



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

Case Reference : **CHI/00HB/HMF/2021/0016**

Property : **87 Keys Avenue, Horfield, Bristol,
BS7 0RP**

Applicant : **Simona Blazic**

Respondent : **Mostafa Kaveh**

Type of Application : **Rent Repayment Order, Housing
and Planning Act 2016 (Occupier)**

Tribunal Members : **Judge Dovar
Mr Davies FRICS
Mrs Wong**

**Date and venue of
Hearing** : **10th September 2021, Remote**

Date of Decision : **15th September 2021**

DECISION

© CROWN COPYRIGHT

1. This is an application, dated 8th June 2021, for a Rent Repayment Order under s.44 of the Housing and Planning Act 2016 ('the Act') by Ms Blazic who was a tenant of Mr Kaveh at the Property.
2. Ms Blazic seeks payment of £3,780, being rent accepted to have been paid to Mr Kaveh for the period August 2019 to May 2020 on two grounds: (1) harassment and (2) renting an unlicensed house in multiple occupation. The material statutory provisions are set out in the appendix to this decision.
3. Directions were given by the Tribunal on 21st July 2021 including for Mr Kaveh by 27th August 2021, to file any evidence, including that of his financial circumstances or any other circumstances which would justify a reduction in the amount of any order made. The Directions also set out the issues for this Tribunal to consider. Mr Kaveh did not engage with the directions. Whilst he said he did get them, he had too many other things going on at the time.
4. The hearing was conducted remotely and although there was some difficulty with Mr Kaveh and Tribunal Member Wong joining, fortunately they both managed to participate by telephoning in and neither was at a disadvantage because of that.
5. Ms Blazic filed a bundle in accordance with the directions, gave evidence and was questioned by the Tribunal and Mr Kaveh. The Tribunal permitted Mr Kaveh to give evidence and he was questioned by Ms Blazic and the Tribunal. Both parties gave short summing up speeches.

Time for bringing an application

6. Before dealing with either basis for the application, the first point of general application is that s.41 of the Act provides that the application must be based on an offence which was committed in the period of 12 months ending with the day on which the application was made (s.41(2)(b)). In this case therefore the offence in question must have occurred in the 12 months leading up to the date of the application, 8th June 2021; i.e. from 9th June 2020.

Ground 1: Harassment

7. The first basis upon which it is said that the Applicant is entitled to an Order is due to Mr Kaveh's harassment of her.
8. At first it is said that Mr Kaveh would wrongly blame her for making a mess in the kitchen. He responded to say that he was trying to make sure that everyone tidied up after themselves. This appeared to the tribunal to be minor issues which did not come close to any of the prescribed offences.
9. However, from June 2020 it was said that he would scream at night and would play loud music during the day. Further that when approached by Ms Blazic and asked to turn the music down because she needed peace, it was turned up louder.
10. Ms Blazic said she would have moved out when this occurred, but she was unable to do so because of the difficulties faced in moving whilst the

country was in lockdown. She did manage to eventually move out in August 2020 though.

11. Mr Kaveh did not deny the screaming. He gave no explanation for it. He also did not deny the loud music during the day, nor that Ms Blazic was in the Property and working from home. His response was that he did not consider it was a problem and that if it had been a problem, then Ms Blazic would have gone to the police.

Offence Committed?

12. The first issue for the Tribunal is whether it is satisfied beyond reasonable doubt (s.43) that that there has been an offence under either of ss.1(2), (3), or (3A) of the Protection from Eviction Act 1977.
13. Further, given s.41 (2) (b) of the 2016 Act, in this case, the offence must have been committed after 9th June 2020. The evidence from Ms Blazic was that the conduct complained of did occur after this date, being from June 2020 to the end of her tenancy in August 2020.
14. The Tribunal does not consider an offence is made out under s.1(2) of the 1977 Act, as Ms Blazic does not complain that she was actually removed or that attempts were made to forcibly evict her.
15. The Tribunal is also not satisfied beyond reasonable doubt that s.1(3) applies, in that although the Tribunal finds that there was screaming and loud music, it is not satisfied that that was done with an intention to cause Ms Blazic to move out. It seems it was more random, bullish and selfish behaviour on the part of Mr Kaveh.

16. However, the Tribunal is satisfied that s.1(3A) is made out. Firstly, it was abundantly clear and was not denied that there was screaming at night and loud music during the day. That meets the first requirement of s.1(3A), being acts likely to interfere with the peace or comfort of Ms Blazic. The second requirement is that either Mr Kaveh knew or had reasonable cause to believe that that was likely to cause her to give up occupation. The Tribunal is satisfied beyond reasonable doubt that either he was aware that his conduct was likely to cause her to give up occupation or that he had reasonable cause to believe that that would be the impact. Under this section the Tribunal does not have to be satisfied that Mr Kumar intended to cause her to leave, but that he knew or had reasonable cause to believe that his conduct was likely to cause her to do so nonetheless.
17. It is difficult to comprehend how anyone could consider otherwise in light of the screaming and loud music. The Tribunal was not impressed with Mr Kaveh's response to this allegation, which was that he did not consider it was a problem, as if it was, Ms Blazic could have simply called the police. It is difficult to imagine anyone wanting to live in a Property where he was screaming at night and playing loud music during the day. Further, Ms Blazic stated she was caught in a difficult situation given that she could not move out during lockdown and was trying for a period to work from the Property, which became impossible.
18. Further, the Tribunal believed the evidence of Ms Blazic when she stated that she had said she needed peace and quiet and had also begged him to turn the music down, but that that only made matters worse. Therefore,

if not at first, at least once they had had this conversation, which must have been at least by August 2020, he would have been aware of her problem and that it was likely to cause her to move out.

Order

19. Having found that an offence was committed arising from conduct around June 2020, s.44(2) provides that the Tribunal can make an order for repayment of rent in respect of the period of 12 months ending with the date of the offence; i.e. from June 2019 to June 2020. Even if the offence was not committed until shortly before she moved out in August 2020, that would still provide for a 12- month period between August 2019 and August 2020.
20. In considering whether to make such an order and the level of rent to be repaid, the Tribunal has regard to circumstances of the offence, Mr Kaveh's approach to this application and specifically in relation to the amount of any order, the factors set out at s.44(4), being the conduct of the parties as well as the financial circumstances of the landlord.
21. There is no complaint about Ms Blazic or her conduct as a tenant. Mr Kaveh accepted that she had paid her rent on time. As for conduct, given the finding of an offence of harassment and the nature of it from around June to August 2020, when Ms Blazic left and that this was during a lockdown period when she was trying to work from home, as well as justifying the making of an order, the Tribunal considers this to be a significantly aggravating factor in considering the amount.

22. As for Mr Kaveh's financial circumstances, he had failed to follow the Tribunal's directions and provide any evidence. He was given an opportunity to provide some details orally, but it was difficult to ascertain his precise position. Whilst he said he was going through a divorce, he said was about to sell his business for around £60,000 and owned properties. The Tribunal was therefore unable to take this into account as a factor to reduce any order. However, his failure to properly engage with this application until the last minute, was a factor taken into account in whether to make an order and was an aggravating factor when it came to consider the amount.
23. Given that the conduct complained of lasted at best for around 3 months, and was serious in nature and Mr Kaveh's lack of engagement with this application, the Tribunal considers that $\frac{3}{4}$ of the rent for three months is the appropriate order to make; i.e. in the sum of £945. As noted above, the legislation does not require the repayment of rent that was paid during the actual period of harassment, but it can be for any period within the 12 months leading up to the offence.

Ground 2: unlicensed HMO

24. The second issue for the Tribunal is whether it considers that it is beyond reasonable doubt that there has been an offence committed under s.72(1) of the Housing Act 2004, during the relevant period, so that there was a failure to licence the Property as a HMO, when there was a requirement to do so.

25. It was difficult to piece together how many people were living at the Property and when. Ms Blazic stated that when she moved in in 2017, contrary to what she had been told by the property agents, there were 5 other occupiers, not 3. Then in about 2018, Mr Kaveh moved into a shed in the garden, but at that time there were only 4 in the Property itself.
26. In her statement of 6th August 2021, she stated that *'during my tenancy at the property lived 5 tenants and house had only one bathroom. At the property also lived Mr Kaveh but in the garden shed flat.'*
27. In August 2020, she sent the local authority a report in which she stated that in March 2020 there were 5 tenants, but that at the time of the report there were only three or four people living at the Property and that *'In the house live more people – around 3 tenants and Mr Kaveh with his partner'*. Mr Kaveh said that his partner lived in Canada and only visited him at the Property.
28. Ms Blazic also relied on a statement from Mr Jones a Private Housing Caseworker employed by the local authority. He had not inspected the Property. At its highest his evidence was that the Property *'has possibly been licensable as a Mandatory HMO'*. He reported a search which showed *'3 people currently on the electoral register and 5 co-residents in 2021. During 2020 there were 4 people on the electoral register and up to 7 co-residents'*. This was not of itself conclusive of occupancy. Firstly, there had been no inspection. Secondly, even if the numbers on the electoral register were conclusive of occupants, which the tribunal did not consider they were, that only amounted to 4 at best. Thirdly, it

was not clear what ‘co-resident’ meant or how those figures had been arrived at. Finally, the most he could say was that it was ‘possible’ that the Property had been a mandatory HMO.

29. The broad flow of evidence that the tribunal heard, was that by around June 2020, there were no more than 4 living at the Property. Mr Kaveh contended there were only 3: himself, Ms Blazic and one other.

30. Mindful of s.41(2)(b) the Tribunal must first be satisfied that an offence was committed in the period between June 2020 and June 2021 when the application was made. If it was, then s.44 provides that where this offence is relied on then the amount of any order ‘*must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence.*’

31. Section 55 of the Housing Act 2004 imposes the requirement for owners of certain HMOs to obtain a license. Section 55(2) refers to the following HMOs being required to be licenced, either:

a. an HMO within any description of an HMO prescribed by a national authority; or

b. if any area is designated under s.56 as subject to additional licencing by a local authority, then if it is within any description of an HMO provided in that designation.

32. The Tribunal was not provided with any evidence of the second, being a local designation, and so the first applied. In which case this Property would not need to be licensed under the description provided by a

national authority, unless there where 5 or more occupants in total (see article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018).

33. There was insufficient evidence to establish that from June 2020 (i.e. in the 12 months prior to the application) there were 5 or more occupants at the Property. It follows that this part of the application fails.

Conclusion

34. The Tribunal is satisfied beyond reasonable doubt that an offence was committed under s.1 (3A) of the Protection from Eviction Act 1977 from June 2020 and that it is appropriate to make a Rent Repayment Order. The Tribunal makes a Rent Repayment Order in the sum of £945. The rent shall be repaid to the Applicant within 28 days.

LEGISLATION

Housing and Planning Act 2016

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	
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		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under [section 30\(1\)](#) or [32\(1\)](#) of the [Housing Act 2004](#) is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

Protection from Eviction Act 1977

1.— Unlawful eviction and harassment of occupier.

(1) In this section “*residential occupier*”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(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.

(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.

(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.

Appeals

A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.