



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

Case Reference : **MAN/00CG/HMB/2019/0003**

Property : **189 Lydgate Lane, Sheffield, S10 5FG**

Applicant : **Ms Brittany Horton**

Respondent : **Ms Rebecca Davies**

Representative : **Mr James Howlett**

Type of Application : **Protection from Eviction Act 1977
Section 1(2),(3) or (3A)**

Tribunal Members : **Mr John Murray LLB
Ms Susan Latham MRICS**

Date of Decision : **25 January 2021**

REASONS FOR DECISION

ORDER

The application for a Rent Repayment Order be dismissed.

INTRODUCTION

1. The Applicant made an application dated 19 September 2019 to the Tribunal to make a Rent Repayment Order against the Applicant pursuant to Sections 1(2),(3) or (3A) Protection from Eviction Act 1977 s41(1) Housing and Planning Act 2016
2. The Tribunal made directions on 25 October 2019 that the applicant submit bundles within 21 days with a statement of reasons for the application, together with supporting evidence and documentation. The Respondent was to submit bundles in respond within 21 days of receipt of the Applicant's bundle.
3. The hearing took place as a Full Video Hearing with the consent of the parties. The Applicant appeared in person. The Respondent was represented by Mr. James Howlett of Counsel.

LEGISLATION

4. The Tribunal has power to make a Rent Repayment order costs by virtue of Chapter 4 Housing and Planning Act 2016 the relevant sections of which read as follows:

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to 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.

	Act	Section	General description of offence
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1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2),(3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	Housing Act 2004	section 32(1)	failure to comply with prohibition notice etc
5	Housing Act 2004	section 72(1)	control or management of unlicensed HMO
6	Housing Act 2004	section 95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	section 21	breach of banning order

S41 Application for rent repayment order

(1) A tenant or a local housing authority 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.

(2) A tenant may apply for a rent repayment order only if —

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

- (a) the rent paid in respect of that period, less
- (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord and the tenant,
- (b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

SUBMISSIONS FOR THE APPLICANT

7. The Applicant gave evidence on affirmation to the Tribunal in accordance with Rule 13.(7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, particularly because she had not signed her written statement with a statement of truth.
8. In her chronology filed with her application the Applicant referred to a number of matters; the Respondent having not provided her with an EPC certificate, and a how to rent guide at the commencement of the tenancy, as required under the Deregulation Act 2015. At the outset of her case, the Applicant accepted that these omissions prevented a Landlord from serving a notice under section 21 of the Housing Act 1988; but they could not however constitute harassment under the Protection from Eviction Act 1977, nor do they constitute an offence; she accepted that they were not relevant to the application.
9. Similarly the Applicant referred to a working smoke alarm not being fitted to the ground floor, and the smoke alarm to the first floor not having been tested on the first day of the tenancy. Whilst these matters are requirements under the Smoke and Carbon Monoxide Alarm (England) Regulations 2015, again the Applicant accepted that they were background matters and could not form part of her application for a Rent Repayment Order.
10. The Applicant in her application stated that she applied for a Rent Repayment Order on the grounds of harassment and illegal eviction, and claimed an order for six months' rent. She provided evidence of her payments from a Royal Bank of Scotland bank account in the name of Everingham TJ, showing seven payments of £750, and one payment of £246.57 between June 2018 and January 2019. She provided a statement from Nationwide showing a payment to Rebecca Davies of £1549.31.
11. She provided a chronology in support of her application, starting on 19 April 2018 ending on the 9 August 2019. This application was also provided as her statement of case pursuant to directions.
12. In the chronology she asserted that no EPC certificate was provided at the start of the tenancy, and not provided until December 2018.
13. She was served with an email purporting to terminate the tenancy, but she advised the Respondent this was insufficient. The Respondent served her with a s21 notice but with short notice and it was valid for noncompliance with the Deregulation Act 2015.

14. On the 14 November 2018 whilst she was out of the country on holiday the Applicant received an email requesting entry to the property on 24 hours' notice. The Applicant agreed she could enter the next day, 15 November at 14.45, and arranged for her partner's brother Glen to be present.
15. The next day the Applicant received an email accusing her of changing the locks, (which she denied). The Respondent said in her email she would employ a locksmith to change them back at the Applicant's expense. The Applicant gave the Respondent permission to enter the property with her own key at 14.45 if her partners' brother was not present.
16. On the 20 November 2018 the Applicant received an email requiring access to the Property on 22 November 2018 at 10.00am. The Applicant asked if it could be postponed until the 24th when she would be back in the country. The Respondent asked for a key to be left, and accused the Applicant of denying her access. The Applicant reminded her she had given her permission to enter with her key. The Applicant again asked for the reason for the visit, but this was not given. The Applicant said in her oral evidence that she did not want to be obstructive, but for some reason Glen had been late getting there. The Applicant confirmed that she was "okay" to let the Respondent into the property.
17. The Applicant gave notice on the 11 December 2018 to end the tenancy on the 10 January 2019.
18. The Applicant provided a signed witness statement from a neighbour, Alex Storey, of 175 Lydgate Lane dated 17 November 2019. He stated that on the 16 November 2018, he had witnessed a lady aged around 40 exiting, closing and locking the door at the Property on at around 17.54 when he went to deliver some mail he had received for her. He described the lady speeding off in a Mini car, the registration number for which he recorded as HK67 NNG. He had told the Applicant about this on 12 December 2019 after she returned from holiday.
19. The Respondent indicated that she did not accept the Applicant's notice, and asked for a full month's rent to the end of January. The Respondent accused the applicant of denying her access to the Property, changing the locks, carrying out works to the property without written approval, having pets without permission, running a business from the property, and selling items from the property that were her daughters. She made a number of further allegations.
20. In her submission the Applicant provided a copy of her tenancy agreement which was a fixed term (six month) assured shorthold tenancy agreement between the Respondent Landlord, the Applicant, and her co-tenant Thomas Everingham. The tenancy commenced on 29 April 2018 at a rent of £750 per month. The property was described as part furnished. There was a typed addendum to the agreement to allow the Applicant to replace the front door with

a new door with a cat flap, and an initialled (by the Respondent) hand written addendum for two cats to be allowed to reside at the Property.

21. She asserted she believed that the Respondent had contravened numerous laws relating to safely renting out a property, and had harassed a disabled person, amongst other laws and regulations relating to the safety of the property not mentioned in this table.
22. The Applicant claimed a Rent Repayment Order of £4500, being six months' rent at £750 per month, and when questioned by Mr. Howlett how she arrived at this total, she said her six month tenancy had been null and void, because the Respondent had neither landlord insurance or mortgage provider permission, making the tenancy illegal.
23. The Applicant admitted that she had handed her notice in the day before she was told by Mr. Storey that he believed he had seen someone who may have been the Respondent leaving the Property.
24. The Applicant was asked to summarise what was the harassment she had suffered, in support of her application. She confirmed that the harassment had not made her give up the property, she had left due to her house purchase. But she had been on a family holiday, a cruise for her Dads' 50th birthday with intermittent internet connection, and was worried that the Respondent was going to change the locks, or might interfere with her belongings and pets. She believed the Respondent had entered the Property whilst she was away, and taken photos of her cat, the cat litter, and cat food bowls. She had been receiving emails threatening to change the locks, and no information as to why the Respondent sought access. She said that she was ill with stress and ended up in bed for some days as a result of the Respondent's behaviour, which she believed was retaliation for telling her the section 21 notice was invalid. She had even looked into getting early flights home from America. She suffered from a disability, and stress would cause her arthritis in her face to swell up. Under cross examination she accepted she had not sought to introduce medical evidence about this as she did not want the bundle to be "over cluttered".
25. Mr. Alex Storey confirmed his statement in the Applicant's bundle to the Tribunal. He said that the events described occurred shortly before 17.54 on the evening in question (15 November 2018) and it was dark. There was no security light as far as he could recall. He noticed a lady at the side door on entering the driveway, whilst stepping from the pavement to the driveway, about 8 or 9 metres away from him. He said that he could not see the door closing from where he was standing, but the actions of the body of the person in question could suggest the door had been closed. He could not put it higher than that. There was no conversation between them, and she drove off quickly in a mini car with a registration he recorded.

SUBMISSIONS FOR THE RESPONDENT

26. As the Applicant had done, so the Respondent gave evidence on affirmation to the Tribunal in accordance with Rule 13.(7) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 . The Respondent had provided a written statement in response to the application.
27. The Respondent stated that the "date of the submission" exceeded the 12 month term, as the information was received on the 4 December and the last alleged defence was dated 16 November.
28. She stated that the Applicant had chosen to leave the property on 11 December 2018 having completed on a property purchase She provided a copy of an email of this date where the Applicant stated that they had enjoyed living in the house but their house purchase had completed.
29. The Respondent stated that an EPC certificate was made available, a right to rent leaflet was provided, and smoke alarms were fitted to both ground and first floors. She said that the Applicant had changed the locks without permission, in breach of the tenancy agreement. She said she could not access the property, and that there had been various leaks and she had concern about the condition of the Property.
30. The Respondent said she gave notice to her tenants as she said they were "troublesome" from the start of the tenancy, and she felt scared of them, particularly the Applicant herself. She said that she had had "painful experiences", and felt that the Applicant had "run circles" around her. She said that she wanted to move back into the property herself.
31. She wanted full access to the Property, to inspect the leak but was unclear in her evidence as to why this was urgent, or why she had not answered the Applicant's question of the purpose of her inspection.
32. The Respondent said that she had arrived promptly just before the time stated by the Applicant, knocked on the door, progressively more loudly, trying to make herself known, and tried locks, but could not gain entry on the side door. She said that the Respondent kept a key in the bi-folding doors at the rear, so she could not get access there either.
33. The Respondent said she did not see Mr. Storey, although accepted it was her car that he had seen. She said that did not get inside the property at any time whilst the Applicant was away.
34. She denied she had taken the photos in the living room at this time, and said it was another time, when the Applicant's partner let her in. She could not give the date of the photographs. Mr. Howlett in his closing submissions

pointed out that the photographs were taken in daylight, not at night time. She said that she wanted evidence of three cats living at the property as she said they have been defecating over the front room.

35. She said furniture and fixtures were advertised for sale on social media. She said the front door was damaged in storage, and a business had been run without approval, and had a kitten without approval.
36. The Respondent had made lengthy submissions about her experience with the Tribunal Office suggesting that the application should be dismissed due to being outside statutory time limits.
37. She stated that the Applicant had received a harassment warning from PC Gibbons.

DETERMINATION

38. The Applicant applied for a Rent Repayment Order under section 41 of the Housing and Planning Act 2016 against the Respondent alleging an offence was committed under section 1(2),(3) or (3A) Protection From Eviction Act 1977, eviction or harassment.
39. The Tribunal must be satisfied beyond reasonable doubt that an offence was committed; that the housing, subject matter of the offence, was at that time let to the Applicants, and that the offence was committed by the Respondent in the period of twelve months ending with the date the application was made.
40. If the Tribunal is so satisfied it must go on to determine the following issues.
41. The Tribunal must consider whether there are any exceptional circumstances which would make it unreasonable for the Respondent to pay the maximum amount.
42. The Tribunal must determine the applicable twelve month period, the maximum amount that can be ordered under section 44(4) of the Act, and, what account must be taken (under s44(4) of the Act of:
 - (a) The conduct of the Landlord
 - (b) The financial circumstances of the Landlord
 - (c) Whether the Landlord has at any time been convicted of an offence shown above
 - (d) The conduct of the tenant
 - (e) Any other factors.

43. The Applicant submitted her application on the 19 September 2019. The matters complained of pertinent to this application being the alleged harassment and illegal eviction took place between 2 November 2018 and the 10 January 2019 when the tenancy was terminated by the Applicant. These events occurred within twelve months of the application being made.
44. The Respondent had not been convicted of any such offence, but the Tribunal has jurisdiction to make a finding that an offence has been committed.
45. The relevant offences in s40(3) of the Housing and Planning Act 2016 the Applicant relied upon to prove was under the Protection From Eviction Act 1977 are:

S1(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.

S1(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 calculated 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

s3(A) 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.

46. On the facts of this matter it was common ground between the parties that the Applicant intended to leave the Property on the 10 January 2019. She had made an offer on a house long before the events of November 2018; the Applicant did not assert she had been evicted.
47. The Applicant's case was that she had been harassed by the Respondent's behaviour; she was worried that the Respondent would enter her house whilst she was on holiday, and was concerned for her pets, and her personal belongings. She had been subjected to allegations which she felt were untrue.
48. The Applicant had sent an email to the Respondent on the 11 December giving her 30 days' notice to end the tenancy on the 10 January 2019. In that email the Applicant thanked the Respondent for the time at the house, said that they had enjoyed living there, but their house purchase had finally completed. It is clear that the tenancy was ended by the Applicant and her partner, because they had purchased a house, not because any action of the Respondent had driven them out.
49. There can be no finding that an offence had been committed under section 1(2).
50. For an offence to be committed under section 1(3), the Tribunal would have to find acts calculated to interfere with the peace and comfort of the Applicant, with an intent to cause the Applicant to give up occupation of the premises, or refrain from exercising a right over the premises.
51. The Respondent admitted to the Tribunal that she wanted the Property back to live in herself. She served a notice under section 21 Housing Act 1988. The Applicant pointed out the technical errors with the time limits of that notice which she accepted. She served a second notice. The Applicant pointed out the flaws in the second notice due to non-compliance with the Deregulation Act 2015, which again she accepted.
52. The Respondent then sought to access the Property, she says to inspect a leak that had started in August. The Applicant said that the leak had been repaired; there clearly was an element of an ongoing issue with the leak as it had to be attended to again in December. The Respondent did not help the situation for either party by not answering the Applicant's enquiries as to why she wanted to inspect, or why the inspection could not wait until the Applicant returned from holiday. This exacerbated the mistrust and anxiety on both sides.
53. The Tribunal could not be satisfied beyond reasonable doubt that the Respondent had entered the property on the 15th December. Mr. Storey was a credible witness, giving an honest attempt of what he had seen, but at best he had only seen that a lady, who we accept given the car registration recorded was

the Respondent, giving the impression she was locking the door. He did not see the door closing, and she could have been trying the locks, as she admitted trying to do.

54. Even if she had entered the Property, she had a contractual right to do so, and the Applicant had in her email of 20 November 2018 indicated that she had given her permission to enter with her own key, albeit not necessarily on that date.
55. There was no evidence before the Tribunal that any of this behaviour demonstrated an intention on the Respondent's part to cause the Applicant to give up occupation of the premises, or refrain from exercising any right.
56. The Respondent could have waited until the Applicant returned from holiday, but she seemed somewhat wary of her. She wanted the Property back, but on the evidence before the Tribunal there was no suggestion that she would take the law into her own hands to do so, and indeed the Applicant was ready to give it back once her house sale completed, which was pending.
57. The Respondent had mentioned changing the locks, but because she wanted access and believed they had been changed. There was no suggestion at any stage that this was to exclude the Applicant, but because she wanted access to the Property, which the Applicant had in principle agreed to.
58. The Applicant presented as an intelligent resourceful confident individual who was able to research, and articulate her rights and felt a strong sense of injustice from her treatment by the Respondent, who was less well informed of her responsibilities as a landlord. For reasons best known to herself she wanted to access the property whilst the Applicant was on holiday, and this created a considerable amount of anxiety in the Respondent, particularly when she failed to answer questions as to why she was so desperate to get inside. The Tribunal was not persuaded this was to examine a leak, which had appeared in August and been repaired at that time. There was no logical explanation provided by the Respondent in her evidence as to why it was so important for her to access the Property when the Applicant was out of the country.
59. There can be consequently no finding that an offence was committed under sections 1(3) or 1(3A).
60. It was clear to the Tribunal that the parties had a difficult relationship, with a great deal of misunderstanding, mistrust and miscommunication between them. The correspondence (from both parties) was fractious at times. There is little doubt that the Respondent was the author of her own misfortune by failing to communicate with the Applicant why she wished to access the Property.

61. The Tribunal finds that the behaviour of the Respondent was not ideal, but was not designed to harass the Applicant into giving up the Property. It may have interfered with the covenant for quiet enjoyment, but did not amount to an offence under section 1(2) 1(3) or 1(3A) of the Protection From Eviction Act 1977 and accordingly the application for a Rent Repayment Order is dismissed.

J N Murray
Tribunal Judge
25 January 2021