



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

Case reference : **LON/00AG/HMK/2019/0055**

Property : **236D Finchley Road, London NW3
6DJ**

Applicant : **Elizabeth Stewart (1); Saskia
Edwards (2); Bobby-Leight Howard
(3) and Lewis Goakes (4)**

Representative : **In person through Ms Stewart and
Ms Edwards**

Respondent : **Mr Babu Rathinapandi
Vadamalayan**

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 : **Tribunal Judge Dutton
Mr T W Sennett MA FCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **31st October 2019**

Date of decision : **14th November 2019**

DECISION

DECISION

The Tribunal determines that by reason of section 40(3) of the Housing and Planning Act 2016 and section 72(1) of the Housing Act 2004 an offence has been committed of failing to licence the property at 236D Finchley Road, London NW3 6DJ (the Property) and that a Rent Repayment Order in the sum of £17,420 should be paid by the Respondent to the Applicants within 28 days of the date of this decision. The division of the payment is set out below.

BACKGROUND

1. The tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenants for a rent repayment order (RRO) on 7th August 2019.
2. The application alleged that the Respondent, the leasehold owner of the Property, had failed to obtain a licence for the flat, it being an HMO under the Designation of an Area of Additional Licensing pursuant to s56 of the Housing Act 2004 which came into effect in Camden, the appropriate Borough, on 8th December 2015. On 12th February 2019, after a visit from the Council's Private Sector Housing Team it was confirmed, in writing to the Applicants, that the Property was an HMO and that the Respondent was committing an offence under section 72(1) of the Housing Act 2004. This is not in dispute, although the Respondent sought to put forward an explanation to explain the circumstances around the commission of the offence.
3. The period for which a RRO may be claimed is governed by s41(2) of the Act that is to say that at the time of the offence the Property was let to the Applicants and that the offence was committed in the period of 12 months ending with the day on which the application was made. Further by reference to s44(2) the period that can be taken into account must not exceed 12 months during which the Respondent was committing the offence. The law is set out below.
4. The Applicants have been tenants of the Respondent under an assured shorthold tenancy dated 9th September 2017. The tenancy is in the four names of the Applicants and records that a monthly rent is payable of £2,383.33 for the term of the tenancy, which is 24 months, expiring on 8th September 2019. There are four rooms at the Property, each Applicant occupying a room but paying a slightly different rent each month, depending upon the size and position of the room. We shall set out those rents later in this decision. The Applicants vacated under an Agreement to Surrender dated 19th July 2019.

5. In this case it is accepted by the Respondent that the Property was not licensed at any time during the tenancy although it is further accepted that an application for a licence was made on 23rd February 2019.

HEARING

6. In advance of the hearing we were provided with three bundles. The first were initial papers lodged by the Applicants in support of the application. This contained the application and directions. An expanded statement of reasons was included, as were individual witness statements from the Applicants. Copies of emails were provided as were details of the freehold and leasehold titles. Confirmation of the rent paid and the apportionment between the Applicants was also included.
7. In response the Respondent provided a detailed bundle, tabulated and in part numbered. It included a statement opposing the application completed by the Respondent, a statement from the director of Bowquest Limited, the freeholder, and a statement from Mr Arulanathan, apparently the Respondent's accountant. Neither statement provider attended the hearing. There then followed 19 appendices dealing with the works said to have been undertaken at the Property before and during the course of the tenancy. We noted the contents and will refer to same as and when necessary in the course of this decision.
8. This bundle from the Respondent elicited a further bundle in response from the Applicants which contained a detailed rebuttal of each paragraph of the Respondent's statement of opposition. In addition it challenged the items of expenditure advanced by the Respondent to substantiate the alleged amount of £58,038.58 that had been spent on the Property, both before the tenancy began and during the course of the tenancy.
9. Certain allegation were made by the Applicants concerning the behaviour of the Respondent. It was said that there had been problems with the Property during their period of occupancy. For example it was said that there was damp, a blocked toilet and a leaking bath in the communal bathroom, leaks from the flat above, some rodent infestation, although unproven and other matters set out in the applicants' statement. These problems are not denied by the Respondent but he says that he attended to them as quickly as he could and that on occasions the Applicants had hindered the attendance of workmen due to unavailability. On one occasion it is said that he had paid for a tenant to stay overnight in a hotel whilst issues were addressed and had apparently agreed compensation of one months rent on an other occasion.

FINDINGS

10. It is accepted that an offence having been committed of managing an unlicensed HMO that an RRO can be made. The period is not in dispute, nor it would seem the maximum amount that can be awarded of £28,599.96 for the full 12 month period being the of 1st February 2018 to

31st January 2019. this amount is confirmed by Dexters, the Respondent's managing agent. There is no allegation that Universal Credit or Housing Benefit is involved. In determining the amount payable we must take into account the conduct of the tenant and the landlord and the financial circumstances of the landlord. It must also be remembered that the intention of the legislation is to create a punitive impact and penalise Landlords who do not comply.

11. Although much was made of the alleged conduct of the landlord we bear in mind that the applicants remained living in the Property for 23 of the 24 months of the tenancy. In addition, although certain allegations are made concerning the Respondent's conduct the application refers only to his failure to obtain a licence. We do not consider that the conduct of either party is relevant to our determination. There is no conviction to take into account.
12. We have taken into account the fact that it appears unchallenged that the Respondent knew a licence was required shortly after the tenancy commenced. He sought to explain his failure to licence partly on the grounds that the agents, Dexters, had proceeded to rent the property to a number of individuals without reference to him and under one tenancy agreement. He did not think that the property was being let to 4 individuals. However, he contradicts himself in his statement as he appears to accept that at the beginning of the tenancy he knew the tenants were individuals. He says he tried to make application for a licence at the commencement and registered an interest with the Council as early as October 2017. However, he does not appear to have progressed the matter citing the need for certain certificates and work to be done. we were unimpressed with his explanation.
13. We found Mr Shah an unconvincing witness. He told us in answer to a direct question that he had no relationship with the freeholder. It then transpired that in fact he had been a director of the freehold company, although he said he no longer held that position. In addition in respect of a number of items of expenditure he claimed should be taken into account there were no invoices to support the figures he said had been paid. Further, it seemed to us that the works he said he had to undertake in respect to a leak from the flat above, the leaks from a flat roof and damp, were matters, that on the face of it would have been the responsibility of the freeholder and recoverable as a service charge, to be split as provided for in the lease. Unfortunately, no copy of the lease was provided.
14. The Applicants had prepared a detailed response to each item of expenditure the Respondent sought to offset (see 19 Schedule to the Respondent's statement). They were prepared to accept that there were items of expenditure totalling £4,551.89 which they considered were reasonable and acceptable as reductions in the sums claimed. In considering the amount which we find should be paid by the Respondent we have taken into account the findings of the Upper Tribunal in the case of Fallon v Wilson and other [2014] UKUT 0300 (LC) and Parker v Waller

[2012]UKUT 301 (LC) on the question of what amount we should order and the matters that should be considered by us.

15. The list of items the Respondent sought to take into account is extensive. however, it includes a number of items which predate the tenancy. These are represented by items 1 - 6 on the schedule. item 7 is agreed as being deductible as is the new bath included in the expenses at item 8. There are no receipts/invoices for the others items said to have been spent. Item 9, the cost to unblock the toilet is agreed. Item 10, the hob replacement is agreed but items 11 to 14 appear to be matters undertaken before the tenancy started. Items 15 to 18 would appear to be issues that should have either been dealt with through the freehold/landlord, or in the case of garden gate an expense which the Applicants denied had been incurred. Items 19 and 20 are accepted expenses as is the landlord's insurance, supposedly for repairs, which should have been followed for some of the works if the landlord did not accept responsibility under the lease. There is also a claim for the insurance of the property in the sum of £762 for two years. We would allow one year at that amount.. The Applicants have accepted the management costs and agency fees in the total of £4,551.89. If we add the insurance for the property that brings the total to £5,313.89. The other items of expenditure are in our finding non-recoverable.
16. A claim to offset mortgage payments is made. In respect of the Mercantile Credit loan we were told that this sum was used to fund other matters and was put in place after the property was purchased. The same applies to the loan with TSB Bank, dated 8th March 2016, the property having been bought in, it would seem from the Proprietorship Register of the title, in 2014. We do not consider that these costs should be taken into account.
17. Accordingly from the sum claimed as being refundable of £28,599.96 we deduct £5,373.89 leaving the maximum amount payable being £23,226.07. We have to consider what would be a reasonable amount to pay. It does not require us to determine that it would be 100% of the sum.
18. In reaching our assessment of the sum payable we have taken into account the financial circumstances of the Respondent, the conduct of the parties and considered what would be reasonable. We have noted the Respondent's failure to apply for a licence, notwithstanding that he was aware a licence was required in October 2017. His explanation was not compelling. We do accept that he would not appear to be a professional landlord and that he has now applied for a licence. A number of problems from which the property suffered, damp, leaks and broken drains were not caused by any fault on the part of the Respondent and he did, it would seem, attempt to deal with matters in reasonable time. We therefore find that the sum payable should be reduced by 25%.
19. Taking these matters into account we conclude that the Respondent should repay to the Applicants the rounded up sum of £17,420 within 28 days. This is divided between the Applicants on the basis that their individual rent contributions applied to the whole.

20. Elizabeth Stewart 25.26% = £4,400.29
 Saskia Edwards 25.36% = £4,417.72
 Bobby-Leigh Howard 25.26% £4,400.29
 Lewis Goakes 24.12% = £4,201.70

Andrew Dutton

Name:

Tribunal Judge Dutton

Date:

14th November 2019

ANNEX – 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 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 to 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 (ie 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.

The Relevant Law Housing and Planning Act 2016

41Application 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.

43Making 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);
- (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 the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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

47 Enforcement of rent repayment orders

- (1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.
- (2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.
- (3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.