



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

**Case Reference** : CHI/00MW/HMB/2023/0002

**Property** : 1D Steephill Road, Shanklin, Isle of Wight,  
PO37 6AB

**Applicant** : Phyllis Sullivan  
Sindy Sullivan

**Representative** :

**Respondent** : Gillian Phelps  
Tim Phelps

**Representative** : Glanvilles Legal Services

**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** : D Banfield FRICS,  
P Turner-Powell FRICS  
Ms Jayam Dalal

**Date of Decision** : 5 November 2023

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**DECISION**

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The Application is refused.

## **Background**

1. On 20 April 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 Applicant has not specified the amount or exact period of rent claimed.
2. The Tribunal in determining the application needs to be satisfied beyond a reasonable doubt that the landlord has committed one or more of the offences outlined in Chapter 4, paragraph 40 (3) of the Housing and Planning Act 2016.
3. The Applicant stated at part 9 of the application form that the application made is “due to the landlord/s failure to repair following a Housing Health and Safety Inspection Report on 26 July 2022 and also landlord harassment aiming to unlawfully force use (sic) to give up possession.”
4. Failure to repair following a Housing Health and Safety Report is not listed as an applicable offence referred to in paragraph 4. It was not entirely clear if the Applicant is alleging an offence of eviction or harassment of occupiers. By Directions dated 22 August 2023 the Tribunal sought further information from the Applicants following receipt of which it was clear that the grounds alleged were of harassment of occupiers.
5. The Directions also set out a timetable for the exchange of cases between the parties, for the Applicant to prepare a hearing bundle and for the case to be heard on 26 October 2023 at Havant Justice Centre.
6. The hearing bundle was duly submitted and references in [ ] are to pdf pages within that bundle. The case came on for hearing as arranged and in attendance were the Applicants Ms Sindy & Miss Phyllis Sullivan who appeared by video and Mr Tim Phelps for the Respondents. A representative from Glanvilles did not attend.
7. The sum claimed was £2,400 in respect of 8 months during the period May 2022 to May 2023.
8. Mr Phelps confirmed that his statement [51] did not contain his signature as the document had been produced digitally but confirmed its correctness.
9. The hearing was recorded.
10. Miss Sullivan presented her case followed by Mr Phelps. Each party was afforded an opportunity to question the other and the Tribunal also asked questions of the parties.

11. The Tribunal at the outset of the hearing reminded the parties that the allegation was that the Respondents had committed a criminal offence and so the criminal standard of proof would apply i.e. beyond reasonable doubt.

## **Law**

12. 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.
13. 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.
14. 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).
15. 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 an offence under the Protection from Eviction Act 1977, the amount must relate to rent paid in respect of the period of 12 months ending with the date of the 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.
16. 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**

17. Miss Sullivan referred to their witness statement [48] and said that there were outstanding repairs from before the Covid outbreak and referred to a damaged freezer door, dampness in the utility room and an infestation of rodents. There had been problems with the immersion heater causing fire but only the thermostat was replaced.
18. The Applicants approached the local authority to conduct an inspection report to encourage the landlords to complete the required repairs. However, the landlord/s (Phelps) instead decided to take steps to “pressure us to leave”.
19. In 2022 a decomposing rat was found inside a kitchen cupboard and called a pest control contractor. The rodent report [71] identified various defects which enabled rats to enter the property which resulted in them sealing the cupboard behind which access was being gained.
20. Mr Phelps had also turned up unannounced to work on window locks which were found to be jammed after he had been asked to leave. Mr Phelps had brought in “plug in” rodent deterrents but there remained holes in the kitchen units. He also commented rudely about her mother.
21. Incidents of Mr Phelps’ behaviour had been reported to the police.
22. Mr Phelps caused stress to the Applicants by sending emails telling them their tenancy had ended when no Order for possession had been made by a court.
23. An application to the Court for possession had been refused due to an incorrect statement being made.
24. Correspondence from Red Squirrel [114-134] regarding the check out had been imposed impossible requirements upon them such as washing down walls which they were physically unable to undertake. They did not recognise Red Squirrel’s involvement in the matter as their tenancy was not with them. They had referred Red Squirrel to the

Ombudsman and the Tribunal was told that they had obtained an award of compensation.

25. It was clearly Mr Phelps intention to sell the property which it was acknowledged he was entitled to do but it should have been with tenants in situ not as per the sales brochure [145] In addition the required EPC had expired.
26. Due to Mr Phelps attempts to terminate their tenancy and his constant reference to his need to sell meant they had been “ready to go” for a whole year which was unsettling.
27. They suffered verbal abuse from passers by.
28. In answer to the Tribunal’s question Miss Sullivan said that they had to remain safe during Covid but had allowed visits in respect of the boiler and electrical safety. They had refused access to Red Squirrel as they had not accepted that they were involved in their tenancy.
29. In reply, Mr Phelps said that the tenancy had started in 2014 and rent had always been paid on time. When his father had managed the property a new agreement had been signed every 6 months but after he died the Applicants had refused to sign the one he had presented to them.
30. Builders had been refused access during the Covid outbreak the first access being gained in February 2022.
31. The pest control company had visited three times and the works specified had been carried out except to the kitchen cupboard where access had been denied. Poison had been left to control any further infestation however it had been removed by the Applicants. He accepted that Miss Sullivan had instructed the pest control company but that he had paid their charges.
32. The damp issue in the utility room was from a leak in the bathroom above which had been attended to when those tenants had moved out. He had waited to check if the leak had been cured until the upper flats had been occupied again and water was being used. He had turned up to paint the utility room and carry out works to the windows but had been refused access.
33. He explained that following his father’s death his mother who was 82 years old, and part owner of the property, had moved to Suffolk and as he had no financial interest in the property they had appointed Red Squirrel to act as managing agents with the intention that they would deal with any outstanding issues. With regard to the damaged freezer, he had offered to buy a new one.

34. In cross examination Mr Phelps agreed that the tenancy the Applicants had refused to sign was on more onerous terms than that previously enjoyed which was due to an error on his part.
35. He had wanted to clean out the kitchen cupboard affected by rodents but denied that he had intended to use a pressure washer. However he had not been permitted to open the cupboard to determine what work was required.
36. In summary Miss Sullivan referred to;
- Persistent withholding of services
  - Long term disrepair and inadequate repairs
  - Waiting 18 months for damp in utility room to be dealt with
  - Not contacting tradesmen when required
  - Incorrect S.21 Notice served
  - Pestering and harassment so not proper home
  - Several things don't work
  - Tenancy should only be ended by the Courts

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

37. In order for the Tribunal to determine that the offence of harassment has been committed it has to be convinced beyond reasonable doubt that the actions complained of support the allegation.
38. The Applicants made a number of allegations about Mr Phelps' behaviour and the condition of the property however the evidence in support was limited.
39. In coming to its decision the Tribunal has noted the following;
- District Judge Grand's order striking out the possession claim on following the Applicants' allegation that Section 6 of the claim was untrue. [148]
  - The letter from Isle of Wight Council following an inspection under the Housing Act 2004 Part 1 identifying two Category 2 hazards and eight advisory issues [108]
  - The pest control report identifying three potential issues. [70]
  - Mrs Gillian Phelps email of 7 July 2022 advising that she intended to appoint professional agents to manage the property. [107]
  - Miss Sullivan's email of 8 July 2022 not agreeing to a "transfer of the terms of ownership of our current tenancy agreement to a letting agency" [57]
  - Red Squirell's email of 8 July 2022 wanting to arrange a visit and for contractors to look at the damp issue and any other issues. [58]
  - S.21 Notice dated 27<sup>th</sup> July 2022 [115]

- An electrical condition report summarising the condition as “satisfactory” but recommending that surge protection be provided. [121]
40. The Applicants referred to the award made by the Ombudsman however no copy was provided or explanation as to what the award was for.
  41. Reports to the police were also mentioned but again no details of what the issues were or the action taken.
  42. Mr Phelps has explained that his mother was simply attempting to put the management of the block in good order pending putting the building up for sale following her husband’s death by appointing a managing agent.
  43. This appointment was not however accepted by the Applicants and the tenancy under which the Applicants occupied the property having expired it became necessary to issue a S.21 Notice to commence possession proceedings.
  44. It is accepted that there were issues of outstanding repairs the remediation of which was hampered by lockdowns and the Applicants’ unwillingness to engage with the managing agents or to provide access to enable works to be done.
  45. On the above evidence the Tribunal is not satisfied that the offence of harassment has been committed by the Respondent and therefore declines to make the order requested.

### **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 [rpcsouthern@justice.gov.uk](mailto:rpcsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
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.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

### **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>

<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.



- (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:
    - (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.