



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

<b>Case Reference</b>	:	<b>LON/00AL/HMK/2019/0033</b>
<b>Property</b>	:	<b>7<sup>TH</sup> Floor flat, 706 Holly Court, John Harrison Way, London SE10 0BL</b>
<b>Applicants</b>	:	<b>(1) Zak Baker (2) Max Ansell-Wood (3) Benjamin Gale (4) Tim Farrell</b>
<b>Representative</b>	:	<b>Miss Lennox of BPP Legal Advice Clinic</b>
<b>Respondents</b>	:	<b>(1) Marc Evans (leaseholder) (2) Pacific Estate Agents (3) Easy Room4You-UK Limited</b>
<b>Representative</b>	:	<b>Mr Shaw for the Second Respondent</b>
<b>Type of Application</b>	:	<b>Application for a rent repayment order by tenants</b>

---

**DECISION**

---

***Introduction***

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondents.
2. The contractual relationships between the Respondents were as follows. The First Respondent is the leasehold owner of 7<sup>TH</sup> Floor flat, 706 Holly Court, John Harrison Way, London SE10 0BL (“the property”). By an assured shorthold tenancy agreement he let the property to the Third Respondent for a term of 12 months from 13 November 2016 (“the first

agreement”). Somewhat misleadingly, the agreement refers to the term ending on 12 November 2018. The rent payable under this agreement by the Third to the First Respondent was £2,502.49 per calendar month.

3. The property was initially managed by OJ Residential on behalf of the First Respondent who were later succeeded by Pacific Estate Limited as the managing agent. It was common ground that neither OJ Residential nor Pacific Estate Limited received rent from the Applicants on behalf of Mr Evans.
4. Subsequently, the Third Respondent let a room to each of the Applicants under licence agreements dated 20 November 2015, 17 November 2017, 2 April 2018 and 15 November 2018 at a rental sum of £770, £650, £800 and £770 respectively (“the second agreements”). The total rent collected from the Applicants was £2,990 per month. The First and Third Applicants remain in occupation. The Second and Fourth Applicants ceased occupation on 15 March and 7 June 2019 respectively.
5. Although the agreements are headed “Licence Agreement”, they nevertheless refer to the occupier as being the tenant. It is, therefore, arguable whether the licence agreements are such agreements or whether they are in fact tenancy agreements. However, this does not matter because the Act does not draw a distinction between whether occupation takes place pursuant to a licence or tenancy agreement. It is the mere act of occupation of an HMO and payments made in connection with such occupation of the unlicensed property that gives rise to a statutory liability for a rent repayment order.
6. It is common ground here that the property was unlicensed at the time it was let to the Applicants by the Third Respondent. The Tribunal was told that the Third Respondent is subject to a penalty of £5,000 imposed by Greenwich Council in relation to the unlicensed letting of the property.

7. On 5 April 2019, the Applicants made this application to the Tribunal seeking a rent repayment order against the Respondents. The First and Second Respondents have not participated in the proceedings, save for the latter's representation at the hearing.

### **Relevant Law**

8. Section 43 of the Act provides that:
- (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).
8. Section 44 of the Act provides that:
- (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.

### ***Decision***

7. The hearing took place on 15 July 2019. The Applicants were represented by Miss Lennox from the BPP Legal Advice Clinic. The Second Respondent was represented by Mr Shaw, a Solicitor who said that he had been instructed shortly before the hearing. Neither the First of Third Respondents attended or were represented.
  
8. Mr Shaw said his client's position was that it should not be a party to the proceedings. Miss Lennox and Mr Shaw said that they had not been served with the bundle of papers filed by the third Applicant. This contained a copy of the first agreement. Having had an opportunity to consider this document, Miss Lennox conceded that only the Third Respondent was the correct Respondent to the application because it was the only one that satisfied the definition of "the appropriate person" within the meaning of section 73(10) of the Act. For the avoidance of doubt, the Tribunal makes a finding in these terms. Mr Shaw then said that his need to participate in the proceedings had ended and he excused himself.
  
9. In the statement of case prepared by a Mr Gomez on behalf of the Third Respondent, it is accepted that when the property was let to the Applicants it was not in fact licensed when this was a requirement for the letting. The Tribunal is, therefore, satisfied that the Third Respondent had committed an offence under section 72(1) of the Housing Act 2004. It has been convicted and/or fined £5,000 by Greenwich Council for this offence.

10. The Tribunal was also satisfied that a rent repayment order should be made against the Third Respondent. It holds itself out as a professional landlord. Therefore, it should have been aware of the statutory requirement to hold or obtain a licence before letting the property.
  
11. Some guidance regarding the exercise of the Tribunal's discretion under section 44(4) of the Act as to the amount of the rent repayment order can be found in the Upper Tribunal in *Parker v Waller & Ors* [2012] UKUT 301. Although the decision concerned a case under the Housing Act 2004 prior to 6 April 2017, nevertheless, the Tribunal considered that the guidance had equal validity for subsequent applications brought under this Act. Relevant considerations include:
  - (a) (section 44(4)) is not a complete list of the matters that must be taken into account.
  - (b) any fine imposed is a relevant factor.
  - (c) there is no presumption or starting point of a 100% refund of payments made.
  - (d) the culpability of the landlord is relevant – a professional landlord is expected to know better.
  
12. Following the same reasoning in *Parker*, the Tribunal concluded that the relevant considerations in this case were:
  - (a) the fact that the Third Respondent did not make an application for a licence or possibly ensure that such a licence had been obtained by the First Respondent. This is especially relevant because Mr Gomez asserted that all of the parties were aware that the property was going to be sublet room by room and it was aware since 6 March 2019 of the requirement that the property had to be licensed, which was not acted upon.
  - (b) the Third Respondent held itself out as being a professional landlord whose business model was to obtain a profit from the subletting.

- (c) the Third Respondent had already been fined £5,000 by Greenwich Council.
  - (d) that the property is subject to a prohibition order made by Greenwich Council dated 7 June 2019 regarding the inner bedroom being used as living and/or sleeping accommodation even though it was a category 1 hazard under the Act.
  - (e) the Tribunal was not presented with any evidence of the Third Respondent's financial circumstances.
13. Having regard to the matters above, the Tribunal determined that a rent repayment order should be made in favour of the Applicants on the following terms. The methodology used by the Tribunal was to initially base its determination on the profit element the Third Respondent derived from the letting of say approximately £500 per month and applying that on a pro rata rate of 25% of the overall monthly rent paid by the Applicants from the commencement of their occupation up to a maximum award of 12 months from that date.
14. Therefore, the Tribunal made the following award to the Applicants:
- (a) Mr Baker – 12 months at £125 per month = £1,500 (increased to £2,250)
  - (b) Mr Ansell Wood – 11 months £125 per month = £1,375 (increased to £2,125)
  - (c) Mr Gale - 12 months at £125 per month = £1,500 (increased to £2,250)
  - (d) Mr Farrell - 6 months at £125 per month = £750 (increased to £1,500)
- Total = £8,125
15. However, to reflect the additional considerations set out at paragraph 12 above, the Tribunal determined that a further award of £3,000 apportioned at 25% between the Applicants at £750 each should be

made to reflect the penalty/deterrence effect of its decision. The increased awards are shown in brackets above. Payment by the Third Respondent is to be made to each of the Applicants within 21 days of this decision being served on the parties by the Tribunal.

### ***Fees***

16. As the application has succeeded, the Tribunal also orders the Third Respondent to reimburse the Applicants the fees of £300 they have paid to have the application issued and heard. Payment is to be made in accordance with paragraph 15 above also.

**Name:** Tribunal Judge I  
Mohabir

**Date:** 15 July 2019

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).