



**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CHI/29UB/HMB/2022/0002**

Property : **Flat 185 The Panorama,
Park Street,
Ashford,
Kent TN24 8FA**

Applicant : **Adrian Douglas Christian Sluijters**

Respondent : **Asha Lalit**

Application : **Application by tenant for a Rent Repayment
Order following an alleged offence committed by the
Respondent of ‘eviction or harassment of occupiers’
- Section 43 of the Housing and Planning Act 2016
 (“the 2016 Act”)**

Date of application : **11th March 2021 (received 11th March 2022)**

Tribunal : **Judge Bruce Edgington
Bruce Bourne MRICS
Mike Jenkinson**

Date & place of hearing: **4th October 2022 as a video hearing from Havant
Justice Centre, The Court House, Elmleigh Road,
Havant, Hants PO9 2AL**

DECISION

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1. Tribunal refuses to make a Rent Repayment Order against the Respondent.

Reasons

Introduction

2. Rent Repayments Orders (“RROs”) require landlords and/or other people in control of properties who have broken certain laws to repay 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.
3. The orders were originally made pursuant to the **Housing Act 2004** (“the 2004 Act”) but this application is made under the later provisions contained in the 2016 Act.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”.

4. Section 40 of the 2016 Act 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 of those offences described is under subsection (3A) of the **Protection from Eviction Act 1977** (“the 1977 Act”) and this is the offence relied upon by this Applicant in his statement of case.

5. The subsection says:

“3A Subject to subsection 3(B) 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 that 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.

3B 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”

6. The Applicant’s position with regard to rent paid is that he claims a repayment order in respect of £2,550.00 in total paid in May, June and July 2021 and the fact that such rent was paid is not challenged by the Respondent.
7. Directions orders were made on the 9th May, 30th May, 23rd June, 7th July and 2nd August 2022 timetabling the case to this hearing. The parties have filed bundles of documents.

Inspection

8. It was not considered that a physical inspection of the property was necessary and none has been requested. It is described by the Applicant as being a 2 bed room flat on the 7th floor of a converted office block. The Tribunal has also considered Google Earth and notes that the block appears to be 9 storeys high.

The Hearing

9. Those attending the hearing were the 2 parties. The Tribunal chair introduced himself and the other Tribunal members. The Respondent was in India and attended via a video link. In the Upper Tribunal case of **Agbabiaka (evidence from abroad; Nare guidance)** [2021] UKUT 286 (IAC), guidance was given on what to do if someone was giving evidence from abroad. The first thing to do is to get permission from the country where the witness was situated. India had been asked but had not given permission despite a reminder having been sent by the Tribunal on the 25th August 2022. The Respondent had also sent a reminder.

10. This put the Tribunal in a very difficult position. An allegation was being made against the Respondent that she had committed a criminal offence and if the Tribunal allowed the hearing to proceed, then it would hear evidence from the accuser but could not hear any evidence from the accused person despite her attending the hearing and wanting to give evidence. The Tribunal chair therefore asked the Applicant whether his statement in the original application form was still correct i.e. that he would be content for the case to be decided on the evidence and submissions in the case papers filed, without an oral hearing.
11. There was then some discussion between the parties and the Tribunal members – which did not include evidence – and, in the end, the Applicant confirmed clearly and without any doubt that he would accept a decision based on what was in the papers. The Respondent agreed. The Tribunal decided that this was the fairest way to continue. Otherwise, it felt that there must be an adjournment until either India decided to consent to the evidence being given from there or the Respondent returned to England, both of which were very uncertain in timescale. The chair then said that the Tribunal would make its decision and then send that decision, with reasons, hopefully within a week. The parties then voluntarily left the hearing.

Discussion – has an offence been committed?

12. The jurisdiction of the Tribunal, including the power to order repayment of rent for the period claimed, is not in dispute. It is also not disputed that the Respondent was, at the relevant time, the person having control or management of the property. The first task of the Tribunal is therefore to consider whether it is satisfied, beyond a reasonable doubt, that an offence was being committed in May, June and July 2021 i.e. during the period for which rent is being reclaimed.
13. It is, perhaps, relevant to consider a chronology which appears to include the following significant dates:

1 st November 2019	Assured Shorthold tenancy entered into by the parties for 1 year with rent of £850 per calendar month
2 nd September 2020	New Assured Shorthold tenancy agreement entered into for a term of 12 months commencing on 1 st November 2020 at a rent of £850 per calendar month with (a) a break clause if the tenancy continues after 12 months enabling termination on 2 months’ notice in writing (b) a clause enabling the landlord to inspect the property on 24 hours notice and (c) the Applicant’s father, Adrianus Sluijters, being the guarantor
25 th February 2021	the Applicant sent 10 photographs of the interior of the property to the Respondent by e-mail. The Respondent gave notice that as soon as the COVID lockdown was over she would want to physically inspect the property on a regular basis (page 5 of the Applicant’s bundle)
2 nd May 2021	Applicant complains to the police for “ <i>primary Offence – Harassment – without violence (course of conduct)</i> ” for

period from 1st June 2020 until 22nd May 2021. It is noted that the complaint had been investigated and the case was closed ‘pending further investigative opportunities becoming available’ (page 65 of Applicant’s bundle)

9th May 2021

Respondent asked for a June inspection

22nd May 2021

Applicant’s father (the guarantor) was copied in to correspondence between the parties by the Respondent. He replies saying that his son is taking COVID guidelines “*to the extreme*” and “*I can understand your position and I shall have a conversation with Adrian*”

11th June 2021

Notice to Quit on 31st October 2021 sent to the Applicant (page 85 of Applicant’s bundle)

16th June 2021
to 3rd August 2021

Respondent in India to be with her father (page 73 of her bundle) who is very ill with leukemia (page 62 of her bundle)

13th July 2021

Applicant requests a further 1 year tenancy (page 102 of Respondent’s bundle)

29th July 2021

Further Notice to Quit on 3rd December 2021 sent to Applicant (page 107 of Applicant’s bundle) as previous standard form used had been amended

4th January 2022

Applicant moved out of subject property (page 120 of Respondent’s bundle) and the Applicant’s father wrote to the Respondent saying “*Adrian has been happy in your flat and was sorry to leave*” (page 49 of the Respondent’s bundle)

14. The rent being reclaimed is for May, June and July 2021. The Tribunal will assume that this application was wrongly dated for 11th March 2021 because it seeks to recover rent paid after that date and such application was actually received on the 11th March 2022.
15. The statements from the parties are long and each accuses the other of harassment but the details are somewhat sketchy. The Respondent says that the Applicant did not pay the electricity charges on time and the Applicant says that the bills sent were wrong and that he was not paying bills which were not in his name. However, this had clearly been going on well before May 2021 and the rent itself was paid on time.
16. The only real change came when the Respondent wanted to exercise her contractual right to inspect the property. The Applicant said that as he had his mother, father (in their 70’s) and pregnant sister were in a ‘bubble’ in the coronavirus pandemic, anyone who visited would have to have the NHS App to show proof of COVID injections, that they had not been told to self isolate and had PPE protection. His sister had not had a COVID injection because of her pregnancy. There are 2 problems with this i.e. (a) the Applicant, in his statement of case at page 4 in his bundle, said that “*he lived on his own*” and (b) the Respondent says that she was unaware that the sister was pregnant

and the first notification of the pregnancy seems to be in an e-mail of the 13th July 2021 (page 101 of the Respondent's bundle).

17. There are several e-mails in the Respondent's bundle (pages 29-31 and 35-37 for example) where the Respondent tries to arrange an inspection and the Applicant keeps changing the arrangements. The Respondent promised, in writing, that anyone who came for an inspection be it herself, a managing agent or a selling agent, would have PPE protection and would follow government advice on property inspections during the pandemic. However, the Applicant would not change his position. On page 4 of the Applicant's bundle, he says that at age 12 he had been diagnosed with and treated for ADHD and 'comorbid Depression' but there appears to be no evidence that the Respondent was aware of this.
18. On the 22nd May 2021 the Applicant wrote to the Respondent (pages 68 and 69 of the Respondent's bundle) telling her to stop contacting him and warning her that if she did not comply with his COVID protection requirements "*which the government allows me to impose*" then this could result in her "*prosecution and ultimately imprisonment*".
19. Eventually, after a huge amount of correspondence and other means of communication between the parties, it seems clear that the Respondent decided not to offer a new tenancy at the end of the term granted and Notices to Quit were served, as stated above.
20. The Applicant pursued at least 4 complaints against the Respondent i.e.
 - (a) The Information Commissioner's Office (ICO) wherein a complaint that the Respondent had broken the terms of the Data Protection Acts 1998/2018 was rejected (page 142 of the Respondent's bundle)
 - (b) The Deposit Protection Service (DPS) wherein the Applicant disputed that £641.35 of the deposit should be paid to the Respondent. His objection was rejected (page 147 of the Respondent's bundle)
 - (c) Ashford Borough Council, who took no action following a complaint from the Applicant in May 2021 (page 148 of the Applicant's bundle) and
 - (d) The police when the Applicant complained that the Respondent was committing the same criminal offence as is alleged in this Application. The case was closed by the police as stated above.
21. The problem in this case is that the Applicant has to prove, to the criminal standard, that the Respondent has committed a criminal offence. He alleges, and has to prove, that the Respondent "*has done acts likely to interfere with the peace or comfort of the ...occupier or members of his household*" AND she "*knows, or has reasonable cause to believe, that that conduct is likely to cause the ... occupier to give up occupation of ... the premises*".
22. In this case there have been many communications between the parties over a period of almost 2 years and the only conclusion this Tribunal can reach is that no criminal offence is proved beyond a reasonable doubt. These are some of the matters it has taken into account:
 - (i) The main problem during May, June and July 2021 was that the Respondent wanted her property to be inspected either by her or an agent on her behalf as she

was legally entitled to under the terms of the tenancy agreement. She clearly had to take the COVID pandemic into account and promised to comply with government guidelines. For most of the period of occupation, the Applicant had a job as an engineer on the railways and the only inference to be drawn is that he must have been mixing with other people, and yet he would not accept the promises made by the Respondent. He also agreed to inspections but then kept changing the arrangements.

- (ii) For half of June and the whole of July 2021, i.e. for half of the period in question, the Respondent was in India to be with her very sick father
- (iii) On the 2nd May 2021, the Applicant complained to the police alleging exactly the same offence as he is now accusing the Respondent of committing. They took no action and closed the case.
- (iv) It was then, after the complaint to the police, that the Respondent felt that the assured shorthold tenancy should not be extended and a Notice to Quit was served expiring on the last day of the tenancy i.e. 4½ months hence. That was extended for over a month as the 1st form of notice was said to be incorrect and had to be re-served. That was something open to the Respondent to do and the Tribunal can understand why a landlord would take the view that her relationship with this tenant should end following the police complaint.
- (v) The Applicant made 3 other claims/complaints to various bodies about the Respondent's behaviour, none of which succeeded.
- (vi) The Applicant's father and guarantor, who was in the family 'bubble' wrote 2 sympathetic and friendly messages to the Respondent as in the chronology above, the last of which was written when the Applicant left the property and said that the Applicant had been happy in the flat and was sorry to leave. His written statement in the Respondent's bundle at page 12 is dated 29th May 2022 and tells a completely different story, without explanation for the change
- (vii) On the 13th July 2021 i.e. almost at the end of the period for which a Rent Repayment Order is claimed, the Applicant requested a further 1 year tenancy. This Tribunal considers that if the Applicant seriously thought that the alleged criminal offence had been ongoing for 2½ months at that time, he would not have asked for this extension.

Conclusion

23. The decision of the Tribunal based on the evidence before it, is that it is not satisfied beyond a reasonable doubt that the Respondent committed the alleged criminal offence. There is no evidence that she sought to interfere with the peace or comfort of the Applicant and/or his family and until she gave several months' notice she would not renew the tenancy at the end of the term, there is no evidence to indicate that she wanted the Applicant to give up possession of the property. Therefore the application for a Rent Repayment Order is refused.



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Judge Edgington
5th October 2022

ANNEX - RIGHTS OF APPEAL

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.