



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

Case Reference : **LON/00AG/HMK/2018/0024**

Property : **3 Borrowdale, Robert Street,
London NW1 3QG**

Applicants : **Dorothy Lau, Phoung Nguyen,
Huynh Thai, Minh Dong**

Representative : **In person**

Respondent : **Mr. Dawit Abraham & Mrs
Yordanos Abraham**

Representative : **Ms Asima Habte**

Types of Application : **Rent repayment order**

Tribunal Members : **Judge Tagliavini
Mr. L Jarero BSc FRICS**

**Date and venue of
Hearing** : **17 October 2018
10 Alfred Place, London WC1E 7LR**

Date of Decision : **16 November 2018**

DECISION

The tribunal's decision:

The tribunal makes a Rent Repayment Order in the sum of £21,394.03 .

The application:

1. This is an application by the tenants of the subject property seeking a Rent Repayment Order (RRO) in accordance with the provisions of the sections 40, 41, 43 and 44 of the Housing and Planning Act 2016 ("the 2016 Act") in the sum of £32,890 for the period 25 July 2017 to May 2018.

Background:

2. The Applicants were tenants of the subject property under a lease dated 25/07/2017 for a terms of 12 months at a rent of £2,999.00 per month. The subject property comprised 4 bedrooms, the living room being converted into a bedroom, with shared use of a kitchen and bathroom and located on the first floor of a 10 storey purpose built block of flats. A deposit of £4140.00 was paid at the commencement of the tenancy and held by the landlord during the period of the tenancy.
3. After a visit to the premises by representatives of the London Borough of Camden (LBC) in response to complaints of excessive noise made by the Applicant tenants, the Applicants were made aware that the subject property required a licence as a House in Multiple Occupation (HMO) under the Housing Act 2004 (Part 2) and the Additional Licensing denomination within the borough. The subject property remained unlicensed a licence was applied by the Respondent landlord for on 1 March 2018 (currently being processed).

The Applicants' case

4. In support of their application the Applicants provided witness statement from Ms Lau, Ms Thai, Ms Nguyen and Mr. Dong. In these statements the Applicants denied that they had intentionally caused noise nuisance as the subject property was uncarpeted throughout with vinyl flooring in place. The Applicants described incidents of water leakage and damage to beds and desks as well as items of damaged furniture and the cost of a key replacement. In oral evidence Ms. accepted there had been insufficient time to clean or have cleaned the flat at the end of the tenancy and did not seek to challenge the deduction made of £600 from their deposit of £4,400. This represented the cost of cleaning, a repair of a window handle, 2 replacement beds and a chair although no inventory had been taken at the outset of the tenancy and some items of damage were due to the landlord's failure to maintain or the failure to provide the 4 new beds, 4 new wardrobes and chairs for the and desks promised at the outset of the tenancy.

5. The Applicants denied having sublet the property or having used it in an untenant like fashion but as university students had expected to be able to invite friends to the property at reasonable hours and to be able to talk and laugh at a normal volume without complaints being made. Rent had been paid with only a little delay of a few days due to the need for family members to transfer money from abroad. The deposit had not been placed in a tenancy deposit scheme but the Applicants accepted that it had been returned reasonably promptly less the deductions outlined above.
6. The Applicants told the tribunal that they were seeking a Rent Repayment Order for the period of 25/07/2017 to 01/03/2018 when a HMO licence was applied for by the Respondents as they believed this was “only fair.”

The Respondents’ case

7. The Respondents provided the tribunal with a bundle of documents on which they sought to rely. This included a letter from the letting agency Black Katz N1 dated 22/02/2018 assuring the landlords that an HMO licence was not required as the property had been let on a single tenancy agreement to the four joint tenants. However, subsequently, the landlords made an application for an HMO licence on 1 March 2018 having accepted that one was in fact, required although was still being processed.
8. In written and oral evidence to the tribunal it was said by the Respondents that the failure to obtain a licence was a genuine error on their part and they had relied on the letting agent to advise them. The Respondents told the tribunal that they had in 2004 purchased a long lease with a mortgage of £64,550 under the ‘right to buy’ provisions as it had been a family home for a number of years. Initially, the Respondents with their family members remained in occupation until they purchased a new family home. In 2012, the subject property was re-mortgaged in the region of £150,000 allowing the current family home to become mortgage free with mortgage repayments on the subject property were required of £1,478.12 per month.
9. Mr. Abraham told the tribunal that he was employed as a bus driver and that his wife did not work. Major works to the lift in the block had been carried out in 2014/15 and he had only recently finished paying these off by instalments (April 2018). In addition, he was in an ongoing dispute with LBC due to ingress of water causing damage to the subject property in 2016. Mr. Abraham also accepted that the Applicant tenants had not been responsible for any water damage in the subject property.
10. The Respondents asserted that throughout their occupation of the subject property the floors had not been carpeted but they had not received complaints about noise nuisance. It was accepted that LBC had advised them to install carpeting but Mr. Abraham had wanted to

wait as he felt it was inconvenient to do so and would require an upfront payment of £1200. Mr. Abraham asserted he had purchased two new beds at the start of the Applicants tenancy but was unable to provide any receipts to the tribunal. Subsequently, he stated he had only purchased one new bed for the Applicant tenants.

The tribunal's decision and reasons.

11. The tribunal is satisfied beyond reasonable doubt that the subject property was a house in multiple occupation and required a licence in accordance with LBC's Addition Licensing Scheme. The tribunal is also satisfied beyond reasonable doubt that an offence has been committed under section 72(1) of the Housing Act 2004 and that the subject property remained unlicensed for part of the duration of the Applicants' occupation pursuant to their tenancy, contrary to section 61(1) and 72(1) of the 2004 Act as the tribunal is satisfied that the requisite licence was not applied for until 1 March 2018, although finds that the Respondents have not been the subject of a conviction in respect of this failure to obtain a licence. The tribunal is also satisfied that the Respondents were made aware on 26 February 2018 that an HMO licence was required but chose firstly to dispute this before agreeing a licence was in fact required and making their application.
12. The tribunal finds that the subject property has been let since about 2012 and that they employed Black Katz N1 to act only as their letting agents, choosing to manage all other aspects of the tenancy themselves. The tribunal finds that the Respondents failed to honour their promise of providing 4 new beds, 4 new wardrobes and chairs for the desks and failed to install carpeting despite being made aware of the need to do so.
13. The tribunal also finds that works to the lift in the subject building invoiced in 2015 for a sum of £8326.66 with Mr. Abraham preferring to pay for these works by instalments despite his substantial re-mortgage of the subject property, his income from the letting of the property over a six year period and his income from his employment. The tribunal finds that the annual service charges in the region of £1300 (£1361.52 - 2018/19) are charges that would be reflected in the substantial amount of rent charged to the Applicants.
14. The tribunal finds that the Applicants behaved in an appropriate tenant like fashion and paid their monthly rent in a timely manner throughout the period of their tenancy. The tribunal accepts that the premises were not cleaned before vacating the premises but finds that the Respondents have been appropriately compensated for this.
15. In determining the amount of any RRO the tribunal has regard to the provisions of the 2016 the relevant sections which state:

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);

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.

16. The tribunal finds that the period for which a RRO can be made is 25/07/2017 to 28/02/2018 (both dates included). The tribunal calculates this is a period of 217 days at a daily rent of £98.59 providing a total sum of £21,394.03 paid by the Applicants over this period.
17. The tribunal takes into account the conduct of the tenants and the landlord and finds that the landlord has failed to inform himself of his responsibilities, failed to fulfil the promises made at the outset of the Applicants' tenancy, failed to provide adequate floor covering to ensure noise complaints were reduced and allow the Applicants to enjoy their tenancy for which they paid a substantial sum.
18. The tribunal finds that the Respondents have profited significantly from the subject property and provided no evidence of financial hardship were a RRO to be made. The tribunal also takes into account that having applied for a licence on 1 March 2018 a period of almost 5 months during which the rent of £2,999 was paid but is not subject to a RRO.
19. Therefore, in all the circumstances the tribunal determines that a RRO of £21,394.03 is reasonable and appropriate and determines that this sum is to be paid by the Respondents to the Applicants.

Signed: Judge Tagliavini

Dated: 16 November 2018