



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

Case reference : **LON/00AN/HMF/2024/0030**

Property : **50 Britannia Road, London SW6 2 JP**

Applicant : **Alan Ainsworth (1)
Maria King (2)**

Representative : **In person**

Respondent : **Eugene Gaal**

Representative : **In person**

Type of application : **Application for a Rent Repayment
Order by tenant. Sections 40,41, & 44 of
the Housing and Planning Act 2016**

Tribunal members : **Judge Carr
Mr Kevin Ridgeway**

**Venue and date of
hearing** : **10 Alfred Place London WC1E 7LR – 5th
August 2024**

Date of decision : **2nd September 2024**

DECISION

Decision of the Tribunal

1. The Tribunal determines not make a Rent Repayment Order

The application and procedural history

2. The applicants made an application for a Rent Repayment Order on December 24th 2023. The applicants alleged that (1) the landlord has committed an offence of having control of or managing an unlicensed HMO and (2) the landlord has committed an offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.
3. The Tribunal issued directions on 5th March 2024
4. At a hearing on 23rd July 2024 the tribunal considered the application. The tribunal identified a preliminary issue concerning whether the application had been received in sufficient time, i.e. whether the offence alleged had been committed in the period of 12 months prior to the application. The tribunal agreed with the respondent that the property had ceased to be an HMO prior to the 25th December 2022 and therefore the tribunal had no jurisdiction to consider the application and therefore dismissed it.
5. On immediate reflection, the tribunal, which comprised Judge Percival and Ms Crane, considered that they had made an error in dismissing the application in its entirety. Whilst the tribunal had no jurisdiction to make an RRO based on a failure to licence, it still had jurisdiction in relation to the allegation that offences had been committed contrary to the Protection from Eviction Act 1977. The tribunal therefore directed that the application relating to the Protection from Eviction Act 1977 be set down for a hearing. The panel recused itself from the case.
6. The parties provided documentation as follows: the applicants provided a bundle of 249 pages plus additional documents and the respondent provided a bundle of 24 pages together with additional documentation.

The hearing

7. The hearing took place on 5th August 2024. The applicants attended and represented themselves. The respondent attended and represented himself.

The Law

8. The relevant sections of the Protection from Eviction Act 1977 provide 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 had 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.

1(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.

s.3A Excluded tenancies and licences.

s.3A (1) Any reference in this Act to an excluded tenancy or an excluded licence is a reference to a tenancy or licence which is excluded by virtue of any of the following provisions of this section.

(2) A tenancy or licence is excluded if—

(a) under its terms the occupier shares any accommodation with the landlord or licensor; and

(b) immediately before the tenancy or licence was granted and also at the time it comes to an end, the landlord or licensor occupied as his only or principal home premises of which the whole or part of the shared accommodation formed part.

S.5 Validity of notices to quit.

(1) Subject to subsection (1B) below no notice by a landlord or a tenant to quit any premises let (whether before or after the commencement of this Act) as a dwelling shall be valid unless—

(a) it is in writing and contains such information as may be prescribed, and

(b) it is given not less than 4 weeks before the date on which it is to take effect.

(1A) Subject to subsections (1B) and (1C)] below, no notice by a licensor or a licensee to determine a periodic licence to occupy premises as a dwelling (whether the licence was granted before or after the passing of this Act) shall be valid unless—

(a) it is in writing and contains such information as may be prescribed, and

(b) it is given not less than 4 weeks before the date on which it is to take effect.

(1B) Nothing in subsection (1) or subsection (1A) above applies to—

(a) premises let on an excluded tenancy which is entered into on or after the date on which the Housing Act 1988 came into force unless it is entered into pursuant to a contract made before that date; or

(b) premises occupied under an excluded licence.

The issues

9. The issues that require to be decided by the Tribunal are:

- (i) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed an offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977? In this particular case this requires the tribunal to determine

- a. Whether the applicants were excluded occupiers for the purposes of the legislation, ie was the landlord a resident landlord.
 - b. Whether an offence under the Act has been committed
 - c. Whether that offence was committed during the relevant period for the tribunal's jurisdiction
- (ii) If the tribunal determines to make a Rent Repayment Order it must consider:-
- What is the applicable 12-month period?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of the respective conduct of the applicant and the respondent and of the financial circumstances of the respondent?

The background and chronology

10. The property is a terraced house of Victorian or earlier construction, in Fulham. There is a separately let basement flat. This application concerns the main body of the house which comprises lockable bedsit rooms and communal facilities.
11. The property is laid out as follows: There are five separate lockable rooms which have at various times been occupied by rental occupiers. One of the rooms also has an ensuite bathroom. There is a shared kitchen, lounge and a bathroom, and one additional separate WC.
12. One of the rental rooms is on the ground floor of the property. That was occupied by Guillaume Remy for more than five years. Mr Remy moved out of the house at the beginning of November 2022.
13. On the first floor there was a double room with ensuite bathroom. Fanny and Chad lived there for more than five years moving out early February 2022.
14. On the 2nd floor there were three bedrooms. One of these was occupied by the first applicant Alan Ainsworth until he moved out in early January 2023
15. A second room was occupied by the second applicant Ms King who moved in 1st January 2022 and left 18th January 2023
16. The third room on that floor was occupied by Stuart who moved in on 15 January 2022 and lived there for four months.

17. Mr Gaal is the registered owner of the property and received the rent. He purchased the property with his wife Ms Patel in 2010. Mr Gaal says that the property was tenanted from its purchase, but that for a period it became his only or main residence.
18. Mr Ainsworth moved into the property in April 2016 and left the property on 17th January 2023. He is seeking to recover rent of £7,920 for the rent paid during the period 1st January 2022 and 31st December 2022. He states that the property was his only or main residence during that period and that he was not in receipt of any benefits during that time.
19. Ms King moved into the property on 1st January 2022 and left the property on 18th January 2023. She paid £690 pcm in rent. She is seeking to recover the sum of £7,120 of rent paid during the period 1st January 2022 and 31st December 2022. She states that the property was her only or main residence during that period and that she was not in receipt of any benefits during that time.
20. The respondent served a notice to quit on 6th June 2022 requiring the occupiers, including the tenants to leave by 30th June 2022. Mr Gaal says this is because he was planning building works.
21. The applicants did not leave the property, so following legal advice the respondent served further notice to quit on 14th December 2022. This notice to quit was nailed to the doors of the rooms of the applicants.

The allegations

22. In summary the applicants allege that the respondent on multiple occasions unlawfully deprived the occupiers of the property the required utilities at the Premises leaving the applicants without electricity, heating or hot water, and restricted access to the kitchen by locking the door.
23. The respondent states that the applicants were excluded occupiers under the Act because he is a resident landlord. This was only stated in his skeleton argument and no supporting evidence was provided in his bundle for the hearing. He produced some bills at the hearing.

Was the landlord a resident landlord?

24. The first issue to be determined is whether the occupiers are excluded from certain protections of the Act. The Act provides at s.3(2) that a tenancy or licence is excluded if
 - (a) under its terms the occupier shares any accommodation the landlord or licensor; and
 - (b) immediately before the tenancy or license was granted and also at the time it comes to an end, the landlord or licensor occupied as his only or principal home premises of which the whole or part of the shared accommodation formed part.

25. The respondent told the tribunal that he lived in the property as his only or main residence from 1st June 2021 to July 2022. He subsequently corrected those dates to September 2021 to June 2022.
26. He told the tribunal that he has a family home but because of relationship difficulties he left home. He says he kept the fact that the property was his only or main residence secret from the occupiers as he did not wish them to know his business.
27. The Notices to quit he served provided the landlord's address as the address of the property.
28. The applicants say that the landlord never lived in the house. He is married and has three children and there was no room for the family in the property as rooms were rented out to tenants for many years. They point to the fact that the respondent was very highly paid and, if he was unable to remain in the family home, had many alternatives available to him. It was highly unlikely he would choose to live in a small room sharing communal facilities.
29. Ms King says she rarely met the landlord and that she is sure he did not reside there.
30. Mr Ainsworth also said that the landlord was not resident. He referred the tribunal to the mechanisms used to pay his rent, which were to meet the landlord in person once a month either at his family home or in a café to hand over cash.
31. The tribunal was referred to the emails sent by Mr. Ainsworth during this period which appeared to be inconsistent with the respondent residing in the property during the months he said he resided there.
32. The respondent says that he sought to keep his residence in the property secret from the tenants. The tribunal expressed surprise that anyone could hope to keep residing in the property secret when there is only one shared bathroom and a shared kitchen.
33. The respondent said he was only in actual residence for 90 nonconsecutive days as he spent a great deal of his time caring for his elderly mother in Slovenia. He was unable to give precise dates to the tribunal.
34. He produced a council tax payment document and a number of bills addressed to him at the property.

The decision of the tribunal

35. The tribunal determines that the respondent was not a resident landlord.

The reasons for the decision of the tribunal

36. The tribunal must determine on the balance of probabilities whether or not the property was the only or main residence of the respondent at the commencement of each of the tenancies of the applicants and at their termination.

37. On the basis of the statement of the respondent it is clear he was not a resident landlord at the commencement of Mr Ainsworth tenancy nor at its termination. Nor was he a resident landlord at the termination of the Ms King's tenancy. Therefore he was not a resident landlord in the terms of the Protection from Eviction Act 1977, and so the applicants are not excluded tenants.
38. For the avoidance of doubt, and on the basis of the evidence before it, the tribunal determines that the respondent was not a resident landlord at any point during the tenancies of Mr Ainsworth or Ms King.
39. The tribunal found that the respondent gave contradictory and evasive answers to the questions asked by the tribunal about his residence at the property.
40. There was no reference to him being a resident landlord in his statement of case.
41. The evidence that he did provide, that he lived there for only 90 days in the total period which he suggests the property was his main residence was not supported by any documentation, nor was his evidence detailed or precise.
42. The tribunal took note of the regular meetings with Mr Ainsworth to pay rent noting that in the email correspondent there was no reference to him being in Slovakia or anywhere other than his family residence. It is inconceivable that he would make such arrangements for the rent to be paid if he was living in the property.
43. The tribunal considered the documents that the respondent produced to support his assertion that he was living in the property as his only or principal home unpersuasive. The council tax bill produced was for a different period from the one in dispute and anyway it was sent to the family property and not the subject property. The other bills produced were not inconsistent with a non-resident landlord who takes responsibilities for paying the bills.

Did the Respondent commit the offence of unlawful eviction or harassment?

44. The tribunal determines that the respondent did not commit the offence of unlawful eviction.

The reasons for the determination of the tribunal

45. The consequence of the tribunal finding that the landlord did not live in the property as his only or main residence in the relevant period is that the occupiers had the benefit of the protections of assured shorthold tenancies. This means that they were entitled to two months notice of termination of their tenancies.
46. The service of notices to quit is therefore a breach of the Protection from Eviction Act 1977.

47. However for the purposes of the application for the RRO what matters is whether an offence under the Act was committed within the 12 months preceding the application. This means that the offences must have been committed between 25th December 2022 and 18th January 2023 by which time both tenancies had been terminated. The service of the notices to quit, orally on 6th June 2022 and by notice pinned to the applicants' doors on cannot be considered for the purposes of an award of an RRO.
48. The applicants make extensive allegations of poor landlord behavior throughout their occupation of the property. The tribunal has focused on those elements of the allegations that might be understood to constitute illegal eviction or harassment, and because of the requirement set out above that only an offence committed within 12 months prior to the making of the application the only relevant allegations relate to
 1. Exclusion from the kitchen
 2. Interference with the gas boiler so that there was no heating in December 2022
 3. The disconnection of the electricity on 17th January 2023
49. The applicants gave evidence about these three matters. They say that they were excluded from the kitchen from late October 2022 for a fortnight. They say that the exclusion was as a result of the landlord
50. They say that the landlord deliberately interfered with the gas boiler meaning there was no hot water to the property. This appears to have happened around 3rd November 2022 and continued till Ms King left the property.
51. Ms King also says that the landlord turned off the electricity on 18th January 2023 which prompted her to leave.
52. The landlord says that the applicants have no proof that he carried out these actions. He says that the exclusion from the kitchen was because of an argument between the tenants and that he had nothing to do with whatever happened to the electricity.
53. When the landlord asked Ms King directly why he would cut off the electricity, she replied, who else would do it?
54. The respondent produced evidence from a workman that the boiler was being serviced in November 2022 and produced a gas safety certificate dated in support.
55. The applicants alleged that the dates on the gas safety certificate had been interfered with.

The decision of the tribunal

56. The tribunal determines that the respondent has not breached the relevant sections of the Protection from Eviction Act 1977 during the relevant period.

The reasons for the determination

57. The exclusion from the kitchen happened in the period before the relevant period for the purposes of the claim. There was no evidence from the applicants the cutting off of the electricity was an act of the respondent. The tribunal accepts the evidence of the respondent that he had employed a gas safety engineer to repair the boiler and provide a gas safety certificate during November 2022. Whilst there were changes of date marked on the gas safety certificate the tribunal accepts the evidence of the respondent that these were not in an attempt to defraud the applicants but corrections of mistakes by the gas safety engineer.

Name: Judge H Carr

Date: 2nd
September 2024

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RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.