



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

Case References : **BIR/00CS/HMK/2023/0027**

Property : **3, Highbury Road, Oldfield,
Birmingham. B68 8QF**

Applicants : **Maryia Anam**

Representative : **None**

Respondents : **Shahina Rashid & Maneesha Rashid**

Representative : **Sebastian Anderson,
Lawrence Kurt Solicitors**

Type of Application : **Application for a Rent Repayment Order
By the Tenant. Part 3 Housing Act 2004
Ss40, 41, 43 & 44 Housing & Planning Act
2016**

Tribunal: **Tribunal Judge P. J. Ellis
Tribunal Member
Mr R Chumley Roberts MCIEH. JP**

Date of Hearing : **6 August 2024**

Date of Decision : **15 August 2024**

Decision

The Tribunal is not satisfied the Applicant has proved beyond reasonable doubt that the Respondents are guilty of offences contrary to s6(1) Criminal Law Act 1977 and s1(2)(3)(3A) Protection from Eviction Act 1977. The Applicant's claim for a rent repayment order is dismissed.

Introduction

1. This is an application for a rent repayment order pursuant to s40 Housing and Planning Act 2016 (the 2016 Act). The Applicant is Maryia Anam who was tenant of 3 Highbury Road, Oldfield, Birmingham B68 8QF (the Property) under a tenancy agreement made on 4 April 2022 until a date in October 2023. The Respondents are sisters Shahina and Maneesha Rashid who have owned the Property since 2020. They live next door to the Property.
2. The application was issued on 27 November 2023. By it the Applicant seeks repayment of rent for a period of twelve months ending with her termination of the tenancy in October 2023. The rent payable throughout the occupation of the Property was £750.00pcm. All utility accounts and council tax payments were the responsibility of the tenant. The total claim is £9000.00 being the rent paid in twelve months.
3. The grounds for the application are that the Respondents have committed housing offences contrary to s6(1) Criminal Law Act 1977 and s1(2)(3) &(3A) Protection from Eviction Act 1977 as prescribed in the table forming part of section 40(3) 2016 Act. The Respondents deny that they are guilty of any such offences and seek dismissal of the claim.
4. The matter was the subject of an oral hearing by this Tribunal. The Applicant was unrepresented. The Respondents were represented by Mr Sebastian Anderson of Lawrence Kurt, Solicitors. The evidence submitted to the Tribunal comprised written submissions by both sides and oral evidence by the Applicant who was cross examined by Mr Anderson.

5. In the course of Directions issued prior to the hearing, the Applicant had been barred from adducing further evidence but in the hearing, this Tribunal allowed her to adduce further evidence comprising Whats App messages as described in this decision.
6. The Tribunal did not inspect the Property. During the hearing the Applicant described relevant parts of the Property as having two bathrooms. One on the upper floor included a bath, handbasin and toilet. The lower room was directly below the upper bathroom and comprised a shower room with hand basin and toilet. The Property has gas central heating

The Parties Submissions

Applicant

7. The Applicant alleged that the Respondents had engaged in a course of conduct designed to force her to leave the Property including intimidatory behaviour by the Respondents or by people on their behalf causing her to fear for herself. Her claim was that the behaviour amounted to the two relevant statutory offences. The Applicant had served a long statement of her case setting out her complaints. In answer to the Tribunal the Applicant asserted that she relied on the facts and matters set out in that statement as her case against the Respondents.
8. The principal allegations are summarised in this Decision.
9. After taking up the tenancy the Applicant who is a single parent of two young children, reported any repairs that required attention in a timely manner. In December 2022 the Applicant was concerned that the insulation of the Property and central heating were inadequate. The house was cold as the temperature did not rise above 18 degrees C. Although there are radiators in every room, two did get hot. The Applicant reported various items of repair that went unattended.

10. In December 2022 the Respondents asked the Applicant to cooperate with them in arranging for renovation work to the kitchen. The Applicant agreed to vacate the kitchen and part of the living room for the purpose of allowing refurbishment works. The Applicant persisted with her complaints that the house was cold.
11. On 14 December 2022 the Applicant complained to the local authority about the disrepair and failure to attend to repairs. There was an inspection of the Property by an officer of the local authority. The Applicant alleged the council officer noted Category 1 & 2 hazards (which the Tribunal assumes is a reference to the Housing Health and Safety Rating System under the Housing Act 2004) but she did not specify the hazards identified.
12. The Applicant alleged that the builder instructed to carry out kitchen refurbishment work for the Respondents themselves harassed her by threatening to remove her belongings from the kitchen because of her alleged failure to clear her belongings from it. This was compounded by the Respondent threatening to give the builder a key to the house, for them to get access during the kitchen renovation works.
13. The Applicant also alleges that during the course of the kitchen renovation works she was left without cooking facilities, so she had to purchase an “air fryer” to allow her to prepare meals.
14. The Tribunal was shown a Whats App message in which the Respondents had indicated the builder appointed to carry out work to the kitchen would remove articles from the kitchen. The exchange also included a request from the Applicant to the Respondent to address the hazards.
15. The Applicant regarded the threat to remove and discard belongings as an example of intimidatory behaviour.
16. A further allegation by the Applicant was that the Respondents entered the Property from time to time without her permission. The Applicant had noticed personal possessions had been moved. On other occasions the Respondents

gave inadequate notice of their intention to visit the Property or would visit her after 9.00pm.

17. It was also alleged that the Respondents had limited the Applicant's use of the Property by their failure to provide a key for a porch door. The inability to fully unlock the door made it difficult for the Applicant to manoeuvre the pushchair used by one of her children.
18. Another allegation made by the Applicant was that the Respondents' harassed her by making calls to her from an unknown number. When challenged by Mr Anderson regarding this allegation the Applicant asserted that she knew the calls came from the Respondents.
19. As a result of the local authority's inspection the Respondents were directed to reposition the cooker in the kitchen. The Applicant considered the Respondents intimidatory behaviour was because of her complaint to the local authority. Moreover, the Applicant was told the Respondents were intending to carry out further works of refurbishment to the Property when her tenancy expired in April 2023.
20. The Applicant referred to several occasions when the Respondents suggested she leave the premises and to a letter of 17 January 2023 from the Respondents stating the tenancy would not be renewed after April 2023.
21. The Applicant stated that in August 2023 there was a serious incident concerning an alleged leak from the bath in the upper bathroom. The Applicant reported a leak on 17 August 2023 and was advised to monitor the situation by the Respondent. The Applicant's version is that on 21 August, Maneesha Rashid with her father Azeem Rashid, came to the Property to inspect disrepairs which were reported previously. Azeem Rashid started shouting, he was very being aggressive, he was pointing fingers towards the Applicant which intimidated and frightened her. They both were told to leave the property but they both refused to leave. Azeem Rashid kept repeating that it's his property and will do as he pleases. Maneesha Rashid started shouting along with Azeem Rashid which escalated the harassment and intimidating

behaviour further. The Applicant believed Maneesha Rashid was aware of her mental health issues and felt very vulnerable. Whilst he was shouting Azim Rashid is alleged to have stated that the Applicant “left it too late to report the repairs” although the Applicant contends a leak was reported on 13 August. Emergency services were called by the Applicant, and both were instructed to leave the property by the police via the phone.

22. In summary the Applicant contended the Respondents had engaged in conduct which exploited her mental vulnerability in retaliation for her call to the local authority regarding a cold hazard with the intention of forcing her to leave the Property. They blamed her for delaying reports of necessary repairs which were not attended to in time. The Respondents were aggressive and intimidating in August 2023 in connection with the alleged leak of the bath. They ignored the Applicant’s complaints that their behaviour amounted to abuse of her.

23. As far as her financial circumstances were concerned, the Applicant was dependent on Universal Credit which includes the sum of £500 housing allowance throughout the tenancy.

24. In answer to questions from Mr Anderson the Applicant denied that she was responsible for removing the overflow plug from the bath then filling it with water so as to cause a serious leak of water into the lower bathroom.

25. She admitted that only two days notice of termination of the tenancy had been given and that the entire deposit of £1000.00 was returned by the Respondents. She admitted that she was seeking social housing to reduce her outgoings but denied her conduct was aimed at securing that alternative accommodation. The Applicant admitted she had described her allegations of threats and abusive behaviour to her social worker and that she was advised an eviction notice was required to help her claim.

26. The Applicant denied her allegations of entering the Property and tampering with possessions were uncorroborated assumptions. She asserted a cctv

camera had been installed to monitor the interior of the Property but it had become unplugged.

27. As far as the events of August 2023 were concerned the Applicant insisted there had been abusive and aggressive behaviour towards her by the Respondents' father. She agreed a video of the leak had been taken by her sister in the morning of 19 August but it was not sent to the Respondents until 10.25pm because she had to go shopping after her bath. She denied the lack of urgency in sending the video was because she had caused the damage.

28. The evidence of a plumber, Mr Joginder Johal regarding the missing or detached bath overflow plug being the cause of the leak was put to her. She denied it was true and refused to accept it.

29. In answer to questions from the Tribunal the Applicant said her children were three and four in August 2023. The cctv camera was normally plugged in to a wall socket juts above skirting board level by an extension lead. At the request of the Tribunal the Applicant produced Whats App messages referring to the alleged threat of removing belongings from the kitchen and asking for the alleged hazards to be addressed.

30. She agreed there was no eviction notice served but referred to the letter of 17 January 2023 saying the tenancy would not be extended.

31. After leaving the Property in October 2023 the Applicant was housed in temporary accommodation until starting a new tenancy with a social landlord in February 2024. She has not notified the Department for Work and Pensions about this claim.

Respondents

32. The Respondents evidence comprised a point by point refutation of the Applicant's statement of case and statements from Joginder Singh Johal a contractor employed by the Respondents in connection with work associated the leak in August 2023, Mohammed Rashid, father of the Respondents and

Mohammed Nadeem brother of the Respondents. Documentary evidence of Whats App exchanges relating to the kitchen, a letter from the council officer, Neena Varma and other messages and notes.

33. The Respondents denied there had been any threat of removing belongings from the kitchen in December 2022. The message referred to by the Applicant was to notify her that the builder would need to remove fittings from the kitchen.

34. The Respondents were not served with any notices from the local authority requiring elimination of hazards although it was admitted that on 8 February 2023 the work in the kitchen was not approved by the local authority after its inspection following the Applicant's complaint. The local authority required attention to gutters front and rear, resolving radiators that are not working in the living room and landing and leaking in the hallway, repositioning of the cooker, dealing with a frayed carpet at the front entrance to the living room and kitchen. There was no reference to any other leaks.

35. On 8 March 2023 Ms Varma wrote again to the Respondents indicating that upon completion of the works required and in the absence of a reply from the Applicant confirming completion of the work the case will be closed.

36. The Respondents produced messages between the Applicant and themselves relating to preparation for the works to the kitchen and the need for the tenant to clear belongings from the kitchen and part of the living room. The Applicant was cooperating with the Respondents requests.

37. At about the same time the Applicant's social worker requested a notice of eviction. The documents produced by the Respondents show that they did not intend to continue the letting after April 2023. In the event the tenancy continued and no formal eviction notice was ever issued.

38. The Respondents denied they had ever made unannounced visits or attempted to tamper with the Applicant's belongings.
39. The incident in August 2023 arose because of the Applicant's conduct. Mr Johal confirmed that the bath overflow plug had been removed. He considered that an unusual interference with the bath as they are hard to remove. His evidence was that there was no shouting or aggression in the part of the Respondents but that it was the Applicant who was shouting and who called the police. He also stated the leak was sufficiently serious to cause the electrical system to trip.
40. Mr Rashid admitted speaking to the Applicant and alleging the leak was negligence on her part. He denied raising his voice but asserted the Applicant shouted at him and called the police who requested that he leave the premises which he did.
41. The evidence of Mr Nadeem was that he attended a meeting with the Applicant's brother, a guarantor of the Applicant who was present during the conversation which took place outside the Property.
42. He asserted the Applicant said she did not like the Property but wanted to remain in order to become eligible for social housing. He agreed with the Applicant and her brother that the Applicant could leave on two days' notice and receive the return of the deposit in full. During the conversation he had told the Applicant that causing malicious damage to the Property in order to make it unfit for occupation is not acceptable.

The Statutory Framework

43. S6(1) Criminal Law Act 1977 provides:

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.

44. S1 Protection from Eviction Act 1977 provides so far as relevant to this case:

(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.

45. S40 Housing and Planning act 2016 provides:

(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.

(the general description of offences has been omitted)

<i>Act</i>	<i>Section</i>
<i>1 Criminal Law Act 1977</i>	<i>section 6(1)</i>
<i>2 Protection from Eviction Act 1977</i>	<i>section 1(2),(3) or (3A)</i>

46. By s41 of the 2016 Act *(1) A tenant 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.

S43 provides “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).

Discussion and Decision

47. As section 40(2), 2016 Act explains, a rent repayment order is an order requiring the landlord under a tenancy of housing to repay an amount of rent paid by a tenant. Section 41(1) provides that a tenant may apply to the FTT for

a rent repayment order. However, S43 provides that a Tribunal may make a rent repayment order only if made under s41, if satisfied beyond reasonable doubt that a landlord has committed an offence to which the Chapter applies, whether or not the landlord has been convicted.

48. The statutory framework established by the 2016 Act has three steps for the Tribunal to follow. First there is a power to make a rent repayment order where a landlord has committed an offence identified by the Act, second the tenant may apply for an order only if the offence relates to housing that at the time of the offence was let to the tenant and third that the Tribunal is satisfied beyond a reasonable doubt that the landlord committed an offence.
49. In this case the Applicant, who appears from her written submissions to understand the grounds upon which she may apply for a repayment order, has made allegations of conduct by the landlord which amounts to offences under the Criminal Law Act 1977 and the Protection from Eviction Act 1977.
50. The offence under the Criminal Law Act 1977 is that a person without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person.
51. In the case of the Protection from Eviction Act 1977 the offence is made out if any person acts in a way as to deprive the tenant of the right to occupy the property. The Act describes various behaviours that will amount to an offence.
52. The effect of the 2016 Act is to place upon the Applicant the burden of proving the offences have occurred and to do so beyond a reasonable doubt. The Tribunal explained to the Applicant that this is a high burden of proof, which requires her to adduce evidence sufficient to discharge that burden.
53. In answer to a question from the Tribunal regarding the factual basis of her claim the Applicant replied that she stood by her written statement as being an accurate description of the Respondents behaviour. Unfortunately, the

Applicant who was unrepresented produced little corroborating evidence to support her factual complaints.

54. The issue of the threat from the builder to remove her belongings from the kitchen was not supported by the Whats App message which the Tribunal admitted as late evidence. It was a message indicating the builder would clear items from the kitchen. No mention was made of the Applicant's belongings. Previously it had been made clear that in order to carry out the work the kitchen would be cleared. The Applicant had sent other messages indicting her acceptance of that situation and describing her attempts to make it ready for the builder.
55. Although there was a suggestion of category 1 and 2 hazards, the Respondents were not served with any notices other than a requirement to undertake relatively minor work as described in this decision. The council officer correspondence did not describe any leakages although the Applicant asserted the officer had seen signs of water staining. The officer was not called by either side.
56. The consequences of the missing porch key were disputed by the Respondents who in any event asserted that the Applicant had delayed in reporting its absence.
57. The Respondents accepted and agreed that they had at times visited the Property on short notice but explained that was to deal with the Applicant's complaints as soon as possible. The Respondents lived next door to the Property making it possible for them to readily visit it. They firmly denied any tampering or interfering with the Applicant's possessions.
58. They denied making calls to the Applicant from a withheld number and by the very nature of a withheld number the Applicant cannot prove the calls were part of a campaign of harassment by the Respondents. The Tribunal does not accept the Applicant's bare assertion that she knew the calls were intended as harassment by the Respondents.

59. Although the Respondents had indicated that the tenancy would not be extended after April 2023 no formal eviction notice was served. It was the Applicant who on advice from a social worker had asked for a notice or letter confirming end of tenancy for use in securing alternative accommodation. In October 2023 the Applicant left the Property upon 2 days notice with the return of her deposit of £1000.00.
60. The episode of August 2023 was a serious matter for both sides. The Respondent alleged the Applicant must have procured the removal of the overflow plug then filled the bath specifically to create major water damage to the bathroom and tripping of the electrical system. The Respondents adduced the evidence of Mr Johal who described finding that the overflow plug had been removed. He further stated removal of a plug is very difficult and unusual. The Respondents denied any aggressive behaviour on their part. Mr Johal's evidence was that he did not see or hear any such behaviour on the part of the Respondents but the Applicant was shouting at the Respondents father and himself.
61. In relation to this episode the Tribunal prefers the evidence of the Respondents that the overflow plug had been tampered with. It is surprising that such a serious fault was overlooked so that the Applicant could take a bath then go shopping before reporting the problem to the landlord.
62. After conclusion of this incident the Applicant's brother and a brother of the Respondents discussed the situation. Direct evidence of this conversation was not adduced by either side but the parties seem to agree the outcome as that the Applicant could leave the property on two days' notice and receive repayment of the deposit of £1000.00. The Applicant remained in occupation of the Property until October 2023 when she left upon the notice period agreed.
63. Having considered the respective submissions and heard the Applicant the Tribunal is not satisfied that any of her complaints are proven.

64. In *Wu v Chelmsford City Council* [2023] EWCA Crim 338, 2023 WL 02695654

the Court of Appeal Criminal Division said:

“In our judgment, that part of the actus reus of s.1(2) which requires that the resident occupier has been deprived of occupation of the premises does require actual physical deprivation of occupation, namely that the occupier has by the defendant's conduct been put and/or kept out of physical occupation of the property.”

65. The Applicant left the Property of her own accord in October 2023. The complaint that the Respondents are guilty of an offence under s1(2) of the Protection for Eviction Act 1977 is not made out.

66. The Tribunal is satisfied the Respondents were not guilty of engaging in conduct with intent to give up occupation of the Property or to cause the Applicant to cease to enjoy the peace and comfort of the Property. The complaint under s1(3) is not made out.

67. After a serious incident involving damage to the bath in the Property for which the Applicant was probably responsible the Respondents took no action against her to obtain possession of the Property. The Tribunal finds the complaint under s1(3)(A) is not made out

68. Although there were allegations of the Respondents entering the Property without the Applicant's permission or on short notice these matters were not behaviour which amounted to conduct which *“uses or threatens violence for the purpose of securing entry into any premises”*. The offence under s6(1) of the Criminal Law Act 1977 is not made out.

69. It follows that as the Tribunal is not satisfied the Applicant has proved beyond reasonable doubt that the Respondents are guilty of offences contrary to s6(1) Criminal Law Act 1977 and s1 Protection from Eviction Act 1977 the Applicant's claim is dismissed.

70. In view of its decision the Tribunal has not assessed the award which the Applicant would have received had she made out her case. However, during the hearing evidence was given about the parties' respective financial positions.

71. The Applicant claimed £9000.00 being rent for twelve months of £750pcm. In fact the Applicant was in receipt of Universal Credit throughout the relevant period of which £500 was housing allowance. She was responsible for council tax and all utilities. The Respondents do not own any other property. They have owned this house since April 2020. It was purchased with 100% mortgage. The Respondents are sisters who are in modestly paid employment. Both earn less than £30,000.pa. The Tribunal did not regard their conduct as relevant to any assessment of an award.

Appeal

72. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Tribunal Judge P. J. Ellis