FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AQ/HMB/2023/0010**
Property	**:**	**Room C, 17 Northwick Avenue, Harrow, Middx HA3 0AA**
Applicant	**:**	**Jamal Akanni (in person)**
Respondent	**:**	**~~Ulugbek Burhanov~~ Stayokay Limited substituted by order pursuant to Tribunal Rule 10, represented by Ulugbek Burhanov**
Type of application	**:**	**Application for a rent repayment order by tenant** **Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal	**:**	**Judge Hargreaves** **Steve Wheeler MCIEH, CEnvH**
Date of hearing	**:**	**9th April 2024**

DECISION

The Tribunal orders

1. Stayokay Limited is substituted as Respondent for Ulugbek Burhanov.
2. The directions made on 30th January and 13th February 2024 are set aside.
3. The application for a rent repayment order is dismissed.

REASONS

1. Stayokay Limited is substituted as the Respondent in place of its director, Ulugbek Burhanov, who had been named as Respondent incorrectly in the Applicant's application form. The substitution was in accordance with Tribunal Rules 3, 6 and 10, being in accordance with the relevant 'tenancy' and 'occupancy' agreement which clearly identified the landlord as Stayokay Limited, the overriding objective, and the reality of the hearing in which, though attending late, Mr Burhanov arrived from an airport and assisted the Tribunal with his submissions on behalf of Stayokay Limitred.

2. The orders of 30th January and 13th February 2023 are therefore set aside because they resulted in debarring Mr Burhanov in his personal capacity from defending after non-conformance with a notice served on Mr Burhanov under Tribunal Rule 9 (30th January). This seemed to the Tribunal to be a procedural error which justified those orders being set aside and enabled the Tribunal to hear from Mr Burhanov in his capacity as representative of Stayokay Limited. It would have been inconsistent to substitute the company at such a late stage and debar it from making submissions and giving oral evidence – in breach of the directions of 22nd November 2023.

3. In the end, we decided to deal with the case as practically as we could. The hearing was adjourned before 11 0'clock at the point when we had listened to the Applicant's oral evidence but had given him a copy of the *Protection from Eviction Act 1977* ('*PEA*') so he could digest the relevant sections before making submissions on the law which he had not considered or prepared. During that adjournment we were notified (see above) that Mr Burhanov was on his way to the Tribunal from an airport, and we started again at noon when he had arrived.

4. As is clear from the front page of this decision, this was the Applicant's application made on 17th August 2023 for a rent repayment order in the sum of £5495. References are to the trial bundle provided by the Applicant except where otherwise stated. The RRO1 form is at p22, and the ground for seeking a repayment order is simply stated to be 'Eviction made to myself through an invalid eviction notice'. It was not clear to us until we handed a copy of the *PEA* to the Applicant and explained the remit and relevance of *ss1(2)(3)(3A)* in the context of the legislation governing rent repayment orders, how the Applicant was going to put his case and persuade us that an offence was committed under the *PEA* beyond reasonable doubt.

5. The Applicant said he relied on *s1(2) PEA* which provides as follows: *'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'. In this case the Applicant failed to make out a case on the facts under the first part of the subsection, and so the second part was never engaged. As the Applicant had no criminal convictions against the Respondent or Mr Burhanov to rely upon to support his application, he would have to persuade the Tribunal that the Respondent had committed an offence under *s1(2) PEA 'beyond reasonable doubt'* pursuant to *s40 Housing and Planning Act 2016* (*'HPA')* before we could consider making a rent repayment order.

6. We start with the tenancy agreement dated 16th February 2023 which is also called an occupancy agreement, at p38 of the bundle. The landlord is clearly identified as the Respondent, and the Applicant as the tenant. He was granted possession of Room C in a house covered by an HMO licence, sharing the hallway, kitchen and bathroom. The rent was £785 pcm paid in full in advance. Clause 5 enables the landlord to take action in default of payment including *'serving a notice for payment/removal or apply to court for payment/removal'*. The Applicant paid £1570 in advance on 14th February (described as *'initial moving in funds'* pursuant to clause 7 being rent of £785 and £785 *'last month rent'*), £196.25 on 24th February, £785 on 24th March, nothing in April or May, £2355 on 26th June, and £785 on 27th July.

7. It should be noted that pursuant to a decision of the Property Redress Scheme the Respondent was ordered to repay the Applicant the last month's rent and a further £225 for distress and inconvenience (apparently on the grounds that there was a failure to serve a *s21* notice). The decision, made on 20th September 2023, is at p20 of the bundle. We are not here to decide whether the decision was correct in law or not.

8. As to the length of the term, clause 4 provides for a start date of 16th February and an end date of 15th August 2023. So it was in the first case a fixed term tenancy due to expire on 15th August. The clause continued: *The tenancy will then continue, still subject to the terms and conditions set out in this Agreement, from month to month from the end of this fixed period unless or until:- The Tenant gives (4 weeks) notice that they wish to end this agreement. The tenant is not allowed to leave the property on the months of November, December, January and July without previous agreement with the Landlord. – The landlord gives (4 weeks) notice if he decides to end the agreement.'*

9. In his statement of case (p1), the Applicant claims he was *'illegally evicted'*. His case rests on an email sent by Mr Burhanov's property manager, Anastasia, who also appeared with Mr Burhanov, on 27th July. We should make it plain that until they were both in Room 4 for the hearing, the parties had never met face to face. They had exchanged WhatsApp messages and there was at least one phone call (possibly more as Mr Burhanov said he called about the rent arrears), probably around 3rd July. But the

correspondence between the parties on the subject of the Applicant departing Room C is limited to the following emails, p2-3. We emphasise that we find as a fact that there was no physical or other contact between Stayokay Limited and the Applicant in relation to his departure.

10. On 27th July Anastasia, as the property manager, emailed the Applicant at 6.25pm on 27th July: *'Dear Jamal, We are very sorry to inform you, but unfortunately we have to give you notice to vacate the property at the address 17 Northwick Avenue after the end of your contract (15.08.2023), Kindest regards, Admin Team'.*

11. The Applicant was on holiday in Nigeria between 15th and 31st July and explained that email contact was sporadic depending on power connections. He was not expecting the email but said that he did not (ever) ask for an extension of time. He has been renting similar accommodation since 2019, never been evicted or been at the end of a possession order or enforcement proceedings. He contacted Shelter, though we are not sure when, who advised him the 'notice' was improper.

12. The Applicant emailed Stayokay Limited at around 1pm on 31st July, as follows: *'Hello thank you for this. I understand the eviction notice is invalid and you will need to send a valid section 21 notice followed by a possession order and a bailiff's warrant'.*

13. Stayokay replied at 1:11:39pm: *'You are not renting a whole property and as per our agreement we need to give you 4 weeks notice to end the tenancy. So please accept the 4 weeks notice and kindly move out by 15th August. Thank you.'* Having listened to Mr Burhanov's submissions, we consider this to be a reference to the requirement to let as property '*as a separate dwelling'* for the purposes of an assured shorthold tenancy/*s21* notice and to the Respondent's firm submission that the Applicant did not have an AST. Again, we are not deciding this in the circumstances of this case.

14. At 13.15 the Applicant responded: *'Hello, As stated by law which you as an agency of an HMO must abide by, the above requested* [presumably a s21 notice] *must be provided in order to serve a notice to a tenant, once this has been provided we can proceed with the steps of the notice you are attempting to serve.'*

15. On 4th August at 11:47:59am the Applicant emailed Stayokay: *'Also please send me proof that my deposit was put in a tenancy deposit scheme.'* Stayokay emailed back at 1:46:20pm: *'Dear Jamal, Thanks for the email. You have not paid us any deposit and it's stated in the contract as well that the agent is able to serve 4 weeks notice to the tenant. Kindest regards, Anastasia.'*

16. The Applicant phoned the CAB. There is a web chat transcript of his conversation with CAB on 4th August at 2.23pm at pp10-19. We do not intend to go through it all because this is advice to the Applicant by a third party and does not in our judgment form part of the causation which the Applicant would have to demonstrate he relied upon for the purposes of *s1(3) PEA* if, by contrast, it was the Respondent's advice. When asked what sort of tenancy he has (p12), the Applicant responds that it is a fixed term tenancy for 6 months. At p13 it is clear that the CAB adviser considers that the Applicant has an AST which requires a 2 months *s21* notice before the Applicant has to leave. He was advised (p15) that he did not have to leave at the end of the fixed term and that the Respondent was in the wrong. At p16 the adviser changed her advice after speaking to her supervisor and stated that the fixed term tenancy will end on the contract expiry date. We bear in mind that the CAB did not see a copy of the contract.

17. Moving back to the Applicant's statement of case, his conclusion having spoken to the CAB and the Property Redress Scheme, was that *'those organisations informed me that the agent had served the correct notice and they could inform me to move out at 4 weeks' notice as per the contract.'* The CAB changed its mind on about 9th August and he made the application for a rent repayment order on 17th August. By this time he had found somewhere else to live and signed a contract.

18. The Applicant provided the Tribunal with the following further additional information in answer to some questions we put. Having indicated that he had started to moved out on 9th August (p1), the Applicant said he found somewhere else to live on around the 5th August, signed the tenancy agreement before 7th August, and moved out leaving his keys with another tenant on 14th August. He told us the decision to move out was his own. He produced evidence of complaints he made to the management about standards at the property.

19. For his part, Mr Burhanov said that other tenants complained about the Applicant's conduct and use of the common parts (particularly the kitchen), and it appears that everyone was unhappy with everything. Mr Burhanov was particularly vexed by the Applicant's non-payment of rent regularly, and there were allegations of abusive language by the Applicant.

20. The Applicant submitted that the email of 27th July came within the behaviour condoned by *s1(2) PEA* because the Respondent was untrustworthy in management issues and he '*was not fully convinced they would behave lawfully'*. He *'did not want to find myself locked out'*. Mr Urbanov said the Respondent never asked for an extension of time which they would have granted him subject to the notice provisions of the lease. It was quite clear to us that Mr Urbanov is well aware that he cannot go round changing locks and we accept his evidence to that effect. This was the first time he had been in court over tenant matters.

21. In our judgment there is no actual or perceived threat in the email correspondence as alleged by the Applicant. We cannot read it as including behaviour '*unlawfully depriving the residential occupier of [Room C] or attempting to do so'*. The Respondent was entitled to ask the Applicant to leave on the expiry date: it never tried anything else. Whilst the email correspondence is at worse muddled, it does 2 things (i) ask the Applicant to leave at the first moment he could be asked to contractually and (ii) refer to 4 weeks' notice after that. Neither of these statements approach anything close to the remit of *s1(3) PEA*. The Respondent was completely unaware that the Applicant had even vacated Room C until after 14th August when another resident informed the Respondent. The email correspondence on the part of Stayokay is polite and temperate. We are wholly unconvinced by the Applicant's assertion that he felt panicked by the correspondence, to the contrary, his tone was more curt than the Respondent's. Without the Tribunal asking him for specific submissions on *PEA* it is notable that his statement of case omits any reference to it (save by reference to an illegal eviction notice). The Applicant was capable of taking advice and acting on it: he took his own decisions and in our judgment the fact of his leaving before the end of his tenancy was matter wholly for him and the conversations he had had with Shelter/CAB and nothing to do with the Respondent.

22. In the circumstances the Applicant has failed to make out any case beyond reasonable doubt relying on the provisions of *s1(2) PEA* for the purposes of the *HPA* and his application must be dismissed.

Judge Hargreaves
Steve Wheeler MCIEH, CEnvH
10th April 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).