



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

Case Reference : LON/00BE/HMC/2023/0001

Property : Flat 21, Axis Court, 2 East Lane,
London SE16 4UQ

Applicants : Julie Nyeko
Simen Solberg

Respondent : Philip Alan Stuart Miller

Representative : PainSmith Solicitors

Type of Application : Application for a rent repayment order
by tenant

Tribunal : Judge Nicol
Mrs J Mann MCIEH

**Date and Venue of
Hearing** : 15th January 2024;
10 Alfred Place, London WC1E 7LR

Date of Decision : 15th January 2024

DECISION

The application for a Rent Repayment Order and for reimbursement of fees is dismissed.

Relevant legislation is set out in the Appendix to this decision.

Reasons

1. The Applicants were tenants from 16th June 2022 to 27th July 2023 at Flat 21, Axis Court, 2 East Lane, London SE16 4UQ. The Respondent is the leasehold owner of the property.

2. The Applicants seek a rent repayment order (“RRO”) against the Respondents in accordance with the Housing and Planning Act 2016 (“the 2016 Act”).
3. The Tribunal issued directions on 22nd August 2023. There was a face-to-face hearing of the application at the Tribunal on 15th January 2024, attended by:
 - The Applicants, who represented themselves
 - The Respondent
 - Ms Harriet Ho, counsel for the Respondent
 - Mr Nathan Grimwood, Cluttons
4. The documents available to the Tribunal consisted of:
 - A bundle of 541 pages from the Applicants;
 - A bundle of 314 pages from the Respondent;
 - A supplementary bundle of 105 pages from the Applicants; and
 - A skeleton argument from the Applicants.

The offences

5. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The Applicants alleged in their application that the Respondent was guilty of failing to comply with an improvement notice, contrary to section 30(1) of the Housing Act 2004 (“the 2004 Act”).
6. In particular, on 14th April 2023 the local authority, the London Borough of Southwark, served an Improvement Notice which identified a category 2 hazard of excess cold arising from issues described as follows:
 - The middle window in the living room. The lock is missing and does not close properly.
 - The window on the left hand side in the living room has draft penetrating through it.
 - The window in the ensuite bedroom. The lock is not secured and does not close properly.
 - The windows in the bedrooms are drafty.
7. The Improvement Notice required the works to be started by 12th May 2023 and completed within 28 days thereafter. In fact, the works had not been completed before the Applicants moved out on 20th July 2023 in frustration at the fact that their conditions remained the same.
8. The problem for the Applicants is that section 30(1) only applies to “the person on whom the notice was served”. The Improvement Notice was addressed to and served on the Respondent’s agents, Cluttons LLP, only, not the Respondent himself. Therefore, the Respondent did not commit the offence.

9. The Applicants' application had originally named Cluttons and their property manager, Lauren Field, as respondents as well as the Respondent but the Tribunal had pointed out that, in accordance with the Supreme Court's judgment in *Rakusen v Jepson* [2023] UKSC 9, a RRO may only be made against a tenant's immediate landlord. Only the Respondent himself met this definition.
10. The legislation is arranged so that, while both agent and landlord may be capable of committing relevant offences, a RRO may only be made against the landlord. There are other means of imposing sanctions which apply to both landlord and agent, such as penalty notices or criminal prosecutions, so that the circumstances in this case do not mean that someone who commits the offence somehow "gets away with it". It just means that the Tribunal cannot grant a RRO for that offence.
11. For these reasons, the Tribunal had no choice but to dismiss the application. However, by letter dated 24th November 2023, the Applicants stated,

I am the claimant in the above matter and write to request that the grounds on which the RRO application is being made is clarified.

On submission of the application on 21/06/2023 I attached detailed grounds which summarised the facts in relation to:

- failure to comply with an improvement notice and
- harassment faced during the tenancy.

I have re attached these for ease of reference.

This is to confirm that the application submitted in June 2023 is in relation to s40(3) Housing and Planning Act 2016 particularly:

- Protection from Eviction Act 1977 in relation to eviction or harassment of occupiers
- Housing Act 2004 failure to comply with improvement notice

The Respondent has been copied into this response.

I look forward to your response.

12. Under section 1(3) and (3A) of the Protection from Eviction Act 1977, it is an offence if:
 - (a) Any person, with intent to cause the residential occupier of any premises to give up the occupation of the premises or any part thereof does acts likely to interfere with the peace or comfort of the residential occupier.
 - (b) The landlord of a residential occupier or an agent of the landlord does acts likely to interfere with the peace or comfort of the residential occupier or members of his household and 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.

13. The problem with the Applicants' letter is that what it stated was not true. The grounds of application said nothing about the Protection from Eviction Act nor did they set out particulars of the alleged commission of the offences under it. Judge Daley considered the letter and simply commented that the issue is within the Tribunal's jurisdiction. That was not the issue rather than whether the Applicants should be permitted to introduce new grounds for their application after the dates given in the Tribunal's directions of 22nd August 2023 for both parties to state their case.
14. No particulars were given for this new ground until the Applicants provided their skeleton argument just before the Tribunal hearing. Ms Ho, on behalf of the Respondent, argued that this constituted a significant amendment of the Applicants' case which should not be allowed in so late.
15. The Applicants argued that they should not be punished for their inexperience. They thought that they had raised the issue with the Tribunal and that the Tribunal's response gave them approval to carry on with the new issue.
16. However, even taking into account the Applicants' lack of knowledge or understanding of Tribunal procedure, the Tribunal is not satisfied that they acted correctly. They misled the Tribunal as to what the issue was. They did not seek to correct the Tribunal when it came back with the answer to a different question. They saw the Tribunal's careful and lengthy directions in relation to the existing issue but did not seek at any time to raise or discuss any additions or amendments to the directions with either the Tribunal or the Respondent.
17. It would be unfair to the Respondent and contrary to the good administration of justice to permit the grounds for the application to be so fundamentally altered at this late stage in proceedings. Neither party suggested they wanted the proceedings adjourned but, in any event, the Tribunal is not satisfied that this would be the appropriate response to such a fundamental alteration, particularly in the light of the fact that the Applicants do not yet appear to be out of time if they wished to re-issue the application.
18. Therefore, the Tribunal refused permission to the Applicants to rely on the new grounds for their application.
19. There being no grounds for the application, it must be dismissed, including the application for reimbursement of fees.

Name: Judge Nicol

Date: 15th January 2024

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).

Appendix of relevant legislation

Protection from Eviction Act 1977

Section 1 **Unlawful eviction and harassment of occupier**

- (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.
- (3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—
 - (a) the residential occupier's right to remain in occupation of the premises, or
 - (b) a restriction on the person's right to recover possession of the premises,would be entitled to occupation of the premises and any superior landlord under whom that person derives title.
- (4) A person guilty of an offence under this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;
 - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

- (5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.
- (6) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Housing Act 2004

Section 30 Offence of failing to comply with improvement notice

- (1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.
- (2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice –
 - (a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);
 - (b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and
 - (c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.
- (5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.
- (6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.
- (7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (8) 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.

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.

Act	section	general description of offence
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.

If the order is made on the ground that the landlord has committed ***the amount must relate to rent paid by the tenant in respect of***

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.