



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

**Case reference** : **LON/00BH/HMC/2022/0004**

**Property** : **First Floor Flat, 9a Carr Road, London  
E17 5ER**

**Applicant** : **Adam Heardman  
Kristina O'Connor**

**Representative** : **Cameron Neilson, Justice for Tenants**

**Respondent** : **Sofiane Oumohand**

**Representative** : **-**

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

**Tribunal  
member(s)** : **Judge D Brandler  
Ms J Mann MCIEH**

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

**Date of hearing** : **6<sup>th</sup> February 2023**

**Date of decision** : **10<sup>th</sup> February 2023**

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**DECISION**

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**Decision of the tribunal**

**(1)The Respondent shall pay to the Applicants a Rent Repayment Order in the total sum of £1,674.00. This sum to be paid within 28 days of this order in the following proportions to the Applicants:**

- (a) To Adam Heardman the sum of £1,266.30**  
**(b) To Kristina O'Connor the sum of £407.70**

- (2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.**

The relevant legislative provisions are set out in an Appendix to this decision.

### **Reasons for the tribunal's decision**

#### **Background**

1. By an application dated 22/06/2022 Adam Heardman ("A1") and Kristina O'Connor ("A2") applied for a Rent Repayment Order ("RRO") in respect of rent paid from 16/11/2021 to 18/04/2022. The amount claimed by Adam Heardman for that period is £3,672.67. The amount claimed by Kristina O'Connor for that period is £1,407.72.
2. The application was brought on the ground that the respondent had committed the offence of failure to comply with an improvement notice served on 19/10/2021 under section 30(1) of the Housing Act 2004 ("the 2004 Act") in relation to the First Floor Flat, 9a Carr Road, London E17 5ER ("the property"). The respondent was at the material time the owner of the property although the letting and management was managed by an agent.
3. The applicants' case is that they entered into the tenancy agreement as a cohabiting couple and paid the rent in equal proportions. The tenancy commenced on 19/05/2021 at a monthly rent of £1,450. The term of the tenancy was for a year. The first floor property contains one bedroom, living room, kitchen, and bathroom with a shower cubicle. There is access from a staircase in the living room to a loft room. The property also has access via a staircase to the rear of the flat to the garden.
4. The respondent's case is that the works were carried out in accordance with the improvement notice, and challenges the amount of housing payments claimed by A2 from Universal Credit.
5. Directions were issued on 11/10/2022 and revised on 23/10/2022 .

#### **THE HEARING**

6. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles provided enabled the tribunal to proceed with this determination.

7. This was a face to face hearing at 10 Alfred Place, London WC1E. The applicants' provided a bundle of [560] pages. Any reference to that bundle of documents will appear as [A/page number]. The respondent provided a bundle of [172]pages. Any reference to the contents of that bundle will appear as [R/page number]. The applicants have provided a response bundle of [13] pages. Any reference to those documents will appear as [AA/page no].

8. The applicants both attended the hearing accompanied by their legal representative, Cameron Neilson, who had provided a skeleton argument by email that morning.

9. The respondent now lives in the Netherlands and did not attend the hearing. Permission was not given for remote evidence from the respondent because the Dutch authorities do not permit evidence from abroad. Nor was the respondent represented at the hearing. The respondent asked that the Tribunal consider their response in defence of the application.

### **The alleged offence**

10. The offence alleged is failure to comply with the improvement notice dated 19/10/2021, served on the respondent by the London Borough of Waltham Forest ("The Council") on that date and coming into operation 28 days later on 16/11/2021. The respondent was required to address the hazards specified in Schedule 1 of the notice by no later than 10/02/2022.

11. S.30(1) of the 2004 Act states that "*Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it*"

12. The respondent did not appeal against that notice. The Council did not carry out works at the property, or carry out a follow up visit to inspect whether or not works had been carried out. There is no evidence that the Council prosecuted the respondent.

### **The evidence**

13. Schedule 1 of the Improvement Notice details the various Category 1 & 2 deficiencies [R/104]. Schedule 2 of that Notice details the remedial action required [R/107]

Category 1: Falling associated with stairs and steps

Improvements required: "*Provide a handrail, at the appropriate height to one side of the stairs from the ground floor to the first floor located at the front of the property. This handrail should start at the bottom step and extend right to the top ensuring that any person can hold on for the entire length of the flight.*"

*Provide a handrail, at the appropriate height to one side of the stairs from the ground floor to the first floor located at the rear of the property. This should start at the bottom step and extend right to the top ensuring that any person can hold on for the entire length of the flight.*

*Provide balustrading, located in the living room to the side of the stairs which is open. This balustrading should not be able to be climbed and thus should either comprise vertical spindles or a solid panel. It should not be possible to pass a 100mm sphere through any gap in the guarding.*  
*OR* *Replace the staircase leading from first floor living room to the second – loft with a design submitted and approved by the Local Authority Environmental Health Officer and Building Control Officer in accordance with Building Regulations Part K”*

14. It is not in dispute that a banister was installed to the front staircase.

15. In relation to the rear staircase, the applicants assert that a banister was installed, but immediately ‘fell off’ and rely on the same photograph that appears in the respondent’s ‘check-out’ report dated 21/04/2022 [R/160] which states “*Hand rail broken to left wall*”.

16. The respondent’s position in relation to the staircase from the first floor living room to the second-floor attic room was that there was handrail on one side, that they had obtained a quotation for a further handrail, but had then decided to give notice to the tenants to leave in anticipation of selling the property [R/170].

Category 2: Excess cold

*Improvements required: “Overhaul the all the windows to the first floor flat (sic). Take out and renew, or repair as necessary, the rotten frames or otherwise defective timber members and renew any broken or defective glass, sash cords, furniture or putties. Ease and adjust as necessary and leave the window in proper working order on completion.*

*Employ the services of a competent person to inspect the window located in the living room.*

*Carry out all works of repair or renewal so that the window is well fitted”*

17. The applicants’ position is that no remedial action was taken. The respondent denies that the window frames were rotten despite this being a defect identified by the Council. The respondent relies on an invoice [R/114] dated 15/06/2021 which does not refer to work carried out to address the rotten window frames, and is in any event dated prior to the Council’s notice. The respondent also refers to the type of window having been designed not to open, in relation to the requirement to ensure opening.

## Category 2: Domestic Hygiene, Pests and Refuse

Improvements required: *“Repair all areas of holes/ damage to the flooring in the kitchen, bedroom, bathroom and landing. Prepare the flooring for a sealant. Apply a hardwood floor sealant to the floor in the kitchen, bedroom, bathroom and landing. Leave the floor firm and level on completion”*

18. The applicants assert no remedial action was taken. They refer to the check in and check out report photographs which demonstrate the gaps in the floor boards [R/151-162]. The respondent does not assert that works were carried out but denies any problem with the flooring and relies on the independent inventory report provided when the applicants moved into the property. Their comment against the Improvement notice is *“original floorboards across all the apartment”* [R/105].

19. In an email on 11/12/2021 to the agents, A2 complained of mice and maggots under the floorboards because of *“food and dirt dropping through the cracks”* [A/381]. On 13/12/2021 the agents reply by email confirming that they have left a message for the landlord and advise that pest control attend to deal with the problem [A/471]. However, A2 in her reply on 14/12/2021 states that *“Extermination is a temporary fix not to mention an inhumane one. As long as mice have a means of entering the property they will return”* [A/416].

20. In oral evidence she was asked about her reluctance to have pest control visit, the lack of evidence of mice, and the fact that the improvement notice does not mention them. Her response was that whenever they cooked they dropped food on the floor which went through the floor boards, that they had seen mice droppings but had not provided any photographic evidence, and acknowledged that the Council had not included pest control treatment in the notice because they had not seen any evidence of pest infestation.

## Category 2: Electrical Hazards

Improvements required: *“Employ the services of a fully qualified Part P registered electrician to inspect the exposed wires located in loft room on the second floor and make safe. Carry out any works as advised by the electrical engineer. Make good any works disturbed”*

21. The applicants assert this was not done. The respondent alleges that the works were completed on 10/11/22 [R/106], and provided an invoice dated 2/11/2021 for an EICR certificate [R/116]. No such certificate was included in the respondent's bundle. He refers to another invoice dated 10/11/2021 for the provision of 4 non-adjustable downlighters for new all one LED downlighters [R/117]. No report was provided to satisfy the requirements detailed in the Improvement notice.

## Category 2: Personal Hygiene sanitation and drainage

Improvements requires: *“Arrange for a competent plumber to repair or replace the shower controller to the shower located in the first-floor bathroom.*

*Arrange for a competent plumber to replace the stopper/plug in the wash basin and shower located in the first-floor bathroom”*

22. The applicants assert that as of 15/03/2022 the work was completed on the shower [A/347]. The respondent provides an invoice dated 7/02/2022 for the provision of new shower mixer valve [R/124].

Category 1: Damp and mould

Improvements required: *“Arrange for a competent plumber to inspect the shower cubicle and identify the cause of the leak. Carry out all works necessary to prevent water leaking out of the shower when in use.*

*Renew any holed or leaking sections, re-make any defective or leaking joints and leave the shower sound and watertight on completion*

*Hack off all defective sections of wall plaster (caused by the leak), and re-plaster to a smooth even finish left flush with existing. Properly prepare the walls and ceiling for redecoration and paint with two coats of emulsion. Make good any works disturbed”*

23. The applicants say that the grouting was carried out but was ineffective, and by an email to the Council dated 28/02/2022 they report that there is still water leaking through to the stairs and provided photographs of dry rot and missing sections of plaster. Some time was spent during the hearing trying to establish the location of the dry rot photographed. It transpired that this was located above the back door leading to the garden. The check-out photographs unfortunately only show the top of that door, and not the area above, which A2 states is the area in the photographs [A/328-332]. There is no mention in the improvement notice of this dry rot, nor is there any mention in the check out report. In the email of 15/03/2022 from A2 to the Council, she writes *“None of the rotten wood or mushrooms were removed; it was all simply plastered over”* [A/347]. When asked during the hearing about the absence in the check out report, A2 stated that she had herself removed the dry rot *“mushrooms”* prior to check out so as to ensure that nothing would be deducted from the deposit. It is unclear why the Council have not noted this issue in their inspection, nor what their response was to the photographs sent to them.

24. The respondent’s position is the shower tray was remedied and relies on an invoice dated 26/11/2021 showing the only remedial work done to the shower was to re-silicone around the shower tray [R/118]. Although it is noted that that invoice states *“If the shower tray leaks after we re*

*silicone it then we will have to remove tray and re fit this is what causing the leak to the rear wall”*

25. Although A2 reported the ongoing leak, the Council did not attend to inspect or carry out works in default, and there is no evidence of the respondent’s contractors returning.

### **The period of claim**

26. The applicants’ case is that the offence was committed as soon as the improvement notice became operative on 16/11/2021.

27. The Tribunal does not agree and finds that the key date is not the date on which the notice became operative, but rather the date by which the respondent was required to have completed the works, that is 10/02/2022. The respondent could have complied with the notice on any date up to and including the latest date on which he was required to comply. For that reason, the Tribunal finds that if any offence was committed, it was committed on 11/02/2022, the day after the deadline to complete the works.

### **The Universal Credit payments to Kristina O’Connor**

28. Any housing payments made by Universal Credit for the period must be deducted from a potential award of a Rent Repayment Order and on that basis, Ms O’Connor has helpfully provided Universal Credit statements for the period 16/05/2021-22/04/2022 [A/61-90].

29. The respondent raised issues they wished the Tribunal to consider in relation to the UC award and states *“Finally, I would also like to point out that as can be seen on the JFT Bundle - Applicants Statement of Case page 61-89, from 16th May 2021, Kristina O’Connor claimed £900.00 on her Universal Credit declaration as being the total rent she was paying as a single person. As can be seen from the tenancy agreement signed 4 days earlier, the total monthly rent was £1450.00 for the entire apartment that was shared jointly by both Mr Heardman & Ms O’Connor as a couple (i.e. £725.00 each). This information does not seem to match her UC declarations.”* [R/172]

30. Universal Credit entitlement is a matter for the Department for Work and Pensions. While the Tribunal noted the respondent’s concerns, if they were correct, that may have meant that the Universal Credit award may have been less, which could have increased any potential rent repayment order against them, rather than decrease it. The Tribunal therefore accepted the Universal Credit evidence at face value.

31. Ms O’Connor confirmed her rental payments of £725 pcm evidenced by her bank statements.

32. Mr Heardman, confirmed his rental payments of £725 pcm evidenced by his bank statements.

## **FINDINGS**

33. The Tribunal finds beyond a reasonable doubt that the respondent landlord is in breach of the following requirements detailed in the improvement notice dated 19/10/2021:

- (a) Failure to provide a banister at the rear staircase leading to the garden and failure to provide balustrading to the open side of the stairs located in the living room, leading to the loft room. By their own admission the banister on the rear staircase is shown as having been detached from the wall in the check-out report; and the balustrading was not installed because notice was given to the applicants to leave the property.
- (b) Failure to overhaul, renew or repair the rotten frames or otherwise defective timber to the windows.
- (c) Failure to repair the holes/damage to the flooring throughout the flat. Evidence of these holes appear in the Respondent's own evidence in the check-out report dated 21/04/2022.
- (d) Failure to provide evidence that the exposed wires located in the loft room had been made safe.
- (e) Failure to resolve a leak from shower combined with Housing Health and Safety Rating Scheme (HHSRS) Category 1 Damp and mould hazard emanating from the shower tray.

34. The respondent committed an offence on 11/02/2022 under section 30(1) of the Housing Act 2004 and the Tribunal is permitted to make a RRO in accordance with section 41 of the Housing and Planning Act 2016

35. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

36. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

37. There is no evidence to demonstrate that the landlord has been prosecuted.

38. The Tribunal finds that the respondent showed poor conduct in relation to his responsibilities as a landlord and his failure to comply with the Improvement Notice

39. Apart from the respondent's concern in relation to Universal Credit, no issues were raised in relation to conduct.

40. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21.



- a. The rent paid by Adam Heardman for the period 11/02/2022 – 18/04/2022 was £1,582.88 (18 days February; 1 month March; 18 days April)
- b. The rent paid by Kristina O'Connor net of UC housing costs paid at a monthly rate of £491.49 was £233.51 pcm. During the period 11/02/2022-18/04/2022 she paid £509.63 (18 days February; 1 month March; 18 days April)
- c. Utilities were not part of the rent. These were paid by the applicants and no deductions are made in that regard.
- d. The respondent was a professional landlord having let this property for some years. Although a licence had been obtained by them from the Council, the respondent had failed to comply with the Improvement Notice of 19/10/2021 and therefore committed the offence on 11/02/2022.
- e. However, the respondent has not been prosecuted and there is no evidence before the Tribunal of any previous convictions. Considering the cases cited in paragraph 16 of the *Acheampong* case cited above, the starting point in this case is 80% and on a par with *Williams v Palmer* [2021] UKUT 244 (LC)
- f. The respondent has provided no information about his financial circumstances.
- g. There is no assertion by the respondent that the applicants' conduct was poor in relation to the tenancy.
- h. The Tribunal consider the multiple failures to comply with the Improvement Notice to be an aggravating factor. The Tribunal therefore consider that 80% of the net rent for the period is repayable. Accordingly, we find that an RRO be made against the respondent in the sum of **£1,674.00** to be paid in the following proportions:
  - (i) To Adam Heardman the sum of £1,266.30
  - (ii) To Kristina O'Connor the sum of £407.70

41. The Respondent is also ordered to repay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

**Name:** Judge D. Brandler **Date:** 10<sup>th</sup> February 2023

### **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 Tribunal 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 for 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 (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.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **Section 72 Offences in relation to licensing of HMOs**

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

## **Housing and Planning Act 2016**

### **Chapter 4 RENT REPAYMENT ORDERS**

## **Section 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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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).

## **Section 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.

### **Section 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).

### **Section 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.

*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.