

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



Case Reference : **LON/OOBK/HMB/2022/0002**

Property : **109 Broadley Street, London NW88BA**

Applicant : **Sezen Mercanoglu and Andrea Marchionni**

Representative : **Julian Hunt**

Respondent : **Julia Bewsher and Gregory Bewsher**

Representative : **Sharaz Ahmed**

Type of Application : Rent Repayment Order

Tribunal Members : Judge Shepherd

**Date and venue of : Preliminary Issue hearing on 25th November
2022**

Hearing

Date of Decision : 27th January 2023

DECISION

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1. This is the determination of a preliminary issue between the parties that exists in a Rent Repayment order application. The Applicants are Sezen Mercanoglu and Andrea Marchionni (“The Applicants”). The Respondents are Julia Bewsher and Gregory Douglas Bewsher (“The Respondents”). In reality Julia Bewsher is the only active Respondent to the application as her husband has been unwell.
2. The issue between the parties which needs to be decided before the Rent Repayment Order application can be considered is whether Ms Bewsher was the applicant's landlord. Originally this was listed for an application online. In the event it was heard in person on 25th November 2022.
3. It is the Applicants' case that they were tenants of rooms at 109 Broadley Street (“The Premises”). In their respective tenancy agreements Zeeshan

Nasir who also lived at the premises was described as the as the *landlord's agent* and collected rent from them. They claim that Mr Nasir was a lead tenant who collected rent from them and was the agent of the landlord. Both applicants received an e-mail dated the 6th of March 2021 requiring them to move out by the 16th of April 2021. The notice was signed by Mr Nasir again in the capacity as the *landlord's agent*. They say that texts/whatsapp messages that passed between Mr Nasir and Julia Bewsher in the days before the eviction (which is alleged to be an illegal eviction and will be examined if the matter goes on to a full hearing of the Rent Repayment Order application) show that Ms Bewsher was clearly aware of the presence of the tenants but she went ahead with the eviction without considering their rights not to be unlawfully evicted. It is the Applicant's case that they were both away separately on the 13th of March 2021 when the eviction took place. It was at the instigation of Ms Bewsher that their possessions were boxed up and removed from the premises and the locks were changed. Ms Bewsher was not the owner of the premises but they say she acted as the landlord. Mr Nasir was evicted at the same time as the Applicants and he instructed solicitors who wrote to the Respondents protesting about the eviction. The response was that Mr Nasir had vacated the premises voluntarily and the locks had been changed.

4. Significantly Mr Nasir did not attend the hearing of the preliminary issue.
5. For her part Ms Bewsher said that the case should not be brought against her but instead should be brought against Mr Nasir who was the Applicants' landlord. She said that no authority was given to Mr Nasir to act on her behalf in entering the tenancies. She let the property to Mr Nasir on his own and did not know that he intended to sublet it. She said that the Applicants had failed to provide any evidence to show that Mr Nasir was acting under her authority. She was at best aware that there were lodgers in the property. She had tried to contact the occupiers without success. She had no landlord and tenant relationship with the Applicants. In broad terms that is the Respondents response to the claim.
6. The Applicants say however that the exchange of text/ whatsapp messages makes it clear that Ms Bewsher was aware of their presence in the premises. She was anxious to obtain vacant possession because she was selling the property and she received rent from Mr Nasir in the sum of £2000. Pausing here, that cannot be determinate of the issue because he may have been paying that £2000 simply for renting the premises himself. The Applicants also say that the letters from Mr Nasir's lawyers speak for themselves and show that he was outraged the eviction had taken place. Again, however if he were the sole tenant of the premises he could be equally outraged by an unlawful eviction. The Applicants say that although Ms Bewsher was not the leasehold proprietor at the premises she adopted the role of the landlord and

she received the rent from Mr Nasir and she assumed the rights and responsibilities of the landlord.

7. Section 41 of the Housing and Planning Act 2016 allows an application to be made for a rent repayment order to the First Tier Tribunal (property chamber). The Application can be made by an occupier or a Local Housing Authority. The rent repayment order can only be made against the tenant's immediate landlord. Where the tenant's immediate landlord is an intermediate landlord, the Rent Repayment Order can only be made against that landlord. It cannot be made against the superior landlord *Rakusen v Jepson & Ors, Safer Renting Intervenor* [2021] EWCA Civ 1150.
8. The main evidence relied on by the Applicants was:
 - The tenancy agreements show Mr Nasir as the landlord's agent
 - The letter dated the 5th of March 2021 in which Mr Nasir called himself the landlord's agent
 - The fact that the Respondents had not made reference to unlawful subletting in correspondence about the alleged unlawful eviction.
 - The messages between Mr Nasir and Ms Bewsher
9. At the hearing the Applicants were represented by Julian Hunt of Counsel and the Respondents by Sharad Ahmed of Counsel.
10. Julia Bewsher gave evidence first. She confirmed that she'd sold the property on the 28th of April 2021. Contracts had been exchanged at the end of March 2021. She said that she'd had phone calls with Mr Nasir as well as exchanging messages. She said she had no idea he was setting up tenancies with people. He was paying £2000 a month.
11. Ms Bewsher was confronted with a number of text messages.. She said he was just the tenant. One of the messages referred to the *middle room guy*. She said people had been storing things in the property. She was not aware that Mr Nasir was renting the property out. He was telling her different things. She was asked why she had not asked who the middle room guy was. She said that

she hadn't seen the tenancy agreements etc until they were sent to her by Westminster Council. He'd made separate agreements and she did not know the details of the other people. She's gone to the property on the 10th of March 2021 and it didn't look like anyone was living there. She'd let herself in and all of the rooms had doors.

12. Ms Bewsher was confronted with a message on the 13th of March 2021 from her asking if the other occupiers were returning. She said that this was referring to people coming to collect their things. Mr Nasir told her that he had an acquaintance who was staying with him. He did not tell her about the agreements. She was confronted with a text message from Mr Nasir that said *as per the contract I've issued them* and asked why she hadn't asked what contract he was talking about. She said this had been discussed on the telephone and her only agreement was with him. At that point he said he had an acquaintance staying in the property. But he told her many things.
13. Ms Bewsher was confronted with a text in which she appeared to be saying something about the other occupiers' rights. She denied that she was aware that they were tenants. She denied that she'd let Mr Nasir sublet or that Mr Nasir was a middleman or that he was passing on their rent. She said if she had wanted an agent she would have got a professional one. In re - examination she said that the bedrooms were not locked when she had inspected the premises on the 10th March 2021. She had seen boxes and suitcases and didn't see anyone else. She said that Mr Nasir said he would deal with the occupiers. She called their numbers and got no response.
14. Sezen Mercanoglu gave evidence. He said when he went to Turkey he'd locked the door and he had a key. He left personal belongings in the property. He said he'd never heard of Julia Bewsher before the eviction. Mr Nasir had never said he was the landlord. He said he had spent time away including in Turkey. During the pandemic he was stuck there for six months and then came back. He accepted that the tenancy agreement did not name the landlord and he didn't know who the landlord was. His solicitor had tried to get Mr Nasir to attend but he'd not responded. He thought that Mister Nasir was not telling him all the details. On the eviction date he was furious as all of his things had been put in boxes.
15. In closing Mr. Hunt said Mr Nasir was being all men to all people. In reality there was only one landlord and she was aware that there were other tenants in other rooms. He said that there were two conflicting sets of evidence and Ms Bewsher could not give a yes or no answer therefore the Tribunal could only rely on the text/WhatsApp messages and the Tribunal should place caution on what she said now.

16. Mr Ahmed said the live evidence was the best form of the evidence. He said that Ms Bewsher had been open in her evidence and had added context to the text/whatsapp messages. He said the Applicants had a huge evidential gap because Mr Nasir was not there. Ms Bewsher did not even know the telephone numbers of the tenants.

Determination

17. I remind myself that I must decide this issue on the criminal standard of proof in other words I must be satisfied beyond reasonable doubt that Ms Bewsher was the landlord of this property.
18. I was not entirely impressed by the evidence of Ms Bewsher who appeared on occasions to be giving the answers that she thought would put her in best light rather than the absolutely true answers. I was more impressed by the evidence of Mr Mercanoglu who gave straight forward answers to questions. He genuinely had not heard of Ms Bewsher until the unlawful eviction.
19. The real problem however for the Applicants was the evidential gap. Without Mr Nasir being present it was impossible for the Tribunal to fully understand the nature of the relationship between him and the other occupants. Was he their landlord or was he just an agent? Despite text messages which seemed to suggest that Ms Bewsher knew about the other occupiers it was impossible to determine whether she had an indirect relationship with them or was just aware of them. I believed her when she said that she had tried to contact the occupants in order to obtain more information from them. If they were tenants of hers she surely would have more information about them.
20. I can't be sure that there was a direct landlord and tenant relationship between the Applicants and Ms Bewsher. My finding on the preliminary issue therefore is that Ms Bewsher was not the Applicants' landlord. This will have an effect on the Rent Repayment Order application which can be determined once the parties have read and digested this judgement.
21. I appreciate that this judgement will cause disappointment to the Applicants who are in effect innocent parties but I would stress that a rent repayment order is a deliberately draconian remedy to deal with rogue landlords, before a party can be named as a defendant in proceedings of this sort the Tribunal must be sure that the right party has been named as a defendant.

Judge Shepherd

27th January 2023

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.