



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

**Case reference** : **LON/00BE/HMB/2022/0007**

**Property** : **First Floor Flat, 76 Denmark Hill,  
London SE5 8RZ**

**Applicant** : **Yuhao Lin**

**Representative** : **Mr Tom Wood (friend)**

**Respondent** : **Westerham Limited**

**Representative** : **Mr Archie Madden, counsel**

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

**Tribunal  
member(s)** : **Judge Tagliavini  
Mr A Lewicki MRICS**

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

**Date of hearing** : **15 March 2023**  
**Date of reconvene** : **20 September 2023**  
**Date of decision** : **17 October 2023**

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**DECISION**

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## **The tribunal's decision**

1. The tribunal finds the applicant has failed to prove beyond reasonable doubt an offence has been committed under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 and dismisses the application for a rent repayment order and refuses the applicant for reimbursement of the applicant's tribunal fees.
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## **The application**

2. This is an application for a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016. The applicant alleges the respondent has committed an offence of harassment and unlawful eviction under the provisions of the Protection from Eviction Act 1977.
3. The application was received by the tribunal on 22 August 2022 and the applicant now seeks a rent repayment order in the sum of £15,098.40 for the period 23 August 2020 to 22 August 2021 (being the 12 months ending on the date of the application).

## **Background**

4. The applicant was an assured shorthold tenant under a tenancy agreement dated 8<sup>th</sup> August 2020 and made between the respondent landlord and applicant tenant which granted a 12 months' tenancy of the First Floor Flat, 76-78 Denmark Hill, London SE5 8RZ ('the premises') for a 12 month term commencing on 22<sup>nd</sup> August 2020 at the annual rent of £15,080.40.

## **Litigation History**

5. Directions were given by the tribunal dated 11 October 2022 and an oral (video) hearing was held on 15 March 2023 and concluded at a reconvened video hearing on 20 September 2023.

## **The Law**

6. The applicant alleges that an offence has been committed by the respondent the provisions of section 1 of the Protection for Eviction Act 1977 which states:

*(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 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.*

*(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.*

7. The tribunal may only make a rent repayment under sections 43 of the Housing and Planning Act 2016 in the following circumstances:

*(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).*

8. Where the application has been made by the tenant the amount of a rent repayment order is determined in accordance with section 44 of the 2016 Act which states:

*(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.*

### **Parties' contentions**

9. As well as the oral evidence of the applicant and a hearing bundle of 209 pages and a supplementary bundle of 66 (electronic) pages the tribunal also heard oral evidence from Mr S Bridson (a director of the respondent company), Mr S Batty (Director of James Stevens and Inventory Clerk) and Ms R Tobin (Sheraton Management Limited - the respondent' managing agent) and S Skibinski (Director of Prime Services Surrey) as well as being provided with a respondent's hearing bundle of 83 (electronic) pages.

10. In his oral and documentary evidence the applicant asserted the acts of harassment and unlawful comprised the following:

- (i) Applicant's message of 22/06/2021
- (ii) Agent's message of 22/06/2021 bogusly seeking to terminate the Tenancy
- (iii) Agent's message of 05/07/2021 threatening unauthorised access for a move out inspection
- (iv) Agent's message of 11/08/2021 requesting an appointment for the check-out inspection
- (v) Agent's message of 14/08/2021 repeating the same request and specifying a requirement for departure by midday
- (vi) Transcript of WhatsApp messages with Steve Batty from 21/08/2021
- (vii) Transcript of WhatsApp messages with Ros Tobin from 22/08/2021

11. The applicant asserted the respondent's agent (Sheratons) '*Grossly infringed his liberties*' by asking if he was moving out of the property; seeking to carry out an end of tenancy inspection and leading him to believe he would either have to leave at the end of the contractual tenancy or enter into a new agreement, rather than remaining as a statutory assured shorthold tenant.

12. The respondent asserted the applicant has pleaded to matters long pre-dating the 12-month limitation period and that for the avoidance of doubt none of those activities pre-dating the 12-month limitation period contravene the 1977 Act nor give rise to a liability for a RRO. The respondent, in any event refuted all of the applicant's allegations of harassment and unlawful eviction and told the tribunal the applicant had led the respondent to believe he did not wish to renew the tenancy and was leaving on or soon after the end of the contractual term. The respondent asserted that its chronology of events during the limited period which the applicant could rely upon within the limitation period was as follows:

- (i) Attendance of the Inventory Clerk on 23 August 2021, as had been directed by the Applicant at a meeting between the Applicant and Inventory Clerk at the property on 21 August 2021;
- (ii) A WhatsApp message [AB / 70] and an email on 23 August 2021 [AB /71 - 72] (together the Communications) sent by the Respondent's managing agent to the Applicant;
- (iii) The re-attendance of the Inventory Clerk on 24 August 2021, as had been directed by the Applicant at a meeting between the Applicant and Inventory Clerk at the

property on 23 August 2021, and the attendance of the Respondent's agent's instructed handyman

### **Reasons for Decision**

13. The tribunal finds the applicant unequivocally led the respondent to believe he did not wish to renew the tenancy and intended to leave at the end of the contractual terms and informed the respondent of his intention to do so. Further, the tribunal finds the applicant accepted in his oral evidence to the tribunal that he *'Didn't tell anybody from the respondent that I wasn't go to move out'* and *'I thought I needed to lie before I told Sheraton I wanted to stay.'*
14. Consequently, the tribunal finds that at no time before he vacated the subject premises, did the applicant inform the respondent that he had changed his mind and was going to stay on as a statutory tenant.
15. Notwithstanding the limitation issue raised by the respondent, the tribunal finds the respondent's enquiry two months before the end of the contractual term as to whether the applicant wished to renew was standard commercial practice and cannot be construed as an act of harassment. The tribunal finds the applicant was neither rushed or pressurised in deciding whether or not to leave or renew the tenancy and finds it reasonable that a professional landlord would seek this information in order to be able to decide whether or not it needed to re-advertise the flat for letting.
16. Further the tribunal finds the respondent's steps to carry out an end of tenancy inventory is considered to be standard practice and designed to protect both parties' interests. The tribunal finds such steps cannot be construed as harassment of the applicant.
17. The tribunal finds the applicant had voluntarily left the premises on 22 August 2022 leaving Mr Wood to pack up the applicant's remaining belongings. The tribunal finds that when Mr Skibinski attended the subject premises on 24 August 2024 to change the locks, Mr Wood was present and not the applicant tenant, although this was not made clear to Mr Skibinski. The tribunal only discovered this fact during Mr Wood's cross examination when he started to give evidence about his contact with the respondent's agents on 24 August 2024, as this fact had not previously revealed to the respondent or to the tribunal.
18. The tribunal finds the applicant was not unlawfully evicted from the premises having voluntarily left the premises on 23 August 2023 and was neither pressurised nor coerced into doing so. The tribunal finds the applicant chose to leave.
19. The tribunal finds Mr Wood sought both to represent the applicant and give evidence himself while cross-examining the respondent's witness. The tribunal finds the respondent was disadvantaged by this approach

as Mr Wood neither revealed his involvement in the matter nor made a witness statement setting out what his involvement had been. In particular, the events of 24 August 2022 involved only Mr Wood as the applicant had already left the subject property.

20. The tribunal accepts the respondent's submissions that the majority of this claim is any event outside the limitation period of 12 months ending on 23 August 2023 (the applicant having given up occupation on that day).
21. In conclusion the tribunal finds the applicant has failed to prove beyond reasonable doubt that he was harassed by the respondent or its agents at any time during the period of the tenancy and was not unlawfully evicted from the subject premises having voluntarily left and given up occupation as of 23 August 2021.

### **Reimbursement of tribunal fees**

22. In light of the tribunal's decision as set out above, the tribunal does not make an order requiring the respondent to reimburse the applicant's tribunal fees.

**Name: Judge Tagliavini**

**Date: 17 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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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).