First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/43UD/HMB/2020/0004**
Property	**:**	**34 Sheepfold Road, Guildford, GU2 9TT**
Applicant	**:**	**Safeer Muhammed Khan**
Representative	**:**	**Alasdair Mcclenahan, lay ("Justice For Tenants")**
Respondent	**:**	**Mark Andrew Crawt**
Representative	**:**	**Annabel Heath, counsel (Carter Lemon Camerons LLP)**
Application	**:**	**Application by tenant for a Rent Repayment Order following an alleged offence committed by the Respondent contrary to section 1(2) of the Protection from Eviction Act 1977 ("the 1977 Act") – Section 43 of the Housing and Planning Act 2016 ("the 2016 Act")**
Date application received	**:**	**5th November 2020**
Tribunal	**:**	**Judge Bruce Edgington Kevin Ridgeway MRICS Michael Jenkinson**
Date & place of hearing:		**11th February 2021 as a video hearing from Havant Justice Centre in view of Covid pandemic restrictions**
Date of decision	**:**	**12th February 2021**

DECISION

Summary of Decision

1. **The Tribunal makes a Rent Repayment Order in the sum of £1,600.00 which must be paid by the Respondent to the Applicant by 4.00 pm on the 12th March 2021.**

2. **The Tribunal also determines that the Respondent pay an additional £300.00 to the Applicant as reimbursement for fees paid to the Tribunal.**

3. **The Tribunal refuses the Respondent's application for a costs order against the Applicant.**

Reasons

Introduction

4. Rent Repayments Orders ("RROs") require landlords who have broken certain laws to repay some or all rent paid either by tenants or by local authorities and are intended to act as a deterrent to prevent offending landlords profiting from breaking such laws.

5. The orders were originally made pursuant to the **Housing Act 2004** ("the 2004 Act") but this application is made under the later provisions contained in the 2016 Act. Section 41(1) of the 2016 Act says that "*A tenant….. 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*".

6. Section 40 sets out the offences and prefaces the definition by saying "*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*". One set of those offences described is under sub-sections 1(2), (3) or (3A) of the **Protection from Eviction Act 1977** ("the 1977 Act") and these are the offences relied upon by this Applicant.

7. The Tribunal made a directions order on the 7th December 2020 timetabling the case to this hearing which has been by way of a video hearing because of the Covid pandemic.

8. An e-bundle of the documents which had been submitted by the parties has been prepared with numbered pages. Any page numbers mentioned in this decision are from that bundle. The parties should know that all of these documents and all submissions have been carefully considered by the Tribunal members.

Jurisdiction

9. Section 41 of the 2016 Act says that the Tribunal has jurisdiction if "*the offence was committed in the period of 12 months ending with the day on which the application is made*". In this case the alleged offence was committed on the 3rd May 2020 i.e. within that 12- month period. The Tribunal has to be satisfied that an offence has been committed using the criminal standard of proof i.e. beyond a reasonable doubt.

10. Section 44 of the 2016 Act says that the RRO must "*relate to rent paid during….a period of 12 months ending with the date of the offence*".

The Hearing

11. Those attending the hearing were the 2 parties plus Alisdair Mcclenahan, a lay representative from Justice for Tenants on behalf of the Applicant and Annabel Heath of counsel on behalf of the Respondent. Ms. Heath had presented a very helpful skeleton argument and both advocates should be commended for their behaviour and careful representation in a case where the relationship between the individual parties had become antagonistic.

12. The Tribunal case officer introduced the attendees and then assisted everyone by giving technical advice as to how the hearing would proceed. The Tribunal judge then introduced himself and the Tribunal members.

13. He then said that he had some questions to raise on the papers filed. He would do that and then ask the parties to put their cases and, finally, he would ask the other Tribunal members to ask any questions they had. That is in fact how the hearing was dealt with although, at the end, he did ask either party if they had anything else to say. They said that they did not.

14. It was confirmed and agreed between the parties that the Applicant had rented a double bedroom from the Respondent with *en suite* facilities on the 1st floor of the property from the 1st December 2019 until 31st May 2020. By the time of the alleged offence he had paid all the rent in advance i.e. £800.00 per month to include utilities. He also had the use of a utility room and 2nd kitchen on the ground floor which he shared with other lodgers who also had their own rooms on the 1st floor.

15. The Respondent landlord owns the property and lives on the ground floor where he occupies a lounge/dining room where he sleeps. He has his own toilet and kitchen. The other occupiers use the front door and hallway to gain access to their rooms on the 1st floor and to their utility room and kitchen. The Applicant did have a front door key.

16. The Applicant is married to a doctor. They both lived in Leeds. The Applicant then obtained employment as a QA Telephone Engineer at Semafone in Guildford which is why he obtained a room at the property. He returned to Leeds at times to be with his wife. His wife then got a job at St. Peter's Hospital in Chertsey which she was due to start on the 4th May 2020. Their plan was to come down to the property and stay until the end of the tenancy to enable them to find alternative accommodation in Surrey.

17. The Respondent was clearly aware of their situation as there is a copy text in the bundle at pages 34 and 76 dated 6th April 2020 from the Respondent to the Applicant which says "*Good morning Safeer, I hope you are both well and are keeping safe - thank you for your last rent on 1st April, Am I to take it that you are still leaving the room at the end of May? As to our original agreement or are we going to renegotiate the rent for the two of you to keep the room on or will it be just you returning until you both find a*

place? Just need to confirm with you what is exactly happening as I will need to advertise the room and start viewings! As soon as possible, Take care, Thanks Mark."

18. Another text was sent by the Respondent on the 11th April (page 35) saying "*Hi Safeer, hope you are well, I have had a viewing on the room and have taken a deposit as I have not heard back from you, The room is still available for you until the end of May as our agreement, Regards Mark*" to which the Applicant replied on the 12th April "*Hi Mark, I am fine hope you and your family are good. We were caught up with a few things here and was about to reply to you. Thats fine! Thanks for notifying me. Regards Safeer*". In paragraph 6 of counsel's skeleton argument it is said that the Respondent had not in fact shown anyone the room nor had he let it. Quite why the Respondent should have told this untruth is not really explained. It is said that he was trying to 'flush out' the Applicant's intentions. However, this is a fixed term contract ending on the 31st May 2020 and that is all that was relevant at this time, despite the Respondent's need for information.

19. On or about the 24th April 2020, the Respondent spoke to Dr. Christopher Jagger. This is confirmed in a letter from Dr. Jagger to the Respondent dated 12th November 2020 wherein he confirms, over 6 months after the event, that he had advised the Respondent "*that he should not allow absentee tenants back into his home until his condition had been fully diagnosed and full quarantine in the case of a positive Covid 19 result*". It is interesting to note that in paragraph 14 of his undated statement in the bundle at page 67, the Respondent simply says that he was advised that he "*should not allow anyone new into the house*" until his condition had been diagnosed. No mention of 'absentee tenants'.

20. The conversation with the doctor was after the Respondent had known that the Applicant was likely to return to the property at any time, and yet he did not see fit to contact the Applicant. The text messages between the parties are clear. Initially, the Respondent wanted notice of what the Applicant was doing but then he said he had taken on a new tenant and simply told the Applicant that the room was available to him until the end of May. The rent was paid until the end of May. Thus, it was perfectly obvious from the 11th April onwards that the Applicant was likely to get into his car – possibly with his wife and his belongings – and return to the property.

21. When giving his evidence, the Respondent claimed that he thought that the Applicant had abandoned the room and was not intending to return because he had taken his belongings back to Leeds. The Tribunal does not accept this. He knew during the text exchange that the Applicant and possibly his wife would probably return to the property and he was clearly aware that the Applicant still had belongings at the property as he boxed them up and returned them to the Applicant on the 18th June 2020.

22. A letter from a Dr. J. Francis dated 4th February 2021 has also been produced. It appears to be from a GPs' surgery and is not really relevant to this case because it states that the positive test was received on the 9th May 2020 and that the Respondent and his household were advised to self isolate at home for 2 weeks from the 9th May. In other words, it does not say that the Respondent was advised to self isolate on the 3rd May.

23. As the journey from Leeds to Guildford was likely to take most of the day, the probability was that the car would turn up late in the day. In fact, an exchange of texts on the 4th May suggests that this is what happened when the Respondent's text to the Applicant at page 37 in the bundle says, "*I found you both very rude last night*". Therefore, looking at the Respondent's case in its most favourable light, it must have been intended that he would refuse entry which was bound to have caused the sort of problems faced by the Applicant and his wife on the 3rd May.

24. On that day, the Applicant and his wife did get in their car and travelled to Guildford. On the way, texts were sent by the Applicant and/or his wife to the occupiers of the other rooms on the 1st floor of the property confirming that they were on their way and asking them to keep space available in the fridge for food to enable them to celebrate Ramadan. Those people evidently told the Respondent.

25. The Respondent telephoned the Applicant and told him that it was not safe for them to come to the house as he and the other occupiers were self isolating as he thought he had the corona virus. The Applicant says that he and his wife were refused access to the house and this is corroborated by the Respondent in paragraph 29 of his statement at page 69 in the bundle when he says that he accepts that his actions amounted to "*a temporary refusal to allow entry to the House because it was unsafe due to self isolation for covid*".

26. Mr. Crawt said that on the 3rd May he felt very ill indeed. He also then added at the end of his evidence that he was in debt and struggling to make ends meet. He referred to a debt of £89,000 which had arisen from a business venture. He also said that he had a mortgage of almost £500,000 on the house which, he said, was about the same value as the house itself. The Tribunal judge explained to him that he had a Google Earth photograph of the house which appeared to be a modern detached house in a pleasant residential area in Guildford. He suggested to the Respondent that such a house was likely to be of a higher value. There was no response.

Discussion as to Liability

27. Sub-section 1(1) of the 1977 Act defines a 'residential occupier' as simply a person occupying premises as a residence "*…under a contract…giving him the right to remain in occupation…*". There are a number of cases such as **Costelloe v Camden LBC** [1985] 10 WLUK 198 which confirm that this can include a single room with other shared facilities.

28. Sub-section 1(2) says that "*if a 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*". In this case, of course, the Respondent knew on the 3rd May 2020 that the Applicant was likely to return to the property and the rent had been paid in advance.

29. Sub-sections 1(3) and 1(3A) say that an offence is also committed if a person or his agent "*does acts calculated to interfere with the peace or comfort of the residential occupier*

or members of his household, or persistently withdraws or withholds services reasonable required for the occupation of the premises as a residence".

30. In this case, the agreed facts are that the Applicant had a contract enabling him to occupy the defined room and *en suite* facilities at the premises as a residence from 1st December 2019 until 31st May 2020. He worked in Guildford and did occupy the room as his home. He returned to Leeds from time to time to see his wife. The rent had been paid in advance and the Respondent agreed, in writing, that the Applicant and his wife could use the room as living accommodation until 31st May. There is even a suggestion that this period could have been extended.

31. It is also agreed that on the 3rd May 2020, the Applicant was returning to the room under the terms of his contract with the Respondent which gave him the right to remain living in the room.

32. Counsel referred the Tribunal to the cases of **R v Yuthiwattana** (1984) 16 H.L.R. 49, **R v Phekoo** [1981] 1 WLR 1117 CA and **McCall v Abelesz** QB 585. However, no case reports were produced at the hearing. A report of the **Yuthiwattana** case was provided by counsel after the hearing by agreement A quotation from **Yuthiwattana** is also set out in the skeleton argument although the words quoted are in fact from the earlier case of **Commissioners of Crown Lands v Page** [1960] 2 QB 274 i.e. they did not relate to the 1977 Act. The facts in **Yuthiwattana** were complex and the decision was an appeal against conviction and determined whether the summing up to the jury had been correct.

33. One of the very many allegations made was that a front door key had gone missing and this may have been the landlady. In any event she refused to provide a replacement and the tenant had to rely on others to let him in. On one occasion he had to go and stay with a friend for the night.

34. The Court of Appeal, Criminal Division, said, in effect, that if an owner tells a tenant to leave for a period and then excludes them from the premises, it would be open to convict under sub-section 1(2) on the ground of unlawfully depriving him of occupation. Locking someone out on one or more isolated occasions would be more like harassment under sub-section 1(3)(a) or (b). The Tribunal is not sure that this case really helps this decision one way or the other.

Conclusion as to Primary Liability

35. The Tribunal is reminded of the words of Judge Cooke in the Upper Tribunal case of **Paulinus Chukwuemera Opara v Marcia Olasemo** [2020] UKUT 96 (LC) when she criticised a First-tier Tribunal for being over cautious in considering the words 'beyond reasonable doubt'. She said this:

> "*...For a matter to be proved to the criminal standard it must be proved 'beyond reasonable doubt'; it does not have to be proved 'beyond any doubt at all'. At the start of a criminal trial the judge warns the jury not to speculate about evidence that they have not heard, but also tells*

them that it is permissible for them to draw inferences from the evidence that they accept…".

36. On the evidence produced and discussed above, the Tribunal is satisfied beyond a reasonable doubt that an offence was committed by the Respondent under section 1(2) of the 1977 Act in that he attempted to, and succeeded in, depriving the Applicant from occupying the premises under the terms of a contract which gave him the right to remain living there at least until the end of May 2020. The reason for the Respondent's actions may be considered by some to have been reasonable but that reason is mere mitigation. It does not amount to a defence to the offence.

37. This was not one or more isolated occasions as referred to in **Yuthiwattana**. This was the Respondent excluding the Applicant from the premises indefinitely. It was also suggested that the Respondent did not exclude the Applicant from the premises technically because he had a key and could have attended at the house and let himself in. As the Tribunal judge said at the hearing, this was a case of a landlord and tenant speaking to each other. The landlord said that the tenant was excluded from the property. The tenant decided not to turn up and break into the property which, in law, was what was being suggested he could have done. This amounts, in terms, to a landlord requiring a tenant to commit a trespass against the landlord's wishes to prevent the said landlord from having committed a criminal offence. The Tribunal does not accept such an argument on the particular facts of this case.

38. Furthermore, the Respondent was clearly able to self isolate from the other 2 occupiers of rooms on the 1st floor. There was no reason given by the Respondent as to why the Applicant and his wife could not have remained entirely separate from the Respondent.

39. As to an offence under sub-section (3) or (3A), the Tribunal is not convinced that what happened amounted to another separate offence of interfering with peace or comfort or withdrawing or withholding services.

Discussion as to Amount Payable

40. The Applicant claims an RRO for the whole period of his contract i.e. from 1st December 2019 until 31st May 2020 which is within the 12 month period set out in section 44 of the 2016 Act. The amount claimed is £4,800.00 plus the fees paid to the Tribunal of £300.00.

41. The 2016 Act changed the way in which Tribunals should consider the calculation of an RRO. Under the 2004 Act, the Tribunal's calculation had to be tempered by a requirement of reasonableness. For example, the landlord should only be ordered to repay any profit element from the rent. As was confirmed in the Upper Tribunal case of **Vadamalayan v Stewart** [2020] UKUT 183 (LC), section 44 of the 2016 Act says, in effect, that the Tribunal should no longer consider such matters as what profit would have been earned by the rent paid. In other words, expenses incurred by the landlord as a result of obligations to keep a property in repair, insured etc. under the terms of a tenancy agreement would have had to be incurred in any event and should not be deducted.

42. Subject to the further comments below, the starting point is therefore the actual rent paid during the relevant period. Such matters as the parties' conduct or the landlord's financial hardship can be used to assess any claim. Conduct is clearly an issue in this case.

Covid 19 Guidance

43. As the whole issue of the Respondent's reaction to medical advice given is so important to this case, it is worth considering the guidance at the time published on the GOV.UK website applicable between 24th April and 3rd May 2020. A 'household' is defined as (1) 'one person living alone' and/or (2) 'a group of people (who may or may not be related) living at the same address and who share cooking facilities, bathrooms or toilets and/or living areas. This may include students in boarding schools or halls of residents who share such facilities'.

44. The guidance goes on to say that if a person has Covid 19 symptoms, he or she should stay at home and self isolate. They should stay away from other members of the household, avoid using shared spaces such as kitchens and other living areas while others are present and take meals back to a different room to eat. A face covering should be worn or a surgical mask when spending time in shared areas inside the home. If the Covid test is positive, the period of self isolation is 10 days from when the symptoms first appeared.

45. In this case, it seems clear that the Respondent could and did self isolate completely after symptoms started and did not have to be in the company of the other occupiers of the house. It would have been necessary to regularly clean any areas such as the hallway where the Respondent might be. However, if the other occupiers had no symptoms, then it does not appear, on the face of it, that they needed to self isolate in this situation, which would have been the same for the Applicant and his wife.

Conclusion as to the Amount of any Order

46. The Tribunal refers to the case of **Ahmed and others v Rahimian** CHI/00HB/HSD/2020/0002 which was determined by Regional Judge Tildesley OBE. This is a First-tier Tribunal decision and is not binding on this Tribunal. However, this Tribunal agrees with that decision and reasoning. It sets out at length the law and reasons for a determination of about half of the maximum amount which could have been awarded i.e. £10,000 ordered as opposed to the maximum of £19,803 which could have been awarded. The Tribunal also ordered the Respondent landlord to reimburse the £300 in Tribunal fees paid.

47. There has been no appeal against the **Ahmed** decision. Judge Tildesley OBE in **Ahmed** said, in paragraphs 102 & 103;

> "*This is not a case which justifies an award of the maximum amount of £19,803.00. The Tribunal normally considers such an award where the evidence shows that the landlord was a rogue or criminal landlord who knowingly lets out dangerous and sub-standard accommodation. The Respondent did not meet that description….The Tribunal here is*

dealing with two sets of decent honourable persons who are separated by the fact that the Respondent failed to licence the HMO and thereby committed an offence…"

48. This Tribunal determines that the Respondent's behaviour on the 3rd May 2020 was bad. It caused the Applicant and his wife to sleep in their car overnight and they had severe problems the next day in seeking out and eventually finding accommodation some miles away with a friend. The Applicant's wife, a doctor, was unable to start her job on the 4th May. Even if the Respondent's case was to be accepted in full, those results could have been avoided if the Respondent had told the Applicant of his intentions after his doctor's advice and there had been goodwill and common sense on both sides.

49. However, it is equally clear that up to and including the 23rd April 2020, the parties got on well and there was not the slightest indication that the Respondent 'knowingly let out dangerous or sub-standard accommodation' or, indeed, behaved badly as a landlord in any other way. It is on the 24th April that the Respondent received his advice about Covid symptoms. The Tribunal concludes that he should then have contacted the Applicant urgently to avoid just the situation which happened on the 3rd May. It is also clear from the agreed facts that no offence had been actually committed by the Respondent under the 1977 Act until the 3rd May. Having said that, the failure to contact the Applicant after 24th April appears to show an intention to deprive the Applicant of his right to occupy as from that date.

50. On the 3rd May, the Respondent says that he was unwell and clearly felt that he was doing the right thing by stopping the Applicant and/or his wife from running the risk of catching the corona virus from him.

51. Having said that, the Tribunal is unimpressed with the Respondent's behaviour since the 3rd May. His apparent refusal to co-operate with the passing over of the Applicant's belongings and his evident failure to discuss a possible resolution to this matter with the Applicant have been unfortunate, to say the least. In paragraph 24 of his statement at page 68 in the bundle, the Respondent says the Applicant was very hostile, that communications between them had broken down and "*I preferred to have no or minimal contact with him*". If, indeed, the Applicant was hostile, then it is the Tribunal's view that this was understandable.

52. What is clear is that an open offer was made by the Applicant to part company with the Respondent with a refund of the rent paid for May 2020 and with the Respondent arranging to hand over the Applicant's belongings. The belongings were not handed over until the 18th June and the refund of rent for May only was rejected. Furthermore, a claim is now being suggested by the Respondent that the Applicant should pay for alleged cleaning and damage to the room in the approximate sum of £1,320.00. There is no evidence to corroborate this and no acknowledgement that as the Applicant was refused access to deal with any cleaning or damage, the possibility of such a claim succeeding are minimal at the present time.

53. Taking all of these matters into account, the Tribunal's conclusion is that a fair and reasonable determination of this matter is for a Rent Repayment Order to be made in the sum of £1,600.00 i.e. 2 month's rent.

54. It was argued on behalf of the Applicant that the starting point should be all the rent paid because that is what **Vadamalayan** says. The Tribunal expressed the view at the hearing that most of the cases which give guidance on the point involve such matters as the failure to obtain a licence for a House in Multiple Occupation where the offence was being committed for the whole of the period of the rent being repaid. In this case, as has been said, the parties got on well until the offence was actually committed. Further, there was considerable mitigation relating to the Covid issue which any criminal court would have taken into account.

55. The Respondent's conduct, particularly on the 3rd May and afterwards is reflected in the order. His financial circumstances are difficult to assess. In the directions order dated 7th December, he was ordered to file and serve a statement as to any circumstances that could justify a reduction in the amount of any RRO including 'the financial circumstances of the landlord'. He failed to do so and only mentioned it at the very end of his verbal evidence to the Tribunal without any supporting evidence.

56. As to fees and costs, the Tribunal does make the order for the Respondent to repay the fees paid by the Applicant. The Respondent has asked (on page 72) for an order that the Applicant pay his costs. Such an order is refused. The reasons for both orders are linked to the determination of the application as will be understood from the reasons given.

.....
Judge Edgington
12th February 2021

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.