



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

**Case Reference** : **CHI/00HB/HMC/2023/0004**

**Property** : **Flat 7 Temple Court, Barton Road,  
Bristol BS2 0LF**

**Applicant** : **Mohammad Abu Hussein  
Zeydan Saadi**

**Representative** : **Gabriela Cabrera**

**Respondent** : **Jenny Russell**

**Representative** : **Berkeley Estates Management**

**Type of Application** : **Application for a Rent Repayment  
Order by tenant (ss40 to 45  
Housing and Planning Act 2016)**

**Tribunal Members** : **Judge R Cooper  
Mr K Ridgeway MRICS  
Ms T Wong**

**Date and venue of  
Consideration** : **07/05/2024  
Havant Justice Centre (remote CVP  
hearing)**

**Date of Decision** : **31/05/2024**

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**DECISION**

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**The Applicants are not entitled to a Rent Repayment Order.**

## **The Applicants' application for reimbursement of the application fee (£100) and hearing fee (£200) is refused.**

(References in this decision to page numbers in the bundle appear as '[ ]')

### **The Application**

1. On 05/10/2023 the Tribunal received an application from Zayden Saadi and Mohammad Abu Hussein ('the Applicants') seeking a Rent Repayment Order ('RRO') under s41 Housing and Planning Act 2016 ('the 2016 Act').
2. The Applicants seek to recover from Jenny Russell ('the Respondent') the rent they paid for their occupation of Flat 7 Temple Court, Barton Road, Bristol, BS5 6DR ('the Property') for the period from 02/10/2022 to 01/10/2023 ('the Relevant Period').
3. The Applicants also apply for reimbursement of the application fee £100 and hearing fee of £200.
4. Mrs Charlotte Cooper (a Legal Officer) issued directions to the parties on 04/03/2024, which included directions to the Respondent to file a witness statement in response to the application indicating whether they disputed the application and if so on what basis, together with any evidence on which they wished to rely. No response was received from the Respondent.

### **Background to the application**

5. On 26/09/2022 Muhammad Abu Hussein and Zeydan Saadi entered into a tenancy agreement with Jenny Russell through her agents Berkeley Estates Management ('Berkeley Estates'). The term of the tenancy was 12 months commencing on 2/10/2022 [37]-[41].
6. On 05/10/2023 the Tribunal received the Applicants' application for a Rent Repayment Order on grounds that the Respondent failed to comply with an Improvement Notice served by the Council [2]-[10].

### **Issues in the appeal**

7. The Applicants apply for a RRO under s41 of the 2016 Act for the period 02/10/2022 to 01/10/2023 ('the Relevant Period'). They claim the sum of £17,000 in rent paid over that period.
8. An RRO can only be made where the Tribunal is satisfied that the Respondent had committed one or more of the seven specified offences that are set out in s40 of the 2016 Act. In this case, the Applicants assert the Respondent failed to comply with an Improvement Notice [6]. In other words, they assert that she had committed an offence under s30(1) of the Housing Act 2004 ('the 2004 Act').

9. Before it may make an RRO the Tribunal must be satisfied to the criminal standard (i.e. beyond reasonable doubt) that the specified offence has been committed (s43(1)).
10. If satisfied an offence has been committed, s43(3) requires the Tribunal to consider the amount of the RRO which must be determined. In the case of an application made by a tenant the relevant factors are set out in s44.
11. The amount of the RRO must relate to the rent paid in a period not exceeding 12 months during which time the landlord was committing the offence (s44(2)). It must not exceed the rent paid by the Applicant in respect of that period (less any Universal Credit (or Housing Benefit) paid) (s44(3)). The Tribunal must take into consideration the matters set out in s44(4) namely conduct of the Applicants and Respondents, the financial circumstances of the Respondents and whether they had been convicted or fined for any of the offences listed in s40(3).

#### The Law

12. The applicable law referred to in this decision is set out in full in the Appendix to this decision.

#### **The Documents**

13. The documents considered by the Tribunal are in the appeal bundle (51 pages) which included the application and documents in support, the Directions of the Tribunal dated 4/03/2024, the applicant's statement of case and evidence.
14. No documents were received from the Respondents.

#### **The hearing**

15. The hearing was a remote hearing by video. Mohammad Abu Hussein attended and was represented by Gabriela Cabrera. Zeydan Saadi was not in attendance. It was said he had '*other matters to attend to*'. The Respondent was represented by Joe Burnell of Berkeley Estates. At the very end of the proceedings, it became apparent that the Respondent herself, Jenny Russell, was also present at the hearing although this had not been made clear at the outset.
16. The hearing was initially conducted on the Video Hearing Service (VHS) platform, but because of difficulties with the sound, was transferred onto the CVP platform. All the parties confirmed that they were able to see and hear.
17. There were a number of preliminary matters. Mr Abu Hussein identified that he was joining the hearing from Dubai. The proceedings were paused briefly for the Tribunal to ascertain whether the United Arab Emirates authorities has given consent for individuals to give evidence in

a UK Court or Tribunal from within its jurisdiction. On finding that no such consent has been given, the Tribunal confirmed that Mr Abu Hussain would not be able to speak during the hearing but could be present and observe. The two representatives confirmed they were happy to proceed by way of submissions only based on the documentary evidence.

18. Mr Burnell despite confirming that he had received the directions notice of 4/03/2024 he had not filed a response or evidence as he was ordered to do. He apologised to the Tribunal but said he had not expected the hearing to go ahead as he had heard nothing since those directions, and he had been informed by the local authority that no enforcement notice had been served. Ms Cabrera confirmed that notwithstanding the directions to do so she had not served the bundle for the hearing on the Respondent because they had not responded by 9/04/2024 as directed. A copy of the appeal bundle was emailed to Mr Burnell during the hearing, and there was a further pause in the proceedings to enable him to consider the same.
19. When the hearing resumed, Mr Burnell confirmed he had had sufficient time to consider the documents. Submissions were made by both Ms Cabrera and Mr Burnell. The Tribunal asked questions of both, and both representatives were given an opportunity to make any final submissions. At the very end of the hearing, after final submissions had been given, Mr Burnell identified that Ms Russell was present with him and wished to address the Tribunal. This request was refused. The Respondent had failed to serve its position statement and evidence in accordance with the directions of 4/03/2024 and the Tribunal was not aware that she was even present at the hearing. It would not have been fair to allow the Respondent to give evidence in this way without any advance notice being given.

## **Decision and reasons**

### The application

20. The Applicants case is contained in the application [2] to [15] and the statement of case [35] to [36].
21. In summary, the Applicants claim that they are entitled to a Rent Repayment Order because the Respondents failed to comply with an Improvement Notice. They complain of penetrating dampness and resulting mould which they say the Respondents failed to deal with, in breach of their tenancy agreement.

### The Response

22. The Respondent failed to file a response to the application, but in submissions, in summary, said there was no power to make a Rent Repayment Order because no Improvement Notice had been served by the Council.

## Discussion

23. It is clear to the Tribunal from the photographic evidence provided with the application [12] to [20] and the letter from Bristol City Council of 18/08/2023 [31] that 7 Temple Court suffers with penetrating dampness through the ceiling of the flat which has resulted in extensive damp and mould problems as well as potential electrical and/or fire hazards. It appears the Respondent had failed to remedy these problems between at least November 2021 and August 2023. The Council in August 2023 identified they were actionable hazards in relation to damp, mould and fire under the Housing, Health Safety Rating System (HHSRS) requiring investigation and appropriate remedial work. It is also clear from the correspondence disclosed that the Applicants had written on a number of occasions complaining of the problems, and the Respondent would clearly have been on notice regarding these hazards.
24. However, the only matter before the Tribunal was an application under s41 of the Housing and Planning Act 2016. The Tribunal, therefore, only had jurisdiction to consider whether an offence was committed (s40 of the 2016 Act) and whether a Rent Repayment Order should be made.
25. For the Tribunal to make a rent repayment order the first matter for determination is whether the Respondent committed one of the specified offences which are set out in s40(3) of the 2016 Act.
26. The Applicants say the Respondent failed to comply with an Improvement Notice [6]. They rely on a letter dated 18/08/2023 served by Ffion Richards, a Senior Environmental Health Officer (EHO) employed by Bristol City Council ('the Council') [31]. This confirms that following inspection, the Council was satisfied that actionable hazards in relation to damp, mould and fire existed at the Property. The letter requires certain remedial works to be undertaken. For example, '*to identify the cause of the penetrating dampness*', to '*carry out such works as may be necessary to remedy and to prevent the recurrence of dampness*', and to '*examine the Fire Alarm system and rectify any faults identified*'.
27. The letter concludes that '*if these matters are not addressed in a timely manner formal enforcement action is likely to be taken under the Housing Act 2004*'.
28. The Tribunal was satisfied that although the Council were clearly satisfied that actionable hazards (under the HHSRS) existed in the flat in August 2023, it had not yet served formal notice under the Housing Act 2004. This letter of 18/08/2023 is not a formal Improvement Notice served in accordance with either s11 or 12 of the 2004 Act. The Tribunal found it to simply be a warning letter requiring the landlord to undertake action and/or remedial works, with clear notice that a failure to rectify these hazards could result in enforcement action being taken.

29. The Tribunal reached this conclusion because the letter of 18/08/2024 does not contain the information required by s13 of the 2004 Act in relation to an Improvement Notice, namely the identification as to whether it related to a Category 1 Hazard (s11) or a Category 2 Hazard (s12), a time frame given for the remedial works to be carried out, notification of the Respondent's right of appeal against the notice, etc. This is consistent with Mr Burnell's statement that Miss Richards (the Council's Senior EHO) had confirmed to him by telephone that enforcement action had not been taken.
30. Gabriela Cabrera and Joe Burnell both confirmed to the Tribunal that no other notice had been served by the Council. There was no other evidence suggesting one had been served.
31. Accordingly, as there was no evidence of a formal Improvement Notice being served, the Tribunal could not be satisfied beyond reasonable doubt that the Respondent had committed the criminal offence of failure to comply with an Improvement Notice under s30(1) of the 2004 Act. No other criminal offence was relied on by the Applicants, and there was nothing in the evidence before the Tribunal to suggest any other of the prescribed offences had been committed. Therefore, the Tribunal had no power to make a RRO under s43 of the 2016 Act, and the Applicants' application must be refused.
32. Having reached that conclusion, there was no need for the Tribunal to go on to make any other findings.
33. As the Applicants have not succeeded in showing an offence had been committed under s41 of the 2016 Act and have not succeeded in their application for a RRO, it would not be proportionate for the Tribunal to order the Respondent to pay either the costs of the application or the hearing. Accordingly, those applications are refused.

#### *Conclusions*

34. The Tribunal refuses the application for a Rent Repayment Order because it is not satisfied the Respondent has committed one of the prescribed offences listed in s40 of the 2016 Act.
35. The Tribunal refuses the Applicants' application for reimbursement of the application and hearing fees.

**Judge R Cooper**

**Date 31/05/2024**

## **Note: Appeals**

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 the Regional office that 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.

## **APPENDIX 1**

The following are relevant excerpts from the legislation referred to in this decision

### **Housing and Planning Act 2016**

#### **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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	<u>Criminal Law Act 1977</u>	section 6(1)	violence for securing entry
2	<u>Protection from</u>	section 1(2),	eviction or harassment of

	<u>Eviction Act 1977</u>	(3) or (3A)	occupiers
3	<u>Housing Act 2004</u>	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).

#### **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.

#### **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).

#### **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.

<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.

