



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

**Case reference** : **LON/00BJ/HMF/2021/0207**

**Property** : **32A, Coverton Road, London, SW17  
oQL**

**Applicant** : **Mr Mark Harte**

**Representative** : **In person**

**Respondent** : **Dodhia Capital Limited,  
represented by Mr Dhodia,  
Director**

**Type of application** : **Application for a rent repayment  
order by tenant**  
Sections 40, 41, 43, & 44 of the Housing  
and Planning Act 2016

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr A Lewicki FRICS**

**Date of hearing** : **15 January 2025**

**Date of decision** : **24 February 2025**

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**DECISION**

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## ***Introduction***

1. Unless stated otherwise, the references in square brackets are to the pages in the Applicant's and Respondent's hearing bundles respectively.
2. This is an application made by the Applicant under section 41 of the Housing and Planning Act 2016 ("the Act") for a rent repayment order against the Respondent in respect of 32A, Coverton Road, London, SW17 0QL ("the property").
3. The property is a ground floor flat in a converted house containing a total of 3 flats. The Respondent granted the Applicant and Judit Olivia Rodriguez an assured shorthold tenancy for a term of 12 months commencing from 24 October 2018 at a monthly rent of £1,750. Ms Rodriguez vacated the property in or about September 2020 and this application is brought solely by the Applicant.
4. This case has a somewhat long and convoluted procedural history. In his order dated 30 August 2022 [AB/154], Tribunal Judge Cowen helpfully set out the procedural history, when dealing with the Respondent's application to strike out the case, as follows:

"2. On 27 August 2021, the Applicant completed a form RRO1 and submitted it to the Tribunal. The claim was issued by the Tribunal on 31 August 2021. The original RRO1 application form claimed an RRO on the grounds that the letting of the Flat was in breach of HMO licensing requirements and on the grounds of "harassment". There were no particulars or dates of the harassment – just the single word which appeared in box 9 of the form.

3. It was soon established that an RRO application on the grounds of breach of HMO licensing requirements could not succeed in this case and the Applicant was asked by the Tribunal to submit another RRO1 form giving amended and further particulars of his claim.

4. The Applicant submitted another RRO1 application form in April 2022. I have not seen a copy of that application form, but I am told that it also contained some defects and the Applicant was invited to try again.

5. The Applicant submitted a further RRO1 application for on 12 May 2022, which is the most recent one. It does not contain any reference to HMO licensing. It claims an RRO on two grounds expressed as follows:

"harassment by the landlord during this time period (March 2019- March 2020) and failure to comply with an improvement notice."

6. The rest of the grounds contains a narrative of various defects of disrepair and concludes by listing examples of the type of behaviour which is said to have amounted to harassment."

5. In his order, Judge Cowen also stated this:

“9. The Applicant conceded at the hearing that his claim could not proceed on the grounds of the alleged failure to comply with an improvement notice and he effectively withdrew that claim.”

6. For the various reasons set out in his order, Judge Cowen granted the Applicant permission to amend his application limited to the sole issue of the Respondent alleged harassment, which was filed on 10 October 2024 as directed [AB/1-7].
7. By an interim application dated 13 January 2025, the Applicant sought permission to admit in evidence a Tomlin order dated 19 April 2023 agreed by the parties in relation to possession proceedings brought by the Respondent in the County Court whereby the Applicant agreed, inter alia, to give up possession by 23 April 2023. In addition, the Applicant also sought permission to admit an improvement notice dated 22 July 2022 served on the Respondent by the London Borough of Wandsworth relating to compliance and building regulations and his appeal against the notice.
8. This was met by a cross-application by the Respondent dated 14 January 2025 objecting to the Applicant’s permission to file late evidence.
9. This conduct highlights the animosity between the parties in this case whereby both parties were prepared to take any point against the other (relevant or otherwise) and this in turn generated a response. This resulted in the Applicant and the Respondent filing hearing bundles comprised of 228 pages and 223 pages respectively, most of which was irrelevant evidence. This unhelpful conduct continued at the hearing when both parties continually attempted to talk over the other and required constant intervention by the Tribunal.

### ***Relevant Law***

#### ***Making of rent repayment order***

10. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers).
11. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:
  - “(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) ...

(c) ...

### **Amount of order: tenants**

12. Section 44 of the Act provides:

- (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.

#### ***If the order is made on the ground that the landlord has committed***

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

#### ***the amount must relate to the rent paid by the tenant in respect of***

the period of 12 months ending with the date of the offence

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.”

### **The Protection from Eviction Act 1977**

13. Harassment and illegal eviction are separate offences under the Protection from Eviction Act 1977. For harassment which has an intent to cause the occupier to leave all or part of the property.

14. Harassment is defined in the Protection from Eviction Act 1977 as:
- acts likely to interfere with the peace and comfort of those living in the property, or
  - persistent withdrawal of services that are reasonably required for the occupation of the premises.

In either case, the offence is committed if the offender knows or has reasonable cause to believe that the conduct is likely to cause the residential occupier to:

- give up part of the premises, or
- refrain from exercising any right in respect of all or part of the premises, or
- refrain from pursuing any remedy in respect of all or part of the premises.

15. Acts likely to interfere with the peace and comfort of those living at the property may include acts such as:

- forcing occupiers to sign agreements that take away their legal rights
- pressuring occupiers to leave where the legal process for possession has not been followed
- removing or restricting essential services such as hot water or heating
- failing to pay bills so that these services are cut off
- constant visits to the property, particularly if this occurs late at night or without warning
- entering the accommodation when the occupier is not there, or without their permission
- stopping the occupier from having guests
- tampering with mail
- persistently offering the occupier money to leave
- intentionally moving in other tenants who cause nuisance
- harassment because of gender, race, disability or sexuality

The acts could be committed against the occupier or any member of their household.

16. Persistently withdrawing or withholding services that the occupier reasonably requires for the occupation of the premises. This may include the disconnection of services such as electricity, hot water, heating, or any other essential services. For an act or acts to be considered to be persistent, there must be some element of 'deliberate continuity'. A single act that affects an occupier over a period of time, for example by cutting off supplies of electricity for an extended period, should be regarded as persistent withdrawing of services.

### ***Hearing***

17. The hearing in this case took place on 15 January 2025. The Applicant appeared in person and the Respondent was represented by Mr Dhodia, a Director of the company.

### ***The Applications in Relation to the Late Filing of Evidence***

18. The Tribunal granted the Applicant's application for permission to rely on the Tomlin order and the documents regarding the improvement notice served on the Respondent on the basis these documents were already familiar to him and, even though it was late evidence, it caused him no real prejudice. The Respondent's cross-application was, therefore, dismissed.
19. The Applicant confirmed at the hearing that his case was limited to the single issue of the various alleged acts of harassment carried out by the Respondent for the 12-month period from 31 August 2020 to 31 August 2021. He further clarified that he was seeking a RRO for the sum of £10,769. This was comprised of £9,019, being an unpaid invoice by the Respondent for the cost of works carried out by the Applicant's company to the property plus associated costs [AB/4]. In addition, the Applicant sought a RRO for the rent of £1,750 paid for the month of October 2020.
20. The Tribunal ruled that the amount of the unpaid invoice could not be the subject matter of an RRO because it was not in fact rent that was paid to the Respondent. Therefore, if his application succeeded, the maximum award the Tribunal could make was for £1,750. The Applicant conceded that he had not paid any other rent for the period from 31 August 2020 to 31 August 2021.

### ***Decision***

#### ***Applicant's Submissions***

21. Paragraph 4 in the order of Judge Cowen dated 30 August 2022 required the Applicant to set out every allegation of harassment relied on by him in the 12 months before 31 August 2021. It is important to note that the Applicant must prove and the Tribunal must be satisfied beyond reasonable doubt that one or more allegations of harassment was proved for it to make a RRO.
22. On 10 October 2022, the Applicant filed and served the amended grounds for the application set out the various allegations of harassment by the Respondent relied on by him [AB/1-7]. The Tribunal's decision is limited to those specific

allegations and are dealt with in turn below. The other allegations of harassment raised by the Applicant at the hearing, for example, the flushing of nappies, the leaving of household waste outside the property, rodent issues and retaliatory eviction do not fall to be determined in this decision.

***Refusal to upgrade the water supplies to flat 32A***

23. The allegation by the Applicant was that the Respondent had failed to install separate water meters for each flat when the property was converted into 3 flats in breach of the Water Industry Act 1991. He relied on a letter from Thames Water to the Respondent dated 25 August 2021 as evidence of this.
24. It is important to note that the letter from Thames Water does not make a finding that the Respondent had failed to install separate meters. It simply states that Thames Water proposes to attend the property to investigate how the flats are supplied with water. There is no evidence that Thames Water either carried out an inspection and whether separate meters were required for each flat. Indeed, the Council withdrew any enforcement action [RB/24].
25. The Tribunal was, therefore, satisfied that this allegation was not proved beyond reasonable doubt. Moreover, it was not the Applicant's case that there had been no or inadequate water supply. It was simply an allegation that the metering of the water supply to the property was not correct. The Tribunal found that this did not interfere with the Applicant's peace and comfort or amounted to a withdrawal of services.

***Refusal to resolve the separate leak from 32B bathroom and the re-occurring ant infestation  
Claims that a separate leak from the bathroom of 32B was part of repairs agreed during works to re-instate 32A after the leak of June 2020***

26. These two allegations can be taken together as they are related issues.
27. Apparently a water leak occurred from Flat 32B in or about June 2020 and remedial works were carried out by the Applicant's own building company in or about September or October 2020. The Applicant alleged that the property was uninhabitable, and he was required to relocate to Ireland for a period of 4 months. He asserted that the leaks were ongoing.
28. The Applicant also alleged that in or about July 2021 the Respondent failed to remedy a further water leak coming from Flat 32B.
29. The Tribunal found that there was no refusal by the Respondent to deal with the leak that occurred in or about June 2020. It was difficult to see how the Applicant could maintain this argument given that it was in fact his own firm that carried out the remedial work. It is clear from the invoice that the remedial work concerned the water leak, and any associated works required. The

In addition, Applicant's real complaint appeared to be that he was not paid for the work. In addition, there was no objective evidence that the leak rendered the flat totally uninhabitable for 4 months and why it was necessary for him to relocate to Ireland for this period of time or that it remained ongoing. The Tribunal noted that the Applicant continued to occupy the property and only vacated it as a result of possession proceedings brought by the Respondent. The inference to be drawn is that the property was habitable.

30. In relation to the leak that occurred in or about July 2021, there was no evidence that this was the result of unsatisfactory work carried out by the Applicant's company in dealing with the initial leak the previous year. In any event, there was clear evidence that the Respondent did instruct a contractor promptly to deal with the leak but he was unable to do so because of a lack of access [RB/12].

31. The Tribunal was, therefore, satisfied that these allegations were not proved beyond reasonable doubt. It cannot be said that the leaks that had occurred from Flat 32B were "acts" of harassment carried out by the Respondent or that he had failed to carry out the necessary remedial work. Taken at its highest, the Tribunal was satisfied that the allegations about the various water leaks were no more than a potential breach of the Respondent's repairing obligations under the tenancy.

32. As to the allegation about the any infestation, this was no more than a bare Assertion by the Applicant. The Tribunal found that the Respondent had not advised the Applicant to treat this with toxic materials. It is clear that the Respondent simply recommended that he put down powder and bait stations [RB/29].

33. The Tribunal was, therefore, satisfied that this allegation was not proved beyond reasonable doubt or that the occurrence of an ant infestation amounted to an act of harassment by the Respondent.

***Refusal to apply the agreed sum for repair work to the rental contract after works were completed***

34. This has already been dealt with above. In any event the Tribunal is satisfied that the Respondent's alleged failure to pay a debt owed to the Respondent cannot amount to an act of harassment that is likely to interfere with the peace and comfort of those living in the property or be a persistent withdrawal of services that are reasonably required for the occupation of the premises.

***Refusal to provide Gas Safety or EICR Certificates***

35. Even if this assertion was factually correct, the Tribunal found that any such failure on the part of the Respondent did not amount to an act of harassment because it did not demonstrably interfere with the peace and comfort of those living in the property or be a persistent withdrawal of services that are reasonably required for the occupation of the premises. The Applicant provided no evidence of this. The Tribunal was satisfied that any such failure was a



breach of the Respondent's statutory duty to provide these certificates as the landlord.

36. Accordingly, for the reasons given, the application is dismissed and no order for a RRO is made.

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).