



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

**Case Reference** : **MAN/00DA/HMF/2019/0093**

**Property** : **18 Beckett's Park Crescent, LS6 3PQ**

**Applicants** : **Mr Keir Fourman-Stevenson**

**Respondent** : **Mr Edward Winters**

**Type of Application** : **Section 41 Housing and Planning Act  
2016**

**Tribunal Members** : **Mr Phillip Barber (Judge)**  
**Mrs Aisling Ramshaw (Valuer)**

**Date of Determination** : **22 February 2021**

**Date of Decision** : **4 May 2021**

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**DECISION AND REASONS**

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## **DECISION**

1. The Tribunal does not make a Rent Repayment Order under section 43 of the Housing and Planning Act 1016.
2. There is no order as to costs.

### Introduction

3. This is an application by the above former tenant of the above property for a rent repayment order arising out of two alleged breaches of housing law statutes. Namely, (a) that the Applicant was harassed and unlawfully evicted by the Respondent under section 1 of the Protection from Eviction Act 1977; and/or (b) that during the Applicant's occupation of the property, the Respondent breached the law in relation to holding a licence as the operator of a house in multiple occupation (HMO) under section 72(1) of the Housing Act 2004.
4. We held an oral hearing by telephone of the application. The parties were both unrepresented, and they had an opportunity to make their cases and to cross question each other. The proceedings were recorded.
5. We declined to make an order as we were not satisfied to the criminal standard – i.e. beyond all reasonable doubt – that an offence had been committed by the Respondent under either of the above statutory provisions.

### **Findings of Fact**

6. Mr Edward Winter, at the relevant time had control of the property known as 18 Beckett's Park Crescent. He claims to have lived there but we did not think that was the case whilst Mr Fourman-Stevens was living there. Although Mr Winter claims to have all of his official documents registered to this address, we were satisfied on the evidence that he never actually occupied the room he says was his room. This is because he was reluctant to provide any details of the dates and times he stayed there and became rather unnecessarily defensive when the issue of his occupation arose. Mr Fourman-Stevens told us that whilst he was there, he had never seen Mr Winter in occupation, and we accept that fact. However, whether or not Mr Winter lived there has made little difference to the outcome.
7. The Applicant moved into the property in September 2017. He was provided with no formal agreement and he was told to pay £50 per week into Mr Winter's bank account as rent for a room in the property and shared use of the kitchen, living room and bathroom. We accept

that whilst the Applicant lived at the property, other tenants were also present at various times and both parties to this application agree that the property was tenanted by transient occupiers with tenants coming and going. The Applicant's rent included gas, electricity, water rates and internet connection and whilst we thought it on the low side we did not think that it was out with the range of rents which might reasonably be charged as a market rent for a room in the property.

8. In January 2019, a tenant known as Rachel Ray moved into the property. It appears that she was known to both Mr Fourman-Stevens and Mr Winter and she also had occupation of another property but, for reasons which are not entirely clear, she preferred to stay at this property. We also discovered during the course of the hearing that Mr Fourman-Winter had previously met Mr Winter on a number of occasions at Miss Ray's other property, when we were initially led to believe that the first he knew of Mr Winter was when Miss Ray put them in touch with each other. It was not entirely clear at the hearing whether the first Mr Fourman-Winter realised he had met Mr Winter was at the hearing itself or when he first moved into the property but we thought that it unlikely that Mr Fourman-Stevens did not recognise Mr Winter when they met – we thought it would have been one of the first things they discussed with each other, especially given that Mr Winter knew that he had met Mr Fourman-Stevens previously. We could see no reason why Mr Fourman-Stevens might fail to mention this in his application.
9. Whilst Miss Ray was living at the property it seems that things were not pleasant between her and the Applicant. We were provided with no specific incidents or events in which she demonstrated “poor behaviour” and therefore we were unable to make any finding that “poor behaviour” had occurred other than that we accept that Mr Fourman-Stevens may have felt uncomfortable in the property with Miss Ray there.
10. It seems that on the 28 March 2019, the applicant returned to the property late in the evening with a girlfriend, Rachel Baptiste. He made no mention of this fact in his witness statement, but it also seems that Rachel Baptiste and Miss Ray knew each other, Miss Baptiste having previously stayed at the property. Not only did they know each other but it was also revealed at the hearing that their relationship was acrimonious and as a result an altercation broke out between them which eventually led to Mr Fourman-Stevens and Miss Baptiste leaving and going to her property.
11. Mr Fourman-Stevens subsequently returned to the property and slept until about early afternoon. He awoke and, upon going downstairs, discovered that Miss Ray had moved his belongings, in approximately 3 cardboard boxes, from the common parts of the house into the garden (or perhaps the street). Mr Fourman-Stevens subsequently rang Mr

Winter and at this point there is slight disagreement between them as to what happened: the Applicant states that he was told by Mr Winter to give the keys to Miss Ray; whereas Mr Winter states that during the telephone call it was agreed that Mr Fourman-Stevens would move out.

12. In any event, the Applicant moved his belongings back into the property and arranged for a friend with a van to come and collect his things from the whole of the property and take them to his mother's house in Huddersfield. In the process it appears that a book, worth some £300, went missing.

#### The Law

13. Chapter 4 of the Housing and Planning Act 2016 introduces the concept of a rent repayment order in circumstances where there has been a breach to one of a list of statutory provisions listed in section 40 of that Act.
14. For present purposes the relevant provisions are section (1) of the Protection from Eviction Act 1977 and section 72 of the Housing Act 2004.
15. Section 1 of the PFEA 1977 generally provides that it is an offence committed if "any person to unlawfully deprives a residential occupier of any premises of his occupation...or attempts to do so" and under subsection 3A, that offence extends to "acts likely to interfere with the peace or comfort of the residential occupier...".
16. Section 72(1) of the Housing Act 2004 provides that a person in control of premises which are let as a HMO in circumstances in which a HMO licence is required.
17. A licence is required in the circumstances set out in the Licencing or Houses in Multiple Occupation (Prescribed Descriptions)(England) Order 2006 but for present purposes the property is required to be licensed if it was occupied by five or more persons comprised of two or more households.
18. In both situations, we had to be satisfied to the criminal standard (not the civil standard) that the offence has been made out. To put it another way we had to be satisfied beyond reasonable doubt that either or both: (a) Mr Winter unlawfully evicted Mr Fourman-Stevens or unlawfully harassed him (or was instrumental in causing Miss Ray to do so); (b) Mr Winter was required to hold a HMO licence for the property whilst Mr Fourman-Stevens lived there.

#### Our Assessment of the Application

19. The difficulty for Mr Fourman-Stevens in relation to both of his claims are they are both rather nebulous and in our assessment, we would have had difficulty holding that the claim is made out on a balance of probabilities let alone beyond reasonable doubt.

## **Harassment and Illegal Eviction**

20. In relation to the claim that Miss Ray was harassing Mr Fourman-Stevens, we were provided with no incidents at all other than the general claim that she was “continuously argumentative and abusive”. Without any specifics we were not in a position to make findings of fact that harassment has occurred and accordingly we reject the application under section 1(3A) of the PFEA 1977.
21. As to the unlawful eviction, Mr Fourman-Stevens told us at the hearing that Mr Winter was not involved moving his things into the garden and that he was not present when he moved out but there is evidence put in by Mr Fourman-Stevens (the witness statement of Mr Warren, for example) which suggests that he was “kicked out of his house by his landlord...” which is palpably untrue. It seems to be the case that what Mr Fourman-Stevens is really claiming that he was left with no choice but the leave, but again, without specific evidence that Mr Winter was instrumental in directing Miss Ray to act in the way she did, we were hard pressed to find that we were satisfied so that we were sure there had been an illegal eviction of the nature required by section 1 of the PFEA 1977.
22. Finally, as to the dispute about what was said during the telephone call, we do not need to make a specific finding on this point but it is sufficient to raise a doubt in our view as to the veracity of Mr Fourman-Stevens’ claim to have been illegally evicted in circumstances where he felt he had no choice: it seems to us as least plausible that during that telephone call both parties agreed that he would vacate there and then and that is sufficient, in our view, to cause this aspect of the claim to fail to come within the very high burden of the criminal standard.

## **Breach of the Licensing Requirements**

23. This simply distils down to whether we are satisfied so that we are sure that there were 5 or more occupants of the property whilst Mr Fourman-Stevens was living there.
24. Mr Fourman-Stevens told us that the property had 5 bedrooms. However, he corrected this to 6 bedrooms once Mr Winter had pointed out that there are 3 bedrooms on the 2<sup>nd</sup> floor and 3 bedrooms on the first floor. The Applicant provided a list of the names of various occupants of the property stating that at various times during his occupation, Marcus Robinson, Toby Goter, Rachel Baptiste, Peter Chambers, Rory McNeal, Rachel Ray and a person known as Elisa, whose surname he did not know. In support of his claim Mr Fourman-Stevens had also provided a witness statement from Rachel Baptiste and whilst we would ordinarily place very little weight on a witness statement from a person who did not attend the hearing, we note that Ms Baptiste states that whilst she lived there (which was at the same time as Mr Fourman-Stevens), Rachel Rea (who the Applicant called

Rachel Ray), Peter Chambers, Toby Goater (who the Applicant called Toby Goter) and Rory McNeil (who the Applicant called Rory McNeal) occupied the property. She also mentions that Peter replaced Toby “in 2017/18” – i.e. a date sometime over a 2-year period. However, Ms Baptiste makes no mention of Marcus Robinson or the person known as Elisa.

25. During the course of his evidence, Mr Fourman-Stevens was unable to tell us who lived in the property at any particular point in time. He also accepted that at various points whilst he lived there, there were fewer than 5 occupiers, including himself. He told us, for example, that at some point in time there were only 3 people in the property, including himself and that at others there were 6 people living there.
26. What we are left with, therefore, is a significant amount of confusion as to who lived in the property at any point in time and it seems to us that we are left with quite a significant amount of doubt as to whether and indeed when at least 5 people occupied the property. This means that we cannot be certain so that we are sure that Mr Winter had at any point breached the requirements to have a HMO licence and had, as a result committed an offence under section 72 of the Housing Act 2004.
27. We should make it clear that on a balance of probabilities it seems to us likely that at some point over the course of Mr Fourman-Stevens occupation of the property he was living there with at least 5 other people, but that it is not good enough for the purposes of these proceedings and as a result he has failed to satisfy the high standard of proof required – the criminal standard.

### **Conclusion**

28. The evidential burden is on Mr Fourman-Stevens to persuade us to the criminal standard that Mr Winter has committed an offence as set out above. The evidence in this application falls far short of the type of evidence necessary to establish that Mr Winter has committed such an offence and as a result the application for a rent repayment order must be refused.

**Judge Phillip Barber**

**4 May 2021**