



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

Case reference : **LON/00BB/HMF/2023/0068.**

Property : **331 Tollgate Road, London. E6 5YF.**

Applicant : **Siu May Tsang.**

Representative : **In person.**

Respondent : **Aktar Ali**

Representative : **Mr Anwar Ali**

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

Tribunal : **Tribunal Judge Shepherd
Tribunal Judge O'Brien
Tribunal Member Mr S Mason BSc FRICS**

Date of Directions : **29 November 2023.**

DECISION

Decision

(i) The Application for a Rent Repayment Order is dismissed.

Background

1. The Tribunal has 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). The application was sent to the Tribunal on 5th April 2023.
2. It is asserted in the application notice that the landlord committed an offence of having control of or managing a house in multiple occupation (HMO) that was required to be licensed but was not so licensed. In addition the Applicant asserts that the Respondent unlawfully sought possession of, the property and committed harassment against her. The Applicant seeks a rent repayment order for a twelve-month period of the tenancy between the dates of **26 April 2021 and 25 April 2022 in the total sum of £6,000.00.**
3. At the hearing the Applicant represented herself and the Respondent was represented by his brother Mr Anwar Ali. The Tribunal was informed that the Respondent is currently residing in Saudi Arabia for work purposes.
4. The Applicant was in occupation of premises at 331 Tollgate Road London E6 5YF, ("The premises") as an Assured Shorthold Tenant from 2017 until September 2023. The Respondent was her landlord. The Applicant shared the premises with other occupiers that were not members of her household. Included in the bundle are documents from the Respondent which indicates that this property was a properly licenced House in Multiple Occupation at all material times.
5. It is the Applicant's case as set out in her application that she experienced continuing acts of harassment by the Respondent starting on 23 April 2021 when she says she was prevented from accessing the kitchen until September 2023 when she vacated the premises. She seeks an order under s.40 of the Housing and Planning Act 2016 (see below). She seeks repayment of rent amounting to £6000 constituting rent she asserts she paid to the Respondent from 26 April 2021 to 25 April 2022.
6. At today's hearing the Applicant did not pursue the allegation that the Respondent was operating an unlicensed HMO, and it became clear that she was seeking a RRO solely on the grounds that the Respondent had harassed her. The Tribunal proceeded on the basis that the applicant's case was that the Respondent had breached section 1 (3) and (3A) of the Protection from Eviction Act 1977. These provisions state the following:
 - (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.

The Housing and Planning Act 2016 (“the 2016 Act”)

7. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
8. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.
9. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that “the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an

unlicensed HMO may be a perfectly satisfactory place to live. The “main object of the provisions is deterrence rather than compensation.”

10. Section 40 provides (emphasis added):

“(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.”

11. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (see above); (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

12. Section 41 deals with applications for RROs. The material parts provide:

“(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.

13. Section 43 provides for the making of RROs:

“(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).”

14. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

THE HEARING

15. On questioning the Applicant today at the start of the hearing the Tribunal was able to ascertain that the specific allegations of harassment were as follows:

- (i) On or about 23 April 2021 the Respondent installed a lock on the kitchen door and did not supply her with the combination, which meant she was unable to access the kitchen from April 2021 until she left the premises in September 2023.
- (ii) The heating in her room was switched off in the winter of 21/22 and was not restored for the remainder of her time in occupation.
- (iii) The hot water was switched off on 14 April 2023 and remained off until the day she left the premises.
- (iv) The lock on the door was not repaired following a burglary in May 2023.
- (v) The Respondent served her with a notice seeking possession pursuant to s.21 of the Housing Act 1988 when he was not entitled to, and made up lies about her when he served notice on her pursuant to s.8 of the Housing Act 1988 relying on Ground 14 of Schedule 1 of that Act.

16. Allegations (iii) and (iv) above are not relied on in the Applicant’s application notice as they post-date the date on which the application was sent to the tribunal. They are however set out in the statement included in her bundle.

17. In relation to the first allegation; refusal of access to the kitchen, the applicant told the tribunal that the lock was installed on 23 April 2021 by the landlord’s agent. She said that all of the other occupants of the property had the code to the lock and were able to access the kitchen. She

said that it was her belief that the Respondent had instructed his agent to install the lock in order to harass her. She did not state expressly whether she ever requested the code but indicated that it was her belief that she that she was not allowed to use the kitchen.

18. Mr Ali for his part said that both he and his brother were surprised to read this allegation as it was the first they had ever heard about it. He was not able to cast any more light on the issue.
19. There were notable inconsistencies in the Applicant's account. It is agreed between the parties that there was a burglary at the premises in May 2023 in which several items were stolen from the kitchen. The Applicant was unable to explain how the burglars were able to access the kitchen if it was locked. She also referred in the course of her evidence to obtaining a kettle from the kitchen at some point after April 2021. The Tribunal is not satisfied to the requisite standard (beyond reasonable doubt) that the Applicant was prevented from accessing the kitchen as she asserts but even if she was there is no evidence whatsoever that this was effected by the Respondent, or by his agents on his instruction. The Tribunal is not satisfied to the requisite standard that this allegation of breach of s.1 of the Protection from Eviction Act 1977 is proved.
20. The second allegation is that the Respondent cut of the central heating to her room in the winter of 2021/2022 and that it was never restored. The Applicant stated that the heat in the building was supplied via a gas fired central heating system. When her radiator stopped working in 2021 she reported the issue to her landlord's agent. They sent around a heating engineer who resolved the problem. However a week later her radiator stopped working again. She said it was her belief that the radiator had been deliberately turned off by the agent. She confirmed that there was a thermostatic valve attached to her radiator but that it did not work. She confirmed that other radiators in the property were operative and that she did not know how the agent could have isolated her radiator from outside her room. She said that she used a fan heater for heat for the remainder of her occupation.
21. Mr Ali confirmed that there was a report of an issue with the heating but he was unsure when it was. He recalled that there was a report of a defective radiator in the Applicant's room and that his brother's agent instructed an engineer to address the issue. He did not appear to know anything else about the heating situation. He confirmed that there is no way of isolating the Applicant's radiator from the central heating system from outside the applicant's room.
22. The Tribunal is not satisfied that applicant has proved her case to the requisite standard. There is no evidence that the heating in the Applicant's room was deliberately turned off by the landlord or by his agent acting on his instruction and the evidence suggests that the only way the landlord or his agent could have turned off the heating in the Applicant's room was by turning of the heating in the whole house.

Consequently the Tribunal is not satisfied that the respondent breached s.1(3A) of the Protection from Eviction Act 1977.

23. The third allegation is that the hot water was turned off in or about 14 April 2023 and was not restored. This allegation post-dates the date on which this application was lodged at the tribunal and therefore is outside the relevant period for the purposes of s. 41 of the 2016 Act. Consequently the Tribunal has no jurisdiction to consider it. Similarly the 4th allegation relates to the events in May 2023 and again falls outside the relevant 12-month period which the Tribunal can consider.
24. The fifth allegation is that the respondent served notice on her pursuant to s.8 of the Housing Act 1988 and that he made up lies regarding her conduct in order to obtain possession. She also asserts that the service of a s.21 notice constituted an unlawful act of harassment because the respondent was not entitled to serve such a notice. The Tribunal has no evidence as to what allegations were relied on by the Respondent in the Ground 8 notice and no copy is included in either the Applicant's bundle or the Respondent's bundle. We note that the claim for possession based on this s.8 notice was dismissed by the county court on 12 January 2023. Mr Ali stated that the claim for possession based on the Applicant's conduct was dismissed because the county court judge was dissatisfied with the evidence relied on by the Respondent in those proceedings. A possession order was made under s.21 of the Housing Act 1988 on 21 March 2023 .
25. It is clear that the Applicant considered that the landlord's service of notices of seeking possession amounted to acts of harassment which breached s1(3A) of the 1977 Act. The service of such a notice is a statutory pre-requisite to possession proceedings in the county court and the Tribunal concludes that it is difficult to see how the service of a statutory notice could amount to a breach of s1(3A) of the 1977 Act save in the most exceptional circumstances. The Respondent was entitled to seek possession and to have his claims considered by the court.
26. In summary the Tribunal is not satisfied that the Applicant has proved 1st and 2nd allegations set out in paragraph 15 above. Furthermore the Tribunal is not satisfied that the service of 2 statutory notices of seeking possession amounted to a breach of s1(3A) of the 1977 Act. Additionally, the Tribunal is satisfied that it has no jurisdiction to consider the 3rd and 4th allegations as they relate to matters outside the relevant period for the purposes of s.41 of the 2016 Act. Consequently the application for a Rent Repayment Order is dismissed.

Judge O'Brien
Judge Shepherd

29th November 2023

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.

Name: Tribunal Judge Shepherd Date: 29 November 2023.

Annexe

The issues for the tribunal to consider include:

- Whether the tribunal is satisfied beyond 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

- Did the offence relate to housing that, at the time of the offence, was let to the tenant?
- Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
- What is the applicable 12-month period?¹
- What is the maximum amount that can be ordered under section 44(3) of the Act?
- What account must be taken of:
 - (a) The conduct of the landlord?

- (b) The financial circumstances of the landlord?
- (c) Whether the landlord has at any time been convicted of an offence shown above?
- (d) The conduct of the tenant?
- (e) Any other factors?