FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMK/2019/0021**
Property	**:**	**15 Hillside Court, 409 Finchley Road, London NW3 6HG**
Applicants	**:**	**Alicja Anna Bladziak** **Fanny Kypengren**
Representative	**:**	**In person**
Respondent	**:**	**Bekim Emini**
Representative	**:**	**In person**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Mr Richard Shaw FRICS**
Date and Venue of Hearing	**:**	**1 July 2019 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**8 July 2019**

DECISION

Decision of the Tribunal

1. The Tribunal makes the following rent repayment orders ('RROs'):

   (i) The Respondent shall refund the sum of £6,318 to Ms Alicja Anna Bladziak;

   (ii) The Respondent shall refund the sum of £6,786 to Ms Fanny Kypengren

2. The said sums, which total £13,104, are to be paid to the Applicants by 4 August 2019.

3. The Tribunal determines that the Respondent shall also pay the Applicants £300 by 4 August, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. On 11 March 2019, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for RROs in respect of Flat 15 Hillside Court, 409 Finchley Road, London NW3 6HG ("the flat"). The respondent is identified as Bekim Emini. The Applicants did not know his address, but rather gave two e-mail addresses. The application has been brought by (i) Ms Alicja Anna Bladziak who occupied a single room between 4 February 2017 and March 2019; and (ii) Ms Fanny Kypengren who occupied a single room between 31 January 2017 and April 2019.

2. On 22 March, the Tribunal notified Mr Emini, by e-mail, that the application had been received. He telephoned the Case Officer on the same day and gave his address as 108 Verulam Court, Woolmead Avenue, London, NW9 7AW.

3. The application form did not attach the relevant tenancy agreements. On 15 April, the Applicants provided these. Both agreements use a similar template. They are described as a "House/Flatshare Tenancy Agreement".

   (i) Ms Bladzik's agreement is dated 4 February 2017 and is for a minimum term of six months from 4 February 2017 at a rent of £135 which is payable fortnightly. A deposit of £270 was paid. An administration fee of £135 was charged by Easy Let, the Letting Agency. Ms Bladzik is described as the "sharer", albeit that she was granted exclusive possession of a room to which she had a key. The tenancy agreement does not specify the name of the landlord or his agent.

   (ii) Ms Kypengren's agreement is dated 30 January 2017 and is for a minimum term of six months from 30 January 2017 at a rent of £145

which is payable fortnightly. A deposit of £290 was paid. An administration fee of £134 was charged by Easy Let, the Letting Agency. Ms Bladzik is described as the "sharer", albeit that she was granted exclusive possession of a room to which she had a key. The tenancy agreement does not specify the name of the landlord or his agent.

4. On 15 April, the Tribunal sent a copy of the application to the Respondent at 108 Verulam Court. On 24 April, the Tribunal gave Directions. On 26 April, the Tribunal sent a copy of the Directions together with a listing questionnaire to the Respondent.

5. The Directions set out the issues which the Tribunal would need to consider. The Respondent was advised to seek independent legal advice. The Respondent was warned of the consequences of failing to comply with the Directions, namely that he could be debarred from taking further part in the proceedings. By 17 May, the Respondent was directed to file a Bundle of Documents including:

(i) A full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advanced by the applicant, and dealing with the issues identified above;

(ii) A copy of the tenancy agreements;

(iii) Evidence of the amount of rent received in the period (less any universal credit/housing benefit paid to any person), with details of the occupancy by the tenant on a weekly/monthly basis;

(iv) A copy of all correspondence relating to any application for a licence and any licence that has now been granted;

(v) The name(s) of any witnesses who will give evidence at any hearing, with a signed and dated statement/summary of their evidence, stating that it is true;

(vi) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order;

(vii) Evidence of any outgoings, such as utility bills, paid by the landlord for the let property;

(viii) Any other documents to be relied upon at the hearing.

6. On 24 May, the Tribunal notified the parties that the matter had been listed for hearing on 1 July. In response to this and one the same day, the Respondent e-mailed the Tribunal stating that he had not received any communication with the Tribunal since two telephone conversations on 22 March. On 30 May, the Tribunal e-mailed the Respondent a further set of the Directions.

7. On 30 May, the Respondent e-mailed the Tribunal requesting an extension for submitting his Bundle. He stated that he had not received the previous Directions which had been sent to him by post. On 5 June, the Tribunal

gave further Directions, extending the time by which the Respondent was obliged to file his Bundle to 13 June. On 5 June, the Tribunal e-mailed this to the Respondent.

8. On 13 June, the Respondent requested a further extension. On 27 June, the Tribunal notified the Respondent that the application had been refused and that the hearing would proceed. On 28 June, the Respondent e-mailed the Tribunal stating that his mobile had been stolen on 19 June and that he had been unable to log in to his bank account.

9. On 20 June, the Tribunal received the bundles for the hearing which had been prepared by the Applicants. The Applicants sent a copy to the Respondent at Flat 18, Lulworth, Wrotham Road, London NW1 9SS.

The Hearing

10. All the parties appeared in person:

(i) Ms Bladziak is from Poland. She has just completed a four-year course at the London College of Fashion. She has supported herself by working as a sales assistant.

(ii) Ms Kypengren is from Sweden. She has been in London for five years and has been employed in organising events.

(iii) Mr Emini is from Kosovo. He has lived in this country for the past 23 years. He has worked for London Habitat, a firm of Estate Agents, for the past 10 years.

11. Mr Emini applied for an adjournment. He stated that he had not received either a copy of the application form or the Hearing Bundle. He stated that he had not received the tribunal's letters of 15 April and 26 April. He accepted that he had received the Directions, but asserted that he had not had an adequate opportunity to prepare his case. He was aware that the Hearing Bundle had been sent to his property at Flat 18, Lulworth. However, he stated that he did not live there and had not had the opportunity to collect it. He stated that his father, aged 79 was ill and that he would be travelling abroad between 20 July to 10 August to visit him. He provided the Tribunal with a witness statement.

12. The hearing started at 10.00. The Tribunal adjourned so that we could analyse both the tribunal file and the e-mail communications. We concluded that it was appropriate to proceed. We were satisfied that Mr Emini had had an adequate opportunity to prepare his case. Further, he had received the letters of 15 and 26 April, it being most unlikely that two letters were not delivered in the normal course of the post. We were satisfied that Mr Emini has been evasive and has sought to conceal both

his role in letting this property and the address at which he should be contacted.

13. We notified the parties of our decision at 12.30 and adjourned for lunch to enable all parties to prepare their cases. We provided the parties with copies of the Hearing Bundle. We notified Mr Emini that we would not permit him to adduce evidence. The purpose of the Directions had been to enable the respondent to file a bundle setting out his reasons for opposing the application. He had failed to take up this opportunity. We would permit him to question the applicants and to make submissions.

14. The Tribunal resumed the hearing at 13.30. Both Applicants gave evidence and were questioned. All the parties made oral submissions.

15. Mr Emini has provided a number of addresses:

(i) Flat 18, Lulworth, Wrotham Road, London NW1 9SS. This is the address which the Applicant provided to the London Borough of Camden ("Camden"). Mr Emini informed the Tribunal that this is a property which he had acquired from Camden under the Right to Buy legislation. For the past five years, he has let the flat to a single household.

(ii) 48 Vernon Court, Hendon Way, NW2 2PE. Mr Emini stated that this was a property which he had rented with his partner. They are now separated.

(iii) 108 Verulam Court, Woolmead Avenue, London, NW9 7AW. This is a property which he currently rents with a friend.

The Background

16. 15 Hillside Court is a four-bedroom flat in a desirable area of London. The living room was let as a bedroom, so there were five separate lettings. Two of the rooms were let to couples. One bedroom has an en-suite bathroom. The four other rooms (one double) shared a single bathroom. All the rooms shared the kitchen. There was no separate living room. A total of 7 people of occupied the flat.

17. On 20 February 2019, Camden imposed a financial penalty on the Respondent pursuant to section 249A of the Housing Act 2004 ("the 2004 Act"), namely £1,500 for failing to licence the flat as a house in multiple occupation contrary to section 72(1) of the 2004 Act. Camden served the notice on Mr Emini at Flat 18, Lulworth. The Notice records that Camden had introduced an additional licencing scheme on 8 December 2015. This was a first offence for the Respondent. The Notice states that a significant financial penalty may act as a deterrent to prevent future offences. Mr Emini paid this penalty on 22 February.

18. On or about 19 February 2019, Mr Emini applied to Camden for a licence. However, on 22 February, Mr Emini notified Camden that the proposed HMO licence holder should be Lucero Estates Ltd. Mr Emini informed the Tribunal that Lucero Estates Ltd is the leaseholder and that he paid a substantial rent to it. Mr Emini stated that the letting to the Applicants had been arranged by "Gino Scalzo" who now lives in Italy, and "Claudio". These gentlemen had provided the tenancy agreement which had been issued to the Applicants. He had first seen the property in January 2017 and understood that four rooms were to be let with the tenants having shared use of the living room.

19. Ms Bladziak stated how she had occupied her room from 4 February 2017 to March 2019. She saw the room advertised on-line. She was shown round the flat by an agent from Easy Let. She asked who the landlord was; the agent did not know. She produced a copy of her tenancy agreement. This does not specify the name of her landlord. She was provided with a key to her room. She had been told that all bills were included. However, it was apparent that the electricity was on a key meter. The tenants did not at first know where the meter was and there were periods when they had no electricity. They were eventually recompensed for the sums that they had paid. She had met Mr Emini after some two weeks. He stated that he worked for the landlord. She knew him as "Gino" and communicated with him at ginoslet@gmail.com. Mr Emini would turn up, unannounced, on occasions, as late as 22.00. There was no gas for some months. Apparently, there was a leak. There was also a period of some days when they had no hot water as there was a leak in the block. She had problems with the heating in her room as there was no individual control. There were also problems with the wifi. She paid rent of £135 per week from her earnings. This was paid fortnightly. Details of her payments are at p.23. The reference for these payments was "Gino Landlord". She paid a deposit of £270. This was returned at the end of the tenancy.

20. Ms Kypengren stated how she had occupied her room from 31 January 2017 to April 2019. The letting had been arranged by "Jose" at Easy Let. She had had to move out of her previous accommodation at short notice. She produced a copy of her tenancy agreement. This does not specify the name of her landlord. Jose stated that he did not know the name of her landlord. She was provided with a key to her room. She also had problems from the start. Her fob did not work. On one occasion, she had had to wait in the local Starbucks for an hour until another tenant could give her access. On a number of occasions, she had found builders in her room. On one occasion, this was as late at 20.00. The builders did not speak good English. She had e-mailed Mr Emini who had finally conceded that he was the landlord. She paid rent of £145 per week from her earnings. This was paid fortnightly. Details of her payments are at p.25. The reference for these payments was "Gino". She paid a deposit of £290. This was not placed in a rent deposit scheme. She was not required to pay rent for the last two weeks of her occupation.

21. The tenants stated that Camden had discovered that this was an unlicensed HMO when they had carried out an inspection in January 2019. Thereafter, Mr Emini had required them to leave. They were told by Camden's Environmental Health Officer, Liam McIntyre, that he could not force them to leave. Mr Emini had provided them with a list of alternative properties. It seems that there were more regular unannounced visits by builders towards the end of their tenancies.

22. In his closing submissions, Mr Emini stated that he had always tried to be a good landlord and had attended to the issues raised by his tenants. He was unaware that the property required a licence. He said that Gino and Claudio had told him that there would only be four tenants. He had rented other properties for Lucero Estates Ltd under Assured Shorthold Tenancies but not as house shares.

Our Determination

23. We found all the two tenants to be honest and reliable. We have no hesitation in accepting their evidence.

24. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) On 8 December 2015, Camden introduced an additional licencing scheme for HMOs. Under this scheme all HMOs in the borough are required to be licenced.

(ii) Flat 15 Hillside Court is an HMO falling within the definition falling within the "standard test" as defined by section 254(ii) of the 2004 Act. In particular:

(a) it consists of five units of living accommodation not consisting of self-contained flats;

(b) the living accommodation is occupied by persons who do not form a single household;

(c) the living accommodation is occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable in respect of the living accommodation; and

(f) the households who occupy the living accommodation share the kitchen, a bathroom and a toilet.

(iii) The Respondent is the relevant landlord;

(iv) The Respondent has failed to licence the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

(v) The offence was committed over the period of 31 January 2017 to 21 February 2019.

(vi) The offence was committed in the period of 12 months ending on 19 March 2019, namely the date on which the application was made.

25. The 2016 Act gives the Tribunal has a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenants during this period, less any award of universal credit paid to any of the tenants. The Applicants confirmed that they were not in receipt of any state benefits and that they paid the rents from their earnings.

26. We are satisfied that the relevant period of 12 months is the period between 1 February 2018 and 31 January 2019. During this period, the tenants have paid the following rent:

(i) Ms Alicja Anna Bladziak: £7,020, namely 26 fortnightly payments of £270.

(ii) Ms Fanny Kypengren: £7,540, namely 26 fortnightly payments of £290.

27. In determining the amount of any RRO, we have had regard to the guidance given by George Bartlett QC, the President of the Upper Tribunal ("UT") in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the 2004 Act where the wording of section 74(6) is similar, but not identical, to the current provisions. The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. Although the period for which a RRO can be made is limited to 12 months, a tribunal should have regard to the total length during which the offence was committed. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is

always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than the non-professional landlord.

28. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord:

(ii) The conduct of the tenants:

(iii) The financial circumstances of the landlord: The Directions invited the Respondent to provide a statement as to any circumstances that could justify a reduction in the RRO and evidence of any outgoings. The Respondent has not complied with the Directions.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. The financial penalty orders are not "convictions" for this purpose.

29. We are satisfied that the Respondent has acted in cynical disregard of the right of these tenants. Mr Emini has worked for a firm of Estate Agents for the past ten years. We are satisfied that he was aware of his duty to licence the flat. Neither tenancy agreements identified the name of the landlord or his agent. Section 47 of the Landlord and Tenant Act requires any written demand for rent to specify the name and address of the landlord. Section 48 requires a landlord to furnish his tenant with an address at which notices may be served. The Housing Act 2004 requires a landlord to protect a deposit in a Tenancy Deposit Scheme. Since 1 October 2015, a landlord is also required to provide a "How to Rent" Guide, an Energy Performance Certificate and a Gas Safety Certificate. The Tribunal is satisfied that Mr Emini has been in flagrant breach of all these requirements.

30. There is a severe shortage of affordable housing in London. Young people in employment and with modest earnings have limited options available to them. The 2014 Act was passed with the express aim to provide greater protection for the health, safety and welfare of occupants of HMOs. These Applicants are particularly vulnerable. They are young workers from Europe who have limited knowledge of their rights under UK domestic law.

31. The Tribunal has had regard to the financial penalty imposed by Camden and which has been paid by the Applicant. In *Asghar v Ahmed* (1984) 17 HLR 25, the Court of Appeal considered the interaction between an award of exemplary damages in a civil claim and a penalty imposed for an offence

under the Protection from Eviction Act 1977. A financial penalty of £1,500 was imposed by Camden for failing to licence the flat as a house in multiple occupation contrary to section 72(1) of the 2004 Act. This is the offence which we have also found that the landlord has committed. However, we have regard to the fact that we are only dealing with the tenants of two of the five rooms and that the offence was committed for more than two years.

32. Having taken all these factors into account, we are satisfied that it is appropriate to make RROs in respect of 90% of the rent paid by the tenants during the relevant period of 12 months. The Respondent has not put forward any mitigating factors in accordance with the Directions. The Tribunal therefore makes the following RROs which total £13,104:

(i) The Respondent shall refund the sum of £6,318 to Ms Alicja Anna Bladziak;

(ii) The Respondent shall refund the sum of £6,786 to Ms Fanny Kypengren

33. We further order that the Respondent should refund, to the Applicants, the tribunal fees of £300 paid by the Applicants pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Robert Latham
8 July 2019

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

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

(a) the area of their district, or

(b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless–

(a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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.

	Act	*section*	*general description of offence*
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

	Act	*section*	*general description of offence*
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 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.

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 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.