



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

Case Reference : **MAN/36UD/HMF/2020/0075**

Property : **30, Providence Terrace, Harrogate,
North Yorkshire HG1 5EX**

Applicant : **Marian Louisa Shinn**

Respondent : **Stephen Archer**

**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 A Hossain**

Date of Decision : **20 October 2021**

**Date of
Determination** : **15 November 2021**

DECISION

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Order : **The application for a Rent Repayment Order is granted in favour of the Applicant in an amount of £1,300.32 together with the application and hearing fees, (totalling £300.00), for the reasons set out in 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 Respondent.
3. Directions were given by a Deputy Regional Judge of the Tribunal for the further conduct of this matter.
4. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application

B Background

- 5 The Applicant was, from 1st August 2016, the tenant of the property at 30, Providence Terrace, Harrogate. Ms Shinn occupied the property under an assured shorthold tenancy agreement, dated on that date, a copy of which has been provided to the Tribunal. She left the premises by mutual agreement on 16th January 2020.
- 6 The Respondent is the owner of the property and The Tribunal is satisfied from what it has read in the papers presented to it and the comments made by the Respondent at the hearing of this matter on 20th October 2021 that the respondent accepts the issues raised as to the general state and condition of the premises sufficient to lead to the circumstances outlined below.
- 7 The application for a rent repayment order is made on the basis that the Applicant, concerned as to the condition of the premises, sought the assistance of the local housing authority, Harrogate Borough Council, in seeking a remedy to what she clearly regarded as a distressing situation, both for herself and her young daughter. She has provided as a particularly clear example the fact that they had to use showering facilities at her gym because of the state and condition of the bathroom at 30, Providence Terrace.

- 8 Such were the concerns of the Council that they issued an improvement notice in respect of a number of hazards identified in its inspection of the property on 3rd May 2019. The notice is dated 20th June 2019 and requires the necessary work to be completed by 20th November 2019.
- 9 Thereafter, no appeal was lodged against the notice and it is accepted by the Respondent that as a result of the failure to complete the work the Council took the view that a “relevant offence” within the meaning of the Housing and Planning Act 2016 (that of failing to comply with an improvement notice) had been committed and it exercised its powers to impose a financial penalty.
- 10 The imposition of the penalty and the amount thereof has already been considered by a differently constituted tribunal. Indeed, representations were made on behalf of the Applicant that this application could have been heard with that relating to the financial penalty, but this was not considered by a tribunal judge to be appropriate, given the advanced stage of the financial penalty proceedings when this current application was made.
- 11 Whilst the Respondent remains concerned as to the amount of the penalty that was imposed, he accepts the principle that as a consequence of that penalty the Applicant is entitled to make application for a rent repayment order, but seeks to challenge the making of an order and the amount thereof, should that challenge be unsuccessful.

The Law

In relation to a rent repayment order:

- 12 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
 - (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
 - (2) A tenant may apply for an 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
- 13 Section 40 of the H&PA
 - (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
 - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenantSubsection 3 then sets out a table of 7 offences to which the Tribunal’s

powers apply:

- 1 using violence to secure entry to residential premises
- 2 eviction of harassment of occupier
- 3 failure to comply with an improvement notice
- 4 failure to comply with a prohibition notice
- 5 and 6 offences in relation to houses required to be licenced
- 6 breach of banning orders in relation to the provision of housing

- 14 18 Section 43 H&PA then provides that
- (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence...(whether or not the landlord has been convicted)
 - (2) A RRO under this section may only be made on an application under section 41
 - (3) The amount of a RRO ... is to be determined in accordance with
 - (a) Section 44 (where it is made by a tenant)

- 14 Section 44 provides a table (Sub-section 2) whereby the amount of the order must relate to rent paid by the tenant in respect of a period not exceeding 12 months during which the landlord was committing the offence and, (Sub-sections 3 and 4)
- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
 - In determining the amount the tribunal must, in particular take into account the conduct of the landlord and tenant the financial circumstances of the landlord, and whether or not the landlord has at anytime been convicted of a (relevant) offence.

Submissions

- 15 The Tribunal received submissions from the Applicant and the Respondent to the effect that the application being made by the Applicant was out of time. Section 41(2)(b) H&PA requires an application to be made. The Respondent contends that if (which is agreed to be the case) the Applicant left the property on 15th January 2020 then an application dated March 2021 is more than 12 months later.
- 16 It is the case, however, this application was only made to provide what the Applicant considered to be a properly signed application following the submission of an earlier application by email, accompanied by a separate signature document because the Applicant could not satisfactorily append the signature to the form. That earlier application form was submitted on 18th November 2020 and well within the appropriate timescale. The Tribunal has asked that the office annex a copy of that original form to this decision for the benefit of the Respondent. The electronic trail clearly shows it as received in that date.

- 17 The only further submission from the Respondent was for the Tribunal to consider the proportionality of any order that might be made, given the financial penalty already imposed and the benefit that the Applicant had received from occupying the property during the relevant period.
- 18 The Applicant was concerned to emphasise the difficulties in which she found herself as a result of the condition of the property and the additional expense to which she had been put because of the state of the bathroom. She was assisted by Ms Holden from the Borough Council as to the verification of dates and property issues.

Decision

- 19 Given the Tribunal's decision in relation to the relevant date upon which the application was made being 18th November 2020, it must then consider whether an appropriate offence has been committed. The Application for an order rests upon such a finding. The Respondent did not contest that matter and in any event this Tribunal considers that in relation to a previous finding by such a Tribunal being based upon proof being established to the criminal burden it would be inappropriate to reconsider that matter afresh.
- 20 It is clear that the relevant offence that has been committed is that of failure to comply with an improvement notice.
- 21 The date upon which that offence is committed, or starts to be committed, can be no earlier than the date specified in the notice for completion of the required works. That date, specified in the notice, was 20th November 2019.
- 22 There may well have been a misconception on the part of both parties that the offence originated much earlier. Whatever the state and condition of the premises earlier and whatever other remedies that may be available to the Applicant the H&P Act is clear. There has to be a relevant offence. Here, the offence is that of failure to comply with the notice. There can be no failure to comply until 20th November as specified in the notice. The offence can only run from that date.
- 23 Under the provisions of Section 44(3) of the Act the maximum amount of any order is the amount of rent paid in respect of the period of the offence (less any amount of universal credit paid, to which no reference has been made). Ms Shinn has paid rent of £695.00 per month. The period in respect of which she has paid rent, during which the offence has been committed is one month (21st November 2019-20th December 2019) and 27 days (21st December 2019 -16th January 2020). That amounts to £1300.32.

- 24 The regime imposed in respect of the making of a rent repayment order is not one that provides the Tribunal with any means to assess the merit, or otherwise, of any claims that the Applicant may have for any general or special damages that might otherwise be available. It imposes a very simple and relatively simplistic mechanism. Thus, any claims for general damages (e.g. lack of repair) or special damages (e.g. the gym costs) are beyond the Tribunal's remit.
- 25 It is required to consider those factors referred to in section 44(4) of the Act, that is:
- The conduct of the landlord and the tenant
 - The financial circumstances of the landlord
 - Whether the landlord has been convicted of an offence (which the Tribunal takes to mean a conviction in a court exercising criminal jurisdiction, not merely a finding that an offence has been committed)
- and while that latter interpretation favours the Respondent, the Tribunal has seen and heard nothing in what has been presented to it to suggest that the Applicant should not benefit from an order in the full amount available, given the extent of the difficulties in relation to the property and the manner in which the Respondent approached the improvement notice.
- 26 The Tribunal is also of the view that the Applicant is fully entitled to the costs of making this application and the hearing fee, totalling £300.00.

Judge J R RIMMER
20 October 2021

Okotore, Margaret

From: luisa shinn <luisashinnsevillano@outlook.com>
Sent: 18 November 2020 15:30
To: Northern RAP
Subject: Proof of payment of rent from June 2019 until 15 January 2020 Part 1
Attachments: SIGNITURE.jpg; Court case.doc; IMG_0182 - Copy.jpg;
PHOTO-2020 11 18-14-28 00.jpg; IMG_0183.jpg; IMG_0181 - Copy.jpg

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