



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

**Case reference** : **LON/00BG/HMF/2023/0046**

**Property** : **Flat 6, 26-32 Bacon Street, London E2  
6DY**

**Applicant** : **John-David Wuarin (A1)  
Clayton Philippoz (A2)**

**Representative** : **James McGowan**

**Respondent** : **Rosemede Homes Ltd**

**Representative** : **Andrei Vasilescu, Counsel**

**Type of application** : **Application for a rent repayment order  
by a tenant  
Sections 40,41,43 & 44 of the Housing  
and Planning Act 2016**

**Tribunal  
member(s)** : **Judge D Brandler  
Mr S Wheeler MCIEH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of hearing** : **23<sup>rd</sup> October 2023**

**Date of decision** : **13<sup>th</sup> November 2023**

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**DECISION**

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**Decision of the tribunal**

- (1) The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £9,742.00. In the following proportions. This sum to be paid within 28 days of this order.**

- (a) To John-David Wuarin the sum of £4,871.00**
  - (b) To Clayton Philippoz the sum of £4,871.00**
- (2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.**

The relevant legislative provisions are set out in an Appendix to this decision.

### **Reasons for the tribunal's decision**

#### **Background**

1. By an application dated 16/02/2023 John-David Wuarin (“A1”) and Clayton Philippoz (“A2”) applied for a Rent Repayment Order (“RRO”) in respect of rent paid to Rosemede Homes Ltd (“the respondent”) from 01/09/2022 to 27/01/2023. The amount of rent paid by each applicant for that period is £6,088.75 (A1) and £6,088.75 (A2)
2. The applicants allege that the respondent has committed the offence of being in control and managing a House in Multiple Occupation in breach of the Selective Licencing requirements managed by the London Borough of Tower Hamlets (“the Council”). The offence relates to Flat 6, 26-32 Bacon Street, London R2 6DY (“the property”) which required the property to be licenced by the Council under the Selective Licencing scheme that came into force on 01/10/2021.
3. The Respondent does not deny that the property required a selective licence during the period of claim and that they failed to licence the property until around June 2023. No reasonable excuse defence was put forward at the hearing, but the respondent asks the Tribunal to look favourably upon them because they admit that they should have licenced the property. They ask the Tribunal to note that they permitted the applicants to end their occupation of the property early without penalty.
4. The applicants entered into an Assured Shorthold Tenancy agreement (“AST”) with the Respondent landlord on 01/09/2022 for a period of one year. A deposit of £2,884 was paid and the contractual monthly rent was £2500 which was paid in equal proportions by the Applicants. The amount of rent paid for the period is not in dispute. Most of the deposit has been returned to the Applicants save for some water charges, which is not in dispute.
5. On 14/12/2022 the Council’s Environmental Health and Trading Standards Department confirmed in writing that the property had no licence [A42].
6. The applicants allege that the property is excessively cold due to a defective window in the front bedroom and inadequate heating. They allege

that the respondent failed to remedy the problem. The respondent disputes that the window was defective or that the heating was ineffective. They submit that they responded to any complaints and instructed their workman to inspect on several occasions and some draught proofing was put round the window.

7. The applicants further allege that the respondent demonstrated poor conduct by making threats against them further to their complaint to the Council. One of those threats involved a threat of physical violence. The respondent denies those allegations and makes a counter allegation that the applicants were racially abusive to the respondents.

8. Directions were issued on 21/06/2023, amended on 12/12/2023 and further amended on 14/08/2023.

## **THE HEARING**

9. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles provided sufficient information.

10. This was a face to face hearing at 10 Alfred Place, London WC1E. The applicant provided a bundle of [134] pages as well as a skeleton argument. The Respondent provided a bundle of documents [97] and a statement of case. Any reference to pages in this decision will be prefixed with [A/] or [R/].

11. The applicants attended the hearing accompanied by their representative James McGowan. The respondent was represented by Andrei Vasilescu, Counsel, who was accompanied by the respondent's witnesses Abraham Rosenberg, Gokul Krishna Thankappan Asari Radhakumari ("Gokul Krishna"), Andrea Szabo and Liviu Cristea.

12. Prior to the hearing, on 17/10/2023, the Tribunal received an application from the respondent to postpone this hearing. The application was made by the respondent's solicitor on the basis that Andrea Szabo had travelled abroad for a family emergency. The evidence provided was a flight ticket for travel on 4/9/2023 but nothing to explain why she was unable to return for a hearing on 23/10/2023. The application also submitted that Ms Szabo was "*an integral witness*" and in considering the application, her witness statement was considered. It was noted that the sole issue in that statement concerned a potential issue of the A2's conduct that took place during an incident in the respondent's office. That incident took place in the presence of both Abraham Rosenberg and Gokul Krishna, who had both produced witness statements for this hearing. The argument that Ms Szabo's evidence was integral was therefore rejected, there being other witnesses to the same incident. The application for a postponement was therefore refused.

## The evidence

### The window

13. The applicants both asserted in written and oral evidence that there was a defect to the window in the front bedroom, such that it did not close properly and allowed so much cold air into the flat that the cold was unbearable. This defect combined with the insufficient heating in the flat left both applicants feeling that the flat was uninhabitable due to the cold. A1, who spent more time in the flat, initially occupied the front bedroom with the defective window. A2 agreed to swap and occupy that room because he often spent weekends away from the flat visiting family. No evidence from the Council was provided, nor was there any evidence from a heating specialist as to whether the flat was too cold.

14. The respondent's position is that when the complaints were raised, they instructed their workman Liviu Cristea, to inspect. On one occasion Abraham Rosenberg also attended the property.

15. In oral evidence Mr Cristea stated that the window was working perfectly and that there was no gap. Nevertheless, he put some draught proofing around the window to reassure the tenants. Mr Rosenberg confirmed he had attended but denied having looked at the window at all.

16. The respondent relies on an energy efficiency certificate dated 08/06/2020 which provides an energy efficiency rating for the property of C72 [R/41]. The suggestion to improve this rating to C73 is to install "*low energy lighting for all fixed outlets*" [R/43]. No contradictory evidence was produced.

### Conduct

17. The applicants allege poor conduct by the respondents as follows:

(a) When the applicants reported excessive cold in the property to the Council, Gokul Krishna responded by telephoning them and threatening not to provide them with a reference, threatening to carry out constant visits to the property and claimed that the applicants had racially abused him. These threats were followed up by What'sApp messages [A/124,114,116,117].

(b) On 27/01/2023 Gokul Krishna made a threat of physical violence against A2. Specifically, Gokul Krishna is alleged to have said "*I will smash your fucking face*". This threat took place in the respondent's office when A2 went to return the keys. Others present during the alleged incident were Abraham Rosenberg and Andrea Szabo. Immediately after the incident Mr Rosenberg invited A2 to leave the office with him. They then had a conversation which A2 recorded. The transcript of that recording indicates that during that conversation, Mr Rosenberg appeared to excuse Gokul Krishna's

behaviour by stating “*He’s a bit ill at the moment*” [A/77]. When A2 stated that “*I’m two seconds away from going to the police with this and saying that he’s threatening me*”, Mr Rosenberg replies “*What they going to do?...I can say you threatened him. So it’s nonsense. Look. Listen, can we please eh,eh, send me... I will send you an email. I’ve got your email? I will send you an email with everything broken down. And then if you’re not happy then email me then. OK?*” [A/77]. In oral evidence Mr Rosenberg confirmed the voracity of the contents of that transcript.

- (c) Several weeks after the tenancy had ended, A1 complained that Gokul Krishna saw him walking along the street, he called his name and made an offensive hand gesture to him, which made A1 feel concern and distress.

18. The respondent alleges poor conduct by the applicant, namely racist comments. These took place firstly during a telephone conversation where it is alleged that A2 told Gokul Krishna “*you foreigners don’t know*” (sic); secondly on 27/01/2023 at the respondent’s office when it is alleged that A2 racially abused Gokul Krishna by telling him “*go back to where you came from*” [R/14].

19. In oral evidence A2 confirmed that they had physically moved out of the property on 16/01/2023 but that he had returned to the property on 27/01/2023 to collect items left there, for a final inspection by Abraham Rosenberg and to hand back the keys. Mr Rosenberg refused to accept the keys whilst they were both in the property and insisted that A2 come to the office. As soon as they arrived in the office, Gokul Krishna started to be abusive, pointing at A2 stating that he was the guy who had made all sorts of issues and then said to A2 “*I will smash your fucking face*”. A2 stated that he was completely taken aback at having been threatened, that Mr Rosenberg tried to calm things down and invited A2 to leave the office. At that point A2 started recording the conversation between him and Mr Rosenberg.

20. In cross examination it was put to A2 that he had racially abused Gokul Krishna by saying to him “*go back to where you came from*”. A2 denied this. He stated that neither he nor A1 are from the UK and that he felt very insulted by being called a racist. It was also put to him in cross examination that he had said that Gokul Krishna was a foreigner, didn’t know anything about the law, and that he had started shouting at Gokul Krishna. This was denied. It was further put to him that maybe Gokul Krishna had been upset by the complaints about the flat, and that somehow was a justification for Gokul Krishna being aggressive.

21. Andrea Szabo, Abraham Rosenberg and Gokul Krishna all refute the allegation that Gokul Krishna made a threat of violence. In oral evidence Andrea Szabo explained her visit to the office that day because she had driven Abraham Rosenberg there after his shoulder surgery. She is Mr Rosenberg’s partner, having lived with him for 16 years. She said she did not know Gokul Krishna well, although he did attend birthday parties, and her

visit to the office on that day was the first time for 7 years. She was very keen to recite the contents of her witness statement but when she was asked how that witness statement had been prepared, she told the Tribunal that Gokul Krishna had prepared it and gave it to her and she was told she would have to come to Court. She said she had not told anyone what her evidence was and was just presented with the statement printed and ready for her to sign by Gokul Krishna. However, later in the proceedings, in his oral evidence, Gokul Krishna said that Ms Szabo was wrong to say he had prepared the statement and he told the Tribunal that she had prepared the statement with the solicitors.

22. Mr Rosenberg's oral evidence was at times confused, at times evasive and at times contradictory. His witness statement denies any verbal threats were made by Gokul Krishna. He alleges that when he and A2 had entered the office that "*the applicant made another racist comment and became aggressive....Once the applicant and I left the room, I tried to calm the applicant. However, I did not know that he was illegally recording me*". The witness statement provides no detail of the alleged racist comment [R/11]. However, in oral evidence Mr Rosenberg became somewhat confused. He initially told the Tribunal that the extent of the incident in the office on 27/01/2023 was that A2 and Gokul Krishna were looking at each other, that A2 was not very friendly, was abrupt, that he took a dislike to Gokul Krishna, and for those reasons he took A2 out of the office. When asked why he had taken A2 out of the office, his response was that otherwise an argument would have started. Later he got confused as to whether it was A2 or Gokul Krishna who had been agitated. He suggested that Gokul Krishna was weak with a fever. He also told the Tribunal that Gokul Krishna had told him as soon as they entered the office that A2 was recording. Mr Rosenberg told the Tribunal that he knew that the whole conversation had been recorded, contrary to his written evidence. This was put to him and his response was that "*I recall it now*".

23. When asked why, when A2 said he was close to reporting the incident of threatened violence to the Police, Mr Rosenberg responded by saying that he would just say that A2 had threatened Gokul Krishna. Nor could he explain why, if A2 had made racist comments and was aggressive, would Mr Rosenberg, a man in his 70's, decide to leave the office with him and felt safe doing so.

24. Mr Krishna was very defensive in his oral evidence stating that he had issued proceedings in the Royal Courts of Justice against the applicants further to their racial abuse. There was no documentary evidence of these proceedings and neither of the applicants knew anything about the stated proceedings. It was put to him that there had been no need for A2 to come to the office to give back the keys. That the presence of Andrea Szabo and Abraham Rosenberg had been arranged so that allegations of racism could be made against A2, supported by his friends. Gokul Krishna denied this and told the Tribunal that there were security cameras in the office, but they failed to record this incident.

25. He denied having made a verbal threat of violence and stated that it was A2 who had slammed the keys on the desk and become aggressive and told him to “*go back where you came from*”.

26. It was put to Gokul Krishna that it was his modus operandi to accuse people of making racist comments. This relates to another tenant in the building, Garrett Burns, who brought separate RRO proceedings against the respondent. Garrett Burns provided a witness statement in these proceedings, but failed to attend the hearing. When asked about the accusations of racist slurs he made against Garrett Burns, Gokul Krishna’s response was that that it was a conspiracy between that tenant and the two applicants.

27. In submissions, the respondent asserts that that the Tribunal must be satisfied beyond a reasonable doubt of the conduct complained of. The Tribunal disagrees. In assessing the conduct, the Tribunal must be satisfied on the balance of probabilities.

## **FINDINGS**

28. The Tribunal finds beyond a reasonable doubt that the respondent landlord is in breach of the selective licensing requirement for the property for the period claimed by the applicant from 01/09/2022 to 27/01/2023. There was no reasonable excuse.

29. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

30. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord’s financial circumstances and whether the landlord has been prosecuted.

31. There is no evidence to demonstrate that the landlord has been prosecuted.

32. The Tribunal find that the claim of excess cold in the flat is not made out. This is because of the lack of evidence to challenge the respondent’s energy efficiency certificate which demonstrates adequate energy efficiency. The Tribunal does not doubt that the applicants felt cold in the flat, but the evidence does not support that it was uninhabitable.

33. In relation to the allegations of verbal abuse and threats made by Gokul Krishna, the Tribunal finds these are made out on the balance of probabilities. In particular, the threat not to provide a reference, and the incident when A2 returned the keys to the property during which Gokul Krishna threatened to ‘smash A2’s face’ [A/29]. The Tribunal found the respondent’s witness evidence in response to these allegations to be at best confused.

34. The allegation that Gokul Krishna made an abusive hand gesture shouted abuse at A1 in February 2023 is outside the term of the tenancy and therefore no finding is made in that regard.

35. The Tribunal finds that the applicants did not demonstrate poor conduct and find that the allegations made by the respondent that A2 racially abused Gokul Krishna to be fabricated. The evidence of Andrea Szabo was given little weight on the basis that she had no input into the preparation of her statement. The evidence of Abraham Rosenberg failed to specify the nature of what was said, and the Tribunal found that his evidence was confused and inconsistent. The Tribunal found the evidence of Gokul Krishna in relation to racist abuse to be fabricated.

36. In relation to the Respondent's financial circumstances, the Tribunal had the benefit of the respondent's unaudited financial statements for the year ended 31/10/2022 [R/32]. The abridged balance sheet confirms "*cash at bank*" £29,255; and "*total assets less current liabilities*" to be £5,812,366 [R/35]. The respondent asked that if an order was made against them, it be by way of instalments. The evidence provided did not indicate to the Tribunal that the respondent was in financial difficulty, and therefore the request for payment of the order by instalments is refused and no deductions are made for financial difficulties.

37. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21.

- a. The rent paid by applicants for the period from 01/09/2022 to 27/01/2023 was £12,177.50.
- b. Utilities were not part of the rent. These were paid by the applicants and no deductions are made in that regard.
- c. The respondent was a professional landlord having let this property for some years. No licence to date has been provided in evidence, although it is said to have been applied for on 26/06/2023.
- d. However, the respondent has not been prosecuted and there is no evidence before the Tribunal of any previous convictions. Considering the cases cited in paragraph 16 of the *Acheampong* case cited above, the starting point in this case is 75% because of the acknowledgement of the respondent's breach and because they permitted the applicants to end the term of their tenancy early.
- e. The assertion by the respondent that the applicants' conduct was poor is rejected.
- f. The Tribunal consider the respondent's verbal threats of violence and threat in writing not to provide a reference to be aggravating factors. The Tribunal therefore consider that 80% of the net rent for the period is repayable. Accordingly, we find



that an RRO be made against the respondent in the sum of **£9,742.00** to be paid within 28 days of this order.

38. The Respondent is also ordered to repay to the Applicant the sum of £300 being the tribunal fees paid by them in relation to this application.

**Name:** Judge D. Brandler **Date:** 13<sup>th</sup> November 2023

### **ANNEX - RIGHTS OF APPEAL**

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

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **Section 72 Offences in relation to licensing of HMOs**

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

## **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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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.

<i><b>If the order is made on the ground that the landlord has committed</b></i>	<i><b>the amount must relate to rent paid by the tenant in respect of</b></i>
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.