



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

Case reference : **CAM/11UB/HMH/2023/0001**

Property : **46 Curlew, Aylesbury, HP19 0WG**

Applicant : **Mr Nnaji Ahunanya**

Respondent : **Fairhive Homes Ltd (formerly
Buckinghamshire Housing
Association Ltd)**

Representative : **IBB Law LLP**

Type of application : **Application for a Rent Repayment
Order – section 41 Housing Act
2016**

Tribunal : **Judge Wayte**

Date : **23 October 2023**

**ORDER STRIKING OUT THE APPLICATION
Rule 9 Tribunal Procedure Rules 2013**

Decision of the tribunal

The application be struck out pursuant to rule 9(2)(d) and 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).

BACKGROUND

1. This application for a Rent Repayment Order (RRO) was made on 28 April 2023. Sections 40-41 and 43-44 of the Housing Act 2016 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. The applicant relied on two “grounds” (offences), namely violence to secure entry under section 6(1) of the Criminal Law Act 1977 and unlawful eviction under section 1(2) of the Protection from Eviction Act 1977. The eviction was said to have been carried out on 10 January 2023 by the respondent who had taken over the housing stock of the applicant’s original landlord.
2. On 14 August 2023 the tribunal wrote to the respondent to ask them for any representations as to the application and in particular the allegation that they had committed the offences, since it was unusual for a registered social landlord to be accused of such behaviour. The tribunal also asked the applicant for details of any rent paid by them personally as there was reference to housing benefit in their application, which only the local housing authority could recover by way of a RRO.
3. On 25 August 2023 the respondent’s representatives wrote to the tribunal providing documentation to support their client’s submissions that the application should be dismissed. That documentation included a chronology and bundle of documents which detailed a lengthy history of possession proceedings taken by Buckinghamshire Housing Association Ltd (“Bucks HA”) against the applicant in respect of rent arrears, culminating in an eviction by court bailiffs on 10 January 2023. A complicating factor was that Bucks HA had transferred its housing stock to Fairhive Homes Limited (“Fairhive”) on 9 January 2023. Fairhive granted a temporary licence to Bucks HA to allow enforcement of their order for possession which they asserted meant that the eviction was by lawful means. Any complaint about the manner of the eviction should be more properly directed to HMCTS as they were responsible for the actions of their bailiffs.
4. The applicant had attempted to issue a private prosecution against Fairhive which was dismissed by magistrates on 14 July 2023. A previous application by him for an injunction within the possession proceedings (presumably to re-enter the property) had also been refused permission due to a limited restraint order against the applicant in those proceedings. The applicant had paid no rent whatsoever since 1 April 2019 and now owed in excess of £20,000 rent arrears and some £38,000 costs.
5. On 5 September 2023 the tribunal wrote to the applicant pointing out that he needed to prove the offence beyond all reasonable doubt and in the circumstances that was unlikely. The tribunal also pointed out that in the event no rent had been paid since 1 April 2019, there was nothing to make a RRO for, since under section 44(2) of the 2016 Act the relevant period was rent paid in respect of the 12 months ending with the date of the

offence i.e. from 11 January 2022. The letter therefore confirmed that the tribunal was proposing to strike out the application under rule 9(3)(e) of the Tribunal Procedure Rules 2013 on the basis that the tribunal considers there is no reasonable prospect of the applicant's proceedings succeeding. The letter also stated that in the circumstances of the background to the case, the judge also considers that the proceedings should be struck out on the basis that they are vexatious or otherwise an abuse of process under rule 9(3)(d). The applicant was given the opportunity to make representations by 2 October 2023, subsequently extended to 10 October 2023, although I have considered all the information sent by the applicant up to the date of this decision.

The Chronology of Events

6. Both parties provided a chronology of events, which broadly agree with each other in terms of the timing of the events, although the applicant's went into more detail in respect of the disrepair at the property, the capping of his gas supply and other complaints and also maintains that the possession order was unjust.
7. On 19 August 2011 the applicant was granted an assured tenancy of the property by Bucks HA. The applicant records two instances of water damage due to burst pipes in 2016 and 2018. Later that year he reports issues with payment of rent due to the mistaken closure of a bank account, which he states led to the cancellation of his housing benefit in 2018 and 2019.
8. Possession proceedings were issued in early 2019 based on alleged rent arrears which the applicant disputed. He also issued a counterclaim for damages for disrepair due to the water damage. After a number of procedural hearings and a stay on possession proceedings during the pandemic, on 14 October 2021 District Judge Buckley-Clarke made a possession order and found there were arrears of some £15,000.
9. That order was appealed by the applicant on 4 November 2021. The appeal was dismissed by HHJ Melissa Clarke on 29 November 2021, the order stating the appeal was totally without merit.
10. The applicant then made an application to suspend the warrant for possession and set aside the possession order. Those applications were dismissed by Recorder Howlett on 9 February 2022, who also stated that they were totally without merit. Again the applicant appealed the decision. That appeal was dismissed on 13 October 2022 by Mr Justice Kerr, who also ordered a limited Civil Restraint Order which required permission from him before any further applications could be made by the applicant in the possession proceedings.
11. A warrant of eviction was issued by the County Court on 7 December 2022 with the date set for 10 January 2023 at 10.30am. On 9 January 2023 Bucks HA transferred its housing stock to Fairhive who sent a Welcome

Pack to the applicant that same day. Prior to the eviction Fairhive granted a licence to Bucks HA for the purpose of executing the possession order.

12. The eviction went ahead on 10 January 2023 by court bailiffs. The applicant applied to the magistrates court for permission to issue a private prosecution against Fairhive. The respondent's representative reports that following a hearing on 14 July 2023, the Judge stated the eviction was lawful and in the circumstances refused to issue a summons. He concluded the application was vexatious and improper. The applicant states that he is appealing that decision to the Crown Court. The applicant had also made an unsuccessful application for an injunction in the possession proceedings.
13. The applicant states that the licence was forged and that he was evicted without a court order, presumably due to the change of landlord.

The tribunal's decision

14. Both parties provided copies of various orders issue in the possession proceedings and there is no dispute that a possession order was made against the applicant and that Bucks HA obtained a warrant of eviction which was carried out by court bailiffs on 10 January 2023. While the applicant still asserts that no possession order should have been made, his attempts to appeal that decision have reached the end of the road. In those circumstances if Bucks HA remained his landlord as at the date of the eviction there can be no reasonable prospect of establishing an offence committed by them. However, the applicant alleges the offence(s) were committed by Fairhive.
15. The difficulty for Fairhive was that the proceedings and warrant were issued on the basis that Bucks HA was the applicant's landlord. As their representative states, the usual course of action would be for an application to be made to court to change the name of the claimant in the proceedings but as there was insufficient time to do that (presumably no one thought about it until shortly before the eviction), Fairhive granted a licence to Bucks HA "to facilitate the execution".
16. That licence states that Fairhive is granting Bucks a licence of the property on a temporary basis while it enforces the possession order. The terms record that Bucks agrees to permit the Tenant (the applicant in these proceedings) to occupy the property under the terms of his agreement until such time as the possession order is executed, with Fairhive complying with the landlord's obligations under the agreement on behalf of the licensee for the duration of the licence. The licence further states that it will terminate on execution of the possession order or the dissolution of the licensee or on notice. Upon determination of the licence Bucks will immediately cease to be entitled to use the property. It is not disputed that a copy of the licence was given to the applicant on execution of the warrant. He claims that the licence is a forgery but I reject that assertion. The applicant has a long history of asserting dishonesty on the

part of his landlord but has provided no evidence to support that allegation. By way of contrast, the respondent has provided a copy of the agreement which their solicitor states was entered into on 10 January 2023, shortly before the warrant was executed. I have no reason to disbelieve them.

17. I find that the effect of the licence was to re-establish Bucks as the applicant's landlord before the eviction took place. That certainly appears to be the intention of the parties to the licence. I accept that the welcome letter sent to the applicant by Fairhive goes against that but it would have been part of a mailshot to all Bucks former tenants and the licence was entered into the following day. In those circumstances I find that the eviction was lawful as it was in accordance with a warrant issued by the court, following the possession order made in favour of Bucks HA back in 2021. Any complaint about the conduct of the bailiffs is not the responsibility of the landlord and cannot give rise to an offence under the Criminal Law Act 1977.
18. In the circumstances I do not consider that the applicant has any reasonable prospect of proving the offences alleged against Fairhive. In the circumstances the tribunal would not have the power to make a RRO. In any event, the applicant accepts that he has paid no rent since 1 April 2019 and therefore there is nothing for a RRO to bite against, as the relevant period would be 12 months leading up to the alleged offence i.e from 11 January 2022.
19. I further decide that in all the circumstances of the possession proceedings, this application is frivolous and vexatious and otherwise an abuse of the tribunal. The applicant has made several unsuccessful attempts to appeal the possession order and is currently subject to a Civil Restraint Order preventing him from making further applications without permission of a High Court Judge. In effect, he is trying to relitigate his objections to those proceedings in this tribunal, having provided evidence of the disrepair to the property and other complaints, which were all raised as part of the possession proceedings. The admitted fact that he has not paid any rent since 1 April 2019 also makes the application for a RRO vexatious.
20. In the circumstances the application is struck out under rule 9(3)(d) and (e) of the Tribunal Procedure Rules 2013. As this is a final decision disposing of the proceedings, I have included the appeal rights below.

Judge Wayte

23 October 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).