



Press Summary

1 March 2023

Rakusen (Respondent) v Jepsen and others (Appellants)

[2023] UKSC 9

On appeal from: [2021] EWCA Civ 1150

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Kitchin, Lord Burrows, Lord Richards

Background to the Appeal

This appeal is about Rent Repayment Orders. These are orders that can be made against landlords that have committed certain housing-related offences. They require a landlord to repay an amount of rent paid by a tenant (or pay to a local housing authority an amount of universal credit paid in respect of rent). The question which arises is whether they can only be made against a tenant's immediate landlord, or whether they can be made against a landlord higher up in a chain of tenancies (e.g. the landlord of the tenant's immediate landlord) – referred to as a “superior landlord”.

The Respondent, Mr Rakusen, is the leaseholder of a flat in London. In May 2016 he granted a short residential tenancy of the flat to a company called Kensington Property Investment Group Ltd (“**KPIG**”). KPIG subsequently entered into separate agreements with each of the three Appellants by which they were each granted a right to occupy one room in the flat in exchange for a fee. As a result of this arrangement the flat was required to be licenced as a “house in multiple occupation” or “HMO” under the Housing Act 2004. However, no such licence was ever obtained.

In 2019 the Appellants applied for Rent Repayment Orders against Mr Rakusen on the basis that he was said to have committed an offence of being in control or management of an unlicensed HMO contrary to section 72 of the Housing Act 2004. Mr Rakusen denies that he committed such offence. He also applied to strike out the Appellants claims arguing that a Rent Repayment Order could only be made in favour of the Appellants against their immediate landlord (i.e. KPIG).

The First-tier Tribunal refused to strike out the Appellants claims against Mr Rakusen and the Upper Tribunal dismissed Mr Rakusen's appeal. They held that it was possible to make a

Rent Repayment Order against a superior landlord. However, the Court of Appeal reversed this decision. The Appellants now appeal to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. It holds that a Rent Repayment Order cannot be made against a superior landlord. Lord Briggs and Lord Burrows give a joint judgment with which the other members of the panel agree.

Reasons for the Judgment

The central statutory provision in question is section 40(2) of the Housing and Planning Act 2016. A straightforward interpretation of the words in section 40(2) is that a Rent Repayment Order cannot be made against a superior landlord and can only be made against the immediate landlord of the tenancy that generates the relevant rent [30].

This is because Rent Repayment Orders can be made against “*the landlord under a tenancy of housing in England*” (section 40(2)), who can be required to “*repay an amount of rent paid by a tenant*” (section 40(2)(a)). The “*rent paid by a tenant*” plainly refers to the rent paid under the “*tenancy of housing*” referred to previously. It would therefore be unnatural to interpret “*landlord under a tenancy*” as referring to any landlord other than the landlord of the tenancy which generates the rent of which repayment is sought [24]-[28].

The words “*repay ... rent paid by a tenant*” also support this interpretation. They naturally refer to a landlord repaying rent that it has received directly from the tenant. It would strain the language to say that a superior landlord is “*repaying*” rent to a tenant from whom it had never received any rent [31].

The Court considers that, on balance, wider contextual factors and an examination of the purpose of the provision support or, at least, are consistent with this straightforward interpretation [59].

First, when Rent Repayment Orders were originally introduced by the Housing Act 2004 they could only be made against the immediate landlord. There is no indication, including in pre-legislative material, that a purpose was to change this when the legislative scheme was revised in 2016 [36];[55].

Second, although some of the offences which form the basis of a Rent Repayment Order can be committed by superior landlords, some can also be committed by people who are not landlords at all (eg property agents). There is no suggestion that Rent Repayment Orders could be made against these other non-landlord offenders. It seems that the purpose was to restrict Rent Repayment Orders to those who directly benefit from the payment of rent – ie immediate landlords [38].

Third, there is a range of other sanctions available to combat rogue landlords. These include fines, civil penalties and banning orders. Ultimately it is a matter for Parliament to decide whether these are sufficient [40]-[43].

Fourth, allowing a Rent Repayment Order to be made against a superior landlord could create complexity as to how much was payable by whom and to whom where there is a chain involving numerous tenancies [44]-[46].

Fifth, the straightforward interpretation is supported by reading section 40(2)(a) together with section 44(3) of the 2016 Act [49]. Support is also found in the fact that certain offences under the Protection from Eviction Act 1977 expressly extended the definition of landlord to include “any superior landlord”, but this was not done in the provisions relating to Rent Repayment Orders [50].

Sixth, taken as a whole, the pre-legislative materials are consistent with the straightforward interpretation that Rent Repayment Orders are not available against a superior landlord [51]-[56].

Finally, the straightforward interpretation is supported by the principle that where there is any doubt as to whether a statutory provision imposes a penalty on someone it should be resolved in favour of not imposing the penalty [57]-[58].

The conclusion reached by the Court is that the additional relevant interpretative factors on balance support or, at least, are consistent with the straightforward interpretation of the words of section 40(2) [59].

A Rent Repayment Order cannot therefore be made against a superior landlord [60].

References in square brackets are to paragraphs in the judgment

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)