



**FIRST-TIER TRIBUNAL**

**PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)**

**Case Reference** : **LON/00AG/HMK/2019/0018**

**Property** : **Flat B, 59–61 Camden High Street,  
London NW1 7JL**

**Applicants** : **(1) Ms C Normoyle**  
**(2) Ms C Bulgarelli**  
**(3) Mr B Wilkins**

**Representative** : **Mr S Devine**

**Respondent** : **Abbee Ltd**

**Representative** : **Mr C Brewin of counsel**

**Type of Application** : **Application by Tenants for a Rent  
Repayment Order**

**Tribunal Members** : **Judge S Brilliant**  
**Mr P Roberts DipArch RIBA**

**Date and Venue of  
Hearing** : **3 June 2019**  
**10 Alfred Place, London WC1E 7LR**

**Date of Written  
Reasons** : **20 June 2019**

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## DECISION

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### **Determination**

1. The tribunal is satisfied beyond all reasonable doubt that, during the year ending 11 February 2019, Flat B, 59–61 Camden High Street, London NW1 7JL (“the flat”) was a House in Multiple Occupation (“HMO”). The applicants are entitled to a rent repayment order as the flat was unlicensed. The amount we order to be paid back to the applicants by the respondent is £12,996.00.

### **The leases**

2. The flat is one of four situated above two commercial units at 59–61 Camden High Street (“the building”). Until recently the flat had three bedrooms, a living room, a bathroom/WC and a shared kitchen.

3. On 09 September 2017, the respondent granted a one year AST of the flat to the applicants, expiring on 08 September 2018. The rent was £2,166.67 per month. It is to be noted that this was a single tenancy to all three tenants, which in law meant that each was responsible for the whole of the rent. In practice, each tenant paid a separate share.

4. On 09 September 2018, the respondent granted a further one year AST of the flat to the applicants, expiring on 08 September 2019. Again, it was a single tenancy at a rent of £2,166.67 per month.

5. Both leases were arranged by Christo & Co Ltd (“Christo”), a well-established estate agency and property management business in Camden Town controlled by Mr Chris Christo. Christo was acting, or purporting to act, on behalf of the respondent.

6. All of the applicants said that they would leave the flat on 08 June 2019. This is because, as set out below, one of the bedrooms can no longer be used and the two remaining tenants could not afford the entirety of the rent.

### **The respondent**

7. The respondent is a British Virgin Islands company. The respondent was formed in 2007, at the direction of Mr Christo, for the purpose of purchasing and holding properties. On 11 March 2008, it purchased the building for £785,000.00. It was registered as proprietor on 8 April 2008. On 21 December 2018, the respondent charged the building for a considerable sum to raise funds for the litigation referred to below.

8. The ultimate beneficiaries of the respondent at the time of the purchase were members of the Galazis family who live in Cyprus. One of the beneficiaries was Mrs Maria Galazis, who is the sister of Mr Christo.

9. There is ongoing and substantial litigation in the Chancery Division relating to the control of the respondent. It is between (1) Mrs Galazis and other members of her family and (2) Mr Christo personally, Christo and other parties.

10. The respondent's case before us was that the control of the respondent had until recently been improperly wrested from the Galazis family and vested in corporate entities party to the wrongdoing. It is said that Mr Christo was instrumental in this fraud and that he has also improperly retained rent from the building.

11. By a consent order made in this litigation by Chief Master Marsh on 4 June 2018, the control of the respondent was ordered to be restored to the Galazis family.

12. As a result, Christo has been removed as managing agent of the building. In September 2018, it was replaced by Marble Lettings Ltd ("Marble"). The Marble group of companies has been managing the problems concerning the building left by Christo.

13. We should say that on the evidence before us we are satisfied that paragraphs 7–12 are correct. None of the defendants in the Chancery Division proceedings was present before us and it goes without saying that what we have found is of no weight in those proceedings.

### **The witnesses**

14. Each of the applicants gave evidence. They are all intelligent and well-educated young adults and we have no hesitation in accepting their evidence.

15. Mr Charles of the Marble group gave evidence on behalf the respondent. He had originally been engaged in his capacity as an accountant by the Galazis family in 2014 to find what had happened to their rental income. He was then tasked with initiating the litigation referred to above. His was a thankless task as most of the problems relating to the building in general, and the flat in particular, did not arise on his watch. However, some criticism can be levelled at the speed with which he has endeavoured to address those problems. Although he has obviously worked very hard attempting to sort out the various problems, where it comes to what repairs have been carried out, and when, we prefer the evidence of the applicants.

### **These proceedings**

16. It is common ground that at all material times the flat required an HMO licence, as the London Borough of Camden ("Camden") has had an additional licensing scheme in place since 2015. This scheme covers a property occupied by

three or more tenants forming two more households. Such a licence was not applied for until 12 March 2019, and was obtained thereafter.

17. The applicants have made an application to the tribunal dated 28 February 2019 for a rent repayment order.

### **The legislation**

18. Where students or friends share a flat, each of them is regarded as a separate household: s.258 Housing Act 2004.

19. ss.254-260 of the 2004 Act define a mandatory HMO. However, as we have said, the additional licensing scheme operates in this case. By s.262(6)(a) of the 2004 Act an “occupier” means a person who occupies premises as a residence.

20. s.61 of the 2004 Act requires an HMO to be licensed. By s.72(1) of the 2004 Act a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed, but is not so licensed. By s.263 of the 2004 Act a person has control of premises if he receives the rack-rent.

21. Importantly, s.72(5) provides that in proceedings against a person for an offence under s.72(1) **it is a defence that he has a reasonable excuse** for having control of or managing the house in the circumstances mentioned in s.72(1). We shall refer to this as “the statutory defence”.

22. s.40(1) Housing and Planning Act 2016 confers powers on the tribunal to make a rent repayment order where a landlord has committed an offence, including a breach of s.72 of the 2004 Act. s.40(2)(a) of the 2016 Act provides that a rent repayment order is an order requiring the landlord to repay an amount of rent paid by a tenant. s.41(1) of the 2016 Act enables a tenant to apply to the tribunal for a rent repayment order against a person who has committed an offence, such as a breach of s.72 of the 2004 Act.

23. By s.43 of the 2016 Act, the tribunal may make a rent repayment order if satisfied, **beyond reasonable doubt**, that a landlord has committed an offence to which Chapter 4 of the 2016 Act applies (this includes a breach of s.72 of the 2004 Act).

24. By s.44(2) of the 2016 Act, the amount of the rent repayment order must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. In this case the period is of 25 weeks from 15 November 2017 - 9 May 2018 (as explained below).

25. By s.44(3) of the 2016 Act, in determining the amount of a rent repayment order 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 anytime been convicted of an offence to which Chapter 4

applies.

### **Factual narrative**

26. In July 2018, the Galazis family regained control of the respondent. In early September 2018, Marble was appointed managing agent of the building in place of Christo. On 06 September 2018, Christo wrote to the applicants informing them of the new appointment.

27. In September 2018, the applicants contacted Marble about large cracks within the flat. Because there was no prompt response to this the applicants contacted Camden on 28 December 2018. In December 2018, the applicants also complained that the condition of the stairs was disgusting and that they had not been cleaned since Marble became the managing agents.

28. On 03 January 2019, Camden visited the flat. A number of health and safety breaches were noticed, including fire detection and escape routes, and the absence of windows in Ms Bulgarelli's room and the shared kitchen. It was then discovered that there was no HMO licence in place. Camden carried out a further inspection on 17 January 2019. The applicants were told that a prohibition order would have to be placed on Ms Bulgarelli's room as having no window it was a fire hazard.

29. On 04 January 2019, after much chasing by the applicants, Marble arranged for a structural surveyor to inspect the building and he was able to reassure the applicants of the structural integrity of the building. The cracking was cosmetic only. Marble immediately emailed the applicants with the result of the survey.

30. The flat was a furnished one. The applicants had requested new mattresses at around the end of November. This was not dealt with satisfactorily. For example, Marble entered the flat without proper notice and stripped Ms Normoyle's bed without her permission, leaving everything in a mess on the floor. The applicants did not receive satisfactory mattresses until early February 2019.

31. Camden discovered a number of breaches of safety legislation.

32. A Fire Risk Assessment dated December 2018 concluded that the building had a high risk of fire and advised every effort should be made to rectify the issues within 14 days. This did not occur. In particular, an unacceptable amount of combustibles was found in the hallway. This was not cleared until March 2019.

33. On 12 March 2019, an application was made by Marble for an HMO licence. Mr Charles says that it was only then that Marble knew that a licence was required. However, a competent managing agent should have known that a licence was required as soon as it took over the management of the flat.

34. It was also discovered that the building did not have planning permission for its current use as a flat. On 08 April 2019, the respondent was granted a certificate of

lawful use. The application for planning permission was given priority over the application for an HMO licence. Both should have been applied for at the same time.

35. On 05 April 2019, Camden served the prohibition referred to above. The absence of a window in Ms Bulgarelli's room gave rise to lighting, fire and excess heat problems.

36. Mr Charles was unable to say whether the fire extinguishers in the building had been updated. No smoke detectors had been fitted in the flat.

### **Submissions**

37. Mr Brewin's submission is that his client can rely on the statutory defence. The owners are based in Cyprus and do not reside in the United Kingdom. They lost control of the respondent, ceased to recover rental income generated from the building, and they did not have control over Christo.

38. Although the two leases referred to above were purportedly agreed and signed on behalf of the respondent by Christo, the Galazis family did not in fact authorise Christo to enter into the leases or create an HMO. The Galazis family were unaware of the letting and were not receiving the rent paid by the applicants.

39. Marble were appointed in October 2018 after the Galazis family had regained control of the respondent. It took some time to review all the documentation and Marble prioritised repairs and planning issues. The respondent applied for an HMO licence on 12 March 2019 and intends to use the flat only as a two bedroom one in the future.

40. Mr Devine submitted that the statutory defence was not open to the respondent. There were numerous health and safety problems in the flat. He contrasted the speed with which the planning application was made with the delay in making the application for an HMO licence. He asked for 100% of the rent to be repaid.

41. We are unable to accept the submission that the statutory defence has been made out. The respondent is a company, a separate legal entity distinct from both its shareholders and, if there is a further layer of ownership, the ultimate beneficiaries. It is not the Galazis family personally which is the rogue landlord, it is the respondent. In any event, control to the Galazis family was restored by September 2018. This means that they were in control of the respondent for five months out of the 12 months in respect of which the rent repayment order is being sought.

### **Culpability**

42. Around six months elapsed between the appointment of Marble and the application for an HMO licence. Although there were planning and other issues concerning the building, we do not consider that the application was made with

sufficient urgency. We are not satisfied that all of the health and safety issues have been addressed. For example, from the photographs it does not appear that the fire extinguishers have been replaced.

## **Mitigation**

43. Marble did apply for and obtain an HMO licence, albeit less quickly than they should have done. The respondent's conduct since September 2018 has in the main been responsible, although we find that some of the repair works remain outstanding.

44. The applicants were, prior to late 2018, more than satisfied with the flat, save that Ms Bulgarelli understandably found her bedroom poorly ventilated, particularly in the Summer. Each found the area to be very vibrant, in some of their cases convenient to work, and also close to transport and other amenities. They were happy to renew the tenancy in 2018. However, they were not aware at the time of the underlying health and safety issues.

45. On the evidence before us, the respondent is a special purpose vehicle for a pension fund of the Galazis family. The respondent is not a professional landlord in the normal sense. The respondent has not been convicted before.

## Conclusion

46. Taking all these matters into consideration, we feel that the appropriate level of repayment should be one half of the claim made by the applicants. This amounts to £12,996.00 rounded down. As we have explained, there is one rent for one tenancy and the applicants will have to divide that award up between themselves as they think fit. The applicant is also entitled to recover the cost of the application.

**Name:** Simon Brilliant

**Date:** 20 June 2019

## **ANNEX - RIGHTS OF APPEAL**

- i. 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.
- ii. 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.
- iii. 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.

- iv. 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.