FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AN/HMB/2024/0002**
Property	**:**	**770B Fulham Rd, London, SW6 5SG**
Applicants	**:**	**Michelle Chirwa and Kundainashe Mutukwa**
Respondent	**:**	**Darrell Stewardson**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Shepherd** **Andrew Lewicki FRICS**
Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**12th September 2024**

DECISION

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1. In this case the Applicants seek a Rent Repayment Order against the Respondent. The Applicants are Kundainashe Mutukwa and Michelle Chirwa

(The Applicants). The Respondent is Darrell Stewardson (The Respondent). The Respondent is the landlord of premises at 770B Fulham Road, London, SW65SJ (The premises). The Respondent granted the Applicants a tenancy of the premises. The term was 2 years without a break clause. The tenancy began on 24th October 2023. The Applicants paid a deposit and a month's rent in advance. They also paid a proportion of the month's rent in December. It was agreed between the parties that they had paid £4721.37.

2. At an early stage of the tenancy the Applicants were in default of the contractual rent payments. Mr Mutukwa who was principally responsible for the rent payments as Ms Chirwa had paid other expenses, said he was a contractor who did transaction reporting. His references said he earned over £80k per annum and Ms Chirwa earned £38K for her work in a solicitor's office. Mr Mutukwa said he had not been paid by the bank he was working for. In any event he told the Respondent he was endeavoring to pay him the rent he owed. Whatsapp messages confirmed this. The Respondent accepted the explanations but was persistent in seeking the rent which is his prerogative. On 11th December 2023 he chased payment. He was told that the rent would be paid that day. There was then a telephone call between Mr Mutukwa and the Respondent. The former says that the Respondent told him that they would have to leave the premises. The latter said this was not the case and Mr Mutukwa had accepted that they would have to leave and it was agreed they would leave the next day. There followed a further whatsapp exchange when the Respondent said " I'm sorry this is happening, but you probably need to leave the flat. Inform KFH you don't have the money to pay etc.". In response Mr Mutukwa said "when do you need us to leave" and the Respondent replied "tomorrow!" and Mr Mutukwa replied "okay no worries" and the Respondent replied "Thank you Kundai sorry its not work out, inform KFH immediately and you can get your deposit back". It is worth saying here that the parties are in dispute over the deposit but this is not something we are dealing with.

3. In isolation the Whatsapp messages appear friendly on both sides. The Applicants say however there was another layer of communication. They say that the Respondent was threatening on the phone call before these messages. They also say that someone from the agents, KFH called Max came to the premises and let himself into the communal area. They allege Max was threatening by telling them that the landlord was not happy and that they were at risk of getting a County Court Judgement if they didn't sort the rent out. Its not clear why Max went to the premises. The Respondent denied that he had asked him to do so and we did not hear evidence from Max himself.

4. As a result of this perceived threat the Applicants say they moved out of the premises albeit in stages. Max let them stay in the property until the next day so that they could move their things to Harrogate in three car journeys. Ms

Chirwa said they had sought advice from her work and they had referred them to the CAB but by that stage they were in Harrogate and could not seek an injunction or take action from there. She told the Tribunal that they didn't want to stay at the premises because they did not feel safe there.

The law

5. Neither party provided any assistance in relation to the legal framework. The Tribunal were therefore left in a position of having to fathom what law the Applicants were seeking to rely on. It appears they were arguing that they had been forced to leave by the Respondent's conduct. The relevant Act and provision is s1 (3A) of the Protection from Eviction Act 1977 which states the following:

(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.

(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.

The Housing and Planning Act 2016 ("the 2016 Act")

6. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

7. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought.

8. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore

been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

9. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

10. Section 40 provides (emphasis added):

"(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."

11. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

12. Section 41 deals with applications for RROs. The material parts provide:

"(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.

13. Section 43 provides for the making of RROs:

"(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)."

Determination

14. In order to decide that a rent repayment order is appropriate the Tribunal has to be satisfied beyond reasonable doubt (i.e the criminal standard) that the Respondent did acts likely to interfere with the peace or comfort of the Applicants and he had a reasonable cause to believe that that conduct was likely to cause the Applicants to give up occupation.

15. Here the conduct relied on presumably was the Respondent telling the Applicants they should leave the next day. They say as a result of this and the conduct of the agent they left. This is an incongruous allegation when one reads the Whatsapp messages. They suggest that what was being discussed was when the Applicants should leave after they had decided to leave. We consider that the evidence points more to a surrender by them rather than a decision by the Respondent to get them to leave. He remained helpful to them. They were breaking the contract by leaving. He could have insisted on payment for the contract in full. Instead, he did not seek to recover rent once the property was re-let. Neither did the Applicants seek to protect themselves by an injunction for example. Indeed, they only took advice after they had left and were in Harrogate.

16. We are far from being satisfied beyond reasonable doubt that the Applicants left because of the conduct of the Respondent or his agent. Indeed, it appears they left because they couldn't pay the rent they recently had agreed. This was surprising in light of their respective incomes.

17. We dismiss the application.

Judge Shepherd

12th September 2024

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.