



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

- Case Reference** : CHI/00MR/HMC/2023/0003
- Property** : 9 Albert Grove, Southsea, Portsmouth,
Hampshire, PO5 1NG
- Applicants** : Finley Stubbs, Dylan Clark, Harry Adams,
James Gooding, Samuel Walton and Samuel
Warner.
- Representative** : Not represented.
- Respondent** : Soyfur Chowdhury
- Representative** : Not represented
- Type of Application** : Application for a Rent Repayment Order,
Sections 41 of the Housing & Planning Act 2016
- Tribunal Members** : Judge N Jutton, Ms T Wong, Mr D Jagger
MRICS.
- Date and Venue of
Hearing** : 1 February 2024
Havant Justice Centre, The Court House,
Elmleigh Road, Havant, Hampshire, PO9 2AL
- Date of Decision** : 2 February 2024

DECISION

1. **Background**

2. The Applicants were formerly tenants of a residential property known as 9 Albert Grove Southsea Portsmouth, Hampshire PO5 1NG (the property). The property is a house in multiple occupation (HMO). The Respondent is the owner of the property and was at the material time the Applicants landlord. The Applicants occupied the property under the terms of a written assured short hold tenancy agreement which was for a term of 11 months starting on 1 September 2022 and ending on 31 July 2023. The rent was payable monthly on the first day of each month in advance in the sum of £2660.
3. By an application dated 15 June 2023 the Applicants seek a Rent Repayment Order in respect of certain rents paid by them to the Respondent during the course of their tenancy.
4. There was before the Tribunal a bundle of documents prepared by the Applicants (not paginated) together with other documents which included a statement of case made by the Respondent. Directions were made by the Tribunal on 12 October 2023 and 15 November 2023.

5. **The Law**

6. Chapter 4 of the Housing and Planning Act 2016 (the 2016 Act) enables the Tribunal to make a Rent Repayment Order in favour of a tenant if it is satisfied beyond reasonable doubt that the landlord has committed one or more of certain specified offences during the tenancy. Those offences are set out in a table at section 40(3) of the 2016 Act. There are seven offences listed.
7. Section 41(2) of the 2016 Act provides:
 - (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.*
8. Accordingly it is for the tenant(s) to prove, to the criminal standard of proof, that the offence or offences alleged had been committed on a date or over a period within the 12 months ending on the date of the application to the Tribunal.
9. If the Tribunal decides to make a Rent Repayment Order in favour of a tenant the amount is determined in accordance with the provisions of section 44. In determining the amount the Tribunal must in particular take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has any time been convicted of an offence to which Chapter 4 of the 2016 Act applies.

10. **The Hearing**

11. The hearing was attended by the respondent Mr Chowdhury. None of the Applicants attended. The hearing was due to start at 10.00am. The Tribunal waited until 10.20am to allow additional time for the Applicants, in case they had been delayed, before commencing the hearing. The Tribunal spoke to the case officer and was satisfied that the Applicants had been given proper notice of the date time and venue of the hearing. Indeed the date time and venue for the hearing was clearly set out in bold print in the Directions made by the Tribunal on 15 November 2023. In the circumstances the Tribunal proceeded in the absence of the Applicants to determine the application on the basis of the written evidence submitted and the oral submissions made by the Respondent at the hearing.

12. **The Application**

13. In their application the Applicants contended that the Respondent had committed three of the offences listed in the table at section 40(3) of the 2016 Act. Firstly that the Respondent had failed to comply with the provisions of an Improvement Notice served upon him in respect of the property pursuant to sections 11 and 12 of the Housing Act 2004 thereby committing an offence under section 30(1) of that Act. Secondly, that the property was at a material time an unlicensed HMO thereby committing an offence under section 72(1) of the Housing Act 2004. Thirdly that the Respondent was guilty of the harassment of the Applicants thereby committing an offence under section 1 of the Protection from Eviction Act 1977. However in a statement of case dated 5 December 2023 the Applicants went further and contended that the Respondent was guilty of committing all seven offences listed in the table set out in section 40(3) of the 2016 Act. In the circumstances the Tribunal proceeds upon the basis that it is the Applicant's case that the Respondent was guilty of committing all seven offences.

14. **Section 6(1) Criminal Law Act 1977**

15. Section 6(1) of the Criminal Law Act 1977 provides as follows:

Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that

- (a) *there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and*
- (b) *the person using or threatening the violence knows that that is the case.*

16. The Respondent states that he doesn't understand the allegation that he has committed such an offence nor he contends was there any evidence before the Tribunal to support the allegation.
17. The Tribunal agrees with the Respondent. There was no evidence at all before the Tribunal that the Respondent or any other person had threatened violence for the purpose of securing entry to the property. The Tribunal is not satisfied beyond reasonable doubt that an offence has been committed.

18. Section 1(2),(3)or (3A) Protection from Eviction act 1977

19. Section 1(2), 1(3) and 1 (3A) of the Protection from Eviction Act 1977 provides as follows:

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 has ceased to reside in the premises.

1(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.

1(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.

3(B) A person shall not be guilty of an offence under sub-section (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question”.

20. On their application form the Applicants state as follows: *'Harassment: the tenants experienced undue pressure to fill the extra room, with threats of raised rent, despite the licensing restrictions. Furthermore, the letting agent has been reported for entering the property without proper notice on multiple occasions, which the council has been notified of'*. In his witness statement dated 29 January 2024 (unsigned) Mr Harry Adams makes reference to alleged unauthorised entry to the property by the Respondents letting agents. He complains of the agents entering the property without prior notice or even knocking at the door. He complains of an invasion of privacy and a disregard for tenants' rights. He complains that the conduct of both the Respondent and the letting agent as being unprofessional and negligent.
21. The Respondent says that he doesn't understand the allegation and that there was no evidence to support it. He told the Tribunal at the hearing that he found such allegations distressing and confusing.
22. There was no evidence before the Tribunal that the Respondent had attempted to deprive the Applicants of their occupation of the property. There was no evidence before the Tribunal of acts by or on behalf of the Respondent carried out with the intent of causing the Applicants to give up their occupation of the property or refraining them from exercising any right or pursuing any remedy in respect of the property. There were with the documents produced by the Applicants a number of emails received by them from the Respondents letting agents during the course of the tenancy giving notice of an intention to inspect the property. Invariably the notice given was insufficient, the lease requiring the landlord to give at least 24 hours written notice of an inspection, save in the case of an emergency. Such emails did not however in view of the Tribunal amount to a form of harassment of the Applicants. If it were the case that the Respondent's letting agents in visiting the property without giving proper notice interfered with the Applicants peace or comfort of the property (and the Tribunal does not find that to be the case) then there was no evidence before it that the Respondent or his letting agents knew or had reasonable cause to believe that such conduct might cause the Applicants to give up possession of the property or part thereof.
23. In all the circumstances and upon the basis of the evidence before it the Tribunal is not satisfied beyond reasonable doubt that the Respondent is guilty of an offence under section 1(2) or 1(3) or 1(3A) of the Protection from Eviction Act 1977.
- 24. Section 30(1) Housing Act 2004**
25. Section 30(1) of the Housing act 2004 provides: *'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'*.

26. The Respondent explained that the HMO licence issued by Portsmouth City Council for the property expired in March 2023. That in anticipation of the renewal of the licence the council inspected the property and produced a form of Housing Health & Safety Rating System report setting out works that it required the Respondent carry out to the property within a given timescale. There was a copy of that report in the documents produced by the Applicants. For the avoidance of doubt that report did not constitute an Improvement Notice served under the provisions of chapter 2 of the Housing Act 2004.
27. The council did subsequently however serve an Improvement Notice which is also in the papers produced by the Applicants and which is dated 7 July 2023, after the date of the application to the Tribunal (15 June 2023). The Respondent told the Tribunal that the work required by that Improvement Notice had been completed and that further the HMO licence for the property had been renewed for a further year.
28. There was no evidence of an outstanding Improvement Notice for the property as at the date of the application to the Tribunal. As set out above section 41(2) of the 2016 Act provides that a tenant may apply to the Tribunal for a rent payment order if the offence complained of was committed in the period of 12 months ending with the day on which the application is made. Even if it were the case that the Respondent had failed to comply with the Improvement Notice dated 7 July 2023 (and there was no evidence to that effect, indeed to the contrary the Respondent said that the notice had been complied with) that would not be relevant to this application given that the notice post-dates the date of the application to the Tribunal. A failure to comply with the notice dated 7 July 2023 could not constitute an offence committed in the period of 12 months ending on the day on which the application to the Tribunal was made.
29. In all the circumstances on the basis of the evidence before it the Tribunal is not satisfied beyond reasonable doubt that an offence was committed under section 30(1) of the Housing Act 2004.
- 30. Section 32(1) of the Housing Act 2004.**
31. This section provides that a person commits an offence if knowing that a prohibition order has become operative in relation to a property he uses the premises in contravention of the order or permits the premises to be so used.
32. The Respondent said that no prohibition order had been issued by the local authority in respect of the property. There was no evidence before the Tribunal that a prohibition order had been made. There was no evidence before the Tribunal that the Respondent had contravened a prohibition order. In all the circumstances the Tribunal is not satisfied beyond reasonable doubt that an offence has been committed under this section.

33. Section 72(1) Housing Act 2004.

34. Section 72(1) of the Housing Act 2004 provides: '*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*'.

35. An HMO licence was issued for the property by Portsmouth City Council on 23 March 2018. It was for a term of five years expiring on 22 March 2023. There were two copies of the licence in the papers before the Tribunal. One provided that the property was for occupation by no more than 6 persons the other by no more than 7 persons. The copies were otherwise identical. The Respondent explained to the Tribunal that the council had originally issued the licence allowing for 6 persons, in error and had subsequently reissued amending the licence to provide for 7 persons. The Respondent told the Tribunal that the licence had in the event been renewed for a further period of one year, the work required by the council to the property under both the terms of the Housing Health & Safety Rating System report and the Improvement Notice dated 7 July 23 having been completed. There was no evidence before the Tribunal that the property, which it is not disputed is required to have an HMO licence, was at any material time unlicensed. (The Tribunal notes both the Directions dated 12 October 2023 and dated 15 November 2023 required the Applicants to produce written evidence from the local authority that the property was unlicensed for a stated period of time. No such evidence was adduced by the applicants).

36. In all the circumstances the Tribunal is not satisfied beyond reasonable doubt that an offence has been committed under this section.

37. Section 95(1) Housing Act 2004.

38. Part 3 of the Housing Act 2004 addresses selective licensing of residential areas by a local housing authority. It allows for a local housing authority to designate an area of their district or an area in their district to be subject to selective licensing. A person who has control of or manages a house in such an area which is accordingly required to be licenced commits an offence under this section if the property is not licensed.

39. There was no evidence before the Tribunal as to whether or not the property is in a selective licensing area. There was no evidence that if a licence was required for the property because it was in such an area, that it was unlicensed.

40. In all the circumstances the Tribunal is not satisfied beyond reasonable doubt from evidence before it that an offence has been committed under this section.

41. Section 21 Housing and Planning Act 2016.

42. Chapter 2 of the 2016 Act provides that a local housing authority may apply to the first-tier Tribunal for a banning order against a person who has been convicted of a banning order offence. A banning order may amongst other

things ban a person from letting a house in England for a specified period of time.

43. Section 21 provides that a person who breaches a banning order commits an offence.

44. The Respondent told the Tribunal that he was not subject to a banning order. There was no evidence before the Tribunal that he was. In all the circumstances the Tribunal is not satisfied beyond reasonable doubt that an offence has been committed under this section.

45. Summary of Tribunal's Decision.

46. From the evidence before it and for the reasons set out above the Tribunal is not satisfied beyond reasonable doubt that the Respondent is guilty of committing any of the offences that are set out at section 40(3) of the 2016 Act. Accordingly the Tribunal cannot make a Rent Repayment order and the application for a Rent Repayment Order is dismissed.

2 February 2024

Judge N Jutton

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at rpsouthern@justice.gov.uk being the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking