



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

Case Reference : **LON/00BJ/HMF/2023/0221**

Property : **129b Seely Road, London SW17
9QX**

Applicant : **Alireza Mehdi Poor**

Representative : **Not represented**

Respondent : **Lyn Yang**

Representative : **Not represented**

Type of Application : **Application for Rent Repayment
Order under the Housing and
Planning Act 2016**

Tribunal Members : **Judge P Korn
Ms F MacLeod MCIEH**

Date of Hearing : **1 February 2024**

Date of Decision : **2 February 2024**

DECISION

Description of hearing

This was a face-to-face hearing.

Decisions of the tribunal

- (1) The tribunal makes no rent repayment order.
- (2) The tribunal makes no cost orders.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The first basis for the application is that the Respondent allegedly committed an offence of having control of and/or managing a house in multiple occupation (“**HMO**”) which was required to be licensed but was not licensed, contrary to section 72(1) of the Housing Act 2004 (“**the 2004 Act**”).
3. The second basis for the application is that the Respondent allegedly harassed the Applicant.
4. The Applicant seeks a rent repayment order in the sum of £6,960 in respect of rent paid for the period 24 August 2022 to 23 August 2023 (“**the Relevant Period**”), and he confirmed that this was what he was seeking at the start of the hearing.
5. The Property was occupied during the Relevant Period by the Applicant, by the Respondent (as a live-in landlord) and by other tenants.

Alleged failure to license

6. The Respondent’s hearing bundle contains a copy of an HMO licence in the Respondent’s name. The licence is dated 3 August 2022. At the hearing the Applicant accepted that the Respondent did in fact have an HMO licence for the whole of the Relevant Period. The tribunal explained that therefore this aspect of the application had to fail.

Alleged harassment

7. The Applicant has made various allegations of harassment in his statement of case and his follow-up comments, and the Respondent has responded to these allegations in her statement in reply. The Respondent has also included witness statements from three other tenants in her hearing bundle, and one of those tenants (Mr Goracci) attended the hearing. The tribunal has considered the parties’ respective written statements and the witness statements and the other contents of the hearing bundles.

The hearing

Applicant's oral submissions

8. The Applicant said, by reference to his written submissions, that there was too much pressure from the Respondent as regards how she wanted the Property to be looked after, and she continually gave instructions as to what he could or could not do. The Respondent was constantly sending him text messages complaining about his poor cleaning standards and making unreasonable demands – for example, telling him that a specific cable represented a fire hazard.
9. One point of contention was that he was not allowed to have a heater in his room, despite his having complained of being cold, even though another tenant was allowed to have a fan. Another issue was what he regarded as unreasonable security concerns, and he was criticised simply for leaving a window slightly open. He was also expected to stay in the kitchen for the entire time that he was cooking something. In addition, the Respondent raised unreasonable concerns regarding the level of humidity in his room.

Respondent's oral submissions

10. In response, the Respondent pointed to her written statement in reply to the Applicant's statement of case which she said answered all of the points raised by him in writing. She said that the concerns that she had raised were purely motivated by the wish to look after the wellbeing of the other tenants, to ensure that the Property was secure and clean and also to look after the fabric of the Property. Her actions neither constituted harassment nor were designed to force the Applicant to leave the Property.
11. The Applicant had portrayed her as obsessive about the Property, but in her submission the reality was that the Applicant had very low standards compared to the other tenants and that the real problem was that the Applicant had difficulty in managing his own life. His behaviour within the Property revealed a basic lack of common sense. For example, he made a mess in the kitchen nearly every day and it was left to her or one of the other tenants to clear up that mess. Also, he left his bedroom window open even when it was raining.
12. The Respondent said that she appreciated that the Applicant had a stressful job, and so she tried not to message him during working hours, but the other tenants also had demanding jobs and/or stressful lives and unlike the Applicant they did not need to be reminded constantly how to behave in a considerate and safe manner within the Property.

13. Other examples of problems were that the Applicant had an electrical extension lead which was covered with piles of papers, and there were clothes lying around everywhere in his room.
14. Specifically regarding the issue of the heater, the Applicant was the only one who had claimed that the Property was cold, and his bedroom was probably the warmest one as it was in the middle of the Property. The problem, it seemed to her, was that even in the winter the Applicant wore thin pyjamas and had a thin duvet. To assist him she bought him a thicker duvet for free, although he chose not to use it.
15. She did not accept that it constituted discrimination to refuse permission for him to have a heater in his room whilst allowing another tenant to have a fan. First of all a heater is more expensive than a fan to run in terms of utility bills, but more importantly there are safety concerns in relation to a heater which do not apply to a fan in the same way. His bedroom was quite small, and he was both messy and careless, and so it was legitimate for her to have safety concerns about a portable heater. In addition, for the reasons referred to above, she considered his room to be warm enough already from the central heating.
16. Examples of the Applicant's carelessness included his leaving the front door unlocked several times when going out, failing on one occasion to turn off the gas hob before retiring for the night, breaking his key (something that did not happen with any other tenants) and losing the key to the alleyway.
17. The Respondent added that in the whole 3 years during which the Applicant lived at the Property he did not once mention anything about harassment – he was raising it for the very first time for the purposes of his rent repayment application. She also found it hard to believe that someone would live in a property for so long if they felt that they were being harassed.

Mr Goracci's witness evidence

18. Mr Goracci was one of the other tenants when the Applicant was a tenant at the Property, and he has provided a witness statement in support of the Respondent's position. In his statement he makes very positive comments about the Respondent as a landlord, describing her as responsible, reliable and trustworthy. He also describes the Applicant's allegations against her as false. He particularly rejects the allegation that the Property was too cold and vehemently disagrees with the suggestion that the Respondent harassed the Applicant.
19. In cross-examination at the hearing, he said that it was the Applicant who raised his voice first in any disagreement with the Respondent. He

also did not agree with the Applicant that the Respondent’s male friend stayed over at the Property for long periods.

Relevant statutory provisions

20. Housing and Planning Act 2016

Section 40

- (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 ...
- (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

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

Housing Act 2004

Section 72

- (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 ... but is not so licensed.

Protection from Eviction Act 1977

Section 1

- (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 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 ... shall be guilty of an offence if – (a) he does acts likely to interfere with the peace or comfort of the residential occupier ... , or (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence, and ... 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.

Tribunal's analysis

Alleged failure to license

21. As stated above, the Respondent has produced evidence that she did have an HMO licence for the whole of the Relevant Period. The Applicant has not contested the accuracy of this evidence and therefore the Applicant has failed to show – whether beyond reasonable doubt or otherwise – that the Respondent failed to licence the Property. This aspect of his case therefore clearly fails.

Alleged harassment

22. First of all, in order to be an offence for which a rent repayment order can be made the offence alleged needs to fall within the table set out in section 40 of the 2016 Act (as to which see above). The alleged harassment would therefore need to fall within either section 1(2), 1(3) or 1(3A) of the Protection from Eviction Act 1977 (“**the 1977 Act**”), these being the only ones within that table which relate to harassment.

23. The Applicant does not argue that the Respondent has unlawfully deprived him of his occupation of the Property or has attempted to do so, and therefore there is no offence proven under section 1(2) of the 1977 Act.

24. Sections 1(3) and 1(3A) both relate more to harassment, and it would seem that these are the subsections on which the Applicant seeks to rely.
25. Turning to the allegations themselves, as pointed out to the Applicant at the hearing he has provided nothing by way of documentary evidence. He has complained that the Respondent harassed him through repeated text messages but has not provided a screen shot or any other evidence of the content or frequency or of the time of day of any of those messages. He has also provided no other documentary support for his allegations nor any copy photographs. He has mentioned that a couple previous tenants were unhappy with the Respondent but has provided no witness statements nor even any copy letters or emails from them confirming this or explaining the context. In addition, at the hearing the Respondent gave her explanation as to what had happened in relation to those tenants, although there is no value in setting out her response in detail as this specific point only has a very limited bearing on the present case in the absence of better evidence from the Applicant.
26. On the basis of the evidence before us we do not accept that the Respondent behaved inappropriately towards the Applicant and we certainly do not accept that she behaved in a manner which could be said to amount to harassment. It is arguable that her standards are quite high and that this might not suit every type of tenant, but Mr Goracci and the other tenants who gave witness statements seem to have been very satisfied with her as a landlord.
27. In relation to the heater issue, we are considerably more persuaded by the Respondent's evidence than by the Applicant's evidence. As a more general point, we accept that the Respondent had legitimate concerns about the Applicant's antisocial approach to house-sharing and his carelessness and lack of common sense in failing to adhere to basic standards and in objecting to the need to do so. Whilst there may be isolated examples of the Respondent's concerns being slightly over-cautious – for example the concern about charging a device in the living room – overall we are satisfied that the Respondent acted reasonably and also sometimes went beyond her responsibilities by for example providing the Applicant with a warmer duvet for free.
28. In any event, looking at the wording of sections 1(3) and 1(3A) of the 1977 Act – also taking into account the defence contained in section 1(3B) – it is not credible to suggest that the Respondent was in breach of any of these provisions. There is no evidence before us that her complaints about the Applicant's behaviour were intended to force him to leave the Property or to refrain from exercising any right or pursuing any remedy or that she had reasonable cause to believe that her complaints would cause him to do so.

29. In conclusion, the Respondent has not committed an offence under the 1977 Act and did not fail to have an HMO licence during the Relevant Period. Accordingly, we make no rent repayment order against the Respondent.

Cost applications

30. The Applicant has applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse his application fee of £100.00 and the hearing fee of £200.00.
31. As the Applicant's claim has been unsuccessful, we do not consider that it would be appropriate to require the Respondent to reimburse the application fee or the hearing fee, and accordingly this cost application is refused.

Name: Judge P Korn

Date: 2 February 2024

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.