



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

Case reference : **LON/00AN/HMF/2022/0001**

HMCTS code : **V:VIDEO**

Property : **54 Belvedere Row Apartments Fountain Park
Way London W12 7JF**

Applicant : **Mr Riaz Moola**

Representative : **Jamieson Alexander Legal**

Respondent : **Mr Khalil M'barek**

Representative : **Connaught Law**

Type of application : **Application for a Rent Repayment Order by
tenants**
Sections 40, 41, 42, 43 and 45 Housing and Planning Act
2016.

Tribunal members : **Judge Pittaway
Ms S Coughlin**

Date of Hearing : **2 March 2023**

Date of decision : **13 March 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal before the hearing were in a bundle from the Applicant of 102 pages, a bundle from the Respondent of 135 pages and a reply from the Applicant of 12 pages, the contents of which the tribunal has noted. There was also a further e mail received from the Applicant's representative on 28 February.

At the hearing Mr Moola and Ms Matjuka were represented by Ms Viljoen, in-house counsel of CoGrammar Limited, who was addressing the Tribunal from South Africa. Mr Parkin of counsel represented the Respondent.

The tribunal heard evidence from Ms Matjuka and Mr M'barek and submissions from Mr Parkin and Ms Viljoen.

The tribunal referred the parties to the decision of the Supreme Court *Rakusen v Jepsen and others* [2023] UKSC 9. It ascertained that both legal representatives had access to the decision and invited them both to consider the same over the adjournment for lunch and have regard to that decision when making their closing submissions.

Decisions of the tribunal

1. **The Tribunal finds that the Respondent was not the Applicant's immediate landlord.**
2. **The Tribunal therefore does not make a Rent Repayment Order against the Respondent.**
3. **The reasons for the Tribunal decisions are given below.**

The background

4. The tribunal received an application naming the applicants as Mr Moola and Ms Alisa Matjuka dated 15 October 2022 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order in respect of 54 Belvedere Row Apartments Fountain Park Way London W12 7JF ('the **Property**'). The amount sought was for the period from 12 February 2022 to 1 November 2022, in the sum of £31,635. The application stated that the Respondent had used violence to secure entry to the property to attempt an unlawful eviction, with particular reference to an event which occurred on 11 October 2022.
5. On 31 October 2022 the Tribunal issued Directions, which provided for the matter to be heard on 2 March 2023. The directions provided for the parties to provide the Tribunal with bundles of all relevant documents. The Directions also required that if any party or witness intended to give evidence

from abroad that the Tribunal be notified within five working days of receipt of the Directions so that the guidance for giving evidence from abroad could be followed.

6. On 25 November Mr Moola submitted a further application naming himself and Ms Matjuka as applicants and referring to a further incident which occurred on 2 November 2022.
7. The tribunal received a request from Mr Moola on 25 February 2023 seeking to give evidence from South Africa and for his representative to address the tribunal from South Africa, to which it responded on 27 February 2023. Given that any such request should have been made, in accordance with the Directions, by 7 November 2022, and that it was the tribunal's experience that South Africa has not responded to requests for permission for evidence to be given within its jurisdiction in previous hearings the tribunal was not able to give permission for Mr Moola to give evidence from South Africa. The tribunal stated that Mr Moola must either attend the hearing within the jurisdiction or rely on his witness statement already served in the proceedings. The tribunal notified Mr Moola that if he did not attend he could not be cross-examined and the Tribunal might not be able to place much weight on that witness statement. The tribunal gave permission for Ms Viljoen to present Mr Moola's case from South Africa.

The Property

8. The Property is described in both applications as a two bedroom flat with access to workspace facilities and gym within the building.

Preliminary Issues

9. At the hearing Mr Parkin raised whether Ms Viljoen could represent the Applicant. The tribunal referred Mr Parkin to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, under which a party may appoint a representative (whether legally qualified or not) to represent that party (Rule 14(1)). It also referred Mr Parkin to the letter from the tribunal of 27 February 2023 in which the tribunal acknowledged that Ms Viljoen was Mr Moola's representative.
10. Mr Parkin also raised whether Ms Matjuka could be named as an applicant, as she was neither a signatory to the tenancy agreements before the tribunal nor named as a tenant in those documents. Mr Parkin submitted that only a tenant may apply to the tribunal for a Rent Repayment Order.
11. Ms Matjuka stated that she had always considered herself to be a co-tenant of the Property with Mr Moola.
12. Section 41(1) provides that, *'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’. The person making the application must be a tenant.

13. Ms Viljoen conceded that only Mr Moola should be considered the applicant.
14. The Tribunal therefore directed that Ms Matjuka be removed as an applicant in accordance with Rule 10 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Ms Matjuka remained a witness.
15. Mr Parkin submitted that the tribunal should not have regard to the additional documents that were submitted by Ms Viljoen on 28 February. They should have been disclosed three months previously in accordance with the Directions and admitting them would place his client at a disadvantage. Mr Parkin submitted that the tribunal should place no weight on them.
16. Ms Viljoen submitted that the documents in question should be allowed in the interests of justice. They were documents that had been in the possession of the Respondent for a long time and that she had submitted them as soon as she became aware that they were not in the bundle.
17. After a brief adjournment the tribunal determined that it would admit the documents but have regard to their late delivery when considering the weight to be placed on them.
18. Reference was made in Ms Matjuka’s witness statement to various videos but the tribunal only had access to three, RM10 and AM5 1 and 2. The Tribunal determined that it would not allow the late submission of any other videos.

Issues

19. The issues before the tribunal to determine were
 - With whom had Mr M’barek entered into a tenancy agreement.
 - Had the Respondent committed an offence under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 (the ‘**1977 Act**’) (eviction or harassment of the occupiers or section 6(1) of the Criminal Law Act 1977 (use of violence to secure entry);
 - The date/dates when an offence had been committed;
 - Did the Respondent have a defence to the commission of any offence under section 1(2),(3) or (3A) of the 1977 Act?
 - The maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act.
 - Any relevant conduct of the landlord, the landlord’s financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

The tribunal's reasons

20. The tribunal has had regard to the witness statements in the bundle, the evidence that it heard, the submissions made at the hearing and the decision in *Rakusen v Jepson and others* (**'Rakusen'**) in reaching its decision. As appropriate, and where relevant to the tribunal's decision, these are referred to in the reasons for the tribunal's decision.
21. The relevant legal provisions are set out in the Appendix to this decision

Evidence and submissions

22. The tribunal heard evidence from Ms Matjuka that it was she who initially found the Property. Ms Matjuka stated that tenancy agreement might not name her as a tenant but she had viewed herself as a tenant as it was her exclusive residence. Ms Matjuka explained to the tribunal that she paid £1000 a month as her contribution to the monthly rent of the flat, which she paid to Mr Moola.
23. There was no tenancy agreement before the tribunal evidencing the terms of the letting entered into with Mr M'barek in February 2022. Mr M'barek gave evidence that there had been no formal agreement entered into. The Respondent's bundle contained a 'Rental Invoice for CoGrammar Ltd' which Mr M'barek stated had been prepared by Mr Moola. This related to the period from 12 February to 1 May, £120 per night for 78 nights in total. This provided for a deposit of £1000 and the manner in which the rent was to be paid. It stated, '*All bills are included in the price*' and "*For guests Riaz Moola and Alisa Matjuka for business travel*". It was signed by Mr M'barek and Mr Moola. This document was not challenged by Ms Viljoen.
24. When Ms Matjuka was questioned as to why the original letting was with CoGrammar Limited, she explained that she and Mr Moola had initially taken the Property on a trial basis. Ms Matjuka stated that once they decided to remain in the property they had entered into a personal agreement with Mr M'barek. Ms Matjuka believed that the letting from 1 May 2022 was a personal one between Mr M'barek and Mr Moola on the basis of what she had been told by Mr Moola.
25. The Applicant's bundle contains a rental agreement for the Property dated 23 March 2022 and apparently electronically signed by Mr Moola and Mr M'barek. This is headed 'Rental agreement for Riaz Moola entered into Feb 2022'. Its terms are as follows;

'For 54 BELVEDERE ROW APARTMENTS from 12th February 2022, extended from 1st May 2022 to 1st November 2022 at £3.6k a month, all bills included.

The rental period shall be extendable at the sole discretion of Riaz Moola for an extra two months or a shorter period at £3.6k a month (pro-rata if shorter), from 1st November 2022.

The rental has already been paid up till 1st April 2022.

The rental is due on the 25th of each month in advance, i.e. the rental for June 2022 is due May 25th 2022.

The rental for April and May 2022 will be paid in advance by March 25th for a total of £7,320. The next rental payment will be made by May 25th 2022 for £3.7k for the month of June, then June 25th 2022 for the month of July etc.

The storage space in the cupboard in the 2nd bedroom will be cleared by the latest end of April 2022.

A deposit of £1000 has already been paid against inventory provided and will be returned minus agreed damages against the deposit within 7 days of the end date.'

26. The Respondent gave evidence that he had never signed this agreement.
27. The Respondent's bundle contains a rental agreement for the Property in identical terms except that it is headed, 'Amendment to rental agreement for CoGrammar LTD signed Feb 2022'. It is signed by Mr M'barek and has handwritten on it the statement, 'From Khalil signed to Riaz He never sent me a signed agreement back'.
28. The Applicant's bundle contains a statement of the rent paid, without evidencing from whom the payment was made.
29. The Respondent's bundle contains redacted statements from Halifax which showed that the rent payments received by Mr M'barek were received from CoGrammar LTD throughout the period in respect of which the RRO is claimed.
30. When questioned Ms Matjuka said that the fact that CoGrammar LTD paid the rent was not evidence that the letting was to that company.
31. Mr Parkin submitted that the original contract was with CoGrammar LTD and that the tribunal must be satisfied beyond reasonable doubt that Mr Moola had been substituted for CoGrammar LTD at the end of March. Mr Parkin submitted that Ms Matjuka had no direct knowledge of the negotiations which took place in March as these were undertaken by Mr Moola. Mr Parkin submitted that her evidence was no more than hearsay. He submitted that there was no direct evidence of any change in identity of the tenant and that Mr M'barek was very firm that there had been no change, and that the tenant had remained CoGrammar LTD.
32. Ms Viljoen submitted that it was for Mr M'barek to prove that the agreement was not with Mr Moola, and that CoGrammar were paying the rent on behalf of Mr Moola. Ms Viljoen submitted that Mr M'barek was the correct person against whom Mr Moola should make the RRO application.

The tribunal's reasons

33. The definition of 'landlord' in the 1977 Act includes 'any superior landlord' (section 1(3C)) so that for the purposes of that Act it is irrelevant whether the Respondent is Mr Moola's immediate landlord or not. However following the decision of the Supreme Court in *Rakusen* a Rent Repayment Order may only be made against a tenant's immediate landlord. Mr M'barek was not Mr Moola's immediate landlord and the Tribunal cannot therefore make a RRO against Mr M'barek.
34. On the basis of the evidence before it the tribunal finds that Mr M'barek's tenant of the Property from 12 February to around 23rd March was CoGrammar LTD. Mr Moola in his witness statement confirms that the original agreement was with CoGrammar LTD. At the hearing Ms Viljoen did not dispute that the original agreement was with CoGrammar LTD, and Mr Moola confirms this in his witness statement.
35. As to the position after the 23rd March 2022 there was conflicting evidence before the tribunal.
36. There were different forms of agreement for the period after 23rd March before the tribunal. On the evidence before it the tribunal finds that the parties did not both sign an agreement in the same form. Mr M'barek signed one that identified the tenant as CoGrammar LTD, Mr Moola one that identified himself as the tenant. The tribunal was referred to various WhatsApp exchanges and e mails for evidence as to the possible identity of the tenant after March 2023 but finds none of this evidence conclusive.
37. Mr M'barek gave evidence that after that date his immediate tenant remained CoGrammar LTD.
38. In his witness statement Mr Moola stated that he personally entered into the agreement on 23rd March. Mr Moola was not at the hearing and could not be cross-examined.
39. Ms Matjuka confirmed that she had not been involved directly in the negotiations which led to the revised agreement of 23rd March.
40. The tribunal notes that the rent was always paid by CoGrammar LTD.
41. Having carefully considered the totality of the evidence before it the tribunal prefers and accepts the evidence of Mr M'barek that for the period from 23rd March, his tenant was CoGrammar LTD.
42. As the tribunal has found that Mr M'barek was not Mr Moola's immediate landlord, either before or after 23 March, no RRO can be made in Mr Moola's favour against Mr M'barek.

43. Because the tribunal is not able to award an RRO against Mr M'barek, it is not necessary for the tribunal to consider whether the Applicant has shown beyond reasonable doubt that an offence was committed under section 1(2),(3) or (3A) of the Protection from Eviction Act 1977 or under section 6(1) of the Criminal Law Act 1977.
44. Given the tribunal's decision it did not have to consider what weight to place on the late-submitted documents.

Name: Judge Pittaway

Date: 13 March 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation

Criminal Law Act 1977

6 Violence for securing entry.

(1) Subject to the following provisions of this section, any person who, without lawful authority, uses or threatens violence for the purpose of securing entry into any premises for himself or for any other person is guilty of an offence, provided that—

(a) there is someone present on those premises at the time who is opposed to the entry which the violence is intended to secure; and

(b) the person using or threatening the violence knows that that is the case.

Protection from Eviction Act 1977

UNLAWFUL EVICTION AND HARASSMENT

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 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.

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 and 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.
- (3) A local housing authority may apply for a rent repayment order only if –
 - (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.

- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.
- (5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a 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 had 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 with –
- (b) section 45 (where the application is made by a local housing authority);

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.

If the order is made on the ground that the landlord has committed

the amount must relate to rent paid by the tenant in respect of

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.