was, or was acting on

behalf of, such an occupier he shall be presumed to be, or to be acting on behalf of, such an occupier unless the contrary is proved by the prosecution.

- (2) Subject to subsection (1A) above, the fact that a person has any interest in or right to possession or occupation of any premises shall not for the purposes of subsection (1) above constitute lawful authority for the use or threat of violence by him or anyone else for the purpose of securing his entry into those premises.

[...]

- (4) It is immaterial for the purposes of this section—
(a) whether the violence in question is directed against the person or against property; and
(b) whether the entry which the violence is intended to secure is for the purpose of acquiring possession of the premises in question or for any other purpose.

Procedure at the Hearing

10. Before the start of the hearing, the members of the Tribunal had taken the opportunity to read both parties' statements of case, witness statements, and other written submissions and documents filed in accordance with the Tribunal's directions.
11. At the start of the hearing, the Tribunal reminded the Respondent that it can only make a RRO if the commission of a relevant offence could be proved beyond reasonable doubt.
12. The Tribunal noted that it had not received any request from the Applicant to adjourn the hearing, even though she had not attended. Under Rule 34 of the Procedure Rules, "If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal — (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and (b) considers that it is in the interests of justice to proceed with the hearing."
13. The members of the Tribunal had been informed beforehand by the Tribunal Office that the Applicant was aware of the hearing and had confirmed her intention to attend, so the Tribunal was satisfied that the Applicant had been notified of the hearing. The Tribunal considered that it would not be in the interests of justice to adjourn the hearing of its own motion, given the delays already experienced by the parties in proceeding to a final hearing, the need to deal with cases fairly but also at proportionate cost, and the need to make efficient use of public resources including the time of the panel members and the SSCS Tribunal building. The Tribunal therefore decided that it should proceed to conduct the hearing in the Applicant's absence. The Tribunal also decided, in the interests of justice, to hear evidence and submissions from the Respondent, rather than strike out the application.

14. The Tribunal stated its understanding that the Respondent had changed the locks to the Property on 24th February 2021, but that the crux of the dispute was whether this amounted to the eviction of a “residential occupier”. The Applicant had asserted that it was because she said she was occupying the Property as her home under an Assured Shorthold Tenancy, whereas the Respondent disputed this and her case was that the Property was occupied for the purposes of a business. The Respondent agreed with this summary.
15. The Tribunal explained to the Respondent that because there were strongly differing factual accounts described in the parties’ competing submissions and written evidence, the Tribunal had decided that the hearing should be conducted in person and that evidence should be taken under oath. The Respondent agreed to give her evidence under oath and was sworn in.
16. The Tribunal read out the contents of the Respondent’s witness statement dated 23rd February 2023 and described the exhibits attached to it. The Respondent was invited to confirm that the contents of the same were true to the best of her knowledge and belief, which she did. When asked if there were any matters which she wished to correct or clarify, she stated that some of the letters which were exhibited to her statement were not opened by her – she said that the Applicant had employed a manager and the Respondent obtained some of the paperwork from him, and observed that the water bill came in the name of the Broomcroft Hotel after she had recovered possession so that she was entitled to open those.
17. The Tribunal invited the Respondent to provide her version of the relevant events. The Respondent said that it was not until April 2023 that the commercial use of the Property was officially changed. She said that the Applicant had also told Blackpool Borough Council that that she only went into occupation in the middle of 2019, such that the Council have sought to recover business rates from the Respondent for the period between January 2018 and June 2019. In relation to when the Applicant’s tenancy began, the Respondent stated that she started the process of buying the Property in June 2017 but it took a while to reach completion due to problems with the condition of the premises, and the previous owner had continued trading in the meantime.
18. The Tribunal asked when the purchase of the Property was actually completed. The Respondent said it was the first week in January 2018 – she had hoped to complete before Christmas 2017 but her solicitors were on holiday. The Tribunal notes that neither party has exhibited Land Registry entries to elaborate on this point.
19. The Respondent also explained that during this time, the Applicant was already running a guest house on the same street, then known as the Memphis Hotel, at 14 Palatine Road. The Respondent said that the Applicant had an arrangement with the previous owner of the Property

that the Applicant's guests could eat their breakfast at the Broomcroft Hotel. The Respondent also stated that the Applicant has claimed in previous Court proceedings that she occupied both the Memphis Hotel and the Property as "houses", but that she had trading accounts for both.

20. The Respondent described the Property as being a three-storey building plus basement, with 8 rooms (7 of which have en suite bathrooms and 1 has a designated separate bathroom), a dining room and lounge.
21. When the Tribunal asked how the Respondent would reply to the allegation that she evicted a residential occupier, the Respondent said that this dispute has already been to the County Court twice, and no unlawful eviction was found in either case. The Respondent suggested that the Applicant was just trying to get money from her even though the Respondent was owed tens of thousands of pounds. She expressly denied committing any criminal offence.
22. The Tribunal explored the reasons why the Respondent had bought the Property and how she came to rent it to the Applicant. She said that she already had a hospitality business nearby and hoped to expand through operating the Property as a guest house, but this turned out to be more difficult than she had realised. Although the Respondent had felt her partner (Mr Gary Pickett) could potentially run the Property, she decided to rent it to the Applicant instead. They agreed on £190 per week and the going rate for the rooms was £60 per room per night.
23. The Tribunal enquired whether the Applicant had been forced to cease trading from the Property after the start of the Covid-19 pandemic in March 2020. The Respondent said she did not know. She said that some places were able to stay open, but she was not privy to what the Applicant did during the pandemic as the Respondent had enough problems of her own to deal with. She said that she was aware that the Applicant had moved out of the Memphis Hotel for around 6 months, and that the owner of the Memphis Hotel had told the Respondent about how much the Applicant had owed him.
24. The Respondent did not call any other witnesses. Also present in Court was her partner, Mr Gary Pickett. He referred to evidence in the Respondent's written submissions that the Applicant had been convicted of criminal offences in the past. The Tribunal explained that these allegations had not been further investigated, substantiated or tested in evidence and so the Tribunal would not be taking them into account in reaching its decision.
25. The hearing concluded at around 11am.

Determination

26. The Tribunal determines the issues as follows:-

Whether the Tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the offences referred to in s.40 of the Housing and Planning Act 2016?

27. The Tribunal considered the written evidence and submissions of the Applicant. The Tribunal notes that the Applicant did not attend the hearing to give oral evidence or confirm her written evidence.
28. The Tribunal also considered the written evidence and submissions of the Respondent. The Tribunal notes that the Respondent attended the hearing to give oral evidence and confirm her written evidence under oath.
29. The Tribunal has no reason to doubt the truth of the Respondent's testimony and accordingly prefers the evidence which she gave, insofar as the parties have given differing accounts.
30. The Tribunal also notes that the evidence submitted by the Applicant was paltry, in that she did not provide any independent documentary corroboration at all of ever having lived in the Property as her home (whether at the outset of the tenancy or otherwise). Even if the Applicant had lived at the Property, then it is likely that she will have broken the law in doing so, since she failed to notify the Council of her residential occupation both for business ratings / Council Tax purposes and also in relation to Planning and Building Control requirements. This casts further doubt on the Applicant's assertions that she was a residential occupier.
31. The burden of proof is on the Applicant to prove her case. The standard required is that the Tribunal must be satisfied to the criminal standard, i.e. beyond reasonable doubt, that a relevant offence was committed. This is a high burden to discharge at the best of times, let alone if the party on whom that burden rests does not attend to present their case.
32. In any event, the Respondent clearly denied having committed any criminal offence. Her case was that the Property was leased for commercial use only and that the Applicant only occupied it for the purposes of her business. This was supported by several aspects of her evidence, submissions and documents. The lease for the Property dated 2nd January 2018 restricted the permitted use to that of a hotel. At that time, it appears that the Applicant was living in the Memphis Hotel, two doors down. The Respondent exhibited email correspondence from the Council confirming that it was registered for business rates throughout her ownership. The Respondent produced printouts from the www.gov.uk website showing that the Property was registered on the rating list until April 2023. The Respondent also exhibited screen prints of public reviews on Google from guests who stayed at the Property after 2017/2018 and photographs of the interior of the Property laid out as a guest house.

33. In the absence of any cogent evidence that the Applicant was a residential occupier of the Property, and in view of the Respondent's substantial evidence to the contrary, the Tribunal cannot be satisfied beyond reasonable doubt that any relevant offence was committed as described in Section 1 of the Protection from Eviction Act 1977.
34. The Tribunal also notes that even on the Applicant's own case, nobody was physically present at the Property when the eviction took place, and so it would not be possible for any offence to have been committed under Section 6 of the Criminal Law Act 1977.

Did the offence relate to housing that, at the time of the offence, was let to the tenants?

35. Not applicable. The Applicant has not proved the commission of any offence as referred to under s.40 Housing and Planning Act 2016.

Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

36. No. The Applicant has not proved the commission of any offence as referred to under s.40 Housing and Planning Act 2016.

What is the applicable 12-month period?

37. Not applicable. The Applicant has not proved the commission of any offence as referred to under s.40 Housing and Planning Act 2016.

What is the maximum amount that can be ordered under section 44(3) of the Act?

38. Not applicable. The Applicant has not proved the commission of any offence as referred to under s.40 Housing and Planning Act 2016.

What account must be taken (under section 44(4) of the Act) of:

- i. The conduct of the landlord?
- ii. The financial circumstances of the landlord?
- iii. Whether the landlord has at any time been convicted of an offence shown above?
- iv. The conduct of the tenants?
- v. Any other factors?

39. Not applicable. The Applicant has not proved the commission of any offence as referred to under s.40 Housing and Planning Act 2016.

Conclusion

40. Accordingly, the application is refused.

After the hearing and the Tribunal's Decision

41. On the afternoon of 29th August 2023, the Tribunal Office received an email from the Applicant seeking to explain her failure to attend the hearing. Contrary to the standing directions of Deputy Regional Judge Bennett, this email was not copied to the Respondent and the Applicant did not confirm whether she intended to do so. By this point in time, the Tribunal had already deliberated and reached its decision in this matter.
42. Because the decision was made in the absence of the Applicant, Rule 51 of the Procedure Rules entitles her to apply to set this decision aside. Any such application must be made in writing and received within the 28 day period referred to in Rule 51. The Tribunal observes that although the Applicant is entitled to make the application, the onus is on the Applicant to persuade the Tribunal to set aside its decision (after considering any representations made by the Respondent).

Costs

43. The Tribunal only has power to make an order for one party to pay the other party's legal costs in limited circumstances, which are set out in Rule 13 of the Procedure Rules, which include where "a person has acted unreasonably in bringing, defending or conducting proceedings". It is a matter for the Respondent to consider whether she wishes to make any such application, and if she does then the Applicant will be given an opportunity to respond to it.

Name:
Tribunal Judge L. F. McLean
Tribunal Member Mr J. Faulkner

Date: 29th August 2023

Rights of appeal

1. 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.
2. 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.
3. 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.
4. 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.

5. 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.
6. If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).