



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

Case Reference : **LON/00AY/HMB/2021/0014**

HMCTS code (paper, video, audio) : **VIDEO**

Property : **Flat 9, Rundell Tower, Portland Grove, London SW8 1JB**

Applicant : **Selim Annahs**

Representative : **John-Luke Bolton, case worker at Safer Renting**

Respondent : **Wojciech Bukowski**

Representative : **Not present and not represented**

Type of Application : **Application for Rent Repayment Order under the Housing and Planning Act 2016**

Tribunal Members : **Judge P Korn
Ms R Kershaw**

Date of Hearing : **24 May 2022**

Date of Decision : **7 June 2022**

DECISION

Description of hearing

This has been a remote video hearing which has been consented to by the Applicant and has not been objected to by the Respondent. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in an electronic bundle, the contents of which we have noted. The decision made is set out below under the heading “Decision of the tribunal”.

Decision of the tribunal

The tribunal orders the Respondent to repay to the Applicant by way of rent repayment the sum of £2,677.00.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that the Applicant alleges that the Respondent unlawfully evicted the Applicant from the Property contrary to section 1(2) of the Protection from Eviction Act 1977 (“**the 1977 Act**”). The Applicant’s claim is for repayment of rent in the sum of £2,677.00.
3. The Applicant was present at the hearing and was represented by John-Luke Bolton, a case worker at Safer Renting. The Respondent was not present and was not represented.

Applicant’s case

4. The Applicant states that he was advised by the Respondent that there was a room available for renting in the Property, which was owned by the Respondent. The Property was a three-bedroom flat with a shared kitchen and two bathrooms. After viewing the Property, the Applicant confirmed that he was happy with it, and the Respondent requested that he pay one month’s rent in advance. He paid this sum and was given a tenancy agreement (with the Respondent named as the landlord) plus a set of keys, although he was not provided with any other documentation.
5. He moved into the Property in mid-January 2021. The tenancy agreement stated the amount of rent to be £950 per calendar month although in practice he was only required to pay £600 per month.

6. In early February 2021 there was a small dispute between the Applicant and another occupant of the Property, Lara Souza. There was some confusion over who was responsible for paying for the cleaning products and the argument became heated. The Respondent visited the Property and discussed the issue with the Applicant and Ms Souza separately. It later turned out that they had each had been told different things about who was responsible for the cleaning products, hence the confusion.
7. In early May 2021 the Respondent asked all of the occupants to leave the Property. One occupant, Ms Pinhero, responded quickly and left the following week. The day after Ms Pinhero left, the Respondent contacted the Applicant and told him that Ms Pinhero had made a rape allegation against him. He completely denies this allegation, and after being told about it by the Respondent he immediately visited Brixton Police Station to enquire as to whether the allegation had been reported to the Police. He was informed that no such allegation had been reported, and he gave a witness statement at the Police Station to protect his position.
8. A new tenant called Marcia moved into the Property shortly after Ms Pinhero had moved out. On 24 May 2021, the Applicant received a further message from the Respondent claiming that he needed vacant possession of the Property and therefore that everyone was required to leave. In a follow-up telephone conversation, the Respondent then told the Applicant that he would need to leave the Property by 28 May 2021. At first, he agreed to move out, but then he realised that the other tenant was not being asked to move out and therefore that the Respondent did not actually require vacant possession. He then changed his mind and refused to leave.
9. On 2 June 2021 the Applicant received another message from the Respondent asking that he make sure to remove his belongings and ensure that his room was clean. The Respondent added that if the Applicant did not do this he would change the locks. The Applicant asked the Respondent to serve him with proper notice, but he refused to do so.
10. On 11 June 2021, the Applicant had a conversation with the Respondent in which the Respondent claimed that Marcia had made several complaints about him. He had only met Marcia a handful of times and was always courteous when he met her and therefore does not understand where the allegations had come from. Also on 11 June 2021 the Respondent messaged him again stating *"You have left me no choice but to give you a notice to vacant the room, if not I have to take the matter further to the police under assault"*. The Applicant replied requesting that the Respondent serve formal notice on him, but the Respondent responded to this saying *"Firs you will have police for assault, your choice"*. In a further message the Respondent stated *"we*

already gave you notice, we gave you opportunity to relocate, nothing personal, your behaviour give me no choice but to report it to the police. You going to get a criminal record for domestic abuse". It seemed to him that the Respondent was using the allegation as a threat in order to get him to move out of the Property.

11. On 16 June 2021, whilst he was working, the Applicant received a message from the Respondent telling him to make an appointment with the police to pick up his belongings, and the message was accompanied by a photograph of his room which showed that the door was open. The Applicant assumes that the door was opened by force, as he had locked it when leaving for work. After receiving this message, he immediately left work and went to a friend's house to discuss what to do. He did not return to the Property that evening and ended up staying at his friend's house overnight.
12. On the morning of 17 June 2021 he visited the Property, which is in a block of flats. He was able to enter the block via the main communal entrance to the flats with the fob that he had, but when he got to the front door of the flat he was unable to enter as the locks had been changed. He went back to his friend's house and then on 18 June 2021 at around 11pm he and the friend walked to Brixton Police Station, arriving at around midnight. His intention was to regain possession of his belongings, and he wanted the police to escort him to the Property so that he could do so. He explained the situation to the police and told them that he had been illegally evicted, showing them the WhatsApp message in which the Respondent had requested that he get a police escort to regain his possessions. He also showed the police his tenancy agreement, but the police were unwilling to help.
13. After leaving the police station he walked to the Property, arriving at around 12.45am. He was again able to access the communal entrance but still was unable to access the flat. He knocked on the door to the flat several times and heard the occupants putting the chain on the door. He explained through the door that he was only there to pick up his possessions, but they replied that the Respondent had instructed them not to open the door to him unless the police were present.
14. After it was clear that he not going to be let in, he and his friend used a crowbar to force entry into the Property, went to his room and used black bin bags to pack up his belongings. While this was happening, the police arrived and took him and his friend outside. The Applicant explained the situation to the police and proved his rights of occupancy to them, and explained that he was only at the Property to pick up his possessions. The police searched him and his friend for a knife, as it had been reported to them that he was in possession of a knife, but he did not have a knife and no knife was found. Another police officer told him that the police had called the Respondent and that the Respondent had told them that he had given the Applicant a key for another

property and that he had changed the locks because the Applicant was now the occupant of another property. The Applicant told the police that this was a lie. The police then allowed him and his friend to collect his belongings and then to leave.

15. The hearing bundle contains some information provided by the police in response to questions asked by the Applicant's representative. It confirms that no knife was found and also states in relation to the eviction: *"This does not seem to be a formal eviction and I do not believe the landlord at this point should have deemed it as such"*. It further states: *"There has been poor communication between landlord and tenant, with tenant unaware that they had been evicted and no formal notice given. Male has gained access to a property he believed he had a right to enter. No offences."*
16. At the hearing, Mr Bolton on behalf of the Applicant said that there had been no attempt to serve a notice on the Applicant or to obtain a court order and therefore the Applicant was unlawfully evicted pursuant to section 1(2) of the 1977 Act.
17. Mr Bolton said that the Respondent was correctly named as Respondent as he was named as landlord in the tenancy agreement and rent was paid into his bank account. The tenancy agreement began on 16 January 2021, and the first payment was for £277.00 for the remainder of that month. There were then four payments of £600.00 each, making a total of £2,677.00. Mr Bolton referred the tribunal to the relevant copy bank statements in the hearing bundle.
18. Mr Bolton also said that the Respondent had provided the Applicant with no documentation apart from the tenancy agreement, for example neither a gas safety certificate nor an energy performance certificate.
19. On the question of the conduct of the parties, Mr Bolton submitted that the Respondent's behaviour had been particularly poor as there had been an unlawful eviction and the Applicant had not been allowed access to his possessions. He had also been forced to rely on a friend, otherwise he would have been homeless. Furthermore, the Respondent had used the police against the Applicant without any justification.
20. Regarding the Respondent's financial circumstances, the Applicant had no specific evidence except for the fact that he had been renting out more than one property.

Discussion at hearing

21. The tribunal asked the Applicant some questions on his witness evidence. On the reduction of the monthly rental from £950.00 to £600.00, the Applicant said that the Respondent had reduced it

because the Applicant told him that he could not afford £950.00 per month. The Applicant conceded that this was in principle a nice thing for the Respondent to have done. On the question of what motive the Respondent might have had for wanting to evict him, the Applicant said that his assumption was that it arose directly out of the complaints made by other tenants, although he again emphasised that those complaints were in his view completely baseless.

22. As to how it might have looked to the other occupiers of the Property when he arrived with a friend and a crowbar at 12.45am, the Applicant said that it would not have been apparent to them when he first arrived that he was accompanied or that his friend had a crowbar. He chose that time because he knew that the other tenants would be in, and he needed them to be in as his key no longer worked.

Respondent's case

23. The Respondent has not made any written representations and did not attend the hearing, and nor did he send a representative to make oral submissions on his behalf.

Relevant legislation

24.

Protection from Eviction Act 1977

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 ...*

(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.*

Housing and Planning Act 2016

Section 40

- (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 ...*
- (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	<i>Criminal Law Act 1977</i>	<i>section 6(1)</i>	<i>violence for securing entry</i>
2	<i>Protection from Eviction Act 1977</i>	<i>section 1(2), (3) or (3A)</i>	<i>eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>section 30(1)</i>	<i>failure to comply with improvement notice</i>
4		<i>section 32(1)</i>	<i>failure to comply with prohibition order etc</i>
5		<i>section 72(1)</i>	<i>control or management of unlicensed HMO</i>
6		<i>section 95(1)</i>	<i>control or management of unlicensed house</i>

7	<i>This Act</i>	<i>section 21</i>	<i>breach of banning order</i>
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Tribunal's analysis

The offence

25. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of (unlawful) eviction of occupiers under the 1977 Act is an offence listed in that table. It is therefore necessary to establish whether the Respondent has committed the offence in question.

26. The evidence before us shows beyond reasonable doubt that the Respondent deprived the Applicant of his occupation of the Property. This is clear from the account of events provided by the Applicant and from the information obtained from the police by the Applicant's representative. The combined narrative from these two accounts, which has not been challenged by the Respondent in these proceedings (nor, to our knowledge, elsewhere), is that the Respondent required the Applicant to leave the Property before the end of his tenancy and that some time after the Applicant refused to do so the Respondent changed the locks whilst the Applicant was at work with the intention of preventing him from continuing to live there.

27. The Applicant fits within the definition of "residential occupier" in section 1(1) of the 1977 Act as he was a person occupying the premises as a residence under a contract (i.e. a tenancy agreement). The Respondent "unlawfully" deprived the Applicant of his occupation of the Property because it is clear from the terms of the tenancy agreement and the general law that a landlord cannot terminate a tenancy of this nature before the contractual expiry date without (depending on the exact circumstances) serving a formal notice and/or obtaining a court order, and on the evidence before us it is clear beyond reasonable doubt the Respondent did neither.

28. Section 1(2) of the 1977 Act provides a possible defence where the landlord proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises, but this is self-evidently not the case here. First of all, the Respondent has not proved anything as he has completely failed to engage with these proceedings, but secondly the evidence all points to the Respondent wanting to deprive the Applicant of his occupation of the Property despite the Applicant having made it clear that he wished to stay.

29. It is possible that if he had engaged with these proceedings the Respondent might have been able to counter the Applicant's narrative and the police narrative in some way, but he has chosen not to engage with these proceedings. In conclusion, therefore, we are satisfied beyond reasonable doubt that the Respondent is guilty of an offence under section 1(2) of the 1977 Act.

Amount of rent to be ordered to be repaid

30. Based on the above findings, we have the power to make a rent repayment order against the Respondent.
31. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), 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. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.
32. In this case, the claim relates to a period not exceeding 12 months ending with the date of the offence. There is also no suggestion that universal credit had been paid in respect of the rent.
33. On the basis of the Applicant's evidence, which is not disputed by the Respondent, we are satisfied that the Applicant was in occupation for the whole of the period to which the rent repayment application relates. The Respondent has also not disputed the amount of rent that the Applicant states that he paid in respect of this period, and there is no suggestion that there is any separate period in respect of which there exist any rent arrears.
34. Under sub-section 44(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 the relevant part of the 2016 Act applies.
35. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is one of the authorities on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.

36. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* having been decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable.
37. In Judge Cooke’s judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will be cases where the landlord’s good conduct or financial hardship will justify an order less than the maximum.
38. Since the decision in *Vadamalayan*, there have been other Upper Tribunal decisions in this area, notably those in *Ficcara and others v James (2021) UKUT 0038 (LC)* and *Awad v Hooley (2021) UKUT 0055 (LC)*. In *Ficcara v James*, in making his decision Martin Rodger QC stressed that whilst the maximum amount of rent was indeed the starting point the First-tier Tribunal (“FTT”) still had discretion to make deductions to reflect the various factors referred to in section 44(4) of the 2016 Act. In addition, he stated that neither party was represented in *Vadamalayan*, that the Upper Tribunal’s focus in that case was on the relevance of the amount of the landlord’s profit to the amount of rent repayment and that *Vadamalayan* should not be treated as the last word on the exercise of discretion required by section 44.
39. In *Awad v Hooley*, Judge Cooke agreed with the analysis in *Ficcara v James* and said that it will be unusual for there to be absolutely nothing for the FTT to take into account under section 44(4).
40. In *Williams v Parmar & Ors [2021] UKUT 244 (LC)*, Mr Justice Fancourt stated that the FTT had in that case taken too narrow a view of its powers under section 44 to fix the amount of the rent repayment order. There is no presumption in favour of the maximum amount of rent paid during the relevant period, and the factors that may be taken into account are not limited to those mentioned in section 44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.
41. Mr Justice Fancourt went on to state in *Williams* that the FTT should not have concluded that only meritorious conduct of the landlord, if proved, could reduce the starting point of the (adjusted) maximum rent. The circumstances and seriousness of the offending conduct of the landlord are comprised in the “conduct of the landlord”, and so the FTT may, in an appropriate case, order a lower than maximum amount of rent repayment if what a landlord did or failed to do in committing

the offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise.

42. Therefore, adopting the approach of the Upper Tribunal in the above cases and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

43. There are aspects of the Applicant's conduct which are at least open to question. To arrive at the Property at 12.45am with a friend and a crowbar could be seen as a disproportionate way of trying to recover his belongings, but in the absence of an alternative credible narrative – or indeed any other narrative at all – we are inclined to accept the explanation for his conduct that he has offered. He tried to involve the police, but they were not prepared to get involved at that stage. He also tried to persuade the occupants of the Property to let him in, explaining that he merely wanted to collect his possessions. He went there late in the evening because he needed to go at a time when people would be in the Property, having originally tried but failed to gain access during the daytime.
44. As for the Respondent's conduct, to evict the Applicant in this way is a very serious matter. Whilst it is possible that he had good reason to believe the allegations made about the Applicant, he has not provided any explanation to this tribunal for his conduct despite having had ample opportunity to do so. In addition, not only has he evicted the Applicant but the evidence indicates that he has done so in a very unpleasant way by breaking into his room and then changing the locks, and involving the police without justification in order to put pressure on the Applicant. He also arguably gave the Applicant no opportunity to find alternative premises, and he made it very difficult for the Applicant to collect his belongings. In addition, it seems that the Respondent failed to supply the Applicant with important documentation such as a gas safety certificate. The only mitigation of which we are aware is the Respondent's agreement to reduce the monthly rent, although the exact circumstances – including whether the original figure was a reasonable figure or even a real one – are unclear.

Financial circumstances of the landlord

45. The Respondent has not provided any information on his financial circumstances. The Applicant has noted that the Respondent was renting out more than one property but otherwise has no information on the Respondent's finances.

Whether the landlord has at any time been convicted of a relevant offence

46. There is no evidence before us that the Respondent has been convicted of any relevant offence.

Other factors

47. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal “must, in particular, take into account” the specified factors. One factor identified by the Upper Tribunal in *Vadamalayan* as being something to take into account in all but the most serious cases is the inclusion within the rent of the cost of utility services. However, in the present case the Respondent is not arguing that any deductions need to be made for utility costs, and nor has he argued that there are any other specific deductions that should be made.
48. In the absence of any evidence to the contrary, we are not persuaded that there are any other specific factors which should be taken into account in determining the amount of rent to be ordered to be repaid.

Amount to be repaid

49. The first point to emphasise is that a serious criminal offence has been committed by the Respondent. Unlawfully depriving a residential occupier of premises of the occupation of those premises is serious even without aggravating circumstances, but here there are also aggravating circumstances. The evidence indicates that the Respondent has evicted the Applicant by breaking into his room and then changing the locks and by involving the police without justification in order to put pressure on the Applicant. The Respondent arguably gave the Applicant no opportunity to find alternative premises, and he also made it very difficult for him to collect his belongings. In addition, he failed to supply the Applicant with important documentation such as a gas safety certificate.
50. Secondly, in the absence of any engagement by the Respondent in these proceedings the evidence before us indicates on balance that the Applicant’s conduct has been good. Thirdly, such limited evidence as we have about the Respondent’s financial circumstances indicate that at the very least he owns or controls more than one property, and we have no evidence from him to suggest that his financial circumstances are difficult. Fourthly, the Respondent has wholly failed to engage with these proceedings.
51. On the other hand, there are some limited points in the Respondent’s favour. We have no evidence that he has previously been convicted of

any relevant offence. We also note that he reduced the rent from the initial asking rent, albeit that the circumstances of that reduction are not clear.

52. However, whilst we have identified limited points in the Respondent's favour, those points are in our view vastly outweighed by the case against the Respondent. As noted above, eviction is a serious criminal offence and there are significant aggravating factors here as summarised above. In addition, there is no evidence to indicate that the Respondent is in difficult financial circumstances. Therefore, whilst we note the analysis in the Upper Tribunal decision in *Williams*, on the facts of this case there is in our view there is no scope for any deduction from the *Vadamalayan* starting point of 100% of the amount of rent claimed.
53. Accordingly, we order the Respondent to repay to the Applicant the sum of £2,677.00, this being 100% of the amount claimed.

Cost applications

54. There were no cost applications. The Applicant's representative confirmed at the end of the hearing that the Applicant had not paid an application fee as he was exempt.

Name: Judge P Korn

Date: 7 June 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.