



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

Case Reference : **MAN/00CF/HMB/2024/0006**

Property : **8 DEEP CARRS LANE, LINDRICK COMMON,
WORKSOP**

Applicant : **LISA TOOTHILL**

Respondents : **GAVIN WELSH and TINA WELSH**

Type of Application : **Application for Rent Repayment Order, section
43 of the Housing and Planning Act 2016**

Tribunal Members : **Tribunal Judge A M Davies
Tribunal Member Neil Swain, MRICS**

Date of Decision : **18 December 2025**

DECISION

The application for a Rent Repayment Order is refused.

REASONS

The Tenancy

1. On 16 May 2023 Ms Toothill took a tenancy of 8 Deep Carrs Lane, Lindrick Common (“the Property”) for a term of 6 months. The Property was managed for the Respondent owners by their letting agents Martin & Co. The previous tenant had been in possession for some 7 years, and the Property had been refurbished for the new letting.

2. The Property was situated in countryside, near to a golf course and adjacent to the Respondents' home. The rent payable was £1000 per month, utilities to be paid for in addition by the tenant. The Respondents had no objection to the fact that Ms Toothill was in receipt of benefits including housing benefit. Housing benefit would contribute to the rent and Ms Toothill would make up the shortfall.

The water supply

3. The Respondents told the Tribunal that they believe that Martin & Co explained to Ms Toothill how the water supply worked at the Property, but she denies that this was fully explained to her prior to her moving in. A mistake seems to have occurred as follows. The Respondents supplied Martin & Co with a photograph of the water meter situated in an outhouse which formed part of the Property, and the agents appended the photograph to the tenancy agreement. Ms Toothill understood initially that this was her water meter showing usage at the Property. In fact the water meter serving the Property was underground outside in the lane. The photograph showed a water meter installed by the Respondents which was designed to measure the water used in their adjacent garden. Ms Toothill, being responsible under the terms of the tenancy for paying for the water supply, was asked to photograph any Yorkshire Water bill she received and to send Martin & Co a reading from the meter in her outhouse, so that the Respondents could calculate and repay to Ms Toothill the cost of water they had consumed in their garden.
4. The Respondents say that this arrangement seemed simple and logical to them, but Ms Toothill did not fully understand it at first, and when she did she objected to having to pay for water consumed by the Respondents and to being reliant on them subsequently calculating their share of the cost and reimbursing her. She felt that she had been misled by the photograph attached to the tenancy agreement. She raised this with Martin & Co and with Yorkshire Water. On receipt of the first Yorkshire Water invoice in September 2023, she paid the bill but telephoned Yorkshire Water to explain why she was not happy with the arrangement. As a result of conversations she had with them, they reimbursed her in full for the amount of the invoice and invoiced Mrs Welsh, who had previously been named as the account holder.

5. Consequently, Ms Toothill paid nothing during her tenancy for the water consumed at the Property, and the Respondents paid for all water supplied to the Property and their garden.

The law

6. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides that the Tribunal may make a rent repayment order if satisfied beyond reasonable doubt that a landlord has committed one of the offences listed at section 40(3) of the Act. Section 41 (2) of the Act provides
“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.”
7. If the Tribunal decides to make a rent repayment order, section 44 of the 2016 Act sets out how the amount of the repayment is to be determined. So far as relevant to this application, the repayment must not exceed the amount of the rent which was paid by Ms Toothill during the period of 12 months ending with the date on which the offence was committed and must in particular take into account the conduct of the landlord and tenant, and the financial circumstances of the landlord.

The application

8. On 28 August 2024 Ms Toothill applied for a rent repayment order. She supplied the Tribunal with copy bank statements showing total payments of £8,000 for the 8 months that she was in the Property. No documentary evidence was supplied as to the amount of housing benefit she received. The application was based on actions on the part of the Respondents which, Ms Toothill said, had caused her considerable distress and amounted to harassment.
9. The application was heard in Sheffield Magistrates Court. Neither party was legally represented. Ms Toothill presented her own case and Mr Welsh spoke for the Respondents. The Tribunal had statements and documents from each party. Ms Toothill also supplied a number of audio files of telephone conversations she had had

during the tenancy. A written statement was supplied by Ms Toothill's sister but she was not present at the hearing to support it.

10. At the outset of the hearing the Tribunal reminded Ms Toothill that she would need to provide convincing evidence of a relevant offence, and evidence of the rent she had paid during the period stated at section 44 of the Act. The Tribunal established that Ms Toothill wished to rely on section 1 of the Protection from Eviction Act 1977 and read out the relevant sections of the Act, which are as follows:

Section 1(2): If any person unlawfully deprives the residential occupier of any premises of his occupation of the premise or any part thereof, or attempts to do so, he shall be guilty of an offence ...

Section 1(3): If any person with intent to cause the residential occupier of any premises –

- (a) to give up the occupation of the premises or any part thereof; or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier.... or persistently withdraws or withholds services reasonably required for the occupation of the premise as a residence, he shall be guilty of an offence.

Section 1(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 or the residential occupier.....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 the 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.

Section 1(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.

11. Ms Toothill said that she had made a note of these provisions and had them before her. The Respondent did not have any documentation with him but said that he had previously read and understood the application.

Ms Toothill's case

12. Ms Toothill relied on six incidents to establish that an offence had been committed, as follows –
 - (a) The arrangement in the tenancy, described above, for supply of water to both the Property and the Respondents' garden (on the basis that the Respondents would reimburse the cost of water used in the garden) caused Ms Toothill distress as well as worry about the financial impact this would have on her. This, she said, amounted to harassment. Ms Toothill described the arrangement for payment for water for their garden by means of reimbursement as "water theft" on the part of the Respondents.
 - (b) On 17 June 2023, on finding that there was no water reaching the outlet in his garden, Mr Welsh called on Ms Toothill who answered the door. It was about lunchtime on a Saturday. Together they went to the outhouse where they found that the lever on the spur for the garden water supply had been knocked out of position. Mr Welsh restored it to the position which allowed for a flow of water to his garden. Ms Toothill said that this incident amounted to a trespass since Mr Welsh had come to her house uninvited, and that after explaining to her at the door that he had no water supply to the garden Mr Welsh had "rushed" to her outhouse and moved her belongings around in order to check on the water supply.
 - (c) A section 21 notice was served on Ms Toothill by Martin & Co on 15 September 2023, which was immediately after Ms Toothill had reported to Martin & Co that following her conversations with Yorkshire Water she believed the creation of a spur and installation of a submeter in her outhouse was illegal. She claimed that the service of the section 21 notice was "a retaliation eviction."

- (d) Early in November 2023 Ms Toothill reported to Martin & Co that she had heard animal noises in the walls of the Property and believed that there were rats present. She had found a rat trap or bait box “at the side of my window”. Martin & Co told her that the Respondents would ask Environmental Health to attend the Property once she had vacated it, and would then take any necessary action if there was a problem with vermin. Ms Toothill said that this made her feel victimized, intimidated, and harassed and that the situation was having an effect on her health and wellbeing. She described facing “another night of distress and anguish”.
- (e) The tenancy agreement contained incorrect information in that the attached image of a water meter was not her water meter but the submeter in her outhouse, which did not record the water she was using.
- (f) There was a crack in the plaster on the wall next to her front door which was reported to Martin & Co but was not repaired during the tenancy. At the hearing Ms Toothill also referred to the fact that, after the end of the fixed term, she had needed to lift lino flooring in order to mop up some water.
13. Ms Toothill said that these issues, taken together, had amounted to harassment and an offence under section 1 of the Protection from Eviction Act 1977 (“the 1977 Act”). In response to a question from the Tribunal she said that the Respondents’ actions had been intended to curtail her “legal right to her own exclusive water supply”. She said that her peace and comfort had been interfered with. Further, the section 21 notice was sent in retaliation for her complaints about the water supply, and was designed to require her to give up occupation of the Property although she had anticipated that she would remain in the Property “long term”.
14. So far as the rent paid was concerned, she said that the housing benefit amounted to £574.99 per month, and that she had paid the balance, £425.01 each month for the 8 months that she was in possession of the Property. She did not produce documentary evidence of the amount of housing benefit she received.

The Respondents’ case

15. In response to these allegations Mr Welsh for the Respondents said –

- (1) They had had no intention of causing distress to Ms Toothill at any time. It was very clear to the Respondents that Ms Toothill was unsettled and unhappy in the Property, and they therefore accepted the advice of Martin & Co to limit her occupation to the six month fixed term. A section 21 notice was served on 15 September 2023 as this was 2 months prior to the end of the fixed term. The timing had nothing to do with Ms Toothill's communications with Yorkshire Water and Martin & Co. Ms Toothill remained in the Property for approximately a further two months after 15 November 2023 while she found alternative accommodation.
- (2) Martin & Co were responsible for reporting back to them any repairs or other issues and it was their policy to rectify any problems immediately. They did not recall any issue being reported regarding a crack in the plaster.
- (3) Mr Welsh, on finding that there was no water reaching his garden on 17 June 2023 called on Ms Toothill "as a neighbour". She answered the door and accompanied him to the outhouse. He believed that the meeting had been entirely amicable throughout and at no time had Ms Toothill asked him to leave. He had had no intention of causing her any anxiety or distress during his visit, and had not received the impression that he had done so.
- (4) If Martin & Co's had made an error in attaching a photograph of the outhouse meter to the tenancy agreement, it was not intended to upset Ms Toothill or to deprive her of any rights. The arrangement regarding payment of water used in the Respondents' garden was explained to her by Martin & Co and at the time the Respondents were not aware of any likelihood that it would cause her anxiety or distress. The Respondents would not steal water, as Ms Toothill had claimed. In any event, the water supply to the Property was uninterrupted throughout the tenancy, and it was paid for by the Respondents.
- (5) The anti-vermin bait box seen by Ms Toothill had been in position for a very long time. It was not on the Respondents' property but on the street outside. It was not in use so far as the Respondents were aware. Ms Toothill herself had called in pest control officers, and following their visit Martin & Co reported to the Respondents that they had found no infestation. The Respondents did not receive any

communication from environmental health, either during or after the tenancy, indicating that there was a vermin problem at the Property or advising them to take any action.

16. In response to a question by the Tribunal, Mr Welsh said that he understood that he did not have to do so, but he would accept Ms Toothill's housing benefit figure without documentary evidence.
17. Mr Welsh said that the Respondents had never intended to harass Ms Toothill or to cause her distress or anxiety. He did not think that anything they had done could reasonably have been expected to cause her distress, and he denied that any offence had been committed.

Tribunal's findings

18. The Tribunal makes no findings as to the deposit paid to the Respondents and its repayment in part to Ms Toothill, as a deposit is not rent potentially subject to repayment.
19. After careful consideration of the documentary evidence produced by the parties and their representations at the hearing, the Tribunal finds that Ms Toothill has not proved beyond reasonable doubt that the Respondents committed any offence under section 1 of the 1977 Act. Specifically:
 - (a) The Respondents were entitled to serve a section 21 notice on 15 September 2023 in order to terminate the tenancy at the end of the fixed term. This was not an offence under section 1(2) of the 1977 Act since the Respondents did not "unlawfully" deprive Ms Toothill of her occupation of the Property.
 - (b) The Respondent did not at any time act "with intent to cause" Ms Toothill to give up occupation of the premises or to refrain from exercising a right or pursuing a remedy in breach of section 1(3) of the 1977 Act. There was no malicious intent. Ms Toothill was supplied with water throughout the tenancy. She did not have a right to an exclusive supply, provided that her water supply was not interfered with.

- (c) Other than Ms Toothill's statement, the Tribunal has no proof that the arrangement for paying for the supply of water to the garden was not explained to her prior to the tenancy. Even if Ms Toothill is correct, the Tribunal finds that the failure was not "with intent" and would not have caused Ms Toothill, as tenant, to refrain from exercising a right or pursuing a remedy.
- (d) The Respondents and their agents did not know and did not have reasonable cause to believe that their actions were likely (i) to interfere with the peace or comfort of Ms Toothill, or (ii) to result in any service to the Property being withdrawn or withheld, and therefore did not commit any offence under section 1(3A) of the 1977 Act. The Tribunal accepts the Respondents' evidence that they did not have reason to foresee that Ms Toothill would object to the arrangement for payment for the water supply to the Respondents' garden. The Tribunal finds that Mr Welsh's visit to the Property on 17 June 2023 was neighbourly and amicable. Ms Toothill did not ask Mr Welsh to leave the Property at the time, or report his visit to the police. Once it became clear that Ms Toothill had become distressed and unhappy in the Property, the Respondents were unable to do anything to alter the situation regarding payment for the water supply to the Property except to pay for it themselves, which they did.
- (e) The Tribunal finds that there is no evidence of any vermin infestation at the Property during the tenancy, and also notes that during the tenancy Ms Toothill kept two pet cats on the premises.
- (f) The Tribunal finds that there is no evidence of disrepair at the Property the Respondents' response to which was capable of amounting to commission of an offence by the Respondents under section 1 of the 1977 Act.
20. In view of the Tribunal's findings that no offence was committed, it is not necessary to consider whether any offence was committed within 12 months before the application - section 41(2)(b) (cited at paragraph 6 above) - or the extent to which any rent was paid by Ms Toothill in accordance with section 44(2) of the Act, ie in respect of the period of 12 months ending with the date of the offence. In any event the Respondents did not raise these issues before the Tribunal.
21. It follows that the Respondents are not required to repay any rent to Ms Toothill.