



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

**Case Reference** : **MAN/32UF/HMB/2019/0001**

**Property** : **40 Tyne Close, Spalding PE11 3DN**

**Applicant** : **Andrew McDonald**

**Respondents** : **Ashley Rebecca Wilson**

**Type of Application** : **Application for a Rent Repayment Order by a tenant - Housing and Planning Act 2016, section 41(1)**

**Tribunal Members** : **Mr S Moorhouse LLB  
Mr IR Harris BSc FRICS**

**Date of Decision** : **22 March 2021**

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**DECISION**

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## **DECISION**

The tribunal makes a rent repayment order against the Respondent in favour of the Applicant in the sum of £3,400.

## **REASONS**

### **Application**

1. The Applicant seeks a rent repayment order, alleging that the Respondent has committed the offence of unlawful eviction. Directions were issued on 12 February 2019 but stayed on 6 March 2019 pending the outcome of related proceedings in the County Court.
2. Following a financial settlement in the County Court proceedings it was confirmed by the Applicant (on 9 February 2020) that he wished to proceed with his tribunal application. The parties were given 28 days from 24 March 2020 to submit statements of case and any other documents to be relied on in accordance with the earlier directions. The Applicant submitted the documents he wished the tribunal to take into consideration. No such submission was made by or on behalf of the Applicant.
3. On 31 July 2020, having clarified that the Respondent was no longer represented and had not received correspondence, the Respondent was supplied by the tribunal with copy documents, including the Applicant's submission, and directed to comply with directions within 28 days. The tribunal's letter in this instance was addressed to the Respondent's parents' house and the Respondent was made aware of this by email on 3 August 2020 with the offer to re-send to 40 Tyne Close.
4. On 2 October 2020 the Respondent was again emailed with electronic copies of the papers and directed to respond to directions within 28 days. On 9 November 2020, in response to a query from the Respondent the Respondent was strongly urged by HMCTS to seek independent professional advice to enable her to fully comply with directions and effectively make her case. The Respondent was warned that failure to comply with directions in a timely fashion could potentially have a detrimental effect on her case and result in the Respondent being barred from participating further in the proceedings.
5. The Respondent was also warned in the directions document that failure to comply could result in a tribunal barring her from participating, and determining all issues against her pursuant to Rules 9(7) and (8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
6. The tribunal convened remotely (by telephone) on 13 January 2021 to review the case. Further Directions were issued barring the Respondent from taking further part in the proceedings and directing that the Applicant provide certain further information and documentation. The Further Directions specified that the Respondent may apply to lift the bar on her participation in the proceedings, and that any such application must be in writing and state the reason for making it.

7. Further information and documentation was supplied by the Applicant pursuant to Further Directions and the tribunal reconvened on 10 March 2021 to determine the Application. No application has been made by the Respondent to lift the bar on her participation.
8. The tribunal considered it appropriate to determine the Application on the papers received in this case, because only one party was participating, neither party had requested a hearing and because there was sufficient information before the tribunal to reach a decision. It was inappropriate to conduct an inspection of the Property in view of the matters in issue, there being no participation by the owner of the Property and the time elapsed since the time of the alleged offence.

### **Applicant's case**

9. The Applicant's case is set out in the application form dated 20 September 2018 that he completed, and in the supporting documents he submitted. It is stated in the application form that he was illegally evicted from the Property on 15 November 2017 for being 5 days late paying rent. It is stated that he had paid 4 months rent at £850 per month. It is indicated that the Applicant believes a rent repayment order would only allow the refund of 1 month's rent, and he therefore claims one month's rent unless more is allowed. The Applicant was directed by the tribunal in its Further Directions to give reasons for the one month limit he referred to. In response the Applicant stated that he believed a time limit was in place, but if that was not the case the full 4 months rent were claimed.
10. Papers supplied by the Applicant include a copy letter from South Holland District Council to the Respondent dated 1 December 2017 stating that the Council had reason to believe that the Respondent had carried out an unlawful eviction, and that information was being collated to support a prosecution case. A copy written record of a police interview of the Respondent dated 3 April 2018 is supplied. In a letter dated 2 November 2018 the Applicant updated the tribunal, stating that the police had regarded the matter as a civil one and decided not to prosecute, and that the Council had decided not to take action in the absence of a police prosecution.
11. Papers appertaining to proceedings in the County Court show that the Applicant made a civil claim for damages against the Applicant, initially in the sum of £10,000. The sum was made up of a sum of £3,400 representing the deposit of £850 and a penalty of 3 times the amount of the deposit for failing to protect it and refusing to return it. The rest of the total sum was made up of: damages for failure to return furniture, equipment and groceries; general damages for waiting for long periods anticipating being able to access the house; failure to provide prescribed information; aggravated damages for risk to health by withholding essential medication and possessions; and exemplary damage. Credit was given for the 5 days unpaid rent in coming to the total sum of £10,000.
12. The County Court proceedings were settled on 14 November 2019. An Order for a stay of the claim recorded that the Respondent had accepted a Part 36 Offer made by the Applicant. This offer was made on 3 September 2019 and required that the Respondent pay the amount of £10,000 initially claimed, with interest and costs (on the standard basis). The costs were recorded as having been agreed at £13,250 and

the deadline for payment was recorded as 26 November 2019 (with provision for proposals to be made if the Respondent was unable to make the payment).

13. Copy bank statements supplied to the tribunal by the Applicant evidence payments by the Applicant to the Respondent in the sum of £850 (each) on 11 July 2017, 9 August 2017, 5 September 2017 and 9 October 2017. These payments are noted by the Applicant to relate to rent. An additional payment to the Respondent of £850 is shown in the bank statement at 27 June 2017 and noted by the Applicant to represent the deposit.

### **Statutory and Procedural matters**

14. The relevant statutory provisions relating to Rent Repayment Orders are contained in sections 40, 41, 43 and 44 of the 2016 Act, extracts from which are set out in the Schedule.
15. Section 40 identifies the relevant offences, including an offence under section 1(2) of the Protection from Eviction Act 1977, an extract from which is set out also in the Schedule.
16. Section 44(4) lists considerations which the tribunal must 'in particular' take into account in determining the amount to be repaid - conduct of the landlord and tenant, financial circumstances of the landlord and whether the landlord has been convicted of an offence to which that chapter of the 2016 Act applied.
17. Provisions concerning the barring of a party from taking part in proceedings are set out at Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 9(8) states:

*'If a respondent has been barred from taking further part in proceedings under this rule and that bar has not been lifted, the Tribunal need not consider any response or other submission made by that respondent, and may summarily determine any or all issues against that respondent.'*

### **Findings and determination**

18. Having received no statement of case or supporting documents from the Respondent, and having barred the Respondent from taking part in the proceedings, the tribunal exercises its discretion under Rule 9(8) to accept the representations and supporting evidence of the Applicant set out earlier under the heading 'Applicant's case'.
19. Section 41(1) of the 2016 Act provides for an application by a tenant or local housing authority. The Respondent admitted in her Defence to the proceedings in the County Court that the Applicant was a tenant at the Property. The tribunal finds that the Applicant was the Respondent's tenant for the period ending 15 November 2017, having paid a deposit of £850 and rent payments of the same amount in July, August, September and October 2017 in relation to the Property.
20. Section 40(3) of the 2016 Act sets out in a table the offences which would entitle a tenant (or local housing authority) to apply to the First-tier Tribunal for a rent repayment order against the offender pursuant to section 41(1).

21. Row 2 in the table describes an offence under section 1(2) of the Protection from Eviction Act 1977. The Applicant claims that he was illegally evicted from the Property on 15 November 2017 and has provided evidence that a civil claim against the Respondent for damages for unlawful eviction was settled by the Respondent for the full amount initially claimed, plus costs.
22. Exercising its discretion under Rule 9(8), the tribunal (1) determines against the Respondent and beyond all reasonable doubt that the Respondent unlawfully deprived the Applicant of his occupation of the Property, and (2) determines against the Respondent that the Respondent had no reasonable cause to believe that the Applicant had ceased to reside in the Property. Accordingly the Tribunal determines that an offence under section 1(2) was committed.
23. Having found that the Applicant was a tenant, and since the offence was committed in the period of 12 months ending with the date on which the Application was made, the tribunal finds that the requirements of section 41(2) of the 2016 Act have been met. Accordingly the Applicant was entitled to make the Application.
24. Having found beyond reasonable doubt that an offence listed in section 40(3) has been committed, the requirements of section 43(1) of the 2016 Act are met and the Tribunal may make a Rent Repayment Order.
25. In this case the Tribunal considers that it is appropriate to make a Rent Repayment Order on the ground that the Respondent committed an offence in unlawfully evicting the Applicant. In reaching this decision the tribunal is mindful of the purpose behind such an Order recorded in Hansard, namely (1) to provide for further penalty additional to any fine, (2) to help discourage illegal letting; and (3) to resolve problems that would arise from a tenant withholding rent.
26. The amount of any repayment is to be determined by the tribunal pursuant to section 44. Provisions within section 46 of the 2016 Act requiring a maximum repayment in the event that the tribunal makes an order do not apply in the present case because the Respondent has not been convicted of the offence, nor has a financial penalty been imposed.
27. Section 44(2) of the 2016 Act prescribes that (for the type of offence in the present case) any repayment must relate to rent paid by the tenant in respect of a period of 12 months ending with the date of the offence. The offence in the present case was committed on 15 November 2017. The rent paid during that period amounted to £3,400 (being 4 x £850)
28. The particular considerations at section 44(4) of the 2016 Act relate to conduct of both parties, landlord's financial circumstances and any conviction(s) to which that Chapter of the 2016 Act applies. Exercising its discretion under Rule 9(8), the tribunal summarily determines these matters against the Respondent. In the absence of any representations from the Respondent or supporting evidence on these issues, or any representations on the part of the Respondent as to any amounts (such as any utility costs met by the Respondent) that should be deducted, the tribunal determines that the rent paid by the Applicant shall be repayable in full.

29. The Tribunal makes a rent repayment order in the total sum of £3,400.

**S Moorhouse**

Tribunal Judge

## Schedule

### Housing and Planning Act 2016

#### Section 40

(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).....

(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.

*The table described in s40(3) includes at row 5 an offence contrary to s72(1) of the Housing Act 2004 “control or management of unlicensed HMO”  
Section 72(1) provides: (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.*

#### Section 41

(1) A tenant.....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.

#### Section 43

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

#### Section 44

(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.

*The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.*

(3) The amount that the landlord may be required to pay 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.

### **Protection from Eviction Act 1977**

#### Section 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.