



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

**Case reference** : **LON/00BG/HMF/2019/0021**

**Property** : **13 Wooster Gardens, London E14  
0PJ**

**Applicants** : **1. Kirsty Elizabeth McKinty  
2. Kriste Matiukaite  
3. Ionut-Marian Coman  
4. Marius Ionut Stoleru  
5. Simone Travali**

**Representative** : **Muhammed Williams, Housing  
Adviser, London Borough of Tower  
Hamlets**

**Respondent** : **Mr Akhtar Khan (freeholder)**

**Representative** : **Mr Jamal Uddin, FMJ Property  
Services (managing agents)**

**Type of application** : **Application for rent repayment  
orders**

**Tribunal member** : **Judge Timothy Powell  
Ms Susan Coughlin MCIEH**

**Date and venue of  
hearing** : **29 November 2019 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **20 December 2019**

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**DECISION**

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**Summary of the tribunal's decisions**

- (1) The Tribunal makes Rent Repayment Orders in favour of the applicants in the total sum of £3,217.48, such sum to be paid by the respondent, Mr Akhtar Khan. The individual sums payable are as follows:
- (i) To Mr Marius Ionut Stoleru, £552.69;
  - (ii) To Mr Ionut-Marian Coman, £296.09;

- (iii) To Ms Kriste Matiukaite, £764.89;
  - (iv) To Ms Kirsty Elizabeth McKinty, £863.59;
  - (v) To Simone Travali, £740.22.
- (2) All the above payments must be made either by direct refund to each of the tenants, or by payment of a lump sum to Tower Hamlets, for distribution to the tenants by them;
  - (3) In addition, the Tribunal orders the respondent to refund the £300 Tribunal fees paid by London Borough of Tower Hamlets on behalf of the applicants;
  - (4) All payments are to be made within 28 days of the date of this decision.

### **The application**

- 1. On 11 June 2019, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a Rent Repayment Order (“RRO”) in respect of 13 Wooster Gardens, Poplar, London E14 0PJ (“the Property”). The Property is a terraced house, with three bedrooms on the first floor and two bedrooms on the ground floor. There are also two bathrooms, a kitchen and a garden at the back. The London Borough of Tower Hamlets (“Tower Hamlets”) is the local housing authority.
- 2. The application was brought by the following tenants, listed in the order that they took up occupation of a room in the Property:
  - (i) Marius Ionut Stoleru, whose occupation of Room C began on 2 October 2018 at a monthly rent of £606.66. He claimed £3,300 by way of RRO, for the period October 2018 to February 2019;
  - (ii) Ionut-Marian Coman, whose occupation of Room E began on 31 October 2018 at a monthly rent of £650. He claimed £1,900 by way of RRO, for payments made in October, November and December 2018;
  - (iii) Ms Kriste Matiukaite, whose occupation of Room B began on 26 November 2018 at a monthly rent of £671.66. She claimed £2,686.64 by way of RRO, for payments made in November and December 2018 and in January and February 2019;
  - (iv) Ms Kirsty Elizabeth McKinty, whose occupation of Room D along with her partner, Christian Vinicio Quintana Carrion, began on 28 December 2018 at a monthly rent of £758.33. She claimed £2,654.15 by way of RRO, for rent payments made in December 2018, January and February 2019, plus a half-month rent payment in March 2019;
  - (v) Mr Simone Travali, whose occupation of a room in the Property began on 29 December 2018 at a monthly rent of £650. He claims £1,950 by way of RRO, for payments made in December 2018 and January and February 2019.

3. In each case, the applicants had been issued with a “Licence of Occupancy with Fixed Terms” by a company called Flat Sharing Limited trading as Flintons, 220 Bow Common Lane, London E3 4HH. Later, Tower Hamlets challenged the issue of licence agreements to the occupants and the Tribunal is satisfied that the council was correct to maintain that, in reality, they were assured shorthold tenancies, because they granted exclusive possession of the respective rooms for a defined period of time at a monthly rent.
4. The respondent to the application was the freeholder, Mr Akhtar Khan, who was registered as the proprietor at HM Land Registry with effect from 30 July 2010.
5. On 12 September 2019, the Tribunal gave directions. These set out the issues which the Tribunal would need to consider. Mr Khan was advised to seek independent legal advice.
6. Despite being directed to do so, Mr Khan did not comply with the directions to send a bundle of documents to the Tribunal and to the applicants, by the 11 October 2019. However, the applicants did comply with the directions to file and serve their bundle of documents, by 24 October 2019. The applicant did so with the assistance of Tower Hamlets, acting under their power to help tenants to apply for Rent Repayment Orders, under section 49 of the 2016 Act.

### **The hearing**

7. The hearing took place on the 29 November 2019. The applicants were represented by Mr Muhammed Williams, a Housing Adviser at Tower Hamlets. Mr Khan was represented by Mr Jamal Uddin of FMJ Property Services Limited (“FMJ”), 373 Cambridge Heath Road, London E2 9RA. Mr Uddin acts as the managing agent of the Property on behalf of Mr Khan, who was not able to attend the hearing himself because he lives permanently in Denmark.
8. Mr Uddin explained that Mr Khan had entered into a “Company Let Agreement” for the whole property with Citiside Properties Ltd (“Citiside”), 220 Bow Common Lane, E3 4HH. That agreement was dated 6 October 2017 and was for a period of 24 months at a monthly rent at £2,050. It was an express term of the agreement that Citiside could sublet the Property, “but not cause overcrowding” and “not allow more than 6 people to reside” in it. The relevant term was found under condition 11.7 of the agreement.
9. As he explained to the Tribunal, Mr Uddin had signed that agreement himself, as agent for Mr Khan. Citiside later changed their name to Flat Sharing Ltd, and their trading name was Flintons. Mr Uddin explained that Flintons pays the £2,050 monthly rent to his firm, FMJ, which then deducts a £100 fee and passes the balance of £1,950 per month, to Mr Khan.

10. Flintons are responsible for finding the tenants for the Property and collecting rent from them. If any repairs are needed, either Flintons would ask FMJ to carry them out, or Flintons would do them and deduct the cost from the monthly rent to Mr Khan.

### ***Application for a landlord licence***

11. Mr Uddin was aware that the rules relating to the mandatory licencing of Houses in Multiple Occupations (HMOs) changed on 1 October 2018. Before that date, mandatory licencing of HMOs only applied to certain properties of three storeys or more. From that date, the three-storey requirement was removed so that any property containing five or more people in two or more households was required to have an HMO licence. Mr Uddin understood that Tower Hamlets had given property owners until the 1 April 2019 to make an application for an HMO licence, but Mr Williams for Tower Hamlets disagreed: he said that the property had been subject to mandatory HMO licencing from 1 October 2018 and later became liable for *additional* licencing from 1 April 2019 (additional licencing applying to properties with fewer than five occupants).
12. In the event, on 15 March 2019, Mr Uddin submitted an application for a “landlord licence” to Tower Hamlets. He used the council’s application form that covers three licence types: selective, mandatory and additional, indicating on the form that he was applying for an additional licence. In that application, he gave Mr Khan’s address as 13 Wooster Gardens, he named himself and FMJ Property Services as the manager and he named Flat Sharing Ltd T/A Flintons as the leaseholder of the property. The application specified that there were four separate bedrooms in the property, with five occupants living in four households. The council response by letter dated 17 April 2019 was to give notice of intention to grant an additional HMO licence for a maximum of five occupants consisting of no more than a maximum of four households (though, as will be seen, this was an error). That letter was sent to Mr Khan at the address provided by Mr Uddin in the application form, namely at 13 Wooster Gardens.
13. On 25 April 2019, Ms Kirsty McKinty, one of the occupants of the Property, contacted Tower Hamlets to object to the licence application, stating that the Property consisted of six occupants in *five* bedrooms, not four households in four bedrooms. As a consequence, Tower Hamlets wrote to FMJ on 30 April 2019 to say that there was an error in their application, because they had applied for the wrong licence: the Property required a *mandatory HMO licence* and FMJ should therefore discard the draft notice of intention to grant an additional licence sent earlier. This was based, Mr Williams said, on the fact that there were five occupants in the Property.
14. Mr Uddin then contacted Tower Hamlets to ask the council not to cancel the application for an additional licence but to put it on hold, while he took instructions from Mr Khan. When asked, Mr Khan said

that Mr Uddin should avoid the need to apply for a mandatory HMO licence, by reducing the number of occupants to four, thereby maintaining the application for an additional licence.

15. Mr Uddin contacted Flintons, who issued notices to two of the occupants, asking them to leave. When challenged by Tower Hamlets, in an e-mail of 5 June 2019, about the form of occupation agreement and the notice to vacate that had been served, Flintons explained their intention to reduce the number of occupants from six to four; and they said they were seeking legal advice about the legality of the agreements and notices served on the occupants. Eventually, at least two of the occupants (and possibly more) vacated the premises and, on 9 September 2019, Tower Hamlets granted an additional licence to Mr Khan for a maximum of four occupants in a maximum of four households.
16. Because the Property appeared to have been let at various times between 2 October 2018 until 15 March 2019, without the landlord having acquired an HMO licence for the Property, in apparent contravention of section 72 of the Housing Act 2004 (as amended by paragraph 3 of schedule 9 to the Housing and Planning Act 2016), Mr Williams at Tower Hamlets agreed to assist the occupants to apply for RROs. In schedules provided, Mr Williams limited each occupant's claim for an RRO to the period from the first rent payment upon taking up occupation to either February or March 2019. The reason for this, he said, was to ensure that none of the claims for an RRO extended beyond the date of Mr Khan's application for an additional licence on 15 March 2019. The total sum claimed was £12,273.79, being the rent that the applicants had paid to Flintons throughout their respective occupations, to that date.

### **Tribunal's decision**

17. The Tribunal determines to make Rent Repayment Orders against Mr Khan in a total sum of £3,217.48 and to order Mr Khan to refund Tower Hamlets the £300 tribunal fees that it had paid on the applicants' behalf.

### **Reasons for Tribunal's decision**

18. The Tribunal is satisfied beyond reasonable doubt that Mr Khan has committed an offence under section 72(1) of the 2004 Act. We are satisfied that:
  - (i) The Property falls within the definition of an HMO, having satisfied the "standard test" in section 254(2) of the 2004 Act. In particular:
    - (a) It consists of one or more 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 or they are to be treated as so occupying it;
  - (d) Their occupation of the living accommodation constitutes the only use of that accommodation; and
  - (e) Rents are payable in respect of the living accommodation;
  - (f) The households who occupy the living accommodation share basic amenities, namely the kitchen, bathroom and the toilet.
- (ii) From 1 October 2018, by reason of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018, all HMOs regardless of height occupied by five or more persons living in two or more separate households became subject to the mandatory licencing requirement of section 55(2)(a) of the 2004 Act;
  - (iii) From at least 28 December 2018, the Property was occupied by five persons, who lived in two or more separate households, and so, at that point the Property became subject to mandatory licensing;
  - (iv) Mr Khan was the person managing or in control of the Property, within the meaning of section 263 of the 2004 Act;
  - (v) Until his application for a “landlord licence” on 15 March 2019, Mr Khan had failed to licence the HMO as required by section 61(2) of the 2004 Act, which constituted an offence under section 72(1);
  - (vi) The offence was committed over the period 28 December 2018 to 14 March 2019; and
  - (vii) The offence was committed in the period of 12 months ending on 11 June 2019, namely the date on which the application for an RRO was made.
19. The 2016 Act gives the Tribunal discretion whether to make an RRO and, if so, the amount of the order. Section 44(2) of the 2016 Act provides that the amount of an RRO must relate to the rent paid by the tenants in respect of “a period, not exceeding 12 months, during with the landlord *was committing the offence*”. The amount must not exceed the rent paid by the tenants during the period, less any award of universal credit paid to any of the tenants. There was no evidence that any of the applicants were in receipt of any state benefits, but there was evidence they paid rent from their accounts (or, in some cases, by cash with receipts) directly to Flintons.

20. Mr Williams for Tower Hamlets urged the Tribunal to consider the whole of the rent paid by the occupants from 2 October 2018 to 14 March 2019, namely the £12,273.79 specified in the application. However, the evidence is that the tenants entered into occupation on various dates, namely 2 October 2018, 31 October 2018, 26 November 2018, 28 December 2018 and 29 December 2018. The first time that there is evidence that the number of *occupants* in the property reached five, as required by the 2018 Order so as to trigger mandatory licensing, was when Ms McKinty and Mr Carrion took occupation of Room D in the Property on 28 December 2018. Up until that time, the Property may have been an HMO, but no evidence has been provided to confirm that there were five tenants living in the property between 2 October 2018 and 28 December 2018.
21. Therefore, the rent paid prior to this date (and/or in respect of occupation before this date) was not for consideration as part of a RRO, because the landlord was *not committing the offence* under section 72(1), until the five persons all took up occupation of the Property. The rent to be considered is therefore that paid from the first date an offence was committed, 28 December 2018, until 14 March 2019, when Mr Khan applied for a landlord licence: a period of 2½ months; though in some instances, the amounts claimed by the tenants were less.
22. By the Tribunal's calculations, the rent claimed by the applicants and paid since 28 December 2018 totalled £7,063.29, as follows:
- (i) Marius Ionut Stoleru, 2 months at £606.66 = £1,213.32 (the first three payments being for occupation pre-dating the offence);
  - (ii) Ionut-Marian Coman, 1 month at £650;
  - (iii) Ms Kriste Matiukaite, 2½ months at £671.66 = £1,679.15;
  - (iv) Ms Kirsty Elizabeth McKinty, 2½ months at £758.33 = £1,895.82;
  - (v) Mr Simone Travali, 2½ months at £650 = £1,625.
23. Of the total sum claimed in this period, Mr Khan received just over two-thirds, namely £4,875 (i.e. £1,950 received from FMJ each month, for the 2½ month period). The rest was retained by Flintons under the Company Let Agreement.
24. In the determining the amount of any RRO, we have had regard the guidance given by the Upper Tribunal in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision was under 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 civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating unlicensed HMO;
  - (ii) To help prevent a landlord from profiting from renting properties illegally; and
  - (iii) To resolve the problems rising from withholding rents by tenants.

25. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to licence 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.
26. Section 44 of the 2016 Act requires the Tribunal to take the following matters into account:
- (i) The conduct of the tenants. In this case, their conduct has not been criticised. They all appear to have paid their rent monthly, and on time;
  - (ii) The conduct of the landlord. The evidence was that Mr Khan owns at least three investment properties, which he has handed over to FMJ to manage on his behalf while he resides abroad. The other properties are also HMOs, but they are run by another company and not by Flintons. To this extent, Mr Khan might be considered to be a professional landlord, albeit with a small portfolio. Although there was a Company Let Agreement with Flintons, allowing for subletting to up to six persons, FMJ were still involved with the Property and they did inspect it from time to time. FMJ were also aware that as from 1 October 2018 there was a change in the rules relating to the mandatory licencing of HMOs, but they did not seek to apply for a licence until 15 March 2019. Mr Khan has not put forward any mitigating factors, apart from an apparent misunderstanding that Tower Hamlets allowed landlords until the 1 April 2019 to make an application for a licence, something which Mr Williams disputed and about which there was no evidence from either side;
  - (iii) The financial circumstances of the landlord. There was no evidence of Mr Khan's financial circumstances at the hearing. Post-hearing directions invited him to provide a statement and supporting evidence as to any circumstances that could justify a reduction in the RRO and evidence of any outgoings. Mr Khan did not put forward any mitigating circumstances but, instead, he wrote to the tribunal on 9 December 2019, to say that he would not object to making a RRO in the sum of £3,217.48, which was a figure discussed with the parties at the hearing as a possible RRO, plus he would pay £300 for the tribunal fees; and
  - (iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of 2016 Act applies, namely one specified in section 40. No evidence of such conviction was provided to the Tribunal.



27. Having taken all the above into account we are satisfied that Mr Khan knew or should have known about the requirement to licence this Property as an HMO from 1st October 2018, once it became occupied by five or more persons. While there is no evidence that the Property was in fact occupied by five or more persons before 28 December 2018, from then on, it is clear that an offence had been committed, which continued to be committed for 2½ months until 15 March 2019.
28. However, we accept the evidence given orally by Mr Uddin to the effect that Mr Khan does not receive all the money paid by these tenants for their accommodation during this period. We also take into account that Mr Khan's agents applied for a landlord licence relatively quickly after they became aware of the need to do so. Having taken all these factors into account, we are satisfied that it is appropriate to make RROs against Mr Khan in respect of approximately 65% of the income received by Mr Khan, or 45% of the rent paid by the tenants, during the relevant period of 28 December 2018 to 14 March 2019, or to such earlier date to which the schedules of rents are calculated. That sum is £3,217.48, so that when divided between the applicants, Mr Khan shall repay rent to the tenants the following amounts:
- (vi) To Mr Marius Ionut Stoleru, £552.69;
  - (vii) To Mr Ionut-Marian Coman, £296.09;
  - (viii) To Ms Kriste Matiukaite, £764.89;
  - (ix) To Ms Kirsty Elizabeth McKinty, £863.59;
  - (x) To Simone Travali, £740.22.
29. All the above payments must be made within 28 days of the date of this decision, either by direct refund to each of the tenants, or by payment of a lump sum to Tower Hamlets, for distribution to the tenants by them.
30. In addition, we further order, pursuant to rule 13(2) of the Tribunal Procedures (First-tier Tribunal) (Property Chamber) Rules 2013, that Mr Khan should refund to Tower Hamlets the Tribunal fees of £300 paid by them on the applicants' behalf for pursuing this claim.

**Name:** Judge Timothy Powell      **Date:** 20 December 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.