



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

Case reference : **LON/00BG/HMB/2020/0012**

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

Property : **51A Cephas Avenue London E1 4AR**

Applicant : **Mx P Richards**

Representative : **In person**

Respondent : **Mr Lee Blundell acting by his power of attorney Mrs Hazel Hall (1)
Mrs Hazel Hall (2)**

Representative : **Erol Topal Counsel instructed by
Dutton Gregory Solicitors**

Type of application : **Application for a Rent Repayment
Order by tenant. Sections 40,41, & 44 of
the Housing and Planning Act 2016**

Tribunal members : **Judge H Carr
Ms S. Coughlin MCIEH**

Venue : **Virtual**

Date of decision : **20th September 2021**

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 was referred to are in a bundle from the Applicant comprising 283 pages, a bundle of pages from the Respondent and a response bundle from the Applicant of 53 pages, the contents of which have been noted.

Decision of the Tribunal

1. The Tribunal determines not to make a Rent Repayment Order

The application and procedural history

2. The applicant made an application for a Rent Repayment Order 2nd December 2020. The applicant alleges that the landlord has committed an offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.
3. The applicant seeks a RRO for the period 2nd December 2019 to 1st December 2020.
4. The Tribunal issued directions on 23rd March 2021. Further directions were issued on 22 July 2021.

The hearing

5. The hearing took place via video on 12th August 2021. The applicant attended and represented themselves. The respondents were represented by Mr Erol Topal of Counsel.

6. The applicant raised several concerns at the commencement of the hearing. They were concerned that there was late submission of documents by the respondent's counsel. The tribunal explained that this was simply a summary of the respondent's arguments and did not constitute new evidence. They were also concerned about the removal of Mrs Hall as respondent. The tribunal agreed with the applicant that Mrs Hall should remain a respondent as she was the landlord named on the tenancy agreement. The tribunal noted that the directions issued on 22 July 2021 reflected the fact that Mrs Hall remained a respondent. The respondents agreed with this decision.

The Law

7. The relevant sections of the Protection from Eviction Act 1977 provide as follows:

1(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.

1(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.

1(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.

1(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.

The issues

8. The issues that require to be decided by the Tribunal are:
- (i) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed an offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.
 - (ii) If the tribunal determines to make a Rent Repayment Order it must consider:-
 - What is the applicable 12-month period?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of the respective conduct of the applicants and the respondent and of the financial circumstances of the respondent?

The background and chronology

9. 51A Cephas Avenue is the basement/ground floor flat in a four storey converted house. The remainder of the property is another flat on the upper stories of the building. At the relevant time it was rented to four occupiers.
10. The first respondent and Mr Nigel Baker are the joint and beneficial owners of the freehold of the property.
11. The first respondent is the long leaseholder of the property. Mr Baker who has no connection with the respondent, is the long leaseholder and landlord of the upper flat.
12. The second respondent is the mother of the first respondent and has acted on his behalf whilst he has lived outside of the jurisdiction. She is named on the tenancy agreement as the landlord.
13. The applicant has lived in the property for five years. Originally they signed an Assured Shorthold Tenancy agreement on 4th January 2016. The tenancy was for a fixed term of 12 months. Various agreements have followed. The most recent assured shorthold tenant was granted for a fixed

term of 2 years from 4th January 2020. The rent is currently £1,213.33 pcm.

14. Foxtons were appointed to manage the property in February 2020 after the applicant fell into rent arrears.
15. A section 21 notice was served on the applicant on 29th July 2020.

Did the Respondent commit the offence of unlawful eviction or harassment of occupiers

Arguments of the applicant

16. The applicant makes extensive assertions about the behaviour of the respondents. They say that they only entered into the two-year contract on condition that the landlord would resolve the accumulating repair and maintenance issues. They say that the landlord failed to honour the agreement about repairs and failed to respond in a reasonable, timely and professional manner throughout the tenancy.
17. The applicant refers to a particular email from Mrs Halls the second respondent which they say was inappropriate because it referred to personal circumstances
18. The applicant also says that despite Foxtons being appointed as agents they failed to carry out the necessary repairs although these had been reported by the applicant to the landlord. The applicant took advice and carried out the repairs themselves.
19. The applicant argues that the service of the s.21 notice by Foxtons was an act of retaliatory eviction. They allege that the eviction was a 'revenge' eviction because of their complaints about the conditions in the property.
20. The applicant was also very concerned about the noise nuisance from the occupiers of the upper flat which they believe was not properly acted upon by the respondent. They suggest that there is a relationship between the two long leaseholders which is to the advantage of the respondent. The applicant argues that they were unable to use their bedroom for sleeping due to noise disturbance for a period of about 2 months from July 2020. The applicant was also very worried by the neglect of the pet which appeared to belong to the occupiers of the upper flat.

Argument of the respondent

21. Counsel for the respondent provides in his skeleton argument a useful summary of the applicant's allegations of harassment.

- Not ensuring the Property and its contents and appliances met Government regulations and legislation;
- Not resolving reported disrepair;
- Withholding services;
- Sustained breach of contract
- Not resolving reported complaint of sustained unreasonable noise disturbance and antisocial behaviour by the other occupants of the Property;
- Not resolving the Property Owners banning of the Applicant from use and maintenance of the Property's communal garden;
- Conspiring against the Applicant in collusion with the Property Owner, Mr Nigel Baker, and his tenants of an unlicensed House in Multiple Occupation;
- Not resolving the reported abuse and neglect of the pet owned by the occupants of the Property, to whom which Property Owner, Mr Nigel Baker's was landlord;
- Providing false information and defamatory information to the Property Owner, Mr Baker, and his tenants
- Making multiple demands for money;
- Refusing to remunerate Property repair costs paid by Applicant;
- Requesting reduction of Property repair costs paid by Applicant'
- Evicting the Applicant because the Respondent believed them to be "unhappy";
- Making defamatory claims against the Applicant and their conduct including; "living rent free", "refused contractor entry", "being evicted for non-payment of rent";
- Stating to the Applicant that they had "no choice" but to speak to Mr Austin of Foxtons, following Mr Austin being given notice not to contact the Applicant;
Refusing to respond to the Applicant's request to confirm the Respondent would not be pursuing further eviction or repossession orders and measures;
- Discussing the intention of eviction and repossession of the Property up to and including April 2021.

22. The respondent says that at no point has he tried to remove the applicant from the property, nor has he or the agent suggested to the tenant that they should vacate out of line with the section 21 notice. An improvement notice has not been served in relation to disrepair by the local authority, the repair history is extensive, and all outstanding matters have either been resolved or are underway.
23. The section 21 notice was served more than 4 months after the renewed term commenced and the correct notice period was provided.
24. The applicant's allegations of illegal eviction are baseless, and all correct procedures have been followed.
25. The respondent also rejects any allegations that the respondent, the agent or the neighbours have harassed the applicant. The respondent accepts that damage was caused to the property when water leaked into it from the flat above – but this was something beyond the control of the respondent and which took time to put right.
26. The applicant has put the respondent in a difficult position which meant the landlord accepting deductions from the rental payments for works they did not authorise and would have happily arranged themselves
27. The applicant has refused to cooperate or discuss the matters further although the respondent did agree to write off some rent arrears as a gesture of goodwill. The applicant has refused to speak with Foxtons on the phone so all communication is in writing at the applicant's request.
28. Counsel argues on the part of the respondent that the allegations of the applicant whether viewed individually or collectively, are not valid grounds upon which a Tribunal could conclude, beyond reasonable doubt, that the respondent is guilty of harassment. The applicant's complaints relate mainly to allegations of disrepair/breach of the covenant to repair or matters which are wholly outside the respondent's control.
29. Counsel makes the following points about what he considers is required for an offence under the Protection from Eviction Act 1977 to be provided beyond reasonable doubt and how the applicant's case falls short of this:

Section 1(2):

The applicant has at all material times remained in occupation of the property. Neither the respondent, nor any other person, has ever “deprived him of his occupation of those premises or any part thereof”. Nor has the respondent, his servants or agents, attempted to deprive the applicant of their occupation of the property. Whilst it is correct that the applicant has been served with notice pursuant to s.21 of the Housing Act 1988, that procedure is permitted by law as means by which a landlord may recover possession of premises let under an AST. It is absurd to characterise the institution of a legal process as an attempt to ‘unlawfully evict’ a tenant; the opposite must be true in that, by its very nature, the service of a s.21 notice is the beginning of a process that might lead to a lawful eviction.

In *R v Yuthiwattana* (1984) 16 HLR 49 CA, the Court of Appeal held that for the purposes of s.1(2), first that there must be a deprivation of occupation and that it must have the character of an eviction. Neither of these criteria are met so this element of the application must fail.

Section 1(3):

The use of the words “with intent to cause..” indicate that this is an offence of specific intent. A specific intent to cause the residential occupier either to give up the premises or to refrain from exercising some right in respect of the premises must be proved before this offence is complete; it is not sufficient to establish indifference to, and unconcern for, the tenant nor is it sufficient to establish a hopeful inactivity over services on the part of the landlord – see *McCall v Abelesz* [1976] 1 All ER 727. The sub-section requires the applicant to prove that the respondent did an “act” likely to interfere with the peace and comfort of the applicant# The applicant must prove that the respondent did something that is likely to interfere with their peace or comfort (for example noise nuisance) or have withdrawn or withheld a service reasonably required for A’s occupation of the Property - for example cutting-off a gas/water/electricity supply.

That is not the case here. There is no authority for the proposition that (alleged) disrepair caused by a third party or a process of natural deterioration over time is an ‘act’ committed by a landlord or a withdrawal/withholding of a service. Accordingly, the respondent argues that this aspect of the applicant’s application must fail.

Section 1(3A):

This sub-section differs from ss.1(3) to the extent that the “acts” complained of do not need to be committed with the intent to cause the occupier to give up possession or refrain from exercising a right or pursuing a remedy, they need only be committed in the knowledge that the occupier is likely to give up occupation .However, it remains a prerequisite that there is an ‘act’ that has the effect described. As has been said above regarding s.1(3), here there has been no such ‘act’. The applicant’s complaint is about disrepair, deterioration of fixtures and fittings and (alleged) noise nuisance from the occupiers of the flat above. The applicant seems to suggest that the respondent is, in some way, responsible for the behaviour of the occupants in the flat above the property. A claim in nuisance lies against the individuals directly responsible for causing the nuisance not their landlord *Mowan v Wandsworth LBC* EWCA Civ 357; nor, as the applicant is asserting in this case, their own landlord who is not also the landlord of those making the noise.In *R v Q* [2011] EWCA Crim 1584 the Court of Appeal in relation to the offence contained in s.1(3A) of the 1977 Act concluded that the offence may not be committed by an agent. At paragraph 14 of the decision Laws LJ found that “The primary question here is whether a defendant may be guilty of an offence under section 1(3A) on the footing that he is vicariously liable for the act of another or others. It seems to us to be clear that on its true construction section 1(3A) requires the actual participation of the defendant and in that case there is no room for vicarious liability.”

The applicant has provided no evidence that they had any contact with the first respondent during their tenancy and it must follow that the respondent cannot be held liable for any act or omission on the part of his servants or agents.

Whilst not entirely clear from the above judgment, it is submitted that the same must be true in relation to s.1(3) of the 1977 Act.

30. The tribunal invited Mr Topol to make a submission, based on his arguments, that the matter be struck out under Rule 9(3) (e). This he did, utilising the arguments set out above.
31. The applicant maintained that the behaviour of the respondents was such that the application should not be struck out. The effects of the behaviour of the respondents were real and caused them distress.

The decision of the Tribunal

32. The tribunal determines to strike out the application under Rule 9(3) (e) .

The reasons for the decision of the Tribunal

33. The tribunal has listened carefully to the arguments and concerns of the applicant. The tribunal accepts that they have been very distressed by the circumstances of their living arrangements, the behaviour of the occupiers of the upper flat and what appears to have been extensive avoidance of repairs work by Mrs Halls.

34. However, nothing the applicant has said provides the basis for an offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.

35. The applicant makes extensive complaints about lack of repairs and poor management but these are not sufficient for an offence under the Protection from Eviction Act 1977. Nor does the service of a s.21 notice under the Housing Act 1988 constitute a retaliatory eviction in the particular circumstances that the applicant finds themselves in. Finally, the allegations of harassment fall far short of what is required to prove harassment beyond reasonable doubt under the statute.

36. The tribunal accepts the arguments of counsel for the respondent.

37. The tribunal therefore considers there is no reasonable prospect of the applicant's proceedings succeeding and strikes out the application.

Application under Rule 13.

38. Counsel for the respondent argued that the tribunal should make an order for costs against the applicant under Rule 13.

39. He argued that the applicant had made serious allegations of criminal offences which required the respondents to make strenuous efforts to defend themselves . Counsel accepts that the applicant is a litigant in person, but nonetheless they have behaved unreasonably, and the respondents should not be obliged to bear the costs.

40. The applicant's starting point was that the law was difficult in this area. They argued that the effect of the respondent's behaviour is real and they felt compelled to take action. They proceeded under the tribunal's directions and took advice from experts in the field. They considered it to be unfair to penalise them with costs.

The decision of the Tribunal

41. The tribunal determines not to make an order under Rule 13.

The reasons for the decision of the Tribunal

42. The tribunal has taken as its starting point the decision in *Willow Court Management (1985) Ltd v Alexander* [2016] 0290. In this decision the Upper Tribunal set a high threshold for an award of costs and was particularly aware of the difficulties faced by litigants in person such as the applicant in this case.
43. The tribunal takes account of the difficulties that the applicant faced in occupying their home, the impact of the conditions upon their mental health, as well as the complexity of the law. The tribunal determines that whilst the claim is legally misconceived, the applicant, in their particular circumstances did not behave unreasonably in making the application. The circumstances in which they found themselves made it reasonable to make the application.

Name: Judge H Carr

Date: 20th
September 2021

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RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.

4. 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.

