



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

Case Reference : **MAN/00BY/HMC/2023/0001**

Property : **11, Daisy Street, Kirkdale, Liverpool L5 7RN**

Applicant : **Richard Akos Harnoczi**

Respondent : **Richard McCallum
(Represented by Reeds Rains, estate agents
and Miss de Cordova of Counsel)**

Type of Application : **Application for a rent repayment order by
tenant (no conviction)
Sections 40-44 Housing and Planning Act
2016**

Tribunal Member : **Mr J R Rimmer
Mr K K Kasambara MRICS**

Date of Decision : **10th April 2024**

Order : **The application for a Rent Repayment Order
is refused for the reasons set out herein.**

A. Application

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicant for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by a Legal Officer of the Tribunal for the further conduct of this matter on 22nd August 2023 once the correct Respondent had been identified. They were subsequently varied on 18th September 2023.
4. The composite directions have now been complied with sufficiently for the Tribunal to be able to determine the application.

B Background

- 5 The Applicant is one of two joint tenants and occupiers of the property known as 11, Daisy Street Liverpool L5 7RN. He has occupied the property under an assured shorthold tenancy agreement, originally commencing on 30th June 2022 and running until 29th June 2023, and the rent is currently £575.00 a month. The joint tenant is Peter Guyula Korda.
- 6 The Respondent is the owner of the property which he lets through the agency of Reed Rains, Estate Agents, of 24B North John Street, Liverpool L2 9RP.
- 7 The submissions made by the Applicant are based upon the fact that the property was rented under the tenancy agreement with the rent being paid in full for the full year prior to the Applicant taking possession and without any inspection by him of the state and condition of the property.
- 8 He sets out at some considerable length his dissatisfaction with the condition of the property and the elements of disrepair that to which he draws the attention of the Tribunal.
- 9 There is no doubt that the Applicant is supported in what he alleges by the fact that the local housing authority, Liverpool City Council, make a suspended improvement notice in respect of the property. The suspension of the notice being until the Applicant has vacated the premises. The Tribunal will return to the matter of the notice below.
- 10 Much of the representations made by both parties refer to their respective views as to what the issues are in relation to the repair of the property, how they ought to be addressed and suitable remedies found to alleviate the acute difficulties that the Applicant indicates that he is encountering. Those

representations were given further consideration during the hearing at the Liverpool Civil and Family Justice Centre on 10th April 2024. At the hearing an interpreter was provided at the behest of the Tribunal to assist the Applicant.

- 11 The Applicant has sought to seek a remedy by bringing the matter to a Tribunal to seek a rent repayment order.
- 12 To assist its enquiries the Tribunal inspected the property immediately prior to the hearing and found it to be a two-bedroomed terraced house under a pitched slate roof. It is flat and flush to the street and has a rear yard. The interior condition is only fair and it shows considerable evidence of wear and tear.

The Law

- 13 For a rent repayment order to be granted it is necessary to show that a relevant housing offence has been committed. Those offences are set out in Section 40(3) of the Act. There are 7 of them and only these are relevant to the Tribunal's considerations for the purposes of a repayment order. They are:
 - (1) Section 6(1) Criminal Law Act 1977 – using violence to secure entry to residential premises.
 - (2) Section 1(2), (3) or (3A) Protection from Eviction Act 1977 – harassing or evicting occupiers.
 - (3) Section 30(1) Housing Act 2004 – failure to comply with an improvement notice.
 - (4) Section 32(1) Housing Act 2004 – Failure to comply with a prohibition order.
 - (5) Section 72(1) Housing Act 2004 – controlling or managing an unlicensed house in multiple occupation (HMO).
 - (6) Section 95(1) Housing Act 2004 – controlling or managing any other house required to be licensed.
 - (7) Section 21 Housing and Planning Act 2016 – breach of a banning order.
- 14 There have been no proceedings taken in any court of competent jurisdiction seeking to establish any relevant offence in respect of any failure to license, nor has there been any apparent consideration by the local housing authority of the imposition of a financial penalty for any such offence. These current proceedings are the first to investigate the facts relating to 11, Daisy Street and the establishment, or otherwise, of any relevant offence.
- 15 The Tribunal is of the view that it must clearly make the point that an application for a rent repayment order is predicated upon the establishment of one or more of the above offences. It is not a means by which to short-circuit proceedings which might otherwise be taken in the County Court for breach of repairing obligations on the part of a landlord.

- 16 It follows therefore that the Tribunal must establish the commission of one or more of the offences listed. It is satisfied that of the 7 matters listed in paragraph 13 it can dispose of consideration of those listed at:
- (4) – failure to comply with a prohibition notice. No such notice has been made with reference to 11, Daisy Street. There is therefore no order to breach.
 - (5) – controlling or managing an HMO. There is no suggestion that 11, Daisy Street is an HMO. It does not satisfy any definition of such a property.
 - (6) – controlling or managing any other house required to be licenced. The property is within an area where a selective licence is required and one has been granted by the Council in favour of the Respondent.
 - (7) – breach of a banning order. No such order has been made in respect of the landlord.
- It therefore follows that no offence in relation to such matters can be made out upon which the Applicant may base a claim for a repayment order.
- 17 On the evidence adduced by the Applicant the three remaining grounds required some further consideration by the Tribunal. Within his submissions the Applicant recounts at some length his interactions with the estate agents acting on behalf of the Respondent and the Tribunal considered the information at further length within the hearing.
- 18 Section 6(1) Criminal Law Act 1967 creates a specific offence of using violence to gain entry to residential premises. The Applicant provides details of the steps that have been taken by the landlord in relation to seeking to remedy the defects that were highlighted in the improvement notice and the responses to these from the Applicant. It is clear that the Respondent, through his agents, wished to gain entry to carry out work and the Applicant was not happy to grant it. Mr Harnoczi was however clear in his evidence to the Tribunal that whatever steps were taken to try to gain entry, they fell short of actual, or threatened, violence. It therefore follows that no offence under this provision can be established.
- 19 Section 30(1) Housing Act 2004 – failure to comply with an improvement notice. A notice has been given. It appears in the Respondent’s bundle of documents at page 93 onwards. Paragraph 4 of the notice provides that it does not become operational “until there has been a change of tenancy and the current tenants vacate the property”.
- 20 The information submitted by both parties set out a fundamental disagreement between the parties as to whether the work is able to be carried out, or the Respondent, not wanting the work, only wishes to accept return of the full annual rent, paid in advance. Whether or not this is the reason for the suspension of the operation of the notice and whether that is appropriate is not a matter the Tribunal needs to decide. It is merely

concerned to note that unless and until the notice does become operational, there can be no breach of its requirements.

- 21 There then remains Section 1 Protection From Eviction Act 1977 which creates a number of offences in respect of acts likely to cause an occupier to give up possession:
- Intentionally depriving, or attempting to deprive, a residential occupier of occupation of all, or part, of premises without reasonable cause to believe that the residential occupier had vacated the premises.
 - Doing any act likely to interfere with the peace or comfort of a residential occupier or members of his household or persistently withdraws services reasonably required for enjoyment of the premises with intent to cause the residential occupier to give up possession of the premises or refrain from exercising any right or pursuing any remedy in respect of the premises.
 - Doing any act likely to interfere with the comfort of the residential occupier or members of his household or withdraws services reasonably required for occupation as a residence if he know of has reasonable cause to believe that such conduct is likely to cause the residential occupier to give up possession of the whole or part of the premises or refrain from exercising any right or seeking any remedy in respect thereof.
- 22 The Tribunal therefore considered at length the observations made by Mr Harnoczi in his submissions and his further explanation of them at the hearing.
- 23 The Tribunal is entirely satisfied that Mr Harnoczi is being truthful in what he says about the condition in which he found the property when he finally arrived to take up occupation. His evidence is clear. It is backed up by his complaints at the time. The Council's service of a suspended improvement notice and the inspection carried out by the Tribunal reveals a property that is in no better than fair condition.
- 24 The situation does not improve greatly. Little work is done and the Applicant is not satisfied with the suggestions put forward by the Respondent as to how it might be resolved by the Applicant relinquishing the property in return for the balance of the rent being refunded. Other correspondence relates to offers to have work done whilst the Applicant and his co-tenant either remain in the property or take up temporary accommodation elsewhere during the time work is done. Such negotiations provide no resolution and the Applicant is adamant he seeks the return of all his rent paid in advance.
- 25 This application is the means by which he seeks to achieve that end. The question for the Tribunal to ask itself, as it has in relation to the other

offences in respect of which a rent repayment order may be made and which are considered in paragraphs 15-20, above, is whether an offence has been committed under the provisions of section 1.

- 26 To do so, the Tribunal must be able to decide, to the extent of the burden of proof in criminal proceedings, that it is so satisfied that it is sure, the Respondent and/or his agents have carried out acts likely to interfere with the peace or comfort of those living in the property,
or,
persistently withdrawn services that are reasonably required for the proper enjoyment and occupation of the premises.
- 27 Section 1 envisages acts, rather than omissions, on the part of the Respondent. The issues relating to the condition and state of repair of the premises about which the Applicant complains arise, in the Tribunal's view from omissions, not acts, and cannot provide a basis for determining an offence has been committed.
- 28 There are two acts about which the Applicant does make complaint that might, if the respondent has reasonable cause to believe they will cause the Applicant to:
- Give up possession of all or part of the premises
 - Seek to refrain from exercising any right in respect of all or part of the premises
 - Seek to refrain from seeking any remedy in respect of all or part of the premises.
- 29 Those acts to which the Applicant draws the attention of the Tribunal are, firstly, the extensive communications from the Respondent or his agents seeking to negotiate any agreement other than that which the Applicant is seeking, which is the full return of his rent and secondly, the harassment of what he saw was the attempt to evict him unlawfully.
- 30 A situation arose where the Respondent's agents entered the property and, as a result of what they discover, treat it as having been abandoned by the Applicant. When the situation is explored further and it is clear the Applicant has not left, the Respondent withdrew any claim in respect of abandonment and the Applicant retained possession.
- 31 In respect of the first of those matters in paragraph 29 the Applicant makes it clear in his submissions and then in what he says at the hearing that he is not interested in anything other than the return of his rent. Do the attempts by the Respondent, through his agents, to negotiate other ways round the difficulties presented by the condition of the property amount to harassment which the Respondent knew, or ought to have known, would lead to the Applicant to adopt any or all of those courses of action outlined in paragraph 28, above?

- 32 The Tribunal has used the word “negotiate” deliberately. The correspondence it has seen suggests efforts to resolve the difficulties relating to the property. The Applicant may not appreciate the approaches, but they are not suggestive of attempts to secure those objectives that upon which the offence is based. Indeed, those attempts are based upon an appreciation of the respective viewpoints of the parties. They are an attempt to reach a mutually satisfactory solution.
- 33 The position in relation to the potential eviction of the Applicant by the treatment of the property as being abandoned must be viewed separately. Did this amount to an act of harassment sufficient, on its own or in conjunction with the matter considered in the preceding paragraphs, to suggest the Respondent was seeking to attain those objectives set out in paragraph 28. The circumstances in which it arose and the speed with which the mistake was rectified when the true situation became apparent suggest to the Tribunal that it was neither a deliberate, nor reckless act, made with the intention of achieving those objectives. It was also not unreasonable in the circumstances at the time and was not made in an attempt to achieve an end that had been thought at the time to have already come about: the departure of the Applicant from the premises.
- 34 The Tribunal is therefore unable to satisfy itself that any of the relevant offences required to be established for a rent repayment order to be made have been made out in these proceedings. There may be other avenues open to the Applicant to seek redress, but the seeking of a rent repayment order is not one of them if there is no relevant offence.

J R Rimmer (Chairman)

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