



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

Case Reference : CHI/45UE/HMF/2022/0011

Property : 22 Stagelands, Crawley RH11 7PE

Applicant : Mr David Soanes

Representative :

Respondent : Mr Mohammed Mirza

Representative :

Type of Application : Application for a rent repayment order by
Tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal Members : Judge D Whitney
Mrs J Coupe FRICS
Ms T Wong

Date of Hearing : 29th September 2022

Date of Decision : 18th October 2022

DECISION

Decision

The Tribunal dismisses the application and makes no order.

Reasons

Background

1. On 1st June 2022 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord and other parties.
2. On the 6th July 2022 a Notice that the Tribunal was minded to strike out certain parts of the Application was sent to the parties. On 29th July 2022 Judge Whitney struck out various parts of the case but confirmed the case would proceed against Mr Mohammed Mirza on the basis of alleged offences of unlawful eviction and harassment contrary to the Protection from Eviction Act 1977.
3. The hearing was attended by the Applicant only. The Tribunal had received no communications from the Respondent in response to the Application. The Tribunal had written to the Respondent at the Property address. Recent correspondence had been returned although Mr Soanes had produced Office Copy Entries showing the registered proprietor was a Ms Ghulam Sakina Mirza with the property address given at the Land Registry.
4. The Tribunal relied upon the hearing bundle of 86 pages produced by the Applicant. References in [] are to pages within that bundle. Further the Applicant had applied to rely on an Amended Statement of Case and such application had been approved on 28th September 2022 and the Tribunal had sight of the same.
5. The hearing was recorded.
6. At the start of the hearing the Tribunal requested that Mr Soanes play a Voicemail recording which he had looked to embed in the Bundle [34] but the Tribunal could not play the same. The Tribunal listened to this Voicemail clip which Mr Soanes described as being an inadvertent call by the Respondent to Mr Soanes' mobile phone on 18th August 2021 whilst the Respondent was speaking to a police officer. The call was some 6 minutes in length.
7. Mr Soanes also relied on two video clips which the Tribunal had been unable to view. Mr Soanes attempted to show these to the panel using the Tribunals video facilities but it was not possible for connection to be made so the Tribunal did not view the same.

8. Prior to Mr Soanes presenting his case the Tribunal identified it would wish him to address the similar facts between this case and three published decisions:

CHI/43UE/HMF/2019/0016

CHI/45UE/HMJ/2020/0001

CHI/45UG/HMF/2021/0039

9. Further the Chairman, Judge Whitney raised that he had also sat on a panel dealing with a claim for a rent repayment order Mr Soanes had made in respect of 6 Madeira Avenue, Horsham CHI/45UF/HMF/2022/0007 and in which the decision had not been published at the date of the hearing.

Law

10. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.
11. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
12. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
13. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of

section 44(3), the amount that the landlord may be required to repay must not exceed:

- a) the rent paid in respect of the period in question, less
- b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

14. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

- 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 any of the specified offences.

15. The Applicant relies on offences committed pursuant to the Protection of Eviction Act 1977. The relevant sections are:

Section 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 or 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 calculated 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.

(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.

(3C) In subsection (3A) above “landlord”, in relation to a residential occupier of any premises, means the person who, but for—

(a) the residential occupier’s right to remain in occupation of the premises, or

(b) a restriction on the person’s right to recover possession of the premises, would be entitled to occupation of the premises and any superior landlord under whom that person derives title.

Evidence and Findings of fact

16. We are satisfied that Mr Soanes entered into an oral tenancy of a room at 22 Stagelands, Crawley with the Respondent on 27th May 2021. We accept his evidence that he has a receipt [18] recording that the tenancy began on 27th May 2021 at a rental of £500 per calendar month and this included utilities as the receipt records “Landlord pay all bill, plumber and electric.”
17. Mr Soanes explained he found the room whilst looking for a new property after he was evicted from 6 Madeira Avenue, Horsham. Mr Soanes explained he spoke to Miss Naseer who was outside a house in Crawley cutting the hedge with a gentleman. He asked if she knew of an available room and she advised that her landlord at 22 Stagelands (the property whose hedge she was cutting) had a room available and supplied Mr Soanes with the telephone number. He made contact and arranged to rent the room.
18. He moved in later that day, 27th May 2021, to occupy an upstairs bedroom. Miss Naseer & Mr Jacobs together with a young child occupied one other room and a Mr Khan the third. Sadly Mr Khan passed away a couple of days after Mr Soanes moved in.

19. We are satisfied that Mr Soanes paid the first months rent. Mr Soanes suggested he paid a second months rent on 27th June 2021. He stated that the receipt was lost when the Respondents son burst into his room on 1st August 2021. He adduced no evidence showing payment save relied on certain text messages from the Applicant requesting payment in cash (see [57]). Mr Soanes relied on the fact that the text messages only referred to Mr Mirza seeking rent payments after the rent was due on 27th July 2021. Mr Soanes admitted not paying the rent due on 27th July 2021. He stated he told Mr Mirza he would not make further rental payments until the rental deposit he paid at the commencement of the tenancy was paid into an approved Government scheme. He relied on the text messages [56-58].

20. We are not satisfied that Mr Soanes proved on a balance of probabilities that he had paid more than the first months rent. He produced no bank statements showing withdrawals of cash. We set out the text messages in full:

“Text Message

5/26/2021 6:36:31 PM

5/27/2021 8:12:02 AM

810 pm please. Mirza Ji

Mirza. Ji Salaam waleykum Will come in the evening today Please send Sanah phone number

5/27/2021 11:10:30 AM

0751118316 Ana

07511183016 sna

5/27/2021 11:16:00 AM

5/28/2021 8:32:25 AM

Mirza. Ji Salaam waleykum Please give me keys to bedroom and house Thanks again Dave

6/22/2021 4:40:58 PM

Mirza. Ji Salaam waleykum Regret I cannot stay after 27 June 2021, as there is no washing

machine here. Further, hand washing of clothes is not allowed I will be leaving on 27 June Thanks

again Dave Thanks again Dave

6/25/2021 1:43:42 PM

Mirza. Ji Salaam waleykum The house I was planning on moving to is not ready May I stay another

month please Thanks again Dave

6/25/2021 2:20:13 PM

Dave u can stay as long u want .

6/25/2021 4:51:33 PM

Thanks. Mirza Ji Will you accept rent by bank transfer please? If yes, please send bank account details Regards Dave

6/26/2021 8:28:35 AM

Dav cash pls.tel I com 4rent.

6/26/2021 8:29:43 AM

Tomorrow. Please. Mirza Ji What time?

6/26/2021 8:30:01 AM

Could you please reduce rent?

6/26/2021 8:33:58 AM

Ok no worry.i com 3pm sun 27jun

Dav I com 4 rent 4 pm to day.

7/27/2021 9:59:11 AM

7/27/2021 10:00:35 AM

Salaam. Mirza bhai Business is bad I cannot afford £500. Please reduce to £400 Thanks again

Dave

7/27/2021 2:30:59 PM

I Dave u can't tell gas elect water,I have not earn plenty.

7/27/2021 3:04:07 PM

Mirza Ji Please do not harass me or threaten me with your son paying me a visit You have not lodged the tenancy deposit of £200 in a government approved scheme You have not given me a tenancy agreement I am going to call the police and inform them about your threats Thanks again David

7/27/2021 8:12:16 PM

*Mirza Ji Please do not involve Sana or Jean Jacob in the dispute The police complaint which was lodged today at 4:40 pm today is reference number is CDS-133338-21-4700-000 Thanks again
Dave*

7/27/2021 8:12:20 PM



8/2/2021 11:31:46 AM

*Please approach the County Court to gain repossession There will be a counter claim If your son comes here again, I will request police to arrest him Please consider
8/5/2021 9:19:05 AM*

Mirza Ji You came yesterday with out notice and demanded rent Harassment of tenant is a criminal offence Please claim rent in the county Court and I will counter claim against you and your son who is a thug

8/9/2021 1:30:54 PM

*DAVID I b visiting u to day after 3.30 pm at 22 stagelands.
8/9/2021 1:34:16 PM*

*What for. Mirza Ji Your son assaulted me in the kitchen yesterday Please do not come here. Please contact me through your solicitor. There is a County Court claim in the offing Thanks David
8/9/2021 5:25:22 PM*

*Dav my son never assaulted you.lived at 31 Silverstone drive
brighton+11haywards pound
hill,crawley+May masala 14+16 Crabtree,glancing.i know more about
u.wat they done to u?
8/9/2021 5:40:32 PM*

*Say what you have to say to the county court and police The door is
damaged by your son and
two thugs You turned a civil matter to criminal matter”*

21. Whilst we are satisfied there is obviously a deterioration in the parties relationship we are not satisfied that these text messages demonstrate payment of the June rental by the Applicant to the Respondent without any other supporting evidence.
22. Mr Soanes suggests that between 1st and 19th August 2021 the Respondents son harassed him by asking him to pay the rent and on occasion to leave the kitchen. Mr Soanes alleges that on 1st August 2021 the Respondent’s son forced his way into his room together with two other unidentified males. Mr Soanes was able to leave the room and go to a nearby parade of shops and call the police. Mr Soanes suggests that the Respondent’s son was arrested although released the following day without charge.
23. On the 8th and 14th August 2021 Mr Soanes was in the kitchen when the Respondent’s son came to the Property. He was visiting the downstairs bedroom accessed off the kitchen. Mr Soanes stated he believed he was making it ready so he could personally move in. On both occasions Mr Soanes stated he was forcibly asked to vacate the kitchen and go to his room. He denied doing anything to provoke such reaction. Mr Soanes said that the language used included “Leave the fucking kitchen or I will punch you.”
24. Mr Soanes suggested that on 18th August the Respondent and his son were at the Property. He said he was asked to leave in an obscene manner. The son pushed him and the Respondent grabbed his telephone. Mr Soanes went to the nearby parade of shops and again called the police. The police attended and told both parties to leave the Property or they would arrest them to avoid a breach of the peace. Mr Soanes spent the night in a nearby hotel.
25. The following day he returned to the Property. He found some of his belongings in plastic bags and the rest in the Respondent’s son’s car. He called the police who he said told him since he had no written contract they could not help but again if he did not leave they would arrest him to avoid a breach of the peace. As a result Mr Soanes left the area.
26. Mr Soanes explained he called a taxi and initially said he went to Worthing to a new property he had found to live in. Subsequently he

said he got a taxi to Crawley town centre, found the new property via Gumtree and then got a taxi to Worthing. He supplied the address and confirmed he moved in on 19th August 2021 and did not look to return to 22 Stagelands.

27. Mr Soanes explained after he initially moved in to 22 Stagelands he thought he would be able to return to 6 Madeira Avenue, Horsham hence he gave notice to the Respondent that he intended to vacate by 27th June 2021. In fact he was not able to return to Horsham and so wished to remain at 22 Stagelands. Mr Soanes stated he is not responsible for the conduct of landlords. He denied seeking out unlicensed HMOs. He stated he takes a property at face value and does not ask any questions as landlords would not accept him as a tenant if he did so.
28. Mr Soanes stated he had tried to issue a county court claim [77-86] on three occasions but the court had rejected the same.
29. Mr Soanes explained the video clip of the Miss Naseer and Mr Jacob was them telling him they believed he provoked the incident on 1st August 2022, he stated they were saying this as they just wanted a peaceful existence.
30. On questioning by the Tribunal Mr Soanes accepted that the facts of this case were similar to those in the three published decisions referred to in paragraph 8 above.
31. Mr Soanes was unable to explain why the transcription [35 & 36] of the voicemail he played at the start was not for the whole of the 6 minute message. He thought the transcriber had transcribed the whole of the conversation and stated he had not noted it appeared to end at 03.25.
32. Mr Soanes agreed with the Tribunal he was renting a room with use of shared facilities.
33. In closing Mr Soanes stated the fact the Respondent had not taken part was a tacit admission.

Are the Tribunal satisfied the Respondent is aware of the proceedings?

34. We are satisfied that the Respondent held himself out as the landlord of the Property. He clearly exercises care and control of the Property and we are satisfied that by sending all of the documents to the Property the application and the like ought to have come to the attention of the Respondent. We are satisfied that the Respondent has chosen to take no part in these proceedings.

Has an offence been committed?

35. Mr Soanes submits that two classes of offence have been committed:

- Breach of Section 1(2) of the Protection from Eviction Act 1977 in that the Respondent unlawfully evicted the Applicant;
 - Breach of Section 1(3) and (3A) of the Protection from Eviction Act 1977 in that the Respondent harassed or caused the Applicant to be harassed;
36. We are not satisfied beyond reasonable doubt that the Respondent has committed either of the two classes of offence pursuant to the Protection from Eviction Act 1977 alleged.
37. We find the evidence of Mr Soanes lacked credibility. On occasion he sought to embellish and change his evidence. An example is when he described finding the new property to which he moved in Worthing. Initially he stated he went straight from the subject Property to Worthing. When questioned he looked to suggest he went first to the town centre, then looked for new property and then went to Worthing. It seems to this Tribunal he changed his story to avoid the fact that it appeared he had already sourced a new home prior to returning to 22 Stagelands on the morning of 19th August 2021.
38. The suggestion that the requests for payment of rent may be harassment we do not accept. We are satisfied that given the refusal to pay rent the Respondent or his servant and agents were entitled to request payment. There is nothing within the text messages supplied which appear to us conduct which would lead to a finding of harassment, as alleged.
39. We were troubled by the incident on 1st August 2021. We accept the Respondent's son came to his room demanding rent. We are satisfied in principle he could come to the house and in asking about rent he was acting on behalf of his father the Respondent. We note that he was arrested although it appears no charges were brought. Mr Soanes on his own evidence suggests that the other occupants in the house suggest he provoked matters. Mr Soanes denies this but the evidence is far from clear. Overall we are not satisfied beyond reasonable doubt that on this occasion there was harassment.
40. Mr Soanes suggested that the Respondent's son told him to leave the kitchen. Mr Soanes suggested he believed that the son may be moving into the room. The description of the events seemed to this panel odd. We could not understand why he would be told to leave the kitchen without some provocation which is denied. We take account of the fact that Mr Soanes admits there are similar facts with earlier cases referred to in paragraph 8 and 9 above.
41. We are not satisfied beyond reasonable doubt that these instances amount to offences committed by the Respondent. We are unclear as to the circumstances and find the Applicant's suggestion there was no provocation on his part not credible. In any event we find even if such incidents took place in the way he describes they were not criminal

offences committed by the Respondent. In respect of these incidents even if they were harassment we are not satisfied that the Respondents son was acting as his servant or agent on these occasions on the basis of Mr Soanes evidence.

42. Finally we look at the incident on 18th and 19th August 2021. Again we are not satisfied beyond reasonable doubt that the alleged criminal offence of unlawful eviction has been proven. Plainly there was an incident leading to the police being called. It was upon the insistence of the police that Mr Soanes left the property both on 18th August and also the following day the 19th August. This was his evidence as to why he left the area. Further he had found himself alternative accommodation and on his own evidence made no further attempt to return to his room. As a result we are not satisfied that an offence has been committed.

Conclusion

43. We have found that no offence giving rise to a rent repayment order should be made. As a result we dismiss the application and make no order.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk
2. 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.
3. 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.

