



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

Case reference : **LON/00BC/HMJ/2022/0001**

Property : **5 Dawlish Drive Gants Hill Ilford IG3
9ED**

Applicant : **Abdullah Naeem**

Representative : **Ali Sethi of Bloomingdales Solicitors**

Respondent : **Mohammed Shaek Miah**

Representative : **-**

Type of application : **Application for a rent repayment order
by tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016**

Tribunal : **Mrs E Flint FRICS
Mr S Mason FRICS**

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

Date of hearing : **26 September 2022**

Date of decision : **28 September 2022**

DECISION

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DECISION

The tribunal determines that the applicant Abdullah Naeem is entitled to a Rent Repayment Order against the respondent, Mohammed Shaek Miah in the sum of £24,414.18, payable within 28 days of the date of this decision. The reasons for our findings is set out below.

In addition, we order that the respondent do repay to the applicant the sum of £300 in respect of the fees paid to the tribunal. Such sum to also be paid within 28 days of the date of this decision.

Background

1. This was an application made by Mr Naeem for a Rent Repayment Order (RRO) under the Housing and Planning Act 2016 (the HPA) The respondent is Mr Mohammed Shaek Miah, the property is 5 Dawlish Drive Gants Hill Ilford IG3 9ED (the Building).
2. The Building is a two storey end terrace house with side extension plus loft conversion occupied by the Applicant and his family under an Assured Shorthold Tenancy (AST) for 12 months from 12 April 2021 at a rent, inclusive of council tax, of £2382 per calendar month.
3. On 1st April 2022 the Application for a RRO was sent to the tribunal. The grounds of the application were as follows: the landlord had not provided an Energy Performance Certificate, gas safety certificate, electrical installation condition report, or the How to Rent checklist and the house was unlicensed in a selective licensing area.
4. The tribunal issued the application and sent a copy to the Respondent on 6 April 2022. Directions were issued on 25 April 2022, the Applicant responded according to the timetable set out in the Directions however, the Respondent did not respond to the Directions and on 29 July the tribunal notified him that it was minded to bar the him from defending the application. No response was received to this notification and on 17 August the tribunal barred the Respondent from defending the proceedings.
5. A face to face hearing was held on 26 September. The applicant and his solicitor, Mr Sethi, attended the hearing. The Respondent was not present nor represented.
6. Prior to the commencement of the hearing we were provided with a seventy nine page electronic bundle, a skeleton argument by Mr Sethi and a schedule of legal costs incurred.

Hearing

7. Mr Sethi said that the Respondent is the legal proprietor and landlord of the property and did not hold a selective licence as required under Part 3 of the Housing Act 2004 when the AST was granted. The Respondent applied for a licence under the selective licensing regime on 7 April 2022. The scheme had been in force since 2017.
8. The property was not equipped with the appropriate appliances to ensure that the applicant could safely occupy the property. On 15 March 2022 a fire started at about 11pm, the fire brigade was called. The source of the fire was identified as a faulty boiler. The Building was not properly equipped with smoke alarms and the gas and electricity supplies were shut off due to being unsafe. The applicant and his family had to move out of the house for approximately four weeks.
9. Mr Sethi said that his client was seeking a RRO in the sum of £28,584, being twelve months rent commencing 12 April 2021.
10. He also made an application pursuant to Rule 13 of the Tribunal Procedure (First Tier) (Property Chamber) Rules 2013 for the Respondent to pay the applicants costs in the proceedings. He referred to the decision of the tribunal to bar the Respondent from defending the application as evidence that the Respondent's behaviour had been unreasonable, frivolous or vexatious or an abuse of process.
11. Mr Naeem gave evidence regarding the condition of the property from the beginning of the tenancy. He said that when they moved in only two gas burners were working, the grills and two ovens were not in working order. He paid for a gas engineer to check the cooker out and was advised that it did not meet modern safety standards. The lights on the ground floor kept tripping the circuit breakers, for several months there were no working power points on the ground floor. The landlord arranged for the electrical installation to be checked: he was advised that the building required a complete rewire.
12. In March 2022 there was no hot water. The landlord acted quickly, an engineer attended, diagnosed the problem and fitted a replacement part the following day to the gas boiler. Mr Naeem was concerned that there were sparks visible when the boiler operated. The engineer assured him that the boiler, which was situated in a bedroom, was safe. This became the seat of the fire on 15 March. There were no carbon monoxide or smoke alarms fitted when the tenancy commenced.
13. The local authority inspected the Building after the fire and issued a Prohibition Order. The loft which was approached via a staircase without handrails and had no door enclosing it and ought not to be used as a habitable room but as storage only.

14. Mr Sethi referred the Tribunal to the relevant statutory provisions in support of the application for a RRO in the sum of £28,584.00. He confirmed that an application fee of £100 and hearing fee of £200 had been paid to the tribunal.

The Tribunal's decision and reasons for that decision

15. We have considered all the evidence and submissions and find that the criteria necessary to support a RRO has been met. The Building was unlicensed at the commencement of the tenancy and an application for a licence was not made until after the Respondent was served with this application. There were a number of safety issues with the building throughout the period leading up to 15 March when the house became uninhabitable following a fire in one of the bedrooms and loft room.
16. Having made that finding we need to consider what level of RRO is appropriate in this case. In *Williams v Parmar* [2021] UKUT 244(LC) it is clear that 100% of the rent paid during a period of twelve months can be awarded. In this case there is no relevant behaviour of the Applicant in relation to the offence to reduce the award: rent was paid throughout and the Applicant arranged for his own safety checks when the landlord had not provided the necessary certification.
17. In *Wilson v Arrow* [2021] UKUT 27 (LC) the property was let by a landlord described as “not an investor in multiple properties. He has rented out a house that used to be his home” and “does not make a living from rent.” The Upper Tribunal noted that the “compelling factor in this case is the absence of important fire safety features, in particular fire doors and alarms” making a 90% award seemingly on the strength of that issue alone.
18. It is accepted that the respondent paid the council tax which was £2187.23 for the twelve months commencing 1 April 2021. Mr Naeem confirmed that he had not paid any rent for the period 15 March to 10 April 2022 when he was living in temporary accommodation. We calculate that the period of occupancy was 11 months and 3 days at a monthly rent, net of council tax, of £2200 per month. This gives a figure of £24,414.18. We do not consider there should be any reduction in this amount.
19. The Applicant sought repayment of the application and hearing fees totalling £300. In view of the decision set out at paragraph 18 the order is made for the repayment of the fees.

Rule 13 Costs

20. The application was made in the skeleton argument and served on the Respondent at the same time as on the Tribunal.

21. The Tribunal may make an order in respect of costs only if a person has acted unreasonably in bringing, defending or conducting proceedings. The Tribunal has considered the behaviour of the Respondent and concluded that it will not use its discretion to award the applicant his costs in connection with these proceedings.
22. In *Willow Court Management (1985) Ltd v Alexander* [2016] 0290 UKUT (LC) the Tribunal set out a three stage process :
 1. “Has the person acted unreasonably”? Mr Sethi acknowledged that at this stage, there is a high threshold. The UTLC said that “*if there is no reasonable explanation for the conduct complained of, the behaviour will be adjudged to be unreasonable, and the threshold for making of an order will have been crossed*”.
 2. “Should an Order be made?” If the party has acted unreasonably, the Tribunal has a discretion whether to make an order or not. There would be focus on the nature, seriousness and effect of the unreasonable conduct, which will be an important part of the material to be taken into account.
 3. “What should the order be?” If the above two stages above are satisfied, it does not necessarily follow there will be an order for costs. Importantly, the order need not be confined to “*attributable to the unreasonable conduct*”.
23. The Applicant had to come to the tribunal to obtain a RRO. Although the Respondent has not complied with the Directions his lack of response has not resulted in the applicant having to provide a more comprehensive case on that account. Indeed, there was no evidence to refute the Applicant’s case owing to the Respondent being barred from defending the application. Mr Sethi acknowledged that it may be that the Respondent knew he could not refute the evidence and hence chose not to take part in the proceedings. This may be a reasonable explanation for the Respondent’s behaviour. In this instance not taking part may possibly meet the test of unreasonable behaviour envisaged under Rule 13. Nevertheless the consequences for the Applicant were not such as to result in additional costs.
24. The Rules provide for the paying party to be allowed to make representations regarding the costs application. However, as the Tribunal has declined to make the order it has not sought the Respondent’s submissions.

Mrs E Flint

28 September 2022

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.

Housing and Planning Act 2016

40 Introduction 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.

| | <i>Act</i> | <i>section</i> | <i>general description of offence</i> |
|---|-----------------------------------|---------------------------|--|
| 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).

41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

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

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

(b) the authority has complied with section 42.

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

43 Making 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).

44 Amount 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.

| <i>If the order is made on the ground that the landlord has committed</i> | <i>the amount must relate to rent paid by the tenant in respect of</i> |
|---|---|
| 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

47 Enforcement 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.

56 General interpretation of Part

In this Part—

- “body corporate” includes a body incorporated outside England and Wales;
- “housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling;
letting”— (a) includes the grant of a licence, but
b) except in Chapter 4, does not include the grant of a tenancy or licence for a term of more than 21 years,
and “let” is to be read accordingly;
“tenancy”— (a) includes a licence, but
b) except in Chapter 4, does not include a tenancy or licence for a term of more than 21 years.