



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

Case Reference : **CAM/26UK/HMC/2024/0001**

Property : **49 Kings Avenue, Watford, WD18 7SB**

Applicant : **Emmanuel Segun Falowo**

Representative : **In person**

Respondent : **James Smith**

Representative : **Did not appear at the hearing and was not represented at the hearing.**

Type of Application : **Application by Tenant for Rent Repayment Order. Sections 40,41, 43 & 44 of the Housing and Planning Act 2016**

Tribunal : **Judge Bernadette MacQueen
Mr Gerard Smith, MRICS, FAAV, REV**

Date of Hearing : **14 April 2025**

Date of Decision : **28 April 2025**

DECISION

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1. The Tribunal finds that the Respondent has committed the offence of failing to comply with an Improvement Notice under the provisions of section 30(1) of the Housing Act 2004, and that accordingly a Rent Repayment Order in favour of the Applicant can be made.
2. The Tribunal makes a Rent Repayment Order of £3,000 for the period 5 June 2023 to 31 August 2023 and this must be paid by the Respondent to the Applicant within 28 days of the date of this decision.
3. The Tribunal also orders the reimbursement of the Tribunal fees (application and hearing fee) and this amount (£320) must be paid by the Respondent to the Applicant within 28 days of the date of this decision.

Background

4. On 10 January 2024, the Applicant made an application for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) in relation to Ground Floor Flat, 49 Kings Avenue Watford, WD18 7SB (the Property). The relevant offence was said to be failure to comply with an Improvement Notice (section 30(1) Housing Act 2004).
5. The Tribunal was satisfied that the application was made within the time limit as the offence was committed in the 12 month period ending with the day on which the application was made (section 41(2) Housing and Planning Act 2016).
6. The Applicant stated in his application to the Tribunal that he had paid rent of £9,600 for the Property from 1 December 2022 to 31 August 2023. This had been made up of rent of £1,150 paid each month in December 2022 to

March 2023 and rent of £1,000 paid each month from April 2023 to August 2023.

7. Directions made by the Tribunal on 11 October 2024 required each party to prepare a bundle of relevant documents for use at the hearing and send these to each party and the Tribunal.
8. The Applicant provided a bundle of documents that consisted of 155 pages.
9. The Directions of 11 October 2024 required the Respondent to provide a bundle of documents by 6 December 2024. However, as the Applicant provided his bundle late, the time for the Respondent to provide his bundle was extended to 15 February 2025. When the Respondent did not provide his bundle, the Tribunal wrote to him and extended the date for the Respondent to comply to 7 March 2025. The Respondent still did not comply and so the Tribunal notified the Respondent that if his bundle was not received by 5 April 2025, the Tribunal would bar the Respondent from participating in the proceedings.
10. The Respondent did not comply and so on 8 April 2025 the Respondent was barred from further participation in the proceedings, however the Tribunal encouraged the Respondent to attend the hearing and explained that the Tribunal panel who heard the matter may decide to lift the bar in whole or in part to (for example) allow the Respondent to answer questions or make submissions to the Tribunal. No further representations were received from the Respondent.

The Hearing

11. The Hearing on 14 April 2025 took place via Cloud Video Platform (CVP). The Applicant attended as a litigant in person but the Respondent did not attend and was not represented.

Hearing In Absence

12. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the Rules) provides:

“If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal-

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing and

(b) considers that it is in the interests of justice to proceed with the hearing.

13. The Tribunal was satisfied that the Respondent had been sent a copy of the application for a RRO on 11 July 2024 and a copy of the Tribunal's Directions on 11 October 2024. Further the Tribunal had written to the Respondent on 29 January 2025, 28 February 2025 and 27 March 2025 directing that the Respondent provide his bundle of documents. On 8 April 2025, the Tribunal had sent a further letter barring the Respondent but encouraging him to attend the hearing as the Tribunal may decide to lift the bar. The Tribunal was therefore satisfied that the Respondent was aware of the hearing.
14. The Tribunal considered that it was in the interests of justice to proceed with the hearing in the Respondent's absence. The Respondent was barred from the proceedings because of his non-compliance. Despite being encouraged to attend the hearing, the Respondent did not attend and did not provide any explanation to the Tribunal.
15. In the circumstances the Tribunal found that it was in the interest of justice to proceed in the Respondent's absence. In reaching this decision the Tribunal had considered rule 3(1)(a) of the Rules which requires the Tribunal to deal with matters in ways which are proportionate to the importance of the case, and rule 3(1)(e) to avoid delay, so far as compatible with the proper consideration of the issues. The Tribunal had listed the matter for hearing and the Tribunal and the Applicant were ready to proceed. The Respondent had not provided the Tribunal with any documents and had not attended the hearing and therefore the Tribunal

determined that it was in the interests of justice to proceed in the Respondent's absence.

The Law

16. Section 41(1) Housing and Planning Act 2016 states:

“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”

17. Section 43(1) Housing and Planning Act 2016 states:

“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 had been convicted)”

18. Section 40(3) Housing and Planning Act 2016 defines “an offence to which this Chapter applies” by reference to a table. The offence under section 30(1) Housing Act 2004 (failure to comply with an Improvement Notice) is within that table at line 3.

Failure to Comply with an Improvement Notice:

19. Section 30(1) Housing Act 2004 provides:

(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.”

Relevant Conviction

20. The Tribunal was provided with a Memorandum of an Entry for the Register of St Alban's Magistrates Court for 3 January 2024 which stated

that the Respondent had pleaded guilty to the offence of failing to comply with an Improvement Notice for a category 1 hazard at the Property as follows:

“Between 05/06/2023 and 26/07/2023 at Watford Hertfordshire failed to comply with an operative Improvement Notice relating to a category 1 hazard, which had been served on you under section 11 of the Housing Act 2004, in that to comply with the conditions specified in an Improvement Notice dated the 5 April 2023 served by Watford Borough Council in respect of Land at 49 Kings Avenue, Watford, Hertfordshire contrary to section 30(1) and (3) Housing Act 2004”

21. The Tribunal was therefore satisfied, beyond reasonable doubt, that the Respondent had committed the offence of failing to comply with an Improvement Notice.
22. Further, the Tribunal was satisfied that the requirements in section 40(4) of the Act were met in that the offence of failing to comply with an Improvement Notice under section 30(1) Housing Act 2004 was committed in relation to housing in England let by a landlord and that the Improvement Notice was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts). The Tribunal was provided with a copy of the tenancy agreement whereby the Applicant was a tenant of the first floor flat and the Improvement Notice related to that Property.

Reasonable Excuse – Section 30(4) Housing and Planning Act 2004

23. It is a defence if a Respondent has a reasonable excuse for failing to comply with the notice (section 30(4)) Housing and Planning Act 2004. However, given that the Respondent had pleaded guilty to the offence at St Alban’s

Magistrates Court where he was represented by a solicitor, the Tribunal does not need to consider this defence further.

Should the Tribunal Make a Rent Repayment Order (RRO)?

24. Section 43 of the Act provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary.
25. However, because the offence has been established, the Tribunal finds no reason why it should not make an RRO in the circumstances of this application. In particular, the Tribunal notes the evidence provided by the Applicant and Simone Smith, Senior Environmental Health Officer employed by Watford Borough Council.
26. The Tribunal accepts the evidence of the Applicant and Simone Smith that there was severe mould in the children's bedroom and mould throughout the Property. Water was leaking onto the kitchen floor every day and there was water coming into the house through the doors to the back garden as these were not fitted properly. Additionally, there were broken drainpipes at the rear and front of the Property. This was the situation when the Applicant moved into the Property on 1 December 2023 and no improvement was made during the whole period of tenancy.
27. Despite the Applicant making complaints to the Respondent and Watford Borough Council's intervention, the Respondent did not take any action. Further, the Respondent refused to allow the Applicant to break his tenancy agreement early, meaning that the Applicant was forced to remain living at the Property.
28. On 5 April 2023 an Improvement Notice was served, and works were required to start no later than 8 May 2023 and be finished by 5 June 2023. As the conditions of the Improvement Notice were not complied with, a

prosecution was brought for the offence of failing to comply with an Improvement Notice, to which the Respondent pleaded guilty. The Tribunal was therefore satisfied that a RRO should be made.

The Amount of the Order Following Conviction

29. Section 46 of the Act provides as follows:

“(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

(a) is made against a landlord who has been convicted of the offence...

(3) Condition 2 is that the order is made—

(a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row ...3... of the table in section 40(3).

(4)...

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.”

30. In this case the Tribunal is satisfied that both conditions of 45(2) and (3) are met as the Respondent was the landlord who has been convicted of the offence, and the RRO is to be made in favour of a tenant on the ground that the Respondent landlord had committed an offence in row 3 of the table in section 40(3) (failure to comply with an Improvement Notice).
31. In accordance with section 46(1), the amount of the RRO is to be the maximum that the Tribunal has power to order in accordance with section 44. The Tribunal is to disregard the factors in section 44(4)), namely the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has a conviction for a relevant offence. Section 44(2) provides that for an offence in row 3 (failure to comply with an Improvement Notice) the amount of the RRO must relate to rent paid in respect of a period, not exceeding 12 months, during which the landlord was committing the offence.
32. The offence was first committed on 5 June 2023 and the Tribunal accepts the evidence of the Applicant that no work in compliance with the Improvement Notice was completed throughout the tenancy. The Tribunal therefore finds that the offence continued to the end of the tenancy, namely 31 August 2023. The rent paid during this period was £3,000 and that is the maximum amount that the Tribunal can order to be repaid.

Exceptional circumstances whereby the Tribunal considers it would be unreasonable to require the landlord to pay the maximum amount (Section 46(5)) of the Act

33. The Tribunal was not provided with any exceptional circumstances such that the Tribunal would consider it unreasonable to require the landlord to pay the maximum amount the Tribunal has power to order to be paid.
34. The Tribunal notes that the Respondent was fined by St Alban's Magistrates Court £4,608 and ordered to pay a victim surcharge of £1,843 and costs of £4,000 (total £10,451). However, at page 9 of the bundle, the Tribunal was

provided with details that the Respondent gave to St Alban's Magistrates Court. In particular, the court was told that the Respondent owned another property and was in receipt of £1,200 per month and also had good potential earnings.

35. The Tribunal was therefore satisfied that there were no exceptional circumstances such that the Tribunal would consider it unreasonable to require the landlord to pay the maximum amount.

36. Taking all of the factors outlined above into account, the Tribunal makes the maximum award of £3,000.

37. The Tribunal orders that the payment be made in full within 28 days.

Application Fees

38. The Tribunal invited representations as to whether or not the Respondent should refund the Applicant for the application fee and hearing fee paid to the Tribunal. The Applicant did not seek an order, however, given that the Tribunal has made an RRO, the Tribunal exercises its discretion to order that the Respondent must pay the applicant £320 (£100 application fee and £220 hearing fee) in respect of Tribunal fees. This amount shall be paid within 28 days.

Judge Bernadette MacQueen

Date 28 April 2025

ANNEX – 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 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 to 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 (ie 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.