



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

Case Reference : **LON/00BC/HMK/2019/0022**

Property : **27A, Wanstead Park Road, Ilford,
IG1 3TG**

Applicants : **Ms Aisha Kulsoom Miah
Mr Farhan Farooq**

Representative : **In Person**

Respondents : **Mr M and Mrs N Gulliver**

Representative : **In Person**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Mrs H C Bowers
Mr M Cairns MCIEH**

**Date and Venue of
Hearing** : **2 July 2019 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **25 July 2019**

DECISION

Decision of the Tribunal

The Tribunal makes no Rent Repayment Order.

The Application

1. On 13 March 2019, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a Rent Repayment Order (RRO) in respect of 27A Wanstead Park Road, Ilford, IG1 3TG (‘the flat’). The flat is described as a two-bedroom flat with a reception room, kitchen/diner and bathroom with WC. The two Applicants were identified as Ms Aisha Miah and Mr Farhan Farooq. Further to a letter from the Tribunal, Mr Farooq signed a declaration that Ms Miah was to act on his behalf. The Respondents are Mr and Mrs Gulliver, the landlords of the subject flat.
2. The application seems to seek a RRO for the sum of £3,450.00, being three months’ rent. The grounds claimed were:
 - (a) The house was unlicensed. The tenancy commenced on 15 September 2018 and at that time the landlords neither held nor had applied for a licence. It is claimed that they only applied for a licence when the Applicants reported harassment in November 2018.
 - (b) There was an illegal entry into the house and that there was theft of cash (police reference number 4426190/18).
 - (c) That there was harassment, from a friend of the landlords, who had acted as a vigilante and attacked one of the Applicants causing Gross Bodily Harm (Police Crime Reference 4255/10Nov18).
 - (d) Threatened eviction before the minimum six-month term of the tenancy.
3. Attached to the application form were copies of various email correspondence between Mr Farooq and the London Borough of Redbridge (LB Redbridge) and Mr Farooq and Haart Lettings, the letting agents for the subject flat.
4. On 25 April 2019, the Tribunal gave Directions. These set out the issues to be determined. The Respondent was advised to seek independent legal advice.

5. The Applicants failed to comply with the original dates given in the Directions and did not produce a bundle as required. An extension was granted and in response the Applicants submitted a two-page letter by the revised date, but stated that they did not wish to provide any further evidence and relied on the documents previously submitted.
6. The Tribunal had a bundle provided by the Respondents.

The Hearing

7. A hearing was held on 2 July 2019 at 11:00am at 10, Alfred Place, London, WC1E 7LR. The Respondents, Mr and Mrs Gulliver were in attendance. Also in attendance was Mr Triphook, who had provided a witness statement. Although the Applicants had indicated they intended to appear at the hearing, they did not attend. The Tribunal's clerk tried to contact them on the morning of the hearing, there received no response. In the circumstances, as the Tribunal were satisfied that the parties had adequate notice, the hearing proceeded.

Background

8. Included with the application form is a copy of the tenancy agreement. The tenancy is an Assured Shorthold Tenancy, dated 15 September 2018. Marc and Nkem Gulliver were defined as the landlords and Aisha Miah and Farhan Farroq as the tenants. The term was for a period of 12 months from 15 September 2018, ending on 14 September 2019, but subject to a break clause. The break clause was operational by either party after the first six-months, but subject to a two-month notice period.
9. The rent was £1,150.00 per month, payable on 15th day of the month. The tenants were responsible either directly or indirectly for the payment of the utility bills and the council tax. Under clause 13 the tenants were obliged to provide the landlord or the landlord's agent with access to the premise for the purposes, amongst other matters, to inspect, repair and redecorate the premises, or the fixtures and fittings; to carry out gas safety checks; to allow for work required by the tenancy or under legislation. However, this was subject to access being at reasonable times and at least 24 hours prior written notice.

The Evidence

Applicants' Case:

10. The Applicants explained that in early September 2018 and prior to the commencement of the tenancy, they checked the licence register and there

was no licence or licence application in relation to the flat. They understood that there has been a selective licensing scheme for the area since October 2017 and the landlords had previously let the flat. The landlords had obtained a licence in March 2019, two months after the Applicants had vacated the flat.

11. It was claimed the landlords had made an illegal entry into the property by using their own keys and it is alleged that money was stolen (police reference 4426190/18). It was submitted that access to the property could only be for emergency works and repairs and that there was no emergency and that no tradesman accompanied the landlord. It is claimed that entry was forced into the flat and that the landlords were obliged to give notice. Although the landlords stated that a notice had been slid under the door, the tenants denied seeing that notice. When the landlords entered they abused a cousin who was visiting for Christmas, by threatening to throw him and his possessions out. Although the landlords claim that this was a sub-letting this is denied, as the flat comprised one double and one single bedroom and was insufficient accommodation for the tenants and their three children and therefore not large enough for a sub-letting.
12. It was claimed that there was harassment by the landlords' friend as a 'vigilante' and there is an allegation of a physical attack with Gross Bodily Harm (Police Crime reference 4255/10Nov18). A neighbour, stating he was a friend of the landlord who had been asked to keep an eye on the property had approached Mr Farooq and threatened him. The police had attended and gave a formal warning to the neighbour, who then came to apologise. It is claimed that this neighbour had CCTV coverage of the incident.
13. Finally, it is claimed that there was a threat to evict the tenants before the minimum contractual term of six months. There had been a telephone call in November 2018 at 10:00pm and Mrs Gulliver had asked the tenants to move out. The tenants decided to put their safety first and moved out of the property.
14. The tenants have provided an email they sent to LB of Redbridge dated 2 January 2019 repeating the allegations made about the landlord's behaviour and suggesting the landlord did not have the right temperament. The reply from LB of Redbridge invited the tenants to attend an interview and to provide a witness statement, but it seems this invitation was not accepted.
15. There are also emails from the tenants to Haart Lettings on 29 November, 10 December and 23 December 2018. The email of the 29 November repeats the allegations. The tenants claimed that car tyres have been slashed and suspected the neighbour had carried this out. The tenants are concerned about their safety and used the email as notice to vacate. The email of 10 December repeated the concerns, gave a vacation date of 14 January 2019 and that the keys would be returned on 15 January 2019.

The email of 23 December stated the police had been informed of the allegations. It is claimed that the landlords believed the explanation provided by the neighbour about the alleged assault. The landlords had visited the property on 20 December with only giving two hours' notice and without any explanation and had returned on 22 December whilst the tenants were away and entered the flat using their keys. The tenants' possessions had been searched and that the police were called. At this stage there was no claim of any theft. The tenants intended to escalate matters with the local authority and had asked for details of the landlords' licence.

Respondents' Case:

16. It was explained that prior to the commencement of the tenancy the landlords had applied for a licence. The computer-generated receipts for the payment of a selective licence application, dated 14 September 2018 at 10:43 am and for an application form at 10:58 am are provided. In an email from Yasir Afzal, a Housing Enforcement Legal Officer from LB of Redbridge, dated 12 June 2019 it is stated that the application was made on 13 September 2018 and was acknowledged in return and the full licence was issued on 6 March 2019. In a further email dated 12 June 2019, Vicki Edgar a Licence Processing Officer from LB of Redbridge stated the local authority was satisfied that once an application had been made and submitted then a property could be rented out.
17. In respect of the claimed illegal entry the Respondents explained that since the tenants had taken occupation of the property there had been delays in the payment of the rent. The rent had been due on the 15th day of each month and as at 20 December 2018 the rent for that month had not been paid. Because of this, an incident that had occurred in November as detailed below and because they had a general practice of making an inspection three months into any tenancy, the Respondents planned an inspection of the flat. On 20 December 2018 at 12:21 pm the landlords emailed both the tenants a letter stating that under clause 13 of the tenancy agreement they were giving 24 hours' notice that the property was to be inspected at 12:00 pm on Saturday 22 December 2018. Also on 20 December 2018 a notice was hand delivered to the flat with email confirmation to the tenants that step was being taken. It was shown that as Mr Farooq had responded to other email correspondence that the email details were correct.
18. It was explained that the landlords had arrived at the property on 22 December 2018 and had tried to call the tenants but received no response and only after several minutes they used a set of their own keys to access the flat. When they were in a flat, an unknown gentleman came out from the second bedroom and challenged as to who they were. Mr Gulliver stated he was the landlord and in response the gentleman denied that they were his landlords as he was paying rent to another person. The Respondents asked the gentleman to call Mr Farooq and it was noted that

the entry on the gentleman's phone for Mr Farooq was "Farooq – Landlord". The phone was handed to Mr Gulliver and it is claimed that Mr Farooq shouted at the landlords, put the phone down and called the police. On the news that the police had been called the gentleman in the flat had run away. When the police arrived, they contacted Mr Farooq and asked why he had not attended and then left the flat stating that the landlords could continue with their inspection.

19. Although the Applicants mention a theft of money from the property, this was not raised in the current application and the allegation was made two weeks after the inspection and at a time when the rent on the property was due.
20. It is claimed that clause 13 of the lease allows the right to access the property for an inspection and there is no requirement that there has to be an emergency and that the only requirement was the provision of written notice at least 24 hours before the inspection.
21. Responding to the third allegation that there was harassment of the Applicants, this is denied by the Respondents. They claimed that they do not know Mr Triphook as a personal friend and they had not asked him to keep an eye on the flat or the Applicants.
22. Mr Triphook provided a witness statement and gave oral evidence at the hearing. He explained that on the relevant date in November 2018 he had observed Mr Farooq kicking a lockable security post on a car space belonging to another flat. He had approached Mr Farooq and they had a confrontation that resulted in Mr Triphook punching Mr Farooq. The police were called and afterwards he went across and apologised to Mr Farooq. He stated that he had not been asked to look after the property or to observe the Applicants, but he had acted in a neighbourly manner. Although the incident had a police reference number, no further action had been taken. An email from the police noted that the case was closed due to insufficient evidence.
23. The final issue relates to an allegation of a threatened eviction. After the Respondents had been made aware of the incident with Mr Triphook and after a further late payment of the rent, the Respondents decided to call Mr Farooq. Screenshots of a text trail between the parties was produced that indicates that the parties agreed a mutually convenient time for a telephone call. During the call there were discussions about a mutually agreed termination of the tenancy agreement. Although an early termination was discussed, Mr Farooq indicated that he would consider the matter but would be away on leave for a couple of weeks. It is claimed that the Respondents never heard from Mr Farooq again on this issue although there were no further rental payments. An email correspondence chain was produced in which the Respondents sought to clarify from Mr Farooq as to his intentions and set out terms for the termination of the tenancy. The Applicants vacated the property on 17/18 January 2019

without formal notice and owing two months' rent, being the December rent and the January rent due to the failure by the Applicants to give formal notice to vacate. The Tribunal were provided with a copy of an adjudication from the Dispute Service awarding the deposit of £1,150 to the Respondents to reflect the unpaid December 2018 rent.

Our Determination

24. The Tribunal is required to be satisfied beyond reasonable doubt that the Respondents have committed an offence under the relevant provisions as set out in section 40 of the 2016 Act.
25. We found all the witnesses present at the hearing to be honest and reliable. We have no hesitation in accepting their evidence.
26. The first allegation is in respect whether an offence had been committed under section 95(1) of the Housing Act 2004 (the 2004 Act) for having control or management of an unlicensed house. Under section 95(3) it is a defence that an application has been made in respect of the relevant property and that application was outstanding. It is clear that prior to the commencement of the tenancy on 15 September 2018, the landlords had made an application for a licence with the associated fee and this was accepted by the LB of Redbridge as having been received on 13 September and acknowledged on 14 September 2018. The resolution of that application came when the licence was granted on 5 March 2019. Therefore, at all material times there was an application outstanding and no offence was committed. The Tribunal notes that it was curious that the tenants had made enquiries about the status of the licensing of the flat prior to the commencement of their tenancy, and if they had concerns did not address these with the landlords.
27. The second allegation is that there was an illegal entry to the flat. The Tribunal accepts the evidence presented by the Respondents that they had given more than 24 hours' notice of the inspection by sending an email to the correct email addresses of the Applicants and by hand-delivering a copy of the notice. The Tribunal also agrees with the Respondent that the tenancy agreement allows the landlords to make an inspection, subject to notice and without any emergency arising. There is no evidence that there was any threat made to the gentleman who was present at the flat on 22 December 2018. There is no evidence of any theft. It is noted that the allegation of the theft came two weeks after the inspection of the premises and when the rent was due and that the email from the police stated that the case was closed due to insufficient evidence.

28. The Tribunal considered that Mr Triphook gave a credible account of the November 2018 incident. Despite the allegation, there is no evidence that Mr Triphook was acting on the behalf of the Respondents. As such the Tribunal finds that there was no harassment of the Applicants by the Respondents.
29. The final allegation is that there was an illegal eviction. There was no specific evidence on this point from the Applicants. However, from the evidence put forward by the Respondents, the Tribunal finds that there was an open dialogue between the parties and efforts were made to mutually agree an early termination of the tenancy. There is no evidence that the Respondents put any pressure on the Applicants to end the tenancy early. The Tribunal finds that despite the discussions and an attempt to reach an agreement, that the Applicants left without due notice and the evidence from a Tenancy Service adjudication is that there were rent arrears amounting to £1,150.0 paid by the deposit. Accordingly, the Tribunal does not find there was any illegal eviction.
30. For the reasons provided above, the Tribunal finds that there is no evidence that the Respondents have committed any offence set out in section 40 of the 2016 Act. Therefore, the Tribunal makes no Rent Repayment Order.

Mrs H C Bowers

25 July 2019

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 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 and 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 to 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 a 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 had 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 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 this 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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.