



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

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Case reference : **LON/OOAH/HMB/2019/0002**

Property : **2 Oakhill Road London SW16 5RG**

Applicant : **Ms Radka Kehayova**

Representative : **Mr Alistair McClennan of Justice
for Tenants**

Respondent : **Ms Althea Johnson**

Representative : **Non-attendance**

Interested person : **-**

Type of application : **Application by Tenant for a rent
repayment order under the
Housing and Planning Act 2016**

Tribunal members : **Judge Professor Robert Abbey
Mr Mel Cairns MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **14 October 2019**

DECISION

Decision of the tribunal

- (1) The tribunal finds that a rent repayment order be made in the sum of £2281.50 in favour of the applicant, the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.41 of the Housing and Planning Act 2016, namely

eviction or harassment of a residential occupier under sections 1(2) (3) or (3A) of the Protection from Eviction Act 1977.

Reasons for the tribunal's decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **2 Oakhill Road London SW16 5RG**.
2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.
3. The hearing of the application took place on Friday 11 October 2019. Ms Kehayova was represented by Mr McClelland of Justice for Tenants. The respondent Ms Johnson who was not in attendance. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 says that if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal 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 considers that it is in the interests of justice to proceed with the hearing. The Tribunal was indeed satisfied that appropriate written notice of the hearing date had been posted to the respondent on 20 August 2019 addressed to the respondent at the address of the subject property. The Tribunal also considered that it was in the interests of justice to proceed particularly bearing in mind that the applicant was in attendance with a representative.
4. The Tribunal also noted that on the day of the hearing an application was made by the respondent to adjourn. The respondent stated she was ill and therefore could not attend the hearing. She produced on the day of the hearing by email a copy HMRC statutory sick pay employee's statement of sickness. The Tribunal carefully considered the nature of the illness but noted that this was stated in the form submitted to have begun on 8 October 2019 and covered commonly encountered illnesses. The applicant's representative also pointed out that he had had extensive contact with a representative of the respondent during the day before the hearing yet at no time during this contact did the respondent's illness get mentioned. In these circumstances the application to adjourn was rejected.
5. At the start of the hearing the applicant advised the Tribunal that she would not offer any evidence with regard to the part of her claim that dealt with the licensing of the property as a house in multiple occupation. In these circumstances the Tribunal makes no finding in that regard. Consequently, the Tribunal will only deal with the claim

regarding the applicant's assertion of eviction or harassment of a residential occupier under sections 1(2) (3) or (3A) of the Protection from Eviction Act 1977.

6. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

The law

7. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence described in the Act and in that regard sections 1 (1) (2) (3) (3A) (3B) and 3(C) of the Protection from Eviction Act 1977 Act state

1 Unlawful eviction and harassment of occupier.

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(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 calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(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 of the residential occupier or members of his household, 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 that 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.

(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.

(3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier’s right to remain in occupation of the premises, or

(b) a restriction on the person’s right to recover possession of the premises,

would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

8. Under section 41 (2) (a) and (b) of the 2016 Act 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. The application to the Tribunal was made 27 June 2019. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

Background

9. The applicant informed the Tribunal that she moved into the property on 14 April 2015. She occupied one room on the upper floor of a two-storey house. She shared the use of the bathroom and kitchen. She claimed she was unlawfully evicted on 22 February 2019.

The Offence

10. The applicant occupied a single room in the property but did so exclusively. She had her own key to the door of this room and did not share the room with anyone else. The Tribunal were satisfied that she was a tenant of this room as defined in the case of *Street v Mountford* [1985] UKHL 4 in that the applicant had exclusive possession and paid rent to the respondent and was in possession for a fixed term, (the tenancy was a monthly tenancy running from month to month.) This being so the applicant was clearly a residential occupier for the purposes of the 1977 Act.
11. The respondent told the Tribunal that she had been evicted unlawfully on 22 February 2019. On that day she had gone to work and then was advised by text message from the landlord that the lock to her room had been changed and that she was therefore excluded from her room. She confirmed that she had not received a proper formal written notice to quit from the applicant and therefore she had been unlawfully evicted. A notice to quit needs to be in writing and cover at least a four-week period of notice expiring on a rent day and which included prescribed statements/information required in a notice to quit by statute. The Tribunal could not find in any of the papers before it any such proper lawful notice to quit and therefore concluded that none had been served and that by changing the locks and excluding the tenant from her room she had indeed been unlawfully evicted contrary to the provisions of the 1977 Act.
12. The applicant also sought to claim that she had been harassed by the respondent during the period of her tenancy. She asserted that for up to seven months the respondent had caused extensive building works to be carried out to the property that had amounted to harassment. The applicant also asserted that correspondence to her from the respondent amounted to harassment. On careful consideration of the limited evidence available to it the Tribunal concluded that this evidence was insufficient to substantiate acts of harassment.

The tribunal's determination

13. The amount of the rent repayment order was extracted from the amount of rent paid by the applicant during the following period. For Ms Kehayova her tenancy ended in February 2019 but the rent claim period ends in February 2018 as the claim period will be 12 months from the date of the alleged unlawful eviction. The applicant was able to

prove payment by reference to copy bank statements produced to the Tribunal.

14. Additionally, the tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the tribunal consider a reasonable order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the respondent was an experienced landlord as by her own admission she said that “*I am an accredited landlord and I have owned and manage property on behalf of Lambeth Council*”.
15. Furthermore, there is no presumption of a starting point of a 100% refund being made. (In the *Parker* case an award at 75% was considered reasonable). In *Fallon v Wilson and Others* [2014] UKUT 300 (LC) it was confirmed that the tribunal must take an overall view of the circumstances in determining what amount should be reasonable.
16. Consequently, the Tribunal concluded that a rent repayment order be made in the sums of £2281.50 the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to sections 1(2) and (3) of the Protection from Eviction Act 1977 as a consequence of the unlawful eviction of the applicant.
17. Taking into account all this guidance and the circumstances of the claim and the non-attendance of the respondent, the tribunal considered that for the above period a reasonable amount should be 75% of the amounts involved. The applicant set out at page 48 of the applicant’s trial bundle the breakdown of the relevant rental payments and these were for the twelve-month period mentioned above and totalled £3842. The Tribunal was also satisfied that an allowance should be made to cover outgoings as the rent paid was paid inclusive of such items. Therefore, to take account of outgoings such as gas and electric charges insurance water rates and Council tax the Tribunal thought the appropriate and proportionate allowance should be the amount of £800. The tribunal was satisfied with the paper based evidence as to the rental payments made by the applicants. After deducting the outgoings from the gross amount of the claim at 75 % the sum to be determined is £2281.50.
18. Accordingly, it is this amount of £2281.50 that the tribunal considers reasonable and appropriate and that it should be the amount of the rent repayment order. These rent repayment monies are to be paid by the respondent to the applicant within 28 days of the date of this decision.

19. Rule 13 of the Tribunal Rules allows for the refund of Tribunal fees. Rule 13(2) states that

“The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.”

There is no requirement of unreasonableness in this regard. Therefore in this case the Tribunal considers it appropriate and proportionate that the Respondent refund the Applicant’s fee payments of £300, (£100 application fee and £200 hearing fee). The Tribunal does so bearing in mind the above decisions.

20. In the circumstances the tribunal determines that there be an order for the refund of the application fee and also the hearing fee in the combined sum of £300 pursuant to Rule 13(2) of the Tribunal Rules payable by the respondent to the applicant.

Name: Judge Professor Robert Abbey Date: 14 October 2019

Annex

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).

Appendix of relevant legislation

s41 Housing and Planning Act 2016

Application for rent repayment order

(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.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.