



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

Case reference : **LON/00BK/HMB/2021/0011**

HMCTS code : **V: CVPREMOTE**

Property : **6B Sutherland Row
London
SW1V 4JT**

Applicant : **Siew Min Chu**

Representative : **In person**

Respondent : **Mrs Maureen McDonnell**

Representative : **Ms Angela McDonnell**

Type of application : **Application for a Rent Repayment Order
by tenant, sections 40, 41, 43 and 44 of
the Housing & Planning Act 2016.**

Tribunal member(s) : **Mr I B Holdsworth FRICS MCI Arb
Mr S Wheeler MCIEH**

Venue : **Remote**

Date of decision : **16th March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which had not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practical under the current covid restrictions. The documents the Tribunal referred to are in two bundles submitted respectively by the applicant and the respondent.

Determination

1. The tribunal are satisfied beyond reasonable doubt that an offence under sections 1 (1)–(3) of the Protection from Eviction Act 1977 was committed by Ms A McDonnell as the landlord of the property for the purposes of the Housing & Planning Act 2016.
2. Ms A McDonnell is deemed a co-respondent in this application as the landlord of the property during the offence.
3. The tribunal has determined that a Rent Repayment Order ('**RRO**') of **£1,183.60** should be paid to the applicant by the respondents.
4. These monies should be paid to the applicant within two weeks of issue of this decision.

Application

5. This is an application made under s.41 of the Housing & Planning Act 2016 ('**the 2016 Act**') made by the applicant for a Rent Repayment Order.
6. It is asserted that the landlord committed an offence of unlawful eviction and harassment of the tenant applicant contrary to Sections 1-3 of the **Protection from Eviction Act 1977**.

Hearing

7. A video hearing was held on 7 March 2022.
8. The applicant represented herself and Ms Angela McDonnell represented the respondent. The respondent called Ms Fiona Holkham as a character witness.
9. Ms Angela McDonnell explained to tribunal that the named respondent in the application, Mrs Maureen McDonnell is her mother who died in January 2022.

Background

10. Chapter 4 of the Housing & Planning Act 2016 makes provision for RROs to be made by a landlord, when a landlord has committed certain offences.
11. The Estate of the respondent is the freeholder of 6B Sutherland Row, London SW1V 4JT ('**the Property**'). This is a house in multiple occupation ('**HMO**') and the tribunal is told that in June 2020 the applicant joined two other occupants of the Property, who were long-term residents of this dwelling.

12. It was explained to the tribunal that the Property had previously been the family home of the respondent. The respondent entered a residential care home in 2018 and subsequently several rooms in the Property had been let. Ms Angela McDonnell (the '**respondents' representative**') retained a room on the first-floor of the Property with her permanent residence at 18 Chaucer House, Churchill Gardens Estate, London SW1V 3DW.
13. It is not in dispute that the applicant held a tenancy of the property from 6 June 2020 to 6 August 2020. The rent was agreed at £900 per month, inclusive of all outgoings, including utilities and council tax bills. A deposit of £900 was paid on commencement of the tenancy.
14. It is alleged by the applicant that the landlord caused her harassment soon after taking occupation of the ground floor room at the Property. This continued harassment culminated in the applicant's unlawful eviction on 26 July 2020.
15. The applicant now seeks a RRO for the period from when she occupied the Property to the date of the alleged offence. She seeks a RRO of £1,800 for the 7-weeks period from 6 June to 26 July 2020.

Legislation

16. Part 1 of the Protection from Eviction Act 1977 ('**the 1977 Act**') defines a residential occupier as a person occupying a premises as a residence under a contract.
17. s.2 of the 1977 Act states that "*any person who deprives a residential occupier of the premises shall be guilty of an offence*". By s.3(a) any "*interference with peace or comfort of the residential occupier,*" or "*withdrawal of services*" is an offence under the 1977 Act.
18. s.40(1) Housing & Planning Act 2016 confers power on the tribunal to make a RRO where a landlord has committed an offence, including a breach of sections 1-3 of the 1977 Act. s.40(2)(a) of the 2016 Act provides that a rent repayment is an order requiring the landlord to repay an amount of rent paid by the tenant.
19. By s.43 of the 2016 Act, the tribunal may make a RRO if satisfied beyond reasonable doubt that a landlord has committed an offence, to which chapter 4 of the 2016 Act applies. This includes a breach of sections 1-3 of the 1977 Act.
20. By s.44(2) of the 2016 the amount of a RRO must relate to rent paid during the period, not exceeding 12-months, ending with the date of the offence.
21. By s.44(4) of the 2016 in determining the amount of a RRO, 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 chapter 4 applies.

Applicant's evidence and submission

22. The applicant told the tribunal she occupied her room at the Property on or around 6 June 2020. This is evidenced by a letter from Ms A McDonnell to the applicant that grants permission to occupy a room and for a rent of £900 per month.
23. At the outset the relationship with Ms A McDonnell, the respondents' representative was cordial, but in early July 2020 the applicant alleges she had a large spoon removed from the kitchen without her permission. She asked the other two residents whether they had seen this spoon and explained to the tribunal that from then on, the relationship with landlords representative deteriorated.
24. The applicant claims her peaceful enjoyment of the accommodation was reduced by visits from Ms A McDonnell to the property. One of these visits allegedly included a late night drinking session with her friends.
25. The applicant alleges her use of the property was inhibited by the egregious behaviour of Ms A McDonnell and this culminated in a series of email and WhatsApp exchanges with her in late-July.
26. Copies of WhatsApp exchanges were provided to the tribunal and these detail criticism of the behaviour of the applicant, alleged failures to secure the front door, frequent visits from male friends and damage to a kitchen bin.
27. On 25 July 2020 there was an exchange between the parties which included a request from Ms A McDonnell to the applicant to leave the premises. Ms A McDonnell then served a formal month's notice on the applicant.
28. On the morning of 26 July 2020 it is claimed by the applicant that Ms A McDonnell asked her to vacate the property immediately. The applicant complied with the request leaving the front door open whilst the vehicle was outside and taking with her the keys to her room and dwelling.
29. The applicant reminded the tribunal this was at the time of national Covid lockdown and alternative accommodation was difficult to secure.
30. The applicant supplied the tribunal with details of her rent payments, she claims her contributions amounted to £1,800 during the period in dispute.

Respondent's evidence and submission

31. The respondent's representative told tribunal that she held joint Power of Attorney for the respondent during the period of the claim.
32. The representative explained to the tribunal that she had received the room deposit money from the applicant together with the first month's rent payment. She claimed this was in lieu of work the representative had undertaken on behalf of the respondent regarding the Property.
33. The representative claimed that the applicant was a difficult tenant. The representative alleged the other two tenants of the Property had complained about the applicants' behaviour, damage of the kitchen bin, numerous visitors to her room and unsocial behaviour. These allegations offered to tribunal were based on hearsay testimony of a tenant who had not provided a written statement nor attended the hearing.
34. Ms A McDonnell submitted a Witness Statement from Miss Holkham. Miss Holkham had not met the applicant during her brief tenancy at the Property. The Witness Statement referred to the previous good behaviour of the representative.
35. The representative explained that the rent included all utility charges and council tax for the tenants of the Property during their stay at the premises.

Discussion and conclusion

36. The tribunal has reviewed the role of the respondent, Mrs Maureen McDonnell and her named representative, Ms Angela McDonnell in this application. It is not in dispute that Ms A McDonnell, prepared and signed the licence for the room letting, received the deposit and rent under the agreement and held Power of Attorney for her mother, the named respondent. She has managed the Property throughout the claim period, received all tribunal correspondence and followed the directions issued on 21 September 2021. We are told since 2018 that the respondent Ms Maureen McDonnell was in residential care suffering dementia and has taken no part in the letting of the Property.
37. For the reasons listed above Ms A McDonnell is deemed the landlord of the premises for the purposes of the 2016 Act. The tribunal directs that Ms A McDonnell is made a co-respondent with her mother, Mrs Maureen McDonnell the previous sole respondent in this application.
38. This change to the parties named in the application is made pursuant to the provisions of Rule 10 of the **Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**. The tribunal cannot identify prejudice to any of the parties as a consequence of this change.

39. The respondents are liable for the payment of any rent repayment order made by the tribunal.
40. The tribunal has reviewed the evidence provided by both the parties. They conclude the applicant Ms Chu was harassed by the respondent, Ms A McDonell during her stay at the property. This is evidenced by copies of the WhatsApp and email exchanges.
41. It is not disputed by the landlord that the tenant was asked to summarily vacate the property on 26 July 2020. No breach of the lease terms is proved by the landlord. The tenant was not granted any statutory notice period prior to the leaving date. The tribunal consider the actions of the landlord constitute an unlawful eviction.
42. The tribunal are satisfied beyond reasonable doubt that the landlord has committed an offence by her behaviour towards the applicant. They conclude that her actions during the claim period towards the applicant contravened the provisions of the 1977 Act. The tribunal can therefore make an RRO under the provisions of the 2016 Act.
43. The tribunal is provided with a detailed rent payment schedule from the applicant. This confirms payment of £1,800 were made to the respondent and her representative during the period of the claim. There is no dispute that these monies were paid to the respondent
44. The tribunal is guided in the analysis of the information and determination of the RRO by the Upper Tribunal Decision in **Vadamalayan –v– Stewart 2020UKUT183(LC)** and **Williams –v– Parmar & ORS 2021UKUT244(LC)**. The RRO guidance provided by the authority **Vadamalayan** asked the tribunal to start with 100% of the rent paid by the tenant and then deduct payments for utilities and council. The Decision **Williams –v– Parmar & ORS** explains that the factors to be taken into account in determining RRO are not limited to those listed at s.44(4) of 2016 Act and summarised at section 15 of this Decision. The guidance requires the tribunal to take into account the purposes intended by the jurisdiction in making the RRO.
45. The tribunal guided by the relevant authorities has considered the written statements, hearing testimony, and supporting financial information submitted by the parties in reaching their decision.
46. The respondent failed to supply any information on the costs of services and council tax, as requested in the Directions provided by the tribunal. This tribunal has decided it is not possible to make an assessment of these charges without any cost information.
47. In assessing the sum payable, the tribunal has had regard to the duration of any reclaimable rent. A Rent Repayment Order can only be made for the length of period over which the applicant paid rent, ending on the date of the offence. This is calculated at 50-days, at a

daily charge of £29.59, based upon the annualised rental of £900 per month. The **total sum** liable for repayment is **£1,479.50**.

48. The tribunal has then made a reduction of 20% to this sum. This is to reflect the following:

- i. The additional personal responsibilities of the respondent due to her mother's illness during the claim period;
- ii. The inappropriate behaviour of the tenant by failing to secure the front door on departure from the Property and holding of the keys to the premises after giving up occupation of her room; and
- iii. The lack of professional property management expertise of the respondent.

49. After reduction, the RRO amounts to **£1,183.60**. This sum to be paid to the applicant within two weeks of the date of this decision.

50. The tribunal considers this RRO reasonable and appropriate in the circumstances.

Valuer Chairman: Ian B Holdsworth

Dated: 16th March 2022

Appendix A

Rights of Appeal

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

