



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

Case reference : **LON/00BG/HMB/2018/0002**

Property : **Flat 11 Nestor House, Old Bethnal
Green Road, London E2 6QU**

Applicant : **Mr Vitalie Stefanet**

Representative : **In person**

Respondent : **Mr Abu Sufian Choudhury**

Representative : **Mr Manzoorul Haque, Solicitor**

Type of application : **Application for a rent repayment
order**

Tribunal member : **Judge Timothy Powell
Mr Trevor Sennett MCIEH
Mr N Miller**

**Date and venue of
hearing** : **2 November 2018 at
10 Alfred Place, London WC1E 7LR**

Date of decision : **17 December 2018**

DECISION

Note: the numbers in square brackets referred to the pages in respect of the hearing bundle, so that [6] is page 6 of the bundle.

Decisions

- (1) The tribunal is satisfied, beyond reasonable doubt, that the landlord, Mr Choudhury, has committed an offence under section 1(3) and/or section 1(3A) of the Protection from Eviction Act 1977;

- (2) Accordingly, the tribunal makes a rent repayment order in favour of the applicant, Mr Stefanet, in the sum of £2,115.62, to be paid by the respondent, Mr Choudhury within 28 days of the date of this decision;
- (3) The tribunal makes no award of costs, but orders Mr Choudhury to refund to Mr Stefanet the sum of £300 in respect of the tribunal issue and hearing fees, also within 28 days of the date of this decision.

Application

1. The applicant tenant, Mr Vitalie Stefanet, applied for a rent repayment order against the respondent, his landlord Mr Abu Sufian Choudhury, pursuant to sections 40 to 44 of the Housing and Planning Act 2016 (“the H&PA 2016”).
2. Mr Stefanet claimed repayment of £3,295, being the rent paid by him for a period of 6 months and 18 days from the start of his tenancy on 20 January 2018, to the date of his application form, on 7 August 2018.
3. The grounds for seeking a rent repayment order are alleged offences committed by Mr Choudhury under sections 1(2), 1(3) and 1(3A) of the Protection from Eviction Act 1977 (“the PEA 1977”) (which relate to alleged attempts to unlawfully evict Mr Stefanet and acts of harassment); an alleged offence under section 30(1) of the Housing Act 2004 (failure to comply with an improvement notice); and alleged offences under the Management of HMO (England) Regulations 2006.

Hearing

4. The hearing took place on the 2 November 2018. Mr Stefanet appeared in person. Mr Choudhury also appeared and was represented by his solicitor, Mr Manzoorul Haque.
5. At the outset of the hearing, Mr Haque said that he had just been handed copies of documents that Mr Stefanet had filed and served on 30 October 2018 and, at his request, the tribunal allowed him time to go through the documents with Mr Choudhury. The hearing then began at 10.30am.
6. The tribunal had the benefit of a hearing bundle prepared by Mr Stefanet. This comprised a copy of his application form, the tribunal’s directions, his witness statement with exhibits “VS1” to VS30” and Mr Choudhury’s witness statement, which exhibited the documents upon which he relied.
7. On 30 October 2018, Mr Stefanet filed and served a 10-page letter with additional submissions (including, for example, applications to strike

out various of Mr Choudhury's documents) and enclosing five additional exhibits "VS31" to "VS35".

Facts

8. Mr Choudhury is the owner of Flat 11, Nestor House, Old Bethnal Green Road, London E2 6QU ("the Flat"), a three-bedroom flat on the third floor of a purpose-build block. An assured shorthold tenancy between Mr Choudhury as landlord and Mr Stefanet as tenant commenced on the 20 January 2018 for an initial period of 6 months at a rent of £500 per month [29-31]. Although in the tenancy agreement the "Property" is defined as "Flat 11", the tenancy was in fact for one of the rooms in the Flat. The other rooms were already let to Mr Paul Campbell (who had been there for some four years) and to Mr Patrick O'Hara, who soon left and was replaced in about March 2018 by Mr Francisco Briz.
9. Mr Stefanet claimed that Mr Campbell effectively acted as the landlord's agent within the Flat. While such a formal relationship was not established, in evidence Mr Campbell accepted that he exercised a degree of control over who occupied the Flat; saying that, because he was living there, he would typically find replacement tenants when someone left, by advertising on the Gumtree website.
10. According to Mr Stefanet there were no issues in relation to "anti-social behaviour or rent repayments" for the first five months of his tenancy, that is until 28 and 29 June 2018, when Mr Choudhury contacted Mr Stefanet and then sent him a text message, purporting to give him four weeks' notice to quit the Flat. Mr Stefanet's flat-sharer, Mr Campbell, painted a somewhat different picture, giving evidence of friction with and alleged "passive-aggressive behaviour" by Mr Stefanet, throughout the tenancy. Although Mr Campbell appears to have made complaints to the landlord about these matters, it seems that Mr Choudhury did not raise them as issues with Mr Stefanet during the first five months of the tenancy.
11. The witness statement of Mr Stefanet exhibits numerous pages of printed text messages and emails passing between him and Mr Choudhury, and between him and his fellow flat-sharers. Mr Stefanet was assiduous to ensure that all his communications were in writing, which allowed him to give comprehensive evidence of events, which he also describes, in similar detail, in his witness statement.
12. With regard to the notice to quit, Mr Stefanet sent a text to Mr Choudhury to tell him that the notice had to be in writing (a hard copy), dated, signed and also give the grounds for the notice. That advice and the requirement that he should be given 24 hours' notice of any visits to the flat were repeated to Mr Choudhury on a number of occasions. Mr Stefanet also went so far as to provide Mr Choudhury with copies of the relevant law. It appears that, at one stage, Mr Choudhury agreed that

he would send a valid notice to quit by post, but the evidence suggests that this was not done prior to the application, even after Mr Stefanet chased for it.

13. The first complaint of an unlawful attempt to evict Mr Stefanet was on 25 July 2018, when he received a threatening text message, which he immediately reported to the police and which seems was sent by Mr Choudhury's son. Mr Stefanet claimed that the text message had caused him "harassment, alarm, distress and anxiety" [20] and he responded to the message, by asking Mr Choudhury to stop issuing threats [45]. He also supplied Mr Choudhury with the contents of section 1 of the PEA 1977.
14. Mr Stefanet also relied upon an allegation that Mr Choudhury had violated his rights as a tenant by failing to fix a disrepair problem with the water supply to the bathroom, from 25 July 2018. He alleged that there had in fact been problems since 3 June 2018 and that the cutting of the water supply to the wash hand basin by a contractor amounted to the withdrawal of services and, therefore, intentional harassment, in order to force him to move out.
15. Mr Stefanet referred to a number of alleged threats with physical violence issued by Mr Choudhury by text on 2 and 5 August 2018, which he also reported to the police, and to an incident on 28 August 2018, when Mr Choudhury's son allegedly chased him outside in front of Nestor House [22]. However, the tribunal does not take into account that alleged incident, as it post-dates the application made on 7 August 2018.
16. Several unannounced entries into the flat on 10 and 13 August 2018 (it appears by contractors) were said to amount to further intentional harassment (though, again, these post-dated the application). Lastly, Mr Stefanet relied upon an alleged failure by Mr Choudhury to comply with an improvement notice apparently served upon him on 20 July 2018 and "multiple offences in relation to the Management of HMO (England) Regulations 2006".
17. Mr Choudhury answered these allegations in his witness statement of 22 October 2018, with paragraphs 6 onwards reflecting the same numbered paragraphs in Mr Stefanet's own witness statement. The tribunal went through the allegations with Mr Stefanet, giving Mr Choudhury's solicitor an opportunity to cross-examine; and Mr Choudhury gave evidence to support his case, cross-examined by Mr Stefanet. Thereafter, evidence was given by Mr Paul Campbell on behalf of the landlord. Mr Campbell described "sustained aggressive behaviour" by Mr Stefanet within the Flat leading to "threats of violence", which made him feel unsafe and caused him eventually to leave the Flat altogether.

The tribunal's decision

18. The tribunal is satisfied, beyond reasonable doubt, that the landlord, Mr Choudhury, has committed an offence under section 1(3) and/or section 1(3A) of the Protection from Eviction Act 1977. Accordingly, the tribunal makes a rent repayment order in favour of the applicant, Mr Stefanet, in the sum of £2,115.62, to be paid by the respondent, Mr Choudhury, within 28 days of the date of this decision.

Reasons the tribunal's decision

19. The relevant provisions of section 1 of the Protection from Eviction Act 1977 are as follows:

“(2) If any 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.

(3) If any person with intent to cause the residential occupier of any premises—

- (a) to give up the occupation of the premises or any part thereof; or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) 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 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.”

20. Section 1 of the PEA 1977 creates three offences which may be considered together. The first offence, contrary to section 1(2) is

concerned with unlawful eviction (the statute using the words “deprives”); the other two offences, contrary to sections 1(3) and 1(3A), are concerned with harassment of a residential occupier. The main difference between the two harassment offences is that the one contrary to section 1(3) can be committed by any person and it is necessary to prove intention, whereas the offence contrary to section 1(3A) can be committed only by the landlord or agent and no intention need be proved (though knowledge or reasonable belief do need to be). Under the criminal law, the penalties are the same for each of the three offences.

Offence under section 1(2): unlawful eviction

21. In the present case, the tribunal is not satisfied that the high threshold for an offence under section 1(2) of the PEA 1977 has been reached.
22. The text messages on 25 July 2018, containing a threat to throw Mr Stefanet’s personal belongings outside on Sunday, and messages on 2 and 5 August 2018, threatening his eviction, clearly caused Mr Stefanet alarm and distress, but in the tribunal’s opinion they fall short of an attempt to deprive Mr Stefanet of his occupation of the Flat. In short, no action was taken to try and effect an eviction; Mr Stefanet was not deprived of his occupation permanently for any period of time; nor was he the subject of an attempt to do so.

Offences under sections 1(3) and 1(3A): harassment

The acts

23. With regard to the other two offences, under sections 1(3) and 1(3A) of the PEA 1977, Mr Stefanet relies, first, on threats of physical violence and to the integrity of his belongings and, secondly, to the withdrawal of the supply of water.

(i) Withdrawal of the water supply

24. Dealing with the withdrawal of the water supply first, this concerned a problem with water leaking from the wash hand basin in the bathroom. Mr Stefanet had reported it to Mr Choudhury about a month previously and, on 25 July 2018, a plumber visited and turned off the water to the basin, because he did not have the necessary parts to fix the leak. The bath/shower still had water supply and there continued to be water in the kitchen. Subsequently, there were delays reinstating the water supply, but as Mr Haque submitted, these were partly due to the conduct of Mr Stefanet in resisting entry by contractors because he had not received 24 hours’ notice of the visits.

25. In the tribunal's view, the supply of water could not be said to have been withdrawn or withheld by the landlord, at all, let alone with intent, knowledge or belief that Mr Stefanet would give up occupation of the premises as a result.

(ii) Threats made by the landlord and his son

26. That leaves the threats made by Mr Choudhury and his son in connection with Mr Stefanet's refusal to leave the Flat, without first receiving a valid notice to quit; and we start by saying that insofar as Mr Stefanet relied on his rights as a tenant in this regard, there can be no criticism of him for doing so.

27. In the present case, the tribunal is satisfied that the following acts were done by Mr Choudhury, as landlord, or by his son, as agent of the landlord, which were likely to interfere with Mr Stefanet's peace or comfort; and that Mr Choudhury intended, or knew, or had reasonable cause to believe, that this conduct was likely to cause Mr Stefanet to give up occupation of the premises, or to refrain from exercising any right in respect of the premises (for example his right to remain, his right to exercise quiet enjoyment and his right to insist on his right to receive a valid notice to quit as a precondition of being required to leave the premises):

- (i) On 25 July 2018 at 6.50pm, Mr Chowdhury's son sent a text message to Mr Stefanet initially offering to help him remove his belongings and leave the Flat but ending with the threat "If not, I will come on Sunday and leave your belongings outside" [43]. Mr Choudhury then followed that up with a further text message at 7.26pm, first, complaining about Mr Stefanet's "bad behaviour" and then requesting him "Please could you follow the instructions [in the son's e-mail] and do not text me anymore." [44];
- (ii) On 2 August 2018 at 3.38pm, Mr Choudhury sent a text message to Mr Stefanet initially complaining that he had not extended his initial six months stay in the premises (in the original agreement) and then stating "You have zero rights as a Tenant as you are well over your stay. I will come over at my own time and deal with you and evacuate [sic] you if need be." He goes on to say "I have dealt with tenants worse than you and I can deal with you without sweat [...] Don't respond to this text and harass me. Just leave my property and we close the case." [49];
- (iii) Again on 2 August 2018, at 6.18pm, Mr Choudhury sent a text message to Mr Stefanet where he threatened that "I will now come over to evacuate [sic] you and throw out your belongings if it is still in my house by end of today." [52];
- (iv) On 5 August 2018 at 1.01pm, Mr Stefanet sent a text message to Mr Choudhury to say "Stop issuing threats to remove/throw me

physically and my belongings from my room. Stop issuing threats”. This resulted in an immediate response from Mr Choudhury stating, amongst other things “This is your last warning [...] I will be arriving anytime so please take your belongings and leave as I don’t want to be responsible for your belongings. By the end of the day please leave the premises.” [53].

The intention

28. The offence under section 1(3) is more difficult to prove because it is essential under this offence to establish the necessary intent. In the present case, this would be the intention either to cause Mr Stefanet to give up occupation of the premises or to refrain from exercising any right or pursuing any remedy in respect of the premises.
29. Intent may be inferred from the facts but, from case law, it appears there needs to be clear evidence that the accused desired the consequence to occur, or may have foreseen it as a by-product of his action; but, in the latter case, it may require consideration of the probability of the consequence coming about.
30. In the present case, the tribunal is satisfied that the necessary intent is proved by the words actually used by Mr Choudhury and by his son, acting on his behalf, which Mr Choudhury adopted. The tribunal is satisfied beyond reasonable doubt that the threats were made with the specific stated desired outcome, namely that Mr Stefanet should leave the Flat.
31. Further, and even if we were wrong about the necessary intent being established for an offence under section 1(3), the tribunal is satisfied beyond reasonable doubt that Mr Choudhury has (also) committed an offence under section 1(3A), where it is not necessary to establish intention; but, rather, knowledge or reasonable belief of the potential outcome must be established.
32. Section 1(3A) only requires that the landlord “knows or has reasonable cause to believe” that his conduct was likely to cause the occupier to leave the premises, or to refrain from exercising his rights. The use of the word “reasonable” indicates that the belief should be determined objectively; and the tribunal is satisfied that Mr Choudhury must have known or believed his threats were likely to cause an occupier to leave the premises, or to refrain from exercising his rights as a tenant.

Other alleged offences

33. The tribunal is not satisfied that Mr Choudhury has committed the offence of failing to comply with an improvement notice under section 30(1) of the Housing Act 2004, because there was insufficient

information to establish this beyond reasonable doubt. In particular, there was no copy of the improvement notice in the papers and there was insufficient evidence of non-compliance. Equally, the tribunal was not satisfied that Mr Choudhury was guilty of multiple offences in relation to the Management of HMO (England) Regulations 2006, which, in any event, are not relevant offences for the purposes of making a rent repayment order.

Decision to make a rent repayment order

34. Having concluded that Mr Choudhury had committed an offence under sections 1(3) and/or 1(3A) of the PEA 1977, the tribunal exercises its discretion under section 43(1) of the H&PA 2016 to make a rent repayment order. The amount of such an order is limited by section 44(2) and, in relation to an offence under section 1(3) or 1(3A) of the PEA 1977, is to be for a period of 12 months ending with the date of the offence. The last offence was the threat on 5 August 2018 and, by the tribunal's calculations, the rent paid by Mr Stefanet up to and including that date is £3,254.80 (198 days at £500 per month).
35. The tribunal has decided to exercise its discretion and make a rent repayment order because Mr Choudhury's conduct in this case was serious and inexcusable. For someone who professes to have been letting properties for more than 12 years and who owns more than one such property, Mr Choudhury displayed a breath-taking ignorance of the law and of proper legal procedures for terminating a tenancy and for regaining vacant possession of premises. He gave inadequate notice to quit to all his tenants, because he wished to sell the Flat; and when one of those tenants, Mr Stefanet, insisted on his rights, Mr Choudhury resorted to unacceptable threats of violence and intimidation to try and make him leave the premises.

Amount of the order

36. When considering the amount of the rent repayment order, the starting point is not 100% of the rent paid, which is the mandatory amount if there had been an actual conviction: see section 46 of the H&PA 2016.
37. Further, in determining the amount to be repaid, the tribunal has had regard to two decisions of the Upper Tribunal relating to the amount of a rent repayment order under the Housing Act 2004, namely *Parker v Waller* [2012] UKUT 301 (LC) and *Fallon v Wilson* [2014] UKUT 300 (LC).
38. Under the 2004 Act, section 74(4) provided that where there has not been a conviction the tribunal shall order such amount as it considers reasonable in the circumstances. While sections 44 and 45 of the H&PA 2016 do not include the word "reasonable", given the similarities

between these provisions and the relevant provisions of the 2004 Act, the tribunal considers that the guidance provided in these Upper tribunal decisions remains relevant under the H&PA 2016.

39. Accordingly, the tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made, and (ii) the benefit obtained by the tenant in having had the accommodation is not a material consideration.
40. Section 44(3) of the H&PA 2016 requires the tribunal to take into account the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter 4 of the H&PA 2016 applies.
41. The tribunal takes into the account that Mr Choudhury had received several complaints about Mr Stefanet from Mr Campbell, who found him a difficult personality, aggressive at times, and a person who he alleged was inconsiderate and lacking in care for the premises. However, while these allegations certainly played on Mr Choudhury's mind, in the text messages that the tribunal has seen, Mr Choudhury appeared more agitated by the fact that Mr Stefanet consistently asserted his legal rights as a tenant. Even where there had been friction between the flat-sharers – something which, it should be said, Mr Stefanet disputed hotly – that does not excuse Mr Choudhury as landlord for failing to follow due process.
42. The tribunal also notes Mr Choudhury's assertions that he is not a violent person and that he did not agree with his son's text threat; Mr Campbell's evidence that he had no issues with Mr Choudhury, who "had always been a fair and honourable person"; and Mr Haque's assertions that there was no intention in Mr Choudhury's text messages. However, none of these can detract from the clear written threats by Mr Choudhury to unlawfully evict Mr Stefanet, which we have no doubt he wished and intended Mr Stefanet to act upon; and which he knew, or had reasonable cause to believe, would have that effect. Such threats are simply unacceptable in a landlord and tenant relationship.
43. It appears that the tenants paid the usual utilities bills, in addition to the rent, so these expenses do not fall to be deducted from any rent repayment order. Although Mr Choudhury mentioned the existence of a mortgage and the fact that he did not make any money from his various let properties, no evidence was adduced of these matters.
44. There was no evidence that Mr Choudhury had any previous convictions, of any kind.

45. Taking all these factors into account, the tribunal makes a rent repayment order in the sum £2,115.62, representing 65% of the rent paid by Mr Stefanet to Mr Choudhury during the relevant period.

Application for costs and refund of fees

46. In his application, Mr Stefanet asked the tribunal to award him back the costs of the application should he be successful. This was understood to be an application for reimbursement of the £100 issue fee and the £200 hearing fee, both of which he had paid.
47. Given that Mr Stefanet had to pay these fees to bring his claim and that he was successful in the proceedings, the tribunal orders Mr Choudhury to refund the £300 to Mr Stefanet, within 28 days of the date of this decision. For the avoidance of doubt, this sum is in addition to the rent repayment order.
48. Insofar as Mr Stefanet may have been seeking an award of legal costs (apart from reimbursement of fees paid), such a request is refused. This is because there was no evidence of any legal costs being incurred by Mr Stefanet; because the tribunal is first and foremost a “no costs” jurisdiction; and because there was no evidence of any unreasonable conduct by Mr Choudhury in relation to the proceedings, that would justify an award of costs for unreasonable conduct, pursuant to rule 13 of the Tribunal’s Procedure Rules.

Name: Timothy Powell

Date: 17 December 2018

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.