



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

**Case Reference** : **LON/00AN/HMK/2019/0039**

**Property** : **27 Argyll Mansions, Hammersmith  
Road, London W14 8QQ**

**Applicant** : **Mr Daniel Faizey**

**Representatives** : **In person**

**Respondents** : **Mr Paul Cohen**

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

**Type of Application** : **Application for a rent repayment order  
by the tenant**  
Sections 40, 41, 43, & 44 of the Housing and  
Planning Act 2016

**Tribunal Members** : **Judge N Hawkes  
Mr H Geddes RIBA MRTPI**

**Date and venue of  
hearing** : **23 August 2019 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **27 August 2019**

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**DECISION**

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## **Decision of the Tribunal**

The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £4,364.27.

### **The application**

1. By an application dated 26 April 2019, the Applicant tenant (Mr Daniel Faizey) applied for a rent repayment order against the Respondent landlord (Mr Paul Cohen).
2. On 9 May 2019, the Tribunal issued Directions leading up to a final hearing which took place on 23 August 2019.
3. The Applicant attended the hearing in person. By an undated letter which was received by the Tribunal on 20 August 2019, the Respondent stated that he would like the matter to be decided on the basis of written evidence.
4. A copy of this letter was not provided to the Applicant notwithstanding that the notes to the Tribunal's directions expressly state "whenever you send a letter or email to the Tribunal you must also send a copy to the other parties and note this on the letter or email". The Tribunal cannot take into account submissions made by a party without giving the other party the opportunity to respond.
5. The application had clearly been listed for an oral hearing and the Tribunal therefore waited until 10.30 am before proceeding with the hearing in case the Respondent chose to either attend or to send a representative appear on his behalf. At 10.35 am, the hearing proceeded in the Respondent's absence.

### **The Tribunal's determinations**

6. Section 40 of the Housing and Planning Act 2016 ("the 2016 Act") provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.
7. Statutory guidance for local housing authorities concerning rent repayment orders under the 2016 Act was published on 6 April 2017 ("the Statutory Guidance"). The Tribunal has had regard to the Statutory Guidance in determining this application.
8. Section 41 of the 2016 Act provides:

*(1) A tenant ... 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.”*

9. Section 43 of the 2016 Act provides:

*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.*

10. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) of controlling or managing an unlicensed house in multiple occupation (“HMO”).
11. The Applicant seeks a rent repayment order (“RRO”) in respect of sums which he states that he paid to the Respondent in the period 28 January 2018 to 27 January 2019 (“the relevant period”).
12. The Applicant asserts that the Respondent committed the offence of controlling or managing an unlicensed HMO throughout the relevant period. In respect of this offence, the amount of any RRO must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) of the 2016 Act).
13. By section 44(3) of the 2016 Act, the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid to any person in respect of rent under the tenancy during that period.
14. Having heard oral evidence from the Applicant and having considered the documents to which it was referred during the course of the hearing,

the Tribunal makes the following determinations. The Tribunal has considered each of the issues which were identified to the Annex to the Tribunal's Directions in turn.

**Whether the Tribunal is satisfied beyond reasonable doubt that the respondent has committed a relevant offence?**

*Control or management of an unlicensed house in multiple occupation*

15. The Tribunal found the Applicant to be a measured and credible witness and the Tribunal has no hesitation in accepting his oral evidence.
16. The Applicant gave evidence that, from January 2018 until September 2018, there were five tenants at the property forming three separate households. He stated that there was a large bedroom, a middle bedroom, and a small bedroom. He occupied the small bedroom and each of the other bedrooms was occupied by a couple. The Tribunal accepts this evidence.
17. In support of his case that the Respondent was controlling and/or managing an unlicensed HMO, the Applicant relied upon an email dated 11 February 2019 from Mr Dan Rose, Private Sector Licensing Officer with Hammersmith and Fulham Council ("the Council").
18. In this correspondence, Mr Rose states that if a landlord has at least five or more tenants forming two or more households a mandatory HMO licence is required; that the property does not have an HMO licence; and that no application for an HMO licence in respect of the property had been made at the date of this letter.
19. On the basis of (i) the correspondence from the Council and (ii) the Applicant's oral evidence that there were five tenants at the property forming three separate households, the Tribunal is satisfied beyond reasonable doubt that the Respondent committed the offence of controlling or managing an unlicensed HMO from the commencement of the Applicant's tenancy until September 2018 (when a mandatory HMO licence was required).
20. The Applicant gave evidence that, from September 2018 to date, there have been four tenants at the property forming three separate households. The Tribunal accepts this evidence. In his correspondence dated 11 February 2019, Mr Rose explains that, in Hammersmith and Fulham, if a landlord has three or four tenants forming two or more households, an additional HMO licence is required.
21. Mr Rose does not state when the Council's additional licencing scheme came into force. However, the Applicant gave evidence that he had telephoned the Council and had spoken to a man called Oliver who had

informed him that the additional licensing scheme came into force on 5 June 2017. He gave evidence that this information is also readily available on the internet. The Applicant stated that he had subsequently spoken to an employee of the Council called Nana who had confirmed that, as at the date of the hearing, the Council had still not received any application for a licence in respect of the property. The Tribunal accepts this evidence.

22. On the basis of the correspondence from the Council and the Applicant's oral evidence, set out above, the Tribunal is satisfied beyond reasonable doubt that the Respondent has committed the offence of controlling or managing an unlicensed HMO from September 2018 to date (when an additional HMO licence was required).

**Did the offence relate to housing that, at the time of the offence, was let to the tenant?**

23. The Tribunal has been provided with a copy of the Applicant's tenancy agreement and evidence of rent payments. The Tribunal is satisfied on the basis of the Applicant's oral and documentary evidence that the offences relate to a property that, at the time of the offences, was let to the Applicant.

**Was an offence committed by the landlord in respect of the period of 12 months ending with the date the application was made? What is the applicable 12 month period?**

24. The application was made in April 2019. For the reasons set out above, the Tribunal is satisfied that an offence was committed throughout the period of 12 months ending with the date on which the application was made (and that an offence continues to be committed).
25. The Respondent has controlled and/or managed an unlicensed HMO for more than 12 months. The period relied upon by the Applicant as being the applicable period ("a period not exceeding 12 months during which the landlord was committing the offence" under section 44(2) of the 2016 Act) is 28 January 2018 to 27 January 2019.

**The exercise of the Tribunal's discretion**

26. Subsection 43(1) of the 2016 Act gives the Tribunal a discretion as to whether or not to make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a relevant offence.
27. In the present case, in which the offences were committed for more than 12 months and an application for a licence is yet to be made, it is clearly appropriate for the Tribunal to exercise its discretion to make a RRO.

### **The maximum amount of the rent repayment orders**

28. The amount of any RRO, if the case is one of an offence of failure to licence, must relate to rent paid by the Applicant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) of the 2016 Act).
29. The Applicant produced bank statements showing that he had paid rent in a total sum of £6,600 during the relevant period (the rent was £550 per month). He also gave oral evidence that this rent had been paid and that he was not in receipt of universal credit during the relevant period. The Tribunal accepts this evidence.

### **The amount of the RRO in the present case**

30. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that, in certain circumstances, the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
31. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

*(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.*

32. During the course of the hearing, reference was made to two decisions of the Upper Tribunal, namely, *Parker v Waller* [2012] UKUT 301 (LC) and *Fallon v Wilson* [2014] UKUT 0300 (LC). These decisions concern the amount of a rent repayment order under the provisions of the 2004 Act which apply when a relevant offence started to be committed before 6 April 2017.
33. The Tribunal considers that *Fallon v Wilson* and *Parker v Waller* remain relevant authorities under the 2016 Act and the Applicant did not seek to disagree as a matter of legal principle.
34. Accordingly, the Tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made, (ii) the

benefit obtained by the tenant in having had the accommodation is not a material consideration (iii) the Tribunal has a general discretion which must be exercised judicially and (iv) the net benefit received by the landlord from the letting is a material consideration.

35. In considering the conduct and circumstances of the parties, the Tribunal has taken into account the following matters.
36. The Tribunal has assumed that the Respondent does not have any convictions. The Applicant accepted that he does not know whether or not the Respondent owns any other properties. He does not have any direct knowledge of the length of time during which the Respondent has let 27 Argyll Mansions. Although the Applicant believes that one of the other tenants has been in occupation of the property for 4 years, he was not in a position to give clear evidence on this point.
37. The Tribunal has therefore proceeded on the basis that the Respondent lets one property and that the length of time during which the property has been let is unclear.
38. The Tribunal considered both parties' evidence and carefully questioned the Applicant. In assessing the weight to be placed on the Respondent's evidence, the Tribunal took into account the fact that it did not have the opportunity to hear the Respondent's oral evidence and to ask him questions (or to question any witness or representative of the Respondent).
39. The Respondent had provided the Tribunal with a schedule of his outgoings and some documentary evidence in support. The Tribunal accepts the Respondent's case concerning the annual costs which he says that he incurred in respect of service charges, council tax, gas and electricity bills, water bills, gas safety insurance, Virgin Media television and broadband and a television licence. These costs total £7,580.72.
40. As regards the painting and decorating costs on the sum of £869.13, the evidence in support of these charges is a typed document which is neither signed nor on headed paper. Further, no business address or telephone number of the contractor has been provided. In all the circumstances, the Tribunal considers that this evidence carries limited weight.
41. The Applicant gave evidence that the painting and decorating work was carried out by another tenant who he has spoken to. The Applicant is personally aware that the Respondent took issue with the quality of the work which was carried out by the tenant and he gave evidence that the tenant would have received no more than £500 in total for this work.

42. The Tribunal accepts the evidence of the Applicant on this issue finds, on the balance of probabilities, that the painting and decorating costs were £500.
43. The Respondent has provided documentary evidence that he purchased a washing machine. However, this document is dated 18 April 2019 which is outside the relevant period. The Tribunal accepts oral evidence given by the Applicant that any costs incurred in respect of a mattress, Ikea products and/or cleaning costs during the relevant period did not relate to the Applicant's tenancy.
44. The Applicant relied upon a copy of the register of title which shows that the Respondent became the registered proprietor of the property on 22 January 2001. The price recorded as having been paid for the property on 1 December 2000 is £180,000. However, the charge on the property is dated 22 November 2013. The Tribunal accepts the Applicant's case that the Respondent's mortgage is unlikely to be referable to the purchase of the property.
45. The Tribunal determines that, in considering the expenses incurred by the Respondent in letting a room to the Applicant, it is appropriate to have regard to annual costs incurred by the Respondent in the sum of £8,080.72 (£7,580.72 + £500), or £673.39, a month, and to divide these costs by the number of people who were in occupation of the property at the material time.
46. The Tribunal has found that there were five people in occupation of the property for eight months and four people in occupation of the property for four months. Accordingly, the expenses to be taken into account during the relevant period amount to £1,750.81 (£673.39/5 x 8 plus £673.39/4 x 4). The net rent is therefore £4,849.19 (£6,600 - £1,750.81).
47. The Applicant gave oral evidence that various allegations of a personal nature which the Respondent has made concerning the Applicant and his girlfriend are untrue and that neither he nor his girlfriend has ever met the Respondent. The Applicant believes that the Respondent has taken against him personally and states that this is evidenced by the extent of a proposed charge for the Applicant having an occasional guest.
48. Having heard the Applicant's evidence, the Tribunal finds that the personal allegations which have been made against the Applicant and his girlfriend are without foundation.
49. The Applicant relied upon evidence that the Respondent had served him with an invalid notice purporting to give him one month in which to leave the property. He stated that the Respondent initially sought to maintain that one month's notice was appropriate, even after the Applicant had



explained why this was not the case and had referred the Respondent to information to the contrary on a government website.

50. The Applicant also stated that a notice was subsequently served on him under section 21 of the Housing Act 1988 by solicitors acting on behalf of the Respondent, notwithstanding the fact that no application for a licence has yet been made.
51. The Applicant informed the Tribunal that the Respondent failed to protect his deposit (which has now been returned) in a rent deposit scheme and that he has only relatively recently received a copy of a gas safety certificate in respect of the property and a How to Rent Guide.
52. The Applicant gave evidence that there is no fire blanket, fire extinguisher or fire door in kitchen at the property and that the fire alarms do not work. He stated that he had checked the fire alarms on the morning of the hearing. He was particularly concerned that, even though he has brought the matter to the Respondent's attention, no steps had been taken to remedy this issue and the property remains unsafe. The Tribunal accepts the Applicant's evidence.
53. In determining the amount of the RRO in this case, the Tribunal has had regard to the oral and written evidence which it has received and, in particular, to the matters set out above. The Tribunal is particularly concerned that (a) although the issue has been expressly raised, appropriate fire safety measures have not been put in place and, (b) to date, no licence application has been made.
54. In all the circumstances, the Tribunal determines that it is appropriate to make an RRO in favour of the Applicant in the sum of £4,364.27, representing 90% of the net rent.

**Name:** Judge Hawkes

**Date:** 27 August 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).