



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

**Case Reference** : **MR LON/00BH/HMA/2017/0001**

**Property** : **875A High Road, Leytonstone,  
London E11 1HR**

**Applicant** : **(1) Ms Nasrin Chowdhury  
(2) Mr Mohammed Ariful Hoque**

**Representative** : **Ms Roz Spencer of Safer Renting**

**Respondent** : **Mr Mohammed Shah Kamal  
Ahmed**

**Representative** : **In person**

**Type of Application** : **For a Rent Repayment Order –  
Sections 41 and 43 of the Housing  
and Planning Act 2016**

**Tribunal Members** : **Mr Jeremy Donegan (Tribunal  
Judge)  
Mr Anthony Harris LL.M FRICS  
FCI Arb (Valuer Member)**

**Date and venue of  
Hearing** : **26 July 2017  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **16 August 2017**

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**DECISION**

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## **Decision of the tribunal**

**The Tribunal makes the following rent repayment orders:**

- (a) The respondent shall repay the sum of £3,755.16 (Three Thousand, Seven Hundred and Fifty-Five Pounds and Sixteen Pence) to the first applicant (Ms Chowdhury) by 14 September 2017, in relation to rent paid during the period 26 November 2015 to 25 November 2015; and**
- (b) The respondent shall repay the sum of £1,741.66 (One Thousand, Seven Hundred and Forty-One Pounds and Sixty-Six Pence) to the second applicant (Mr Hoque) by 14 September 2017, in relation to rent paid during the period 26 November 2015 to 25 November 2016.**

## **The application**

1. The Tribunal has received two applications seeking rent repayment orders for rooms at 875A High Road, Leytonstone, London E11 1HR ('the Property'), which is a House in Multiple Occupation ('HMO'). The applications were made on form RRO2 and refer to section 73(5) of the Housing Act 2004 ('the 2004 Act'), which was replaced by sections 40-46 of the Housing and Planning Act 2016 ('the 2016 Act') on 6 April 2017. The Tribunal is treating the applications as having been made under section 41 of the 2016 Act.
2. Both applications were issued under case reference LON/00BH/HMA/2017/0001 and directions were issued on 18 April 2017. The applicants filed and served bundles of relevant documents in accordance with paragraphs 5 and 6 of the directions. Paragraphs 7 and 8 required the respondent to file and serve his bundle by 26 May 2017. He failed to comply with these directions and gave no indication that he intended to oppose the applications.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The background**

4. The Property forms part of 875 High Road, Leytonstone ('the Building'). The respondent's mother, Mrs Ranu Begum, is the freeholder of the Building.
5. Ms Chowdhury was granted an assured shorthold tenancy ('AST') of the first floor front room at the Property in November 2013. Mr Hoque was granted an AST of the second floor rear room at the Property in November

2013. Both tenancies were granted by the respondent and included shared use of the bathroom and kitchen at the Property.

6. On 25 November 2016, the respondent was convicted of offences under section 72(1) and (6) of the 2004 Act at East London Magistrates Court, having pleaded guilty. He was fined £3,200 and ordered to pay a victim surcharge of £120 together with costs of £1,587. Copies of the memorandum of conviction were included in the applicants' bundles. The narrative for the conviction reads:

*“Contrary to section 72(1) and (6) of the Housing Act 2004.*

*On 09/08/2016 at London the defendant had control or managed a House in Multiple Occupation which was required to be licensed under Part 2 of the Housing Act 2004, namely 875A High Road, Leytonstone E11 4HR, but which was not so licensed.”*

7. The applicants subsequently obtained an injunction in the County Court at Bow on 24 February 2017, arising from the repossession of their rooms. They pursued proceedings against the respondent under claim number DOOBo486 and an injunction hearing took place on 24 February, where they were represented by Ms Spencer of Safer Renting, as their McKenzie Friend. The respondent appeared in person.

8. Copies of the injunction orders were also included in the applicants' bundles, which provided:

*“1. The Claimants shall be allowed to return to their rooms in the property forthwith & shall be provided with the keys to the property forthwith,*

*2. If the Claimants rooms are not yet habitable, the landlord shall house them in suitable alternative temporary accommodation forthwith.”*

### **The hearing**

9. The applications were heard on 26 July 2017. The applicants both attended the hearing and were represented by Ms Spencer. The respondent appeared in person.
10. The only documents before the Tribunal were those contained in the applicants' bundles and the Tribunal office file.
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made the determination set out below.

## **Evidence and submissions**

12. The Tribunal heard oral evidence from Mr Hoque and Ms Chowdhury, both of whom are currently living in temporary accommodation.
13. Mr Hoque spoke to a witness statement dated 3 May 2017, which gave brief details of his tenancy of the second floor rear room and the rent paid to the respondent. The statement also gave details of the injunction proceedings in the County Court, arising from the repossession of his room. Mr Hoque returned to the room on 24 February 2017 following a trip abroad, to discover the locks had been changed. He has not recovered possession of the room despite the injunction order and has been unable to retrieve the contents, including his copy of the tenancy agreement.
14. Mr Hoque also referred to disrepair in his room, which he had complained of to the respondent. In cross-examination he stated that he paid his rent monthly in advance, from his bank account. He also paid some utility bills and set-off the amount of these bills from his rent. On questioning from the Tribunal, Mr Hoque stated that his initial rent was £180 per month but this was subsequently increased to £200 per month.
15. Ms Chowdhury spoke to a statement dated 8 May 2017 that was similar to that that from Mr Hoque and gave brief details of her tenancy of the first floor front room and the rent paid to the respondent. She also discovered that the locks on her room had been changed on 24 February 2017 and has been unable to recover possession of the room or retrieve the contents, including her copy of the tenancy agreement.
16. Ms Chowdhury also referred to disrepair in her room and her complaints to the respondent. She is a cancer patient and believes that the conditions compromised her health. Ms Chowdhury stated that her initial rent was £400 per month, which increased to £425 per month in May 2016.
17. The respondent failed to file any documents, in breach of the directions. He stated that he had only become aware of these proceedings when he received a letter from the Tribunal dated 10 July 2017, addressed to him at 40 Kingswood Road, Leytonstone E11 1SF. However, the Tribunal file revealed that earlier letters had been sent to him at this address on 12, 19 and 26 April, 6 June and 4 July 2017. Further, Ms Spencer had sent copies of the applicants' bundles to the same address on 11 May 2017.
18. The respondent stated that he had submitted an appeal against the injunction order. He did not produce any of the appeal documents but Ms Spencer said she was aware of the appeal.
19. The respondent also stated that he had submitted an appeal against the conviction in the East London Magistrates Court. Again, he did not produce any of the appeal documents. Ms Spencer was unaware of this

appeal and cast doubt on this evidence. She also submitted there was no basis for an appeal and that any appeal would be out of time.

20. The respondent disputed the applicants' complaints about the condition of their rooms. He also disputed that Mr Hoque had paid any utility bills.
21. The respondent submitted that any rent repayment orders should be limited to less than twelve months but gave no reasons for this and did not provide any information regarding his financial circumstances.
22. Ms Spencer invited the Tribunal to make rent repayment orders for the full period permitted by section 44 of the 2016 Act. Copy bank statements for Ms Chowdhury and Mr Hoque, evidencing their rent payments to the respondent, were included in their bundles. The Tribunal explained that any rent repayment orders could only cover the 12-month period leading up to the respondent's conviction. Ms Spence calculated that the rents paid during this period were:
  - Ms Chowdhury - £3,835
  - Mr Hoque - £1,741.66

### **Findings**

23. The Tribunal is satisfied that the respondent granted ASTs to the applicants in November 2013 and was their landlord. This was not disputed at the hearing.
24. It is clear from the memorandum of conviction that the respondent was convicted of an offence under section 72(1) and (6) of the 2004 Act on 25 November 2016. He stated that he is pursuing an appeal against this conviction but there was no independent evidence to corroborate this. Further, the Tribunal notes that the respondent pleaded guilty to the offence.
25. If an appeal is pending, which has not been established, it is far from certain that the conviction will be overturned. At the date of the Tribunal hearing there was a live conviction arising from the respondent's failure to licence the Property. The Tribunal is satisfied, beyond reasonable doubt, that a landlord (the respondent) has committed an offence to which chapter 4 of the 2016 Act applies.
26. The offence in question falls within row 5 of the table in section 40(3) of the 2016 Act. Accordingly, the amount of any rent repayment order must relate to rent paid during a period, not exceeding 12 months, during which the respondent was committing an offence (section 44(2)). This 12-month period ran from 26 November 2015 to 25 November 2016. Based on the

bank statements in the applicants' bundles, the rents paid to the respondent during this period were:

Ms Chowdhury

13/01/16 (first payment)	£400.00
13/01/16 (second payment)	£400.00
18/02/16	£400.00
15/03/16	£400.00
12/04/16	£245.16
03/05/16	£425.00
13/06/16	£425.00
06/07/16	£180.00
04/08/16	£220.00
01/09/16	£220.00
03/10/16	£220.00
02/11/16	<u>£220.00</u>
	£3,755.16

Mr Hoque

09/12/15	£154.40
12/01/16	£152.00
10/02/16	£152.00
11/03/16	£152.00
01/04/16	£100.00
03/05/16	£172.26
01/07/16	£184.00
01/08/16	£180.00
01/09/16	£180.00
03/10/16	£135.00
01/11/16	<u>£180.00</u>
	£1,741.66

27. The Tribunal agrees Ms Spencer's figure for Mr Hoque but not for Ms Chowdhury. The disparity in the figures was relatively modest and was probably due to an arithmetical error.
28. The Tribunal found both applicants to be honest and reliable witnesses and accept their evidence in its entirety. They have successfully obtained an

injunction against the respondent, arising from the change of locks to their rooms in February 2017. The respondent has failed to comply with the terms of that order and has been convicted of an offence under section 72(1) and (6) of the 2004 Act. Further, he failed to comply with the Tribunal's directions and produced no documentary evidence.

29. Having regard to the facts of the case and the conduct of the parties, the Tribunal determines that the respondent should repay the rent paid by each applicant for the full 12-month period. The respondent did not provide any information regarding his financial circumstances, which might affect the amount of the rent repayment orders.

### **The Tribunal's decision**

30. Based on the findings set out above, the Tribunal makes the following rent repayment orders:

- (a) The respondent shall repay the sum of £3,755.16 (Three Thousand, Seven Hundred and Fifty-Five Pounds and Sixteen Pence) to the Ms Chowdhury by 14 September 2017; and
- (b) The respondent shall repay the sum of £1,741.66 (One Thousand, Seven Hundred and Forty-One Pounds and Sixty-Six Pence) to Mr Hoque by 14 September 2017.

**Name:** Tribunal Judge Donegan    **Date:** 16 August 2017

## **RIGHTS OF APPEAL**

1. 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.
2. 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.
3. 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.
4. 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.



## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

- (1) A person commits an offence if he is a person having control or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if –
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if –
  - (a) a notification has been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence has been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time –
  - (a) a notification has been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence has been duly made in respect of the house under section 63,and that notification or application was still effective ( see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse –
  - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
  - (b) for permitting the person to occupy the house, or
  - (c) for failing to comply with the condition, as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £20,000.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either –
  - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are –
  - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice of licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

**73 Other consequences of operating unlicensed HMOs: rent repayment orders**

- (1) For the purposes of this section an HMO is an “unlicensed HMO” if –
  - (a) it is required to be licensed under this Part but is not so licensed, and
  - (b) neither of the conditions in subsection (2) is satisfied.
- (2) The conditions are –
  - (a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));
  - (b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).
- (3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of –
  - (a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or
  - (b) any other provision of such a tenancy or licence.

- (4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74.
- (5) If –
- (a) an application in respect of an HMO is made to the appropriate tribunal by the local housing authority or an occupier of a part of the HMO, and
  - (b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),
- the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the relevant award or awards of universal credit or the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).
- (6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters –
- (a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),
  - (b) that–
    - (i) one or more relevant awards of universal credit have been paid (to any person); or
    - (ii) housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO,
 during any period during which it appears to the tribunal that such an offence was being committed,
  - (c) that the requirements of subsection (7) have been complied with in relation to the application.
- (6A) In subsection (6)(b)(i), “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) or any corresponding provision replacing that Schedule, in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO.
- (7) Those requirements are as follows–
- (a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”) –

- (i) informing him that the authority are proposing to make an application under subsection (5),
    - (ii) setting out the reasons why they propose to do so,
    - (iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and
    - (iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;
  - (b) that period must have expired; and
  - (c) the authority must have considered any representations made to them within that period by the appropriate person.
- (8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—
- (a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of
    - (i) one or more relevant awards of universal credit, or
    - (ii) housing benefit paid in connection with occupation of a part or parts of the HMO,
  - (b) that the occupier paid, to a person having control of or managing the HMO , periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and
  - (c) that the application is made within the period of 12 months beginning with—
    - (i) the date of the conviction or order, or
    - (ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.
- (9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—
- (a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and
  - (b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.
- (10) In this section—
- “the appropriate person ”, in relation to any payment of universal credit or housing benefit or periodical payment payable in connection with occupation of a part of an HMO , means the person

who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;

“housing benefit ” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);

“occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “ occupation ” has a corresponding meaning);

“periodical payments” means—

- (a) payments in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 (“relevant payments”) or any corresponding provision replacing that paragraph; and
- (b) periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation;

(11) For the purposes of this section an amount which—

- (a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
- (b) is not an amount of universal credit or housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

## **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.
- (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.

...

### **43 Making of a rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond a 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 –
- (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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
- (a) the rent 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,
  - (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 an offence, or
  - (b) is made against a landlord who has received a financial penalty in respect of that 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(4), or
  - (b) in favour of a local housing authority.
- (4) For the purposes of subsection (2)(b) there is “no prospect of an 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.