FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AN/HMB/2020/0001**
HMCTS code	:	**V:CVP Remote**
Property		**First floor flat 6 Viola Square, London W12 0QF**
Applicant	:	**Angelos Karageorgos and Elpiniki Gereoudaki**
Representative	:	**Flat Justice Community Interest Company**
Respondent	:	**Mrs Angel Rizk**
Representative	:	**Mr Faisel Sadiq of Counsel**
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(s)	:	**Judge H Carr** **Ms S Coughlin MCIEH**
Date and venue of hearing	:	**2nd December 2020 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**22nd February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video] hearing which has not been objected to by the parties. The form of remote hearing was [insert the code and description, , V: SKYPEREMOTE. A face-to-face hearing was not held it was not practicable and all issues could be determined in a remote hearing

Decisions of the tribunal

(1) The tribunal determines not to make a Rent Repayment Order.

(2) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).

2. The applicants seek a RRO in the sum of £9000 for the six month period from February 22nd 2019 to August 20th 2019 . The rent payable at this time was £1,500pcm.

3. The applicants allege that the respondent landlord has committed the offence of harassment of occupiers as defined by s.1(3A) of the Protection from Eviction Act 1977,

The hearing

4. The applicants, Mr Angelos Karageorgos and Ms Elpiniki Gereoudaki attended the hearing together with their representative, Mr Luke Decker,

5. The respondent did not attend, neither did she instruct a representative to attend on her behalf.

6. Directions in this case were made on 4th September 2020 in which the Respondent was required to provide to the Tribunal and to the Applicant her bundle of documents on which she relies in response to the application. No bundle has been received by the applicants or by the tribunal.

7. On 24th November 2020 the tribunal gave notice to the respondent of its intention to debar her from the proceedings under Rule 9(1)(3) (a) of the Tribunal (Procedure) First Tier Tribunal) Property Chamber) Rules 2013. No response to that notice was received.

8. The Case Officer attempted unsuccessfully to contact the respondent on 1st December 2020. In these circumstances it was appropriate to proceed without the attendance of the respondent.

The background

9. The property is a one bedroom flat on the first floor of a converted house. The respondent lives in the ground floor flat. The parties shared a communal front door and hallway, but each individual flat had a lockable door. Both parties had keys to the communal front door.

10. The respondent is the freeholder of the property which she purchased in 1985.

11. The applicants signed an agreement described as a non Housing Act agreement on 21st February 2019 for a fixed term of 12 months commencing on 22nd February 2019. There was a 6 month break clause in the agreement. The respondent is named as the landlord.

12. The tenancy agreement included an express term that the rent include all bills including gas, electricity and council tax.

13. The applicants paid six months of the rent in advance on 21st February 2019 together with a tenancy deposit of £2,076. The tribunal notes that the applicants have had to issue proceedings in the county court for the return of the deposit.

14. The applicants terminated the tenancy on 21st August 2019 utilizing the six-month break clause.

The issues

15. The issues that the tribunal must determine are:

    (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

    (ii) If the tribunal determines that the relevant offence has been committed by the landlord then it must determine what amount of RRO, if any, should it order?

The law

16. Section 1(3A) of the Protection from Eviction Act 1977 provides as follows:

> Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if –
>
> (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
>
> (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
>
> and (in either case) he knows, or has reasonable cause to believe, that the conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

17. Section 1(3B) of the Protection from Eviction Act 1977 provides as follows:

> A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

The determination

Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

18. The applicants provided a detailed chronology of the events they allege are relevant to the issue that the tribunal has to determine. The most relevant of these acts are set out below.

19. When the applicants moved into the flat they found that they were required to move the respondent's belongings to the attic of the property.

20. From the commencement of the tenancy the applicants complained of noise, a constant tik-tok and bang. The respondent promised on at least six occasions to get the noises fixed but failed to do so. It appears that the noise was an old exterior alarm that was malfunctioning. The applicants say that the respondent took no action until June 2019 which they believe was as a result of the respondent being contacted by Hammersmith and Fulham Council.

21. On numerous occasions the respondent turned off the heating to the premises during the day. On most occasions the respondent restored the heating, although the applicants found it undignified to have to ask her to do this. On at least three occasions the heating was turned off for relatively prolonged periods. The respondent turned the heating off on 23rd April 2019 permanently and refused to put it back on unless the applicants pay a further £200 per month to pay for the heating.

22. The applicants say that they were left freezing cold and facing a number of medical problems as a result of turning off the space heating. Ms Gereoudaki's health suffered in particular from the lack of heating. The respondent witnessed this firsthand on 27th March 2019 when she visited the applicants.

23. The respondent made demands that the applicants pay more money as contribution to council tax and utility bills. The applicants state that these demands were accompanied by demands that the applicants vacate the premises unless they pay.

24. On three occasions the respondent locked the applicants out of the property.

25. On two occasions the respondent confronted the applicants. The applicants say that on one of those occasions the confrontation was violent.

26. The applicants also allege that the respondent entered the premises without permission. The trespasses left the applicants feeling insecure.

27. The tribunal questioned the applicants about their allegations. They noted the following:

    (i) The applicants were clearly very distressed about the respondent's behaviour. Ms Gereoudaki suffers from a debilitating medical condition that appears to be exacerbated by the cold.

    (ii) The respondent is elderly and, as the applicants explained, lonely. The heating system serves both the flats in the house, meaning that when the heating was

turned off the respondent had no heating either. The respondent appears to have turned off the heating when she believed it to be unnecessary.

(iii) There is no suggestion that the respondent is anything other than a competent person who is fully aware of the consequences of her actions.

(iv) The applicants dealt swiftly and sensibly with the possessions that the respondent had left in the flat. The tribunal also notes that they returned the possessions from the attic on their departure.

(v) The applicants' expectation was that central heating be provided constantly throughout the year. The applicants were able to use electric heaters when the central heating was turned off. The applicants explained that they were reluctant to do so because of the attitude of the respondent.

(vi) At no time was the hot water turned off.

(vii) Most of the incidents when the heating was turned off were limited to a period of some hours during the day. There were however some more protracted periods, on 2 – 3rd March, 8th – 10th March, 17th – 18th March 19th – 20th March and 25th – 26th March before it was finally turned off on 23rd April 2021.

(viii) The confrontations described as violent were not in the opinion of the tribunal properly so described. The applicants oral evidence suggested that a door was closed in the face of Mr Karageorgos and a file was thrown in the vicinity of Ms Gereoudaki. These appear to have been unpleasant experiences for the applicants but to describe them as violent incidents seems excessive.

(ix) The locking out of the applicants was for very short occasions and the trespasses were relatively minor. Moreover the applicants are not able to show beyond reasonable doubt that the trespasses occurred.

(x) The applicants' communications with Hammersmith and Fulham Council were primarily concerned with the disrepair.

28. The applicants' representative made the following submissions:

(i) The actus reus of the offence is made out. The respondent has performed acts likely to interfere with the peace or comfort of the applicants and/or persistently withdrawn or withheld services reasonably required for the occupation of the premises as a residence. The representative refers in particular to

(a) The repeated turning off of the space heating and then permanently turning it off on 23rd April 2019.

(b) The repeated demands for additional money

(c) Acts of trespass

(d) Violent confrontations

(e) The respondent leaving her possessions in the flat

(f) Failing to repair the malfunctioning and defunct alarm

(g) Locking the applicants out of the house.

(ii) The representative also submits that the mens rea is also made out. He suggests that the respondent knew or had reasonably cause to believe that the conduct was likely to cause the applicants to give up the occupation of the premises because:

(a) The applicants were left freezing cold and facing medical problems as a result of cutting off the heating.

(b) The demands for further monies were accompanied by demands that the applicants vacate the premises unless they pay.

(c) The acts of trespass left the applicants feeling insecure.

(d) The respondent used violence in confronting the applicants.

(e) The applicants were not fully able to use the living room of the flat because of the respondent's possessions.

(f) The constant noise of the alarm.

29. The representative also submits that the applicants were entitled to a right that the Respondent would remove, or pay for the removal, of those possessions prior to the commencement of the Tenancy and failing to do this was a denial of their express rights under the tenancy. He also argues that failing to repair the faulty alarm prevented the applicants from living peacefully in the flat.

The decision of the tribunal

30. The tribunal determines that the applicants have not proved beyond reasonable doubt that the respondent landlord has committed the offence of harassment of occupiers as defined by s.1(3A) of the Protection from Eviction Act 1977,

The reasons for the decision of the tribunal

31. The tribunal has listened carefully to the evidence of the applicants and the submissions of their representative. It has sympathy with the position that the applicants found themselves in. The respondent does not appear to have understood her responsibilities as a landlord, nor the terms of her own tenancy agreement with the applicants. It may be that the applicants can take civil action against the respondent in the county court.

32. The tribunal also notes that some of the difficulties experienced by the applicants were because of having the respondent as their neighbour.

33. Although the applicants have put forward a range of behaviours by the respondent that they found to be distressing, the tribunal considers that it is only turning off the central heating on a number of occasions that is sufficiently serious to be considered to be harassment under the Act. The disrepair appears to have been low level, although irritating to the applicants, the incidents of trespass and the confrontations between the applications and the respondent minor and the exclusion of the applicants from the property were for a very short duration and can be explained as accidental. Even taken together the tribunal does not consider that the behaviour was sufficiently serious to constitute an offence under the Act.

34. The tribunal does not accept the submission that breaching express rights under the tenancy is a breach of s.1(3A) of the Act.

35. The tribunal therefore focussed on the issue of the respondent cutting off the heating. The problem that the applicants face is that they must prove that when the respondent cut off the heating to their flat, that she knew, or had reasonable cause to believe, that her conduct was likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

36. The tribunal does not consider that the applicants have discharged that burden. It seems more than likely that when the respondent turned the heating off what was foremost in her mind was the expense of providing continual heating.

37. The fact that at those times the respondent was without heating herself is also relevant. She cannot, beyond reasonable doubt, be argued to have known that being without heating (other than electric heaters) at that time would lead to the applicants giving up the occupation of their flat if she herself continued to occupy her own flat in identical conditions.

38. Moreover the applicants have not demonstrated beyond reasonable doubt that the respondent understood and acted upon the relationship between Miss Gereoudaki's medical condition and the lack of space heating when she cut off the heating.

39. The tribunal was told that on those occasions the applicants asked the respondents to restore the heating she did so. The tribunal also considers that the respondent did not understand that the applicants required heating during the spring and summer months. For the tribunal, the respondent's behaviour in cutting off the heating on 23rd April 2019 can be explained as standard behaviour by people of the respondent's generation who do not expect people to require heating in those months. Far more evidence would have to be provided to persuade the tribunal that the respondent's actions were designed or likely to cause the residential occupier to give up the occupation of the whole or part of the premises.

Name: Judge H Carr **Date:** 22nd February 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).