FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/HMB/2019/0003**
Property	:	**33 Fulready Road, London E10 6DT**
Applicant	:	**Mrs Eweline Wolczek and Mr Piotr Wolczek**
Representative	:	**Mr Y Muststapha from "Safe Renting"**
Respondent	:	**Mrs O Soopen**
Representative	:	**Mr D Deeljur - Counsel**
Type of application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	:	**Tribunal Judge Dutton** **Mr C P Gowman MCIEH MCMI BSc**
Venue and date of hearing	:	**10 Alfred Place, London WC1E 7LR on 6th December 2019**
Date of decision	:	**7th January 2020**

DECISION

DECISION

(1) The tribunal finds that the respondent has, beyond all reasonable doubt, committed an offence under Section 1 (3A) Protection from Eviction act 1997 (the 1977 Act) in the period 1st September 2018 to on or about 26th of November 2018
(2) The tribunal makes a Rent Repayment Order against the respondent in the sum of £1,942.11.
(3) The tribunal finds that the respondent should also repay to the applicants the sum of £300 in respect of the fees that were paid to the tribunal.
(4) The total sum of £2,242.11 must be paid by the respondent to the applicants within 28 days of the date of this decision.

Background

1. On the 12th of August 2019 the applicants Ewelina Wolczek and Piotr Wolczek made application to the tribunal for a Rent Repayment Order under the Housing and Planning Act 2016 (the 2016 Act). The allegation in the application was that the respondent Mrs Oodaye Soopen withheld services between the 1st of September 2018 and the 26th of September 2018 and acted in a manner interfering with the peace and comfort of the applicants. In addition, on the 4th of May 2019 a threat was made and both matters therefore engaged the provisions of section 1(3A) of the 1977 Act. The applicants sought repayment of 12 months rent for the period commencing 26th November 2017 to the 26th of November 2018 under sections 44 (2) and 44 (3) of the 2016 act. A total of £8,160.00 was said to have been paid to the respondent in respect of this period.

2. The matter came before us for hearing on the 6th December 2019. Prior to the commencement of the hearing we were in receipt of 2 bundles prepared by the applicants and one bundle prepared on behalf of the respondent. The first bundle in time was from the applicants and contained a copy of their application, the reasons for making the application, copies of their tenancy agreements in 2017 and 2018, evidence of rent payments and calculation of the total amount of the rent paid. There were also voice records. Subsequently solicitors acting for Mrs Soopen lodged a defence bundle which contained the defence, a witness statement, correspondence, an HMO licence and various other documents said to be relevant to the application. In response to this bundle the applicants lodged a further document headed 'Our Corrections' in which they filed not only a lengthy response but also responded in detail to matters raised in the papers received from the respondent. We also had other papers in support including witness statements and a flash drive script which we noted.

Hearing

3. At the start of the hearing we were provided with a skeleton argument prepared by Mr Deeljur counsel for the respondent. He handed in a letter from the respondents GP dated the 3rd of December 2019 indicating reasons why it was said she may not attend the hearing on the 6th of December 2019, although it was to be her decision as to whether or not she did come to the hearing. In fact she did not attend the hearing and we had no live evidence from her.

4. Acting for the applicants Mr Mustapha from 'Safer Renting', a charitable body who had been put in touch with the applicants by the local authority, confirmed that the first key point of the offence was that the respondent had denied access to services in particular the heating. We were told she had padlocked the cupboard housing the boiler so that the tenants had no access to the control of the boiler resulting in limited heating from the 1st of September 2018 until the 26th of November 2018. It was said however that the padlock remained in place long after that date. He told us that the heating was available but only in certain periods and not during the day. The locking of the cupboard in which the boiler was housed prevented the applicants from enjoying the heating, which was a service included within the terms of their tenancy.

5. We were told there were no particular issues as to the standard of heating but that there was a lack of heating during the daytime and on other occasions when it seemed that the respondents daughter, who resided at the property, was not there to turn the heating on. There was it seems no working timer and the only way of turning the heating off or on was for the person who had access to the cupboard, namely the respondent's daughter, to be there to turn the heating on. It was said that prior to the 1st of September 2018 the parties had access to the heating which could be turned on and off as required. It was said that the respondent was unhappy about this and that the heating was being used excessively.

6. A further complaint against the respondent was that on the 4th of May 2019 she had made a threat against the applicants which was likely to cause concern and we were referred to an exchange of emails in this regard. This was the only allegation of this nature.

7. In addition to the above Mr Mustapha said that they were general issues of improper conduct in respect of the entry to the applicants room by the respondent's contractors and further that the landlady or somebody on her behalf had removed laundry from the kitchen and placed it in the garden. These were said by Mr Mustapha to be evidence of elements of a wider hostile environment in the property but were not considered part of the relevant offences for the rent repayment order (RRO).

8. We heard from Mrs Wolczek who had provided reasons for the application, that started with allegations in August of 2018 which were not before us but

did then deal with the question of heating and the allegations concerning the laundry. We noted all that was said. There was a narrative setting out alleged conversations that had taken place between the respondent and her husband Mr Piotr,Wolczek.

9. In January of 2019 it appears that there was some coming together of the occupants of the property when the respondent served notices to quit under section 21 of the Housing Act 1988 as a result of the respondent's application for an HMO licence being declined. It appears that the respondent gave the tenant 6 months notice, although in fact the notice was set to expire in May of 2019.

10. In addition to the above it appears that the respondents failed to take proper steps to protect the rent deposit but that has been dealt with and an agreement was reached whereby the respondent paid the applicants compensation in the sum of £2,040.

11. In around March of 2019 it appears that there was further issue concerning the placement of laundry in the garden, which appears to have occurred on at least two occasions.

12. It is alleged that a further attempt at illegal eviction had been undertaken because in April of 2019 it appears that the respondent arranged for building works to be carried out, which took place in May of 2019. Apparently earlier in April of 2019 the respondent had told the applicants that the council was not granting an HMO licence. However, an enquiry by the applicants with the council informed them that the respondent had been in possession of a license from the 1st of April 2019. This alleged lie is said to be an attempt at illegal eviction.

13. The threat that forms part of the allegations of harassment is said to have been made on the 4th of May 2019. It appears that there had been a number of texts exchanged between Mr Wolczek and the respondent about access to the applicants' room for builders. After a long discussion, in which it became apparent that the applicants were not happy for the respondent or her contractors to enter the room whilst the applicants were away, she responded by email saying as follows *"I gave you 24hrs noticed for tomorrow it's just going to take 5 minutes they told me. I don't know why you are making life so difficult. Live happily as you never know what can happen tomorrow as life is too unpredictable.".* The response from Mr Wolczek was *"I'm talking it as threat"* The response to this by the respondent was *"Not like a threat but as a good human beings. There is no gain in threatening or being nasty to others. God always says to be good not to be nasty to others"*. This exchange was said by the applicant ,Mrs Wolczek, to have terrified her and as a result they came back early from their travels, it having been a birthday weekend. We were told that she was afraid of her security at home as the husband was working all day and she was often there alone.

14. In May 2019 it appears that some works were undertaken to the boiler, which the applicants say started making noises resulting in Mrs Wolczek calling the gas inspector for a safety check. The inspector confirmed that there was no gas leak. There are also allegations concerning dirt and damage to some of the applicants' property.

15. Within the bundle were exchanges of emails, copies of photographs, transcripts of apparent telephone conversations with Shelter and as we have indicated copies of the tenancy agreements for the periods in which the applicants occupied the property.

16. Continuing with her evidence to us she told us that the respondent had asked for more money to go towards the gas bill, but none had been paid. The applicants had purchased an electric heater for their room to supplement the heating arrangements. Mrs Wolczek told us that the heating was essentially at the beck and call of the respondent's daughter Una as she was the only person who had a key to the cupboard. She did confirm that on one or two occasions Una had left a key available to the applicants but it was not always left in the same place and the applicants did not wish to search Una's cupboards, as that was her property.

17. We were told that Mrs Wolczek made contact with Sandra McGrath at the Council who in turn contacted the respondent concerning the heating arrangements. It appears that from this time the relationship between the applicant and respondent were difficult. Mrs Wolczek told us that she and her husband vacated the property on the 8th of June 2019.

18. She was asked questions by Mr Deeljur and confirmed that she considered it unfair for only one person to be in control of the heating. Una was in effect the gatekeeper she told us. Mrs Wolczek said that she had been working from home for a company based in Hayes and had asked the respondent if she could register a company at the property address. This had been refused. It was denied that this had caused the rift between her and the respondent. Mrs Wolczek asserted that this only arose after the problems with the boiler. Further questions were asked relating to the laundry and its removal to the garden and also questions about the alleged threat. Asked whether she considered it was sent as a threat, Mrs Wolczek said in her opinion it was.

19. Following her evidence Mr Wolczek gave some evidence to us confirming that he agreed with all that have been said by his wife both in writing and at the hearing. He confirmed that he did have access to the boiler on occasions when he was able to find the key which was kept in a cupboard belonging to Una. This however was very limited. He had no definitive knowledge as to why the boiler had been locked in a cupboard although he did recall the respondents saying to him in the summer of 2018 that the heating bills were too much and the costs had increased.

20. Concerning the threat, he confirmed that there had been a number of messages exchanged that day between himself and the respondent and that the applicants decided to come back early because of the text messages indicating that access was required to their room. He was concerned that somebody would enter their room without permission.

21. Asked questions by Mr Deeljur he was challenged on the threat, which he felt was more directed at his wife and the threat could mean not just physical issues. He did confirm however that he had put the threat out of his mind after just a few days.

22. As indicated above the respondent Mrs Soopen did not attend the hearing. Mr Deeljur on her behalf conceded that she was not a perfect landlord. It was said however that the application fell short of the proof required to support the offence.

23. The 'threat' strained the interpretation as to whether it could constitute a threat and he did not consider that padlocking the boiler door fell within the terms of the act. There were no real submissions made on the issues concerning the laundry and it was not in the applicant's case as set out in the application. The complaints he said stemmed from the respondent's refusal to allow a business to be set up at the premises.

24. We were drawn to papers in the respondents bundle which included witness statements from tenants at the property which appeared to indicate that the respondent was a good landlord and they had no complaints as to her behaviour.

25. The padlock he told us had been placed on the cupboard to limit the maximum heating usage and he accepted that there may have been occasions when there was no heating during the day but this was because the timer was not working and had not been repaired.

26. The intention under Section 1 (3) of the Act is difficult to prove. The 'threat' was an objective matter and it was submitted by Mr Deeljur that it could not have caused the applicants to leave or want to leave the property.

27. If there was to be a rent repayment order made the starting point should not be 100% and we were directed to the Upper Tribunal cases on the question of the level of award of Parker v Waller and Fallon v Wilson. The rent included gas and electric and as there are 7 rooms it was submitted that one 7th of the bill should be allowed as a reduction if an RRO were made.

28. Mr Mustapha on behalf of the applicants said that the key point to the application was the harassment by the respondent in locking off the boiler and failing to provide heat . There was no access to the boiler cupboard except on

infrequent occasions and no documentation from the respondent about access being supplied. Access was denied purely to reduce gas consumption and there was no working timer or thermostat in the building which could have controlled the heating arrangements. He confirmed with us that he was only relying on section 1(3A) and not Section 1 (3) of the Act.

29. Cutting off the heating to reduce gas consumption interfered with the services for the applicant and interfered with the applicants right to use the property. He said the period was 12 months going backwards from November 2018 and he believed that there was sufficient evidence to enable a claim for a rent repayment order. Insofar as the threat was concerned, he confirmed that this was not a separate matter and there was no alternative claim for a rent repayment order the problems he said related to the heating.

Findings

30. The law relating to this application is set out below. Mr Mustapha confirmed that the applicant's relied on the provision of section 1(3A).

31. We find that the locking of the cupboard which housed the boiler with the inability to enable the applicants to have access to utilise the heating at a time of convenience to them does constitute the act of persistently withholding or withdrawing services reasonably required for the occupation of the premises.

32. The question however we need to consider is whether the respondent did so knowing or having reasonable cause to believe that the conduct was likely to cause the applicants to give up occupation of the whole or part of the premises or refrain from exercising any right or pursuing any remedy in respect of whole or part of the premises. There we consider, lies the nub of this case. It appears from the evidence before us that a notice to quit was served in the early part of 2019 essentially on the basis that the local authority had refused an HMO licence to the respondent. That appeared not to be the case as we were told that such a licence had in fact being granted.

33. On the evidence before us it would appear that the respondent had deliberately prevented the applicants from having heating as required by them and as a term of their tenancy agreement certainly for a the period of some 3 months from the beginning of September to the end of November as alleged by the applicants. At that point it appears that Mrs Wolczek had contacted the council who had in turn contacted the respondent advising her that she should desist in preventing heating being available to the property.

34. It may be that this contact with the council had caused the respondent to change her views of the applicants. We cannot be sure because the respondent did not attend the hearing to give evidence. Although we had a letter from her doctor the import of that letter was that the final decision as to whether or not she gave evidence rested with Mrs Soopen. She chose not to attend.

35. When one considers the actions relating to the central heating and the subsequent notice to quit issued in early 2019 there does appear to be a certain consistency of conduct on the part of the respondent designed to encourage at the very least the applicants to vacate the property. In those circumstances therefore we consider that an offence has been created under the provisions of section 1(3A) of the Act.

36. The provisions of the Housing and Planning act 2016 enabled Rent Repayment Orders (RRO) to be made in the circumstances set out in the law as cited below. We are entitled to make an RRO if we are satisfied beyond all reasonable doubt that the landlord has committed an offence, in this case of eviction or harassment of occupiers under the section 1(3A) of the Act. We are satisfied that that burden of proof has been established by the applicants and that an RRO should be made.

37. The amount of the rent repayment order is to be determined in accordance with section 44 of the 2016 act. The application was dated the 12th of August 2019 and the rent that can be claimed is for a period of 12 months ending with the date of the offence. We find that the offence started on the 1st of September 2018 and according to the application continued until November 2018. We consider therefore that there is a period of 3 months which should be the subject of the RRO, based on the applicants' case. The rent at the time was £680 per month. Allowance should be made for the gas and the electricity that was paid during that period. We had available to us copies of the annual summary for the utility bills in this regard which were annexed to the respondent's statement. This appeared to indicate the total costs of electricity for the period October 2017 to October 2018 was £1020.90 with an estimated cost of £1113.37 for the year from October 2018 onwards. In respect of gas the total cost for the same year was at £1720.93 estimated to reduce to £1662.10 for the year following.

38. We find it appropriate to reduce the monthly rental by the amount of the gas and electricity based on the annual electricity and gas summaries provided to us by the respondent. This shows that for electricity the total consumed for the year was as stated above which divided on a daily basis and then a one 7th allowance being made on our calculation gives a figure of £12.15 per month to be deducted. In respect of the gas the total was as stated above, namely £1720.93 which doing the same mathematics as we did with the electricity gives a figure of £20.48 per month. This therefore makes a total deduction of £32.63 from the rent of £680 giving a final figure of £1,942.11 for the three months, which we conclude is the amount for which the RRO should be made. We do not consider that the alleged threat forms part of the harassment. Indeed, Mr Mustapha did not seek to argue that there should be an additional sum allowed because of that action. In any event we find that to conclude that the email from the respondent constitutes a threat likely to cause the applicants to vacate the property is taking it too far. The threat, if it be such,

was made to Mr Wolczek who appeared to take a somewhat pragmatic view and certainly did not appear to cause him concerns. The major issue was that the respondent may seek to enter the applicants' room without their consent. Mrs Wolczek said that she had some concerns that the respondent's son and or friends may have caused her problems but there is no evidence to support this assertion.

39. Accordingly, we limit our finding on the RRO to the amount set out above.

Andrew Dutton

Tribunal Judge Dutton 7th January 2020

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.

The Relevant Law

Housing and Planning Act 2016

40Introduction and key definitions

(1)This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2)A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a)repay an amount of rent paid by a tenant, or

(b)pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3)A reference to "an offence to which this Chapter applies" is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4)For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41Application 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.

43Making of rent repayment order

(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)section 45 (where the application is made by a local housing authority);

(c)section 46 (in certain cases where the landlord has been convicted etc).

44Amount of order: tenants

(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	*the amount must relate to rent paid by the tenant in respect of*
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	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

47Enforcement of rent repayment orders

(1)An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2)An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3)The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.

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.

(4)A person guilty of an offence under this section shall be liable—

(a)on summary conviction, to a fine not exceeding the prescribed sum or to imprisonment for a term not exceeding 6 months or to both;

(b)on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both.

(5)Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

(6)Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.