



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

**Case Reference** : CHI/00HB/HMG/2020/0002

**Property** : 66A Ridingleaze, Lawrence Weston, Bristol  
BS11 0QD

**Applicant** : Stefan Elzenbaumer

**Representative** : -

**Respondents** : Kwok On Wan  
Sui-Mei Wan

**Representative** : Mr Nicholas Evans of Counsel, instructed  
by Wards Solicitors, for the Second  
Respondent

**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 E Morrison  
Mr M J F Donaldson FRICS MCI Arb MAE  
Mr P A Gammon MBE BA

**Date of hearing** : 21 July 2020 (by video conferencing)

**Date of Decision** : 24 July 2020

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**DECISION**

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## **The application**

1. By an application made on 18 February 2020 the Applicant tenant applied for a rent repayment order (“RRO”) against the First Respondent, on the ground that he had been illegally evicted from 66A Ridingleaze, a shared house in which the Applicant rented a room.

## **The law and jurisdiction**

2. The relevant provisions relating to rent repayment orders are set out in sections 40 -46 Housing and Planning Act 2016 (“the Act”), reproduced in full in the Appendix to this Decision.
3. Section 41 permits a tenant to apply to the First-tier Tribunal for a RRO against a person who has committed a specified offence, which include offences under Sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977 (“the PEA”).
4. The relevant parts of section 1 of the PEA are as follows:
  - 1.— *Unlawful eviction and harassment of occupier.*
    - (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*

*(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.*

5. Under section 43, the Tribunal may only make a RRO if satisfied, beyond reasonable doubt, that “a landlord” has committed one of the specified offences.
6. Where the application is made by a tenant, and the landlord has not been convicted of a relevant offence, section 44 relates to the amount of a RRO. Where a relevant offence under the PEA has been committed, the amount must relate to a period, not exceeding 12 months, ending with the date of the offence. It must not exceed the amount of rent paid less any universal credit paid in respect of the rent. In determining the amount tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant and (b) the financial circumstances of the landlord.

### **Procedural background**

7. The Tribunal served notice of the application with all accompanying documents and its Directions dated 3 March 2020 on the address for the First Respondent provided by the Applicant, namely 66 Ridingleaze, Lawrence Weston, Bristol BS11 0QD, which is also the address for the First Respondent noted on the title entries at the Land Registry. The papers were returned in the post marked “No such person at this address”. 66 Ridingleaze is a commercial property from which, according to the Applicant and Second Respondent, the Respondents ran a takeaway restaurant, “Peking Chef”, during the period of the Applicant’s tenancy. (For the sake of brevity and clarity, the First Respondent is hereafter referred to as Mr Wan, and the Second Respondent is referred to as Mrs Wan).
8. In June 2020 a judge reviewed the file and noted that there was no written tenancy agreement, that all rent had been paid to Mrs Wan, and that the Applicant stated that Mrs Wan was his main point of contact throughout the tenancy. The Tribunal asked the Applicant whether he wished to join Mrs Wan as a respondent. Having received a reply in the affirmative, Mrs Wan was so joined. Through solicitors, she provided a statement of case in response to the application.
9. The Tribunal reissued all the papers to Mr Wan by post, and also sent him notification by text message, with details of the hearing date and how to participate, to his mobile telephone number as provided by the Applicant. Mr Wan has not responded or otherwise participated in the proceedings.

### **Details of the tenancy**

7. The Applicant occupied a bedroom at 66A Ridingleaze at a rent of £390.00 per month including utilities, sharing a kitchen and bathroom with the occupiers of three other bedrooms. The residential

accommodation was over the ground floor shop. There was no written tenancy agreement. Mr Elzenbaumer lived there from 1 July 2018 to 10 March 2019. He claims a RRO in respect of the sum of £3380.00, being the rent paid for the period of his occupation. The sum paid is not disputed.

### **The Applicant's case**

8. Mr Elzenbaumer provided a witness statement, with accompanying documentation, and also gave oral evidence. He explained that he found the room at the property through an advert on the "Spareroom" app. He called the telephone number provided in the advert and spoke to Mrs Wan. An appointment was made for him to view the property and the room with Mrs Wan. Terms were agreed orally, and she provided her bank account details for payment of the tenancy deposit and the rent. The Applicant assumed that Mrs Wan was the owner; Mr Wan's existence was not mentioned. Mr Elzenbaumer requested a written tenancy agreement, but this was never provided.
9. Mrs Wan worked in the takeaway shop below the house. If the Applicant had any questions or issues, such as when the rubbish was collected, he went to the shop and spoke to Mrs Wan. At some point he became aware of Mr Wan, who also worked in the shop, and that Mrs Wan was his wife. Mrs Wan would ask Mr Wan to deal with issues in the house, such as changing a bulb. Mr Elzenbaumer described Mr and Mrs Wan as acting "as a couple" making decisions together.
10. In January 2019 there was an altercation between the Applicant and another tenant Marius. Marius complained to Mr Wan, who then spoke to the Applicant about the matter. About a week later the Applicant went to Mr Wan to complain about Marius smoking in the house. Then on Friday 8 March 2019 Mr Elzenbaumer had been drinking and fell against the door of Marius's bedroom, breaking the lock. There ensued a violent incident between the Applicant and Marius. Mr Elzenbaumer says that Marius attacked him with a knife, cutting his head, that he passed out, and was woken later by Police who arrested him and took him to hospital. Once discharged from hospital he was taken to a police station. Following an interview he was released without charge or further action at 3pm on Sunday 10 March 2019.
11. On returning to the property Mr Elzenbaumer discovered that the door was locked, and his keys were still in his room. Mr Wan came up from the shop and said that he could not stay at the house and that he had already changed the locks. Mr Wan told the Applicant that he must collect his belongings by the next day or they would be thrown out onto the road. Having stayed with a friend overnight, Mr Elzenbaumer returned to the property on Monday 11 March 2019 by appointment with Mr Wan and was allowed to collect his belongings. The Applicant did not see, or communicate with, Mrs Wan on either 10 or 11 March 2019.

12. Subsequently the Applicant sought the return of his deposit and the rent paid in advance for 11 – 31 March. He carried out searches at the Land Registry and Companies House and discovered that Mr Wan owned 66/66A Ridingleaze. From that point onwards he regarded Mr Wan as the landlord, and sued him in the county court, obtaining a default judgment in respect of the deposit, a penalty for failing to protect the deposit, and the advance rent. Mr Wan did not defend the proceedings, and has not satisfied the judgment.
13. The Applicant called his friend Patrick Gulghor as a witness. Mr Gulghor helped the Applicant to collect his belongings on Monday 11 March 2019. Afterwards, Mr Gulghor returned alone to the shop to speak to Mr Wan about what had happened. Mr Wan said he had the right to evict Mr Elzenbaumer because of the incident on 8 March; it was his property and up to him if he wanted to kick people out. Mr Gulghor also saw a woman in the shop but he did not know who she was.

### **The Respondents' case**

14. Mr Wan, the First Respondent, has not provided any response whatsoever to the application. He did not attend the hearing.
15. Mrs Wan, the Second Respondent, attended the hearing, and was represented by Counsel, Mr Evans, at the hearing. She had not provided a witness statement but Mr Evans asked if she could give oral evidence, even if limited to adopting the statement of case signed by her solicitors as her own evidence. The Tribunal agreed to this and Mrs Wan subsequently verified the accuracy of the statement of case.
16. Her evidence was that Mr Wan was outside the UK when the tenancy was granted, and that she had been acting on his behalf as his wife, Mr Wan being the sole owner of the property. She accepted that the rent was paid into her bank account, but said that at the time she “helped run Peking Chef alongside” Mr Wan and that the rent was “used to help run Peking Chef”.
17. She exhibited her Decree Nisi and Decree Absolute of divorce from Mr Wan, dated 5 October 2018 and 13 February 2019 respectively. Her evidence was that following the Decree Absolute her involvement with the property “decreased further”. She denied having any participation in the eviction of the Applicant, and said that she had not consented to Mr Wan’s actions in this regard.
18. The statement of case averred that “on or around 10 March 2029” Peking Chef was sold by Mr Wan. When asked about this date by the Tribunal, Mrs Wan said the correct year was 2019 and she thought 10 March was when the property was sold. She also insisted that her last day of working in the shop was on 9 March 2019. When asked about the coincidence of these two dates with the Applicant’s eviction, she did not elucidate. She said she was not in the shop on 10 March 2019. She said she could not remember exactly who had told her what had happened

with regard to the incident and the eviction, but it was people in the shop.

19. Mr Evans made legal submissions on Mrs Wan's behalf. His primary submission was that she could not be "a landlord" for the purposes of making a RRO because she had no interest in the property and therefore could not grant a tenancy.
20. In the alternative, there was no evidence that Mrs Wan had committed a relevant offence and therefore no RRO could be made against her.

### **Discussion and determination**

21. A RRO can only be made if "a landlord" has committed one or more of the specified offences; a RRO requires "the landlord" to repay some rent: section 40 of the Act. There is no definition of the term "landlord" in the Act. In *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC) the Upper Tribunal stated that the landlord need not be the immediate landlord of the person applying for the RRO.
22. The first question for this Tribunal is whether either Mr Wan or Mrs Wan has committed a specified offence. If so, the second question is whether that person is a landlord against whom a RRO can be made. If the answer to that question is also in the affirmative, then we must decide whether to make an RRO and for what amount.

#### *Has a relevant offence been committed?*

23. The Applicant impressed the Tribunal as an honest and reliable witness. He gave his evidence in a measured, straightforward manner, and, except in relation to the nature and degree of Mrs Wan's involvement, his evidence was unchallenged. Mr Gulghor's evidence supported the Applicant's case. It is undisputed that Mr Elzenbaumer was a tenant, and that Mr Wan was the person who, on 10 March 2019, refused to let him back into the property and thus evicted him.
24. The Applicant was a tenant under a periodic assured tenancy, which cannot be brought to an end by a landlord except by obtaining a court order: section 5 Housing Act 1988.
24. The Tribunal is therefore satisfied beyond a reasonable doubt that Mr Wan has committed an offence under section 1(2) of the PEA by unlawfully depriving the Applicant of the occupation of his room at 66A Ridingleaze.
25. The Applicant accepted that he has no knowledge of Mrs Wan's knowledge of or participation in the eviction. Accordingly the Tribunal is not satisfied beyond a reasonable doubt that she has committed a relevant offence and no RRO can be made against her.

#### *Was the person committing the offence a landlord?*

26. Mr Elzenbaumer originally believed that Mrs Wan was the landlord. He paid all his rent to her. As time went on he observed that Mr and Mrs Wan worked as a couple, both in the shop and with respect to the house, and towards the end of his occupation he had direct dealings

with Mr Wan. Once evicted, and his investigations revealed that Mr Wan was the owner of the property, he thought Mr Wan was the landlord and the person against whom he should pursue claims.

27. Mrs Wan denied she was the landlord, asserting that she was acting for Mr Wan in granting the tenancy. This amounts to a claim that she was acting as Mr Wan's agent. She admitted receiving the rent. Her assertion that the rent was used "to help run Peking Chef" does not assist her. Not only is there no evidence whatsoever that any of the rent ever left her bank account, but her own case is that she helped Mr Wan to run that business. If she were an agent, she would have to account to Mr Wan for the rent unless there was an agreement otherwise, but she gave no explanation of the financial arrangements between her and Mr Wan with respect to the rent. Moreover, there is no evidence, even from Mrs Wan, that she ever mentioned Mr Wan to the Applicant at the time the tenancy was granted. An agent is liable on a contract entered into on behalf of an undisclosed principal so long as the principal remains undisclosed. We conclude that any reasonable person looking at her dealings with Mr Elzenbaumer at the start of the tenancy would have concluded that she was a landlord.
28. The Tribunal was not impressed by Mrs Wan as a witness; she did not support her evidence with any corroboration, save with respect to her divorce. Her assertion that her last day of work in the shop was, conveniently, 9 March 2019 - the very day before the eviction - was inconsistent with her evidence that she heard about the eviction later from people in the shop.
29. Nor does the Tribunal accept Mr Evans' submission that Mrs Wan could not grant a tenancy because she had no legal interest in the property. A person can grant a tenancy without having such an interest: *Bruton v London & Quadrant* [2000] 1 AC 406. It is the character of the agreement, rather than the nature of the landlord or the estate held by him, that is the determining factor in deciding whether a tenancy has been created.
30. However, since Mrs Wan has not committed any of the offences relied on by the Applicant, the important point is not whether Mrs Wan was a landlord, but whether Mr Wan was a landlord. Doing the best we can on what is frankly murky evidence - no written tenancy agreement, no evidence from Mr Wan, no clear explanation of the arrangements between Mr and Mrs Wan - we conclude that that Mr and Mrs Wan were co-landlords. Mr Wan authorised his wife to grant a tenancy for both of them as part of their joint business dealings. She was the visible and active party at the start, but when problems arose he became increasingly involved. We accept Mr Elzenbaumer's evidence that that Mr and Mrs Wan acted "as a couple". Mr Wan is therefore a landlord of Mr Elzenbaumer.
31. If the Tribunal is mistaken about there being a tenancy granted by both Mr and Mrs Wan, we find that in the alternative that Mrs Wan granted the tenancy as agent for Mr Wan, who was an undisclosed principal. Under the test in *Goldsborough* (above) Mr Wan is still "a

landlord” against whom an RRO can be made once his existence became known.

*Should an RRO be made?*

32. The Tribunal sees no reason why an RRO should not be made against Mr Wan, who has committed a serious offence. In deciding how much to order, section 44 of the Act requires the Tribunal to take particular account of the conduct of the parties, and the landlord’s financial circumstances. In *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) Judge Cooke said the starting point should be the full rent paid for the relevant period. In this case the relevant period is the 12 months prior to 10 March 2019.
33. Dealing first with conduct, there is no evidence either of poor conduct on the part of the Applicant, or good conduct on the part of the Respondent, which can justify any reduction in the award. Although Mr Elzenbaumer was involved in a violent incident on 8 March 2019, there is no evidence that he was the perpetrator. He accepts that he had been drinking and fell against the door of Marius’s bedroom, breaking the lock, but that alone is insufficient evidence of relevant poor conduct. Nor is there any evidence about Mr Wan’s financial circumstances which might warrant a lower amount. Finally, the Tribunal is unaware of any other factors that might affect the amount of the award.
34. Accordingly we make a **rent repayment order in the sum of £3380.00** to be paid by Mr Wan, the First Respondent, to the Applicant by 24 August 2020.

**Costs and Fees**

35. The Applicant has requested reimbursement of his tribunal fees in the sum of £300.00. He has been wholly successful as regards Mr Wan and, pursuant to Rule 13(2), the First Respondent is ordered to reimburse the Applicant in this amount by 24 July 2020.
36. The Applicant has also requested an order for reimbursement of “loss of working hours”. There is no power to make this order and the request is refused.
37. In her statement of case Mrs Wan had requested a costs order against the Applicant, but at the end of the hearing Mr Evans confirmed that this would not be pursued.

24 July 2020

Judge E Morrison



## Appeals

1. 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.
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.
4. 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.

## APPENDIX

### Sections 40 – 46 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 <u>Criminal Law Act 1977</u>	<u>section 6(1)</u>	violence for securing entry
2 <u>Protection from Eviction Act 1977</u>	<u>section 1(2), (3) or (3A)</u>	eviction or harassment of occupiers
3 <u>Housing Act 2004</u>	<u>section 30(1)</u>	failure to comply with improvement notice
4	<u>section 32(1)</u>	failure to comply with prohibition order etc
5	<u>section 72(1)</u>	control or management of unlicensed HMO
6	<u>section 95(1)</u>	control or management of unlicensed house
7 This Act	<u>section 21</u>	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.

(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 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 <u>row 1 or 2 of the table in section 40(3)</u>	the period of 12 months ending with the date of the offence
an offence mentioned in <u>row 3, 4, 5, 6 or 7 of the table in section 40(3)</u>	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.

## 45 Amount of order: local housing authorities

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.

(2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid in respect of</i>
an offence mentioned in <u>row 1 or 2 of the table in section 40(3)</u>	the period of 12 months ending with the date of the offence
an offence mentioned in <u>row 3, 4, 5, 6 or 7 of the table in section 40(3)</u>	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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

(4) In determining the amount the tribunal must, in particular, take into account—

- (a) the conduct of the landlord,
- (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.

## 46 Amount of order following conviction

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 and both of the following conditions are met, the amount is to be the maximum that the

tribunal has power to order in accordance with section 44 or 45 (but disregarding subsection (4) of those sections).

(2) Condition 1 is that the order—

- (a) is made against a landlord who has been convicted of the offence, or
- (b) is made against a landlord who has received a financial penalty in respect of the offence and is made at a time when there is no prospect of appeal against that penalty.

(3) Condition 2 is that the order is made—

- (a) in favour of a tenant on the ground that the landlord has committed an offence mentioned in row 1, 2, 3, 4 or 7 of the table in section 40(3), or
- (b) in favour of a local housing authority.

(4) For the purposes of subsection (2)(b) there is “*no prospect of appeal*”, in relation to a penalty, when the period for appealing the penalty has expired and any appeal has been finally determined or withdrawn.

(5) Nothing in this section requires the payment of any amount that, by reason of exceptional circumstances, the tribunal considers it would be unreasonable to require the landlord to pay.