



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference : CHI/45UE/HMC/2024/0004

Property : 3 St George's Court, Northgate, Crawley,
RH10 8LP

Applicants : Makarand Harihar Purandare and
Harshada Vilas Nilangekar

Representative : Justice for Tenants

Respondent : Mitesh Patel

Type of Application : Application for Rent Repayment Order
under the Housing and Planning Act
2016
Sections 40, 41, 42, 43 & 45 of the
Housing and Planning Act 2016

Tribunal Members : Tribunal Judge H Lumby
Mr C Davies FRICS
Ms T Wong

Venue : Havant Justice Centre, Elmleigh Road,
Havant, Hampshire PO9 2AL

Date of Hearing : 5th December 2024

Date of Decision : 9th December 2024

DECISION

Decisions of the tribunal

- (1) The tribunal orders the Respondent to repay to the Applicants the sum of £1,325.01 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.
- (2) The tribunal also orders the Respondent to reimburse to the Applicants the application fee of £100 and the hearing fee of £220 (amounting to £320 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("the 2016 Act").
2. The basis for the application is that the Respondent was in breach of an Improvement Notice served under Chapter 2 of the Housing Act 2004 ("the 2004 Act") and such breach amounts to an offence under Section 30(1) of the 2004 Act. Chapter 4 of the 2016 Act allows a tenant to apply for a rent repayment order if at a time when the offence was committed, it was let to that tenant. The Applicants claim that the Respondent's offence was committed at a time when the Property was let to them.
3. The Property comprises a ground floor one bedroom in a three storey purpose residential block. It was let to the Applicants by way of an Assured Shorthold Tenancy commencing on 24 December 2022. That lease expired on 23 July 2023 but the Applicants moved out on 8 July 2023.
4. The Applicants' claim is for repayment of rent paid during the period from 1 May 2023 to 8 July 2023, amounting to £2,650.02.
5. The tribunal was provided with a bundle running to 96 pages. The contents of all these documents were noted by the tribunal.
6. The hearing was conducted in person. Mr Brian Leacock of Justice for Tenants appeared on behalf of the Applicants. Neither of the Applicants or the Respondent attended. A witness statement had been provided by Mr Makarand Harihar Purandare and Mr Leacock accepted that less weight would be given to that statement as a result of his non-attendance.

7. No response during the proceedings had been received from the Respondent. However, the Applicants' lease from the Respondent contained email and telephone details for the Respondent and these had been utilised by the Applicants to make contact with the Respondent during their tenancy. The email had been used by the tribunal during the proceedings without bounce back. Mr Leacock had used the number provided to seek to contact the Respondent, the number rang without answer. The tribunal was satisfied that appropriate means had been used to contact the Respondent and that he was either aware or ought to be reasonably aware of the proceedings and the hearing today.

Relevant statutory provisions

8. The relevant statutory provisions are set out in the Schedule to this decision.

Alleged Offence

Improvement Notice

9. Crawley Borough Council served an Improvement Notice in relation to the Property on the Respondent on 31 March 2023 (the "Improvement Notice"). This was addressed to the Respondent and Payal Patel. The Land Registry office copy entries in the bundle show the Respondent and Payal Patel as joint owners of the Property.
10. Section 11 of the 2004 Act allows the local housing authority to serve improvement notices in relation to two categories of hazard, Category 1 and Category 2, with Category 1 being the more serious. The Improvement Notice contained one Category 1 hazard and one Category 2. The Category 1 hazard covered excess cold, arising as a result of single glazed windows with rotten frames causing draughts and from inappropriate and inefficient heating systems and appliances leading to higher energy costs; those higher energy might deter the tenants from using the heating. The Category 2 hazard related to damp and mould growth caused by a defective mechanical extract fan in the bathroom.
11. The Improvement Notice came into effect on 1 May 2023 unless the recipients of the notice appealed within 21 days of receipt. The Applicants state that there was no appeal and so it became effective on that date; this is supported by an email from the council. Absent any evidence to the contrary, the tribunal accepts this.
12. Works were specified in the Improvement Notice and were to be commenced by 1 May 2023 and completed by either 27 May 2023 or 3 June 2023, depending on the required action.

13. The Applicants contend that the Respondent breached the Improvement Notice on 1 May 2023 by not commencing the works then. Section 30(1) of the 2004 Act provides that when an improvement notice becomes operative, the person on whom the notice was served commits an offence if he fails to comply with it. The Applicants argue that by not starting works by 1 May 2023, an offence was committed by the Respondent (as the person on whom the notice was served) on that date.
14. The evidence presented by the Applicants for the Respondent's failure to begin the works is contained within an email dated 4 August 2023 from Chris Modder (a Private Sector Housing Manager at the council) to the Applicants' representative which states:

"We have served the attached Improvement Notice on the landlord but he has failed to carry out any of the remedial works and therefore has not complied with the notice. The landlord did not appeal against the notice."
15. By failing to carry out any of the remedial works, the tribunal accepts that they cannot have been commenced. It therefore determines that a breach of the Improvement Notice occurred on 1 May 2023 as a result of that failure. If a breach arose on that date, then by virtue of the application of Section 30(1) of the 2004 Act, the Respondent committed an offence on that date. In addition, as the council's confirmation of the failure to carry out any works was given on 4 August 2023, the offence had not been remedied by the time of the council's email.
16. The tribunal therefore determines that it is satisfied beyond reasonable doubt that the Respondent committed an offence pursuant to Section 30(1) of the 2004 Act on 1 May 2023 as a result of his breach of the Improvement Notice and that the breach had not been remedied by 4 August 2023.

Entitlement to apply for a Rent Repayment Order

17. Section 41 of the 2016 Act entitles a tenant to apply for a rent repayment order against a person who has committed an offence to which that Chapter of the 2016 Act applies. An offence under Section 30(1) of the 2004 Act is one such offence. The Section provides for a time limit for applications to be made and the tribunal is satisfied that the Applicants brought their claim before the required time limit. In addition, an application can only be brought by a tenant to whom the relevant property is let when the offence was committed. As the Property was let to the Applicants when the offence was committed (1 May 2023), they are entitled to bring a claim against the person who has committed the offence.
18. The Supreme Court in *Rakusen v Jepsen and others* [2023] UKSC 9 determined that a rent repayment order may only be made against the immediate landlord. The office copy entries for the Property show that

the registered proprietors are the Respondent and Payal Patel and these are the addressees of the Improvement Notice. However, the case has only been brought against the Respondent. The reason for this was the tenancy to the Applicants was granted solely by the Respondent and the rent was paid solely to an account in his name. He may be treated as acting as an undisclosed principal and agent for himself and Payal Patel (and so liable in accordance with the Upper Tribunal decision in *Cabo v Dezotti* [2022] UKUT 240 (LC)) or as landlord by estoppel by holding himself out as owner (by virtue of the Supreme Court decision in the case of *Bruton v London & Quadrant Housing Trust* [2000] 1 A.C. 406). In either case, the tribunal finds that the Respondent is the immediate landlord of the Applicants and therefore the person against whom the Applicants can claim.

19. However, Section 41 of the 2016 Act requires the claim to be brought against the person who committed the offence, in this case breaching the Improvement Notice. The question is therefore whether it makes a difference that the Applicants' immediate landlord is the Respondent but the Improvement Notice was addressed to the Respondent and Payal Patel. The tribunal determines that it does not, first because the Improvement Notice was actually served on the Respondent alone (reflecting the wording of section 30(1) which refers to the person upon the notice was served as the person that commits the offence) and secondly because the Respondent and Payal Patel would have joint and several liability for the offence. This means that, whichever way this is viewed, it was the Respondent who committed the offence, whether Payal Patel did too is irrelevant.
20. The tribunal therefore determines that the Applicants are potentially entitled to bring their application for a rent repayment order against the Respondent, unless the Respondent has a reasonable excuse for his offence (as provided by Section 30(3) of the 2004 Act).

Reasonable excuse

21. Accordingly, the tribunal considered whether the Respondent had a reasonable excuse for committing the offence. This would operate as a defence to the claim and mean that a rent repayment order could not be made.
22. The Respondent has not responded to the Applicants' application and did not attend the hearing. No reasonable excuse has therefore been offered by him. Having considered all the evidence provided, it also cannot find any such excuse.
23. As a result, the tribunal finds that the Respondent does not have a reasonable excuse for the offence.

Consideration of grounds

24. The tribunal is satisfied beyond all reasonable doubt that the offence was committed by the Respondent, that the Respondent does not have a reasonable excuse for the offence and was at the time the Applicants' landlord. The offence was committed on 1 May 2023 and had not been remedied when the Applicants left on 8 July 2023. The Applicants are claiming a rent repayment order for the period from 1 May 2023 to 8 July 2023 and brought their application in time. Accordingly, the tribunal is satisfied that they can bring their claim in respect of that period.

Rent Repayment Order

25. Section 43 of the 2016 Act provides that where a tribunal is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, it may make a rent repayment order. The tribunal does therefore have a discretion as to whether to make an order although it has been established that it would be exceptional not to make a rent repayment order (*Wilson v Campbell* [2019] UKUT 363 (LC)).
26. In this case, the tribunal is satisfied beyond reasonable doubt that an offence has been committed and that there is no reasonable excuse for the offence. It does not consider that there are any exceptional circumstances preventing it making an order and therefore determines that a rent repayment order should be made.

Submissions on amount of order

27. Having determined that a rent repayment order should be made, the tribunal next considered what the amount of such order should be.
28. The Applicants argued that the full rent paid by them for the period from 1 May 2023 to 8 July 2023 should be repaid to them, arguing that the failure to comply with an improvement notice was the third most serious of the seven offences covered by Chapter 4 of the 2016 Act. In addition, Mr Makarand Harihar Purandare in his witness statement made various allegations in relation to the condition of the Property at the commencement of the term, asserts that the landlord had to be chased to address issues (but did do so eventually) and had not returned their deposit. However, as he had provided no evidence to support his assertions and did not attend the hearing to answer questions, less weight was given to his statement.
29. The Applicants could provide no evidence as to whether the Respondent had prior convictions for relevant offences or whether he owned a portfolio of properties or just the Property.

Method of assessing amount of order

30. Section 46 of the 2016 Act specifies circumstances where a tribunal is obliged to make a rent repayment order in the maximum amount (subject to exceptional circumstances). These do not apply here. The tribunal therefore has discretion as to the percentage of the rent it can order be repaid.
31. Section 44 of the 2016 Act specifies the factors that a tribunal must take into account in making a rent repayment order. This has been qualified by the Upper Tribunal in guidance given in the case of *Acheampong v Roman* [2022] UKUT 239. That guidance is summarised as follows:
- (i) ascertain the whole of the rent for the relevant period;
 - (ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;
 - (iii) consider how serious the offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence?
 - (iv) finally, consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4), namely the matters the tribunal must 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 identified in the table at section 45 of the 2016 Act.

Tribunal assessment of amount of order

32. The tribunal agrees with the Applicants calculation that the rent paid for the period claimed (1 May 2023 to 8 July 2023) amounted to £2,650.02. The Applicants state that they did not receive any Universal Credit.

33. The tenancy agreement between the parties provided that the tenants were responsible for payment of electricity, water and council tax. It is apparent from the bank account statements provided that the Applicants were paying for electricity and council tax. There is no evidence as to whether the Property had a gas supply and no payments in relation to water were identified by the Applicants. There is no evidence that the Respondent paid for any utilities or for internet provision. Accordingly the tribunal makes no deduction for utilities or other matters provided or paid for by the Respondent.
34. The tribunal did not consider that the offence was as serious as portrayed by the Applicants. They argued that the failure to comply with an improvement notice was the third most serious of the seven offences covered by Chapter 4 of the 2016 Act. The seriousness of breaching an improvement notice should not be downplayed, but it is generally much less serious than a relevant offence under the Criminal Law Act 1977 or the Protection from Eviction Act 1977 or a breach of a banning order. All of these are punishable by imprisonment, whilst breach of an improvement notice is, like the other remaining three, only punishable by way of a fine. The tribunal does not therefore agree that a breach of an improvement notice is any of the top three most serious offences.
35. The assessment of the seriousness of the offence is made not only against the other offences listed in Chapter 4 of the 2016 Act but also against other breaches of the same offence. Importantly, the tribunal does not consider the actual breach of the Improvement Notice as being as serious as other breaches of improvement notices that occur. In this case, the breaches covered by the notice were relatively minor, covering a faulty extractor fan, draughts from windows and inefficient heating, leading to higher heating bills. Given the period claimed is late spring to summer, this would have been less of an issue at that time. There is no evidence as to whether the Respondent was a professional or experienced landlord.
36. The tribunal considered the conduct of the Respondent and the Applicants. The tribunal found that the Respondent's actions in apparently ignoring the Improvement Notice do need to be taken into account. The assertions provided by the Applicants in relation to other poor conduct is noted but was unsubstantiated by supporting evidence and diminished by their non-attendance at the hearing. The Applicants provided no explanation as to why they had on two occasions underpaid the rent and on three occasions paid late (by one to three days). No evidence of the Respondent's financial circumstances was provided. Finally, the tribunal noted that there was no evidence that the Respondent had previously been convicted of an offence identified in the table in section 45 of the 2016 Act (which is set out in the Schedule to this decision).

37. Taking all these factors into account, the tribunal determined that the amount payable by the Respondent should be reduced by 50%, leaving the amount to be repaid as £1,325.01.

Tribunal determination

38. The tribunal is satisfied beyond all reasonable doubt that the Respondent committed on 1 May 2023 the offence of breach of an improvement notice as provided by Section 30(1) of the 2004 Act offence was committed by the Respondent, that the Respondent does not have a reasonable excuse for the offence and was at the time the Applicants' landlord. The offence had not been remedied when the Applicants left the Property on 8 July 2023.
39. The tribunal has determined that it should make a rent repayment order for it and has calculated the amount of that order as £1,325.01.
40. Accordingly, the tribunal orders the Respondent to repay to the Applicants the sum of £1,325.01 by way of rent repayment, such repayment to be made within 28 days of the date of this decision.

Cost applications

41. The tribunal considered on its own initiative whether to make an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent reimburse the application fee of £100.00 and the hearing fee of £220.00.
42. As the Applicants has been successful in this claim, the tribunal is satisfied that some level of reimbursement of these fees should be made. It considers that the failure of the Respondent to engage in any way in the process means that all of these fees should be reimbursed.
43. The tribunal therefore orders the Respondent to reimburse to the Applicants each of the application fee of £100 and the hearing fee of £220 (amounting to £320 to be reimbursed in total), such repayment to be made within 28 days of the date of this decision.

Rights of appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
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.

SCHEDULE

Relevant statutory provisions

Housing and Planning Act 2016

Section 40

- (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 ...
- (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	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	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

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

- (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.

Housing Act 2004

Section 30

- (1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.
- (3) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.