FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AT/HMF/2019/0066**
HMCTS code (paper, video, audio)	**:**	**V: VIDEO**
Property	**:**	**26 Campion Road, TW7 5HS**
Applicant	**:**	**Mr A Sood**
Representative	**:**	**In person**
Respondent	**:**	**Beachcourt Properties Ltd**
Representative	**:**	**Mr T Fitzgibbon of counsel**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Ms J Mann MCIEH**
Date and venue of Hearing	**:**	**2 July 2021** **Remote**
Date of Decision	**:**	**2 July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video using VHS. A face-to-face hearing was not practicable and all issues could be determined in a remote hearing.

The application

1. On 23 September 2019, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for Rent Repayment Orders ("RROs") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 9 December 2019 and 25 February 2020 (other directions were made in the form of letters from the Tribunal office).

2. In accordance with the directions, we were provided with an Applicant's bundle of 60 pages, and a Respondent's bundle of 15 pages. The Respondent also submitted a skeleton argument.

The hearing: preliminary applications

First preliminary issue: strike out on the basis of wrong identification of Respondent

3. Mr Fitzgibbon made an preliminary application to strike out the application under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 ("the Rules"), rule 9 on the basis that the application misidentified Ms Shannon Barrett as the landlord.

4. Mr Fitzgibbon submitted that it was clear from the HM Land Registry details provided in the bundles that the owner of the freehold interest was Beechcourt Properties Ltd. Ms Barrett is the sole shareholder and director of Beechcourt.

5. That Beechcourt was the proper respondent was, Mr Fitzgibbons said, known to the Applicant, who was engaged in other litigation with the landlord. He nonetheless made no attempt to amend the application at any time.

6. When asked, Mr Fitzgibbon accepted that there would be no substantive prejudice if we were to order that Beechcourt be substituted as Respondent. Mr Fitzgibbon told us that he was authorised to represent Beechcourt if necessary.

7. The Applicant resisted the application on the basis that Ms Bassett had "changed her name" to Beechcourt at some point, but – or at least this is what we infer he meant to argue – there was no material difference between the two.

Decision on first preliminary issue

8. The Respondent is correct that the landlord is the company, and that therefore Ms Bassett is not the appropriate respondent. Although clearly the company and Ms Bassett are different legal persons, given the fact that Ms Bassett is the sole controlling mind of the company, and that Mr Fitzgibbon can act for it, no prejudice is occasioned by the Tribunal substituting the company for Ms Bassett as the Respondent, and we do so.

Second preliminary issue: strike out of allegations of criminal offences

9. In his second preliminary application, Mr Fitzgibbon submitted that each of the criminal offences alleged by the Applicant should be struck out. In each case, there was no reasonable prospect of success in arguing that they were made out, and they should be struck out under rule 9(3)(e) of the Rules.

10. The jurisdiction of the Tribunal to make an RRO under section 43 depends upon us finding that the landlord has committed at least one of the criminal offences listed in section 40 of the 2016 Act, applying the criminal standard (section 43). The Applicant had identified four criminal offences of which he alleged the Respondent was guilty.

11. The four offences were:

    (i) Controlling or managing an unlicensed house in multiple occupation ("HMO") contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act");

    (ii) Using or threatening violence for the purpose of securing entry to premises, contrary to Criminal Law Act 1977, section 6(1);

    (iii) Failing to comply with an improvement notice, contrary to section 30(1) of the 2004 Act; and

    (iv) Unlawful eviction/harassment, contrary to Protection From Eviction Act 1977, section 1(3) or (3A).

12. The basis for the application in respect of (i) and (ii) above was that the relevant time limit had elapsed.

13. The application was received on 23 September 2019. By section 41(2)(b) of the 2016 Act, an application can only be made if the offence was committed within 12 months of the application. The offence window was therefore from 24 September 2018 to 23 September 2019.

14. It was not contested that an application for an HMO licence had been received by, at the latest, 8 May 2018 (the Respondent argued that it must have been somewhat earlier in April, but the difference is immaterial).

15. Section 72 of the 2004 Act defines the offence. It provides that it is a defence if an application for a licence has been made (section 72(4)(b)).

16. It follows, Mr Fitzgibbon argued, that, even if the Respondent was committing the section 72 offence before 8 May 2018 (at the latest), it was not doing so thereafter. Accordingly, the HMO offence was not committed during the offence window.

17. The incident relied on by the Applicant in relation to the violence for securing entry offence took place on 13 June 2018. It involved a man who was apparently acting as an agent of the Respondent at the time. This too, Mr Fitzgibbon argued, was therefore outwith the offence window.

18. The basis for the allegation of a failure to comply with an improvement order was that the Applicant had complained to the local authority, the London Borough of Hounslow, about disrepair at the property. An officer of the authority visited the house in February 2019, and told the Applicant that he would issue an improvement notice. Subsequently, the Applicant asked Ms Barrett about the improvement notice, and she denied that one had been served.

19. In his submissions, Mr Fitzgibbon invited us to conclude that there was no prospect of the Applicant persuading us to the criminal standard that an improvement notice had been served, let alone not complied with, in the absence of anything more than an oral assertion that one would be served in the future.

20. In his written application, the Applicant invited us to disbelieve Ms Barrett when she denied that an improvement notice had been served. However, in his submissions before us, he said that he had, later again, telephoned the Council and had been told that the officer concerned had left and "basically whatever he was working on had been abandoned".

21. Accordingly, in his own submissions, the Applicant conceded that there had been no improvement notice.

22. In respect of the Protection From Eviction Act 1977 offence, Mr Fitzgibbon submitted that there were no adequately particularised incidents of harassment within the offence window in the Applicant's written submissions.

23. Before us, the Applicant refined his submission in respect of the offence.

24. Section 1(3) and (3A) are, relevantly, in the following terms:

> (3) If any person with intent to cause the residential occupier of any premises –
>
> (a) to give up the occupation of the premises …
>
> (b) …
>
> … persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.
>
> (3A) … the landlord of a residential occupier … shall be guilty of an offence if –
>
> (a) …
>
> (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,
>
> and … 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 premises … .

25. The Applicant argued before us that the Respondent had indeed withdrawn or withheld a service.

26. The Applicant put some weight on the difficulty he had encountered in securing maintenance of the house by the Respondent – that is, the "service" was discharging the landlord's maintenance responsibilities.

27. But his principal submission related to anti-social behaviour by three other tenants in the house. He was, he said, the victim of serious anti-social behaviour by the other tenants, and his complaint was that the Respondent failed to adequately deal with the anti-social behaviour. There was considerable material relating to the anti-social behaviour in his written submissions, but it was only orally before us that he developed the argument that the landlord should provide, as a service to its tenants, protection from anti-social behaviour by other tenants. For this service, he relied on both the terms of the HMO licence and on descriptions of the duties of landlords of HMOs in websites belonging to the local authority. The Applicant also adverted to a letter from the police to the effect that he should report the other tenants to the

landlord; and similarly a letter from the Council who also advised him to take the matter up with the landlord.

28. Mr Fitzgibbon responded to this approach by submitting, first, that as a matter of the law of landlord and tenant, a landlord was not responsible for the behaviour of other tenants. Secondly, he drew attention to steps that Ms Barrett had, indeed, made to talk to the other tenants and discourage anti-social behaviour.

29. The Applicant did not contest that Ms Barrett had made the efforts that Mr Fitzgibbon referred to, but countered that they were inadequate.

Decisions on second preliminary issue

30. We have no hesitation in allowing the application in respect of the first three potential alleged offences.

31. The HMO offence and the offence of violence for securing entry did not take place (even if made out) during the offence window.

32. The improvement notice offence is unsustainable in the light of the Applicant's own effective concession in his submissions.

33. We also allow the application in respect of the Protection from Eviction Act 1977 offence.

34. In the first place, at least paradigmatically, the offence refers to "services" like electricity, gas or sewerage, rather than management services. While we do not exclude the possibility that management services could be covered by the term in those sub-sections, it is important to start from what we see as the core case for the application of the offence.

35. The "service" relied on by the Applicant is some distance from that core case.

36. The Applicant's approach has some apparent plausibility only if one ignores two other features of the offence, in the factual context of this dispute. First, both offences related to a withdrawal of a service "reasonably required for the occupation of the premises as a residence". This creates a high threshold for the importance of the service. To take the examples above, it may be that electricity or sewerage are services required for premises to be capable of being lived in. We do not think that, at the very highest, the Applicant's complaints were of the withdrawal of services that made the property not reasonably capable of residential occupation. If nothing else, he still lives there.

37. Thirdly, the offence under subsection (3) requires that the service is withheld the intent to cause the occupier to leave, and that under subsection (3A), knowing or having reasonable cause to believe that that will be the effect. It is true enough that the Respondent wishes the Applicant to leave. However, that that was her intention in respect of either the repairs or the anti-social behaviour is not credible. As to the first, the allegation would have to be that (bearing in mind the point above about the threshold) Ms Barrett sought to make the house, occupied by a number of tenants, unable to be lived in in order to cause the Applicant to leave (or with the knowledge that it would do so). The level of disrepair complained of does not come anywhere near justifying such a position.

38. As to the anti-social behaviour, the Applicant does not contest that Ms Barrett has taken some steps to counter it. Even if ineffective (as the Appellant would have it) provision of a service can amount to withdrawal or withholding of the service, the implication of this is that Ms Barrett must have carefully calibrated her intervention in respect of the anti-social behaviour so that she did take steps, but that the conduct she was apparently seeking to discourage would still have the effect of making the premises unfit for reasonable occupation as a residence. This is not a credible allegation.

39. Taken together, we do not think that there is any reasonable prospect that the Applicant could persuade us to the criminal standard that the Respondent had breached section 1(3) or (3A) of the Act.

Disposal

40. We have struck out, cumulatively, the four parts of the Applicant's case relating to the allegations of criminal offences. This is not the same as striking out the application as a whole. The result, however, is that it is not possible for the Tribunal to make an RRO, it being not possible for us to conclude that the Respondent has committed a qualifying criminal offence.

41. Accordingly, we dismiss the application.

Application for costs

42. The Respondent made an application under Rule 13 of the Rules for its costs on the basis that the Applicant had acted unreasonably in bringing and conduction the proceedings.

43. Since their amendment by Tribunal Procedure (Amendment) Rules 2017/723, the rule 13 jurisdiction applies to the jurisdiction under the 2016 Act.

44. Mr Fitzgibbon submitted that under the three part approach set out in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 290 (LC), [2016] L& TR 34, we should find that the Applicant had acted unreasonably, in the *Ridehalgh v Horsefield* [1994] Ch. 205 sense.

45. In respect of the objective judgement of unreasonableness (*Willow Court*, [28], he relied first on the misidentification of the Respondent (see above). Secondly, he adverted to what he described as delay and prevarication by the Applicant in the conduct of the proceedings. When asked for particulars, he referred to one occasion, when the Applicant has missed a deadline in January 2020, which occasioned a letter from the Tribunal, and the provision of a new deadline.

46. Finally, he relied on the fact that he had been successful in striking out each of the allegations of criminal offences. In each case, he said, the errors should have been apparent. That the HMO offence and the violence for securing entry offences were out of time was obvious (and would have been apparent from publicly available websites), and the Applicant effectively admitted that the improvement order offence was unsustainable.

47. Mr Fitzgibbon submitted that his conduct allowed of no reasonable explanation. Rather, he said, we should infer that he was engaged in a vendetta against Ms Barrett, further evidenced by his failure to pay any rent since about December 2018 and the other litigation between the parties.

48. In considering our discretion as to costs in the second stage of the *Willow Court* approach, we should take account of what he described as the Applicant's vexatious conduct in respect of the Respondent.

49. In respect of the final stage of the terms of the order, he asked for his costs for the day of the hearing if summarily assessed, or if costs were to be assessed, a fuller statement would be provided.

50. The Applicant explained in his answer that the only specified incident of delay was attributable to him having trouble extracting information from the Borough Council (a proposition that has at least some apparent support from a letter from the Council in his bundle).

51. He further adverted generally to the stress and depression, and problems with working at home, that had afflicted him as a result of the anti-social behaviour of the other tenants, and of the proceedings.

52. He adamantly disavowed any suggestion that he was promoting a vendetta against the Respondent.

53. We note, although neither side went into any details in submissions, that we are not aware of litigation beyond possession proceedings brought by the Respondent.

54. The Applicant is a litigant in person. In *Willow Court*, the Upper Tribunal was clear that that was relevant to the assessment of the reasonableness of a party's conduct ([25], [31] to [34]). In the absence of further particularisation, we do not find that the Applicant's conduct of the proceedings can be characterised as unreasonable, from the one specific point made by the Respondent. More significant is the misconceived nature of the allegations of criminal offences, which resulted in us striking out those parts of the Applicant's case. No doubt, such an error in a lawyer could well reach the high threshold for *Willow Court/Ridehalgh* unreasonableness.

55. We are not, however, persuaded that it does so in the context the Applicant found himself in as a litigant in person. The key error was in the Applicant's failure to appreciate that the HMO offence ceased on the making of an application. It is true, as the Respondent says, that he was told at one point on the telephone, and again much later, well after the application was made, in a letter, that Hounslow considered that application brought the criminal offence to an end. But no one (including the Respondent) made it clear that this was a legal requirement, until we did so during the hearing.

56. The Applicant was not, we conclude, unreasonable in the *Ridehalgh* sense. We remind ourselves that, in that case, Bingham LJ said that the term connoted "conduct which is vexatious, designed to harass the other side rather than advance the case."

57. We consider that the Applicant was motivated by a real feeling of injustice, rather than, as Mr Fitzgibbon submits, a desire to promote a vendetta against Ms Barrett. He made important mistakes as a result, but those do not, we consider, reach the requisite threshold of unreasonableness.

58. We reject the application for costs.

59. There was on the papers an application by the Applicant for reimbursement of fees. Wisely, he did not pursue that orally before us.

Rights of appeal

60. 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 London regional office.

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

62. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

63. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 2 July 2021