



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

Case reference : **LON/00AN/HMF/2021/0257**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Flat 23 Bush Court, Shepherds Bush
Green, London W12 8PJ**

Applicant : **Michael Briones Yien**

Representative : **In person**

Respondent : **Xin Huang**

Representative : **Dr Andrei Yakovlev**

Type of application : **Rent repayment order**

**Tribunal
member(s)** : **Judge Tagliavini
Mr C Gowman BSc**

**Venue and hearing
date** : **10 Alfred Place, London WC1E 7LR
18 March 2022**

Date of decision : **29 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V:CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in core bundles of 95 pages (applicant's) and 23 (respondent's) pages,

the contents of which have been considered together with the late served additional evidence provided by the parties.

The tribunal's summary decision

- (1) The tribunal finds that the applicant has failed to prove beyond all reasonable doubt that the respondent committed an offence under section 40(3) of the Housing and Planning Act 2016 i.e., section 1(3A) of the Protection for Eviction Act 1977 and section 72(1) of the Housing Act 2004 during the period 14 November 2020 to 13 November 2021.
 - (2) The application for a rent repayment order is refused.
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The application

1. In an application dated 21/10/2021 the applicant sought a rent repayment order under section 41(1) and (2) of the Housing and Planning Act 2016 for the respondent's alleged breaches of s. 1(3A) Protection from Eviction Act; s. 30(1) Housing Act 2004 and s. 72(1) Housing Act 2004. Subsequently, the applicant did not pursue the alleged offence of failing to comply with an improvement notice as it was recognised no relevant notice had been served by the Local Authority.

The premises

3. The premises comprise a flat with 4 rooms, kitchen and bathroom/w.c. located in a purpose-built block of flats ('the flat').

Background

4. Under a written agreement dated 15/10/20 made between the applicant and the respondent landlord, the applicant became the tenant at room 2 in the flat, with exclusive use of one bedroom and shared use of the kitchen and bathroom/w.c., at a rent of £589 per month from 14 November 2020 to 13 January 2021. The applicant subsequently held over as an assured shorthold tenant until his departure from the flat on 14 November 2021.
5. In an expanded Statement of Reasons, the applicant asserted that the acts of harassment comprised (i) a one week notice of a rent increase; (ii) purported termination of tenancy with one month's notice; (iii) throwing away of tenant's kitchen items; (iv) taking photographs of the communal area and (v) creating an uncomfortable atmosphere and awkward relationship between the applicant and the respondent including attending the premises a day earlier than previously notified.

6. The applicant asserted that the flat was one that was required to be licensed under the London Borough of Hammersmith and Fulham (LBHF) additional licensing scheme and that it had not been licensed during the period of the applicant's occupation. The applicant also asserted that from the outset of his tenancy a number of wooden slats on his bed frame were broken, water leaked from the fridge and gas and electrical safety certificates had not been provided by the respondent.

The applicant's case

7. In support of his application the applicant relied upon a bundle of documents which included a number of 'WhatsApp' messages said to be between the applicant and other occupiers of the flat. The applicant also provided a print-out taken from the LBHF HMO register of licensed premises in the locality of the flat showing that the flat was not included among them. Proof of rent paid was provided by the production of relevant entries on the applicant's bank statements.
8. The applicant did not provide any witness statements either from himself specifying who had occupied the flat and when, or from any of the tenants said to have occupied the flat during the course of the applicant's occupation. In an email exchange with Mr Oliver Williams, Private Housing Licensing Officer at LBHF dated 8 February 2022, the applicant was informed that if the flat was occupied by 3 persons in 2 households or more an (unspecified) HMO licence was required and that the local authority had no record of such a licence of having been applied for prior to 9/12/2021.
9. In oral evidence to the tribunal the applicant repeated the alleged acts of harassment by the respondent. When asked for details about who lived in the flat and when, the applicant relied upon a document he had prepared giving the names of other occupants and the date he believed their tenancies had started although gave no end dates and relied upon the WhatsApp messages as proof of their occupancy during the relevant period. On questioning by the tribunal, the applicant was unable to provide further details of these tenancies, stating only that the other tenants did not want to give witness statements in support of his application and referred to one tenant having been resident abroad during a period of the COVID-19 pandemic isolation/lockdown periods.
10. The applicant told the tribunal that as he did not agree with the respondent's proposed rent increase by at least £150 per month he decided to leave the flat, although he had been offered the correct notice period of two months by the respondent, having found himself alternative accommodation and being afraid of bailiffs attending the flat.

The respondent's case

11. The respondent did not attend the hearing and was represented by his partner Dr Yakolev who told the tribunal the respondent was very upset by the application. Dr Yakolev referred the tribunal to the various correspondence between the applicant and the respondent and asserted that the latter had made every effort to be a considerate landlord and accommodate the respondent's requirements. Further, when the respondent realised, he had incorrectly given the applicant one month's notice of the termination of tenancy, he offered to provide the correct notice period if the applicant still required it, although the applicant indicated he wished to leave the flat anyway.
12. Dr Yakolev submitted that the applicant had failed to prove that an HMO licence was required during all or part of the applicant's occupancy and had failed to prove beyond all reasonable doubt that an offence under s.72(1) Housing Act 2004 had been committed. Similarly, it was asserted that the acts complained of by the applicant did not constitute acts of harassment in breach of s.1(3A) Protection from Eviction Act 1977.

The tribunal's decision and reasons

13. The tribunal finds that the applicant has failed to prove beyond all reasonable doubt that an offence was committed by the respondent during the period 14/11/2020 to 13/11/2021 pursuant to section 72(1) Housing Act 2004 and s.1(3A) Protection from Eviction Act 1977.
14. The tribunal finds that the applicant has failed to establish on the criminal standard of proof so that the tribunal can be sure, that the flat was occupied by 3 or more persons in 2 or more households as their sole or main residence during the period for which a rent repayment order is sought. The tribunal finds that in the absence of any or any supporting witness statements and copies of other tenancy agreements the applicant has not been able to meet the required high standard of proof.
15. The tribunal finds that the acts complained of by the applicant are insufficiently serious to comprise harassment and were relatively minor inconveniences. The tribunal finds that none of these acts caused the applicant to vacate the flat and that his voluntary surrender of the tenancy of the flat was as a result of the proposed higher rent, which the applicant was unable to afford.
16. The tribunal finds, and the respondent admits that the incorrect notice period to terminate the applicant's tenancy was initially given. However, the tribunal finds this was not causative of the applicant leaving the flat as the respondent offered to serve the correct notice of termination,

which the applicant implicitly declined by his voluntary surrender of his tenancy.

17. In conclusion, the tribunal dismisses the applicant's application for a rent repayment order.

Name: Judge Tagliavini

Date: 29 March 2022

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).