



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

**Case Reference** : CHI/00MW/HMB/2021/0003

**Property** : 8 Youngswood Copse, Alverstone Garden  
Village, Isle of Wight PO36 0HJ

**Applicants** : Louise Jones and David Jones

**Representative** : Not represented.

**Respondent** : Mrs Beryl Jupp

**Representative** : Mr Luke Gibson (counsel).

**Type of Application** : Application for a Rent Repayment Order,  
Sections 40, 41, 42, 43 and 45 of the  
Housing & Planning Act 2016

**Tribunal Members** : Judge N Jutton, Mr M J F Donaldson  
FRICS, Ms T Wong

**Date and Venue of  
Hearing** : 3 March 2022  
Havant Justice Centre, The Court House,  
Elmleigh Road, Havant, Hampshire, PO9  
2AL

**Date of Decision** :  
9 March 2022

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DECISION

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1 **Background**

2 The Applicants apply for a Rent Repayment Order in respect of a tenancy previously enjoyed by them at 8 Youngswood Copse, Alverstone Garden Village, Isle of Wight, PO36 0HJ (the Property). The Respondent, Mrs Beryl Jupp, is the owner of the Property. The Applicants occupied the Property from May 2019 until they moved out on 31 October 2021. They seek an Order for repayment of rent paid by them to the Respondent for the period October 2020 to October 2021 in the total sum of £12,325.

3 There was before the Tribunal a bundle of documents which included the Applicants' Application, a Statement of Case signed by the Applicants verified by a statement of truth, Witness Statements made by the Respondent, Julian Keddle and George Bason, and the Applicants' Response thereto also verified by a statement of truth. References to page numbers in this Decision are references to page numbers in that bundle.

4 **The Law**

5 Section 40 of the Housing & Planning Act 2016 (the 2016 Act) enables the Tribunal to make a Rent Repayment Order in favour of a tenant if the landlord has committed certain offences during the tenancy. Those offences include the harassment of occupiers under sections 1(3) and 1(3A) of the Protection from Eviction Act 1977 ('the 1977 Act'). Those provide as follows:

*"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 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.*

*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 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.*

*3(B) A person shall not be guilty of an offence under sub-section (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question”.*

6 If the Tribunal is satisfied beyond reasonable doubt that an offence has been committed pursuant to section 1(3) or section 1(3A) of the 1977 act and decides to make a Rent Repayment Order in favour of a tenant, the amount is to be determined in accordance with section 44 of the 2016 Act. The amount must relate to rent paid by the tenant in respect of the period of 12 months ending with the date of the offence (section 44(2)) and the amount to be paid must not exceed the rent paid in that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period (section 44(3)). In determining the amount, the Tribunal must take into account in particular the matters listed in section 44(4) being the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which chapter 4 of the 2016 Act applies.

## 7 **The Hearing**

8 The hearing was attended (remotely) by the Applicants, Mrs Louise Jones and Mr David Jones, by the Respondent, Mrs Beryl Jupp and by Mr Julian Keddle. The Respondent was represented by counsel, Mr Luke Gibson.

## 9. **The Applicants’ Case**

10. The Applicants’ case is set out in a Statement of Case dated 18 January 2021 (starting at page 16 of the bundle) and in a response to the Respondent’s witness statements dated 23 February 2020 (pages 156 to 159). The Applicants expanded upon their case orally at the hearing. The Applicants say that the Respondent has committed an offence pursuant to Sections 1(3) and 1(3A) of the 1977 Act. They seek repayment of rent paid for the period October 2020 to October 2021 in the sum of £12,325 plus reimbursement of legal costs incurred with solicitors of £600.

11. The Applicants say that in the spring of 2019 they had sold their family home and were looking for a property to rent. They were friends with the Respondent’s son, Mr Julian Keddle. Through Mr Keddle they became aware that the Property may be available to rent. The Applicants say that they agreed with the Respondent that they would carry out certain works to the Property, in particular works to the decking area and to one of the bathrooms. In return they would pay a rent that was less than the market rent of £550.00 per calendar month. The Applicants say that they commenced the works to the Property before they moved in spending some £4,426.15. They say that the Respondent refused to provide a written tenancy agreement so they produced one of their own which the Respondent didn’t sign.

12. After moving to the Property, the Applicants say that they continued to carry out work to it. They became aware of other defects/wants of repair that

required addressing. They refer in their Statement of Case to the lack of a front door lock, to there being no cooker, to over-flowing guttering and to other issues with the Property (page 17). They say that smoke alarms needed to be installed as a matter of urgency. They contend that it was clear that the Property had suffered from historic neglect and a lack of maintenance.

13. The Applicants say that the Respondent reacted badly to their request that works of repair and maintenance be carried out to the Property. They allege that the Respondent began harassing them; that she was guilty of abusive behaviour towards them; that she made it clear that she wanted them to leave the Property.
14. The Applicants were asked by the Tribunal at the hearing why they felt it was the case that the Respondent was not prepared to carry out works of repair and maintenance to the Property. Their initial answer was that they were of the view that the Respondent didn't like spending money on a property in which she was not living. They said that the Respondent's attitude was to be dismissive of what she regarded as their complaints, that after a time she was no longer prepared to talk to them. They went on to say that they thought the Respondent simply wanted them 'out and gone'. That it was noteworthy they said that works of repair to the Property were carried out only after they had moved out.
15. The Applicants say that the Respondent accused them of being squatters. That she told other people that that was the case. They found that upsetting and distressing. That the harassment they suffered at the hands of the Respondent and which is outlined in their Statement of Case, together with the want of repair to the Property became too much, which was why they eventually moved out.
16. The Applicants say that the Respondent sought to increase the rent they paid for the property from £550 per calendar month to a total of £1,550 to take effect from 1 December 2020. They declined to pay that because they didn't believe that it represented the market rent. They believed that a full market rent would be £1,000 per month. The issue of rent was referred to this Tribunal which made a determination increasing the rent with effect from January 2021 to £1,125 per calendar month.
17. In March 2021 the Applicants referred the want of repair at the property to the Local Housing Authority. In particular they raised concerns in respect of the following:
  - i. A lack of smoke alarms
  - ii. A lack of smoke/fire doors
  - iii. A leaking toilet
  - iv. A non-working shower
  - v. The failure of certain electrics
  - vi. Blocked guttering

On 10 May 2021 the Isle of Wight Council served on the Respondent a form of Remedial Notice. The Remedial Notice required the Respondent to take action

to install smoke alarms. At the hearing the Applicants submitted that a Remedial Notice was a form of Improvement Notice even if a failure to comply with it may not be a criminal act.

18. On 28 May 2021 the Property was inspected by Mr Keith Fryer, a Housing Renewal Officer with Isle of Wight Council. On 24 June 2021 Mr Fryer wrote to the Applicants to confirm that he had written to the Respondent with a Schedule of Deficiencies that he had identified at the Property (page 40). The letter said *'As it is our policy to attempt to resolve matters informally at first the Authority is not proposing to take formal action at this stage, however we will continue to review the situation'*.
19. On 3 August 2021 Mr Fryer wrote again to the Applicants (page 47) stating that he considered that the Respondent was in breach of the Remedial Notice. He confirmed that he had written to the Respondent with a notice to the effect that the Council were now under a duty to arrange and undertake the work identified in the Remedial Notice. There is at page 48 a form of Penalty Charge Notice addressed to the Respondent dated 3 August 2021.
20. The Applicants vacated the property on 31 October 2021. Subsequently the Council served on the Respondent a Hazzard Awareness Notice pursuant to Section 29 of the Housing Act 2004 dated 22 November 2021 (pages 58 to 68).
21. The Applicants set out details in their Statement of Case of actions and behaviour of the Respondent which they contend amounted to harassment of them. They refer to a text message sent from Mr Keddle's girlfriend, Kerry, dated 12 June 2019 (page 130). Kerry and Mr Keddle used to live at the Property. The Applicants say that Kerry complained that she was constantly stalked by the Respondent when she lived at the Property.
22. In summary the Applicants contend that they were subjected to a campaign of harassment, stalking and slander by the Respondent. That combined with the failure on the Respondent's part to address the need to carry out repairs to the Property had caused them to become extremely stressed and, in the event, they decided to move out of the Property. At the hearing they submitted that there was sufficient evidence to show that the Respondent was guilty of harassment. That in the circumstances the Tribunal should be satisfied that the criteria for making a Rent Repayment Order had been met.
23. **The Respondent's Case**
24. The Respondent's case is set out in her witness statement dated 17 February 2022 (pages 161 to 175). The Respondent also relies upon witness statements from her son Mr Julian Keddle (pages 140 to 155) and Mr George Bason (pages 138 to 139). Mr Bason didn't attend the hearing. The Respondent and Mr Keddle made further submissions at the hearing. At the hearing the Applicants were given the opportunity to cross examine both the Respondent and Mr Keddle.
25. The Respondent says that her son had been good friends with the Applicants. That she wasn't terribly keen on letting the Property to them, that she had some

reservations about doing so. However, in the event she agreed to let the Property to them for a period of 12 to 18 months.

26. The Respondent says that the Property was in a good state of repair when the Applicants began occupying it. That agreement was reached for the Applicants to carry out certain works to the Property in return for which they would pay a reduced rent. The Respondent says that she anticipated a market rent in the region of £1,500 per month but agreed to accept in the circumstances a reduced rent of £550 per month. The work to be carried out was work to rectify some wear and tear to the outside decking and to flooring/shower tray in the annexe.
27. When the 18 month period expired the Respondent said that she expected the Applicants to give the Property back. She wrote to them to that effect asking them to vacate the house on 1 December 2020. She wasn't aware of any formal process that she would need to take to obtain possession. She took advice from solicitors. They advised her of the need to service a Gas Safety Certificate, an Energy Performance Certificate and the Government's booklet on How to Rent before a Notice could be served pursuant to Section 21 of the Housing Act 1988.
28. The Respondent says that she agrees that the Property was in a poor state of repair at the end of the Applicants' tenancy but contends that it was the Applicants who had put it into that condition. She doesn't accept that the Property was in the condition which the Applicants say it was at the commencement of the tenancy. She says that the work that was identified at the Property as being required by Mr Keith Fryer the Housing Renewal Officer at Isle of Wight Council was in the main the result of damage deliberately caused by the Applicants. She accepts that, as she puts it in her statement that she *'put my head in the sand somewhat over this'* and that the Local Authority were *'unhappy with me'*.
29. It is not the case, the Respondent says, that she harassed or intimidated the Applicants. That she wasn't constantly watching them as they allege. That she didn't look through their bedroom windows at night, that she didn't scream at them when they were walking their dogs. That she did take a picture in front of the Property in October 2021 when a gas engineer visited because she says the Applicants wouldn't allow him access. She also took a picture on an occasion when she saw a lot of cars at the front of the Property. Taking a couple of pictures, the Respondent says does not amount to harassment of the Applicants. That she wasn't seeking to pressurise or distress the Applicants.
30. It is for the Applicants, the Respondent says, to prove to the Tribunal to the criminal standard, that is, beyond reasonable doubt, that the Respondent is guilty of one of the offences which is listed at the end of the Tribunal's Directions Order of 23 December 2021 (page 14). That the evidence very much suggests that the Applicants vacated the Property; that they were not evicted from it by the Respondent. That there was no suggestion of violence on the Respondent's part to secure entry. That the allegations of harassment were disputed. That no contemporaneous evidence whether in the form of documents photographs videos or otherwise had been produced to support the Applicants' allegations of harassment. That the text message referred to from

Mr Keddle's partner Kerry (page 130) referred to events which pre-dated the tenancy. Further there was no witness statement from Kerry.

31. Mr Gibson submitted that the Applicants' account of events was in its totality rebutted by the Respondent. That in the circumstances that in itself should be sufficient to provide doubt as to whether harassment took place. That there was insufficient evidence before the Tribunal for it to determine that an offence had been committed beyond reasonable doubt.
32. Section 1(3A) of the 1977 act needs to be distinguished, Mr Gibson said, from the provisions relating to the service of Improvement Notices contained in the Housing Act 2004. The reality was that in this case an Improvement Notice had not been served on the Respondent and as such there could not have been an offence of failing to comply with a notice pursuant to Section 30(1) of that Act. That the service of a Remedial Notice was not in itself an offence and in any event not an offence identified for the purposes of a Rent Repayment Order application under the 2016 Act. That it would be wrong for the Tribunal to allow the Applicants to rely upon what he described as 'a lesser notice' that doesn't meet the threshold of an Improvement Notice. For the purposes of Section 1(3A) of the 1977 Act Mr Gibson submitted that the more usual scenario was where a landlord withdrew provision of services from a property with the intention of making the tenant leave. That there was no such allegation here.
33. It was noteworthy Mr Gibson said that the Applicants first answer at the hearing to a question put to them by the Tribunal as to why it was that they believed that the Respondent hadn't carried out or wouldn't carry out repair work to the Property was that she wasn't prepared to spend money. There was a failure Mr Gibson said on the part of the Applicants to provide evidence to support the necessary *mens rea* or *actus reus* required for an offence under the terms of the 1977 Act. That there was a distinction Mr Gibson said between an application for a Rent Repayment Order and a claim in relation to disrepair for example pursuant to Section 11 of the Landlord & Tenant Act 1985. That to succeed an application for a Rent Repayment Order must, as Mr Gibson put it fit in to the 'rubric of criminality'. That in all the circumstances the evidence before the Tribunal didn't reach the standard of proof sufficient to support a finding that the Respondent was guilty of a criminal act. As such the application should be dismissed.

#### 34. **The Tribunal's Decision**

35. The Applicants contend that the Respondent is guilty of an offence pursuant to the provisions of Sections 1(3) and 1(3A) of the Protection from Eviction Act 1977. They don't contend that the Respondent is guilty of an offence pursuant to Section 30(1) of the Housing Act 2004 of failing to comply with an Improvement Notice although the possibility of such an allegation was addressed by counsel for the Respondent.
36. The burden is on the Applicants to prove to the criminal standard that the Respondent is guilty of an offence as alleged. That is to prove guilt beyond reasonable doubt. That does not mean proving beyond any doubt at all.

37. The Tribunal has very carefully considered both the written submissions made by the parties and the submissions made at the hearing. The Applicants in summary make two allegations in support of their submission that the Respondent is guilty of an offence pursuant to Sections 1(3) and 1(3A) of the 1977 Act. Firstly, that in the knowledge that there was a want of repair of the Property sufficient to make it at least in part uninhabitable that the Respondent deliberately took no action to carry out works of rectification. That she did so with the intent that that would cause the Applicants to vacate the Property or in the reasonable belief that the withholding of works to carry out repairs would be likely to cause the Applicants to give up possession of the Property. Secondly, that the Respondent carried out a campaign of harassment and intimidation with a view to interfering with the peace or comfort that the Applicants enjoyed at the Property with the intent to cause them to vacate or otherwise she knew that such conduct was likely to cause the Applicants to give up their occupation of the Property.
38. In the view of the Tribunal the Applicants have failed to overcome the burden of proof placed upon them. The Tribunal is not satisfied upon the basis of the evidence before it, beyond reasonable doubt, that the Respondent is guilty of the offences alleged. The evidence before the Tribunal amounted to representations made by the Applicants which in turn were simply rebutted by the Respondent. There was no contemporaneous evidence from third-parties to support the Applicant's case. Certain evidence adduced by the Applicants such as the text message from 'Kerry' (page 130) referred to events that pre-dated the tenancy and didn't involve the Applicants. That in all the circumstances there is sufficient doubt in the mind of the Tribunal as to whether or not the events as outlined by the Applicants took place such that it cannot be satisfied beyond reasonable doubt that they did.
39. Mr Gibson raised the possibility of an allegation of an offence being occasioned pursuant to Section 30(1) of the Housing Act 2004, in short, a failure to comply with an Improvement Notice. The fact is that an Improvement Notice was not served by the Local Authority on the Respondent (at least there was no evidence before the Tribunal that it had done so). The Tribunal could not therefore in any event be satisfied that an offence had been committed by the Respondent under that Section.
40. For those reasons the Applicants' application for a Rent Repayment Order is dismissed.
41. The Applicants also sought an Order for repayment of costs incurred by them with their solicitors of £600. Those were costs which they confirmed were incurred prior to the making of the application to the Tribunal. It was explained to the Applicants at the hearing that the Tribunal's ability to make costs orders was limited and only arose if a Tribunal was satisfied that a party had behaved unreasonably in conducting proceedings before the Tribunal. The Tribunal was satisfied that was not the case here and in any event the costs that had been incurred by the Applicants had been incurred before instituting proceedings before the Tribunal and therefore could not be costs incurred by reason of a Respondent's conduct in these proceedings. Accordingly, the Applicants application for a Costs Order is dismissed.



Dated this 9<sup>th</sup> day of March 2022

Judge N P Jutton

## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.