



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

**Case Reference** : **FC/LON/00BG/HMF/2018/0020**

**Property** : **Room 1, Flat 2, 42B Settles Street,  
London E1 1JP**

**Applicant** : **Mr Theodore Henri Veremis**

**Representative** : **Mr Robert Mackenzie (Counsel)  
and Legal Road Limited**

**Respondent** : **Ms Razia Begum Salique**

**Representative** : **Unrepresented**

**Type of Application** : **Application for a Rent Repayment  
Order by Tenant – Sections 40, 41,  
43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Members** : **Mr Jeremy Donegan (Tribunal  
Judge)  
Mr Luis Jarero FRICS (Valuer  
Member)  
Mrs Jackie Hawkins (Lay Member)**

**Date and Venue of  
Hearing** : **30 November 2018  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **03 December 2018**

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**DECISION**

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## **Decision of the Tribunal**

1. **The Tribunal makes the following rent repayment order ('RRO'):**
  - (a) **The respondent shall repay the total sum of £4,800 (Four Thousand, Eight Hundred Pounds) to the applicant; and**
  - (b) **The sum of £4,800 is to be repaid to the applicant by 31 December 2018.**
2. **The respondent shall reimburse the Tribunal fees paid by the applicant in the total sum of £300. The respondent must pay this sum to the applicant by 31 December 2018.**

## **The application and procedural history**

3. The Tribunal received an application for a RRO on 20 August 2018. The application concerns Flat 2, 42B Settles Street, London E1 1JP ('the Property'), which is a shared flat comprising five bedrooms, a kitchen and three shower rooms/WCs. The applicant was a tenant of 'Room 1', being one of the bedrooms at the Property from 10 August 2017 to 10 February 2018. He alleges that the Property was an unlicensed house for the duration of his tenancy.
4. The Tribunal issued directions on 28 August. It then wrote to the parties on 28 September, notifying them that the hearing would take place on 30 November.
5. Direction 2 required the respondent to file and serve her bundles by 28 September. Direction 3 listed the documents to be included in her bundles, which included:
  - “(vii) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see above);*
  - (vii) Evidence of any outgoings, such as utility bills, paid by the landlord for the let property”.*
6. The respondent failed to serve her bundles and the Tribunal issued a 'minded to' notice on 24 October, pursuant to regulation 9 of the Tribunal (Procedure) (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'). The respondent failed to comply with that notice. The Tribunal then wrote to the parties on 13 November, stating that the application would be determined without consideration of any written evidence from the respondent *“unless she applies for and is granted*

*permission...to rely upon evidence submitted late.”* The letter went on to say that the respondent was entitled to attend the hearing.

7. Direction 4 required the applicant to file and serve his bundles by 26 October 2018 and direction 5 listed the documents to be included in those bundles. The applicant’s representative, Legal Road Limited (‘LRL’) provided the Tribunal with a comprehensive bundle on 26 October. This ran to 183 pages and included detailed witness statements and exhibits from Mr Ian Duncan of LCL and the applicant.
8. The Tribunal decided the application based on the documents in the applicant’s bundle and the information in the application form. No documents were provided by the respondent.
9. The relevant legal provisions are set out in the appendix to this decision.

### **The background**

10. The Property is within the Whitechapel ward of the London Borough of Tower Hamlets. Tower Hamlets Council (‘THC’) introduced a selective licensing scheme on 01 October 2016, pursuant to section 80(1) of the Housing Act 2004 (‘the 2004 Act’). This requires all privately rented properties in the areas of Whitechapel, Weavers, Spitalfields and Bangla Town to be licensed.
11. The applicant was granted an assured shorthold tenancy (‘AST’) of Room 1 on 10 August 2017. This was for a term of 6 months from that date at a rent of £850 per month, including bills. A copy of the tenancy agreement was included in the applicant’s bundle. This did not name the landlord but the landlord’s agents were stated to be KME London (‘KME’).

### **The hearing**

12. The hearing took place on 30 November 2018. The applicant attended and was represented by Mr Mackenzie. The respondent did not attend.
13. The Tribunal members were supplied with a helpful skeleton argument from Mr Mackenzie, setting out the relevant statutory provisions. He outlined the facts of the case in his opening submissions and the Tribunal then heard oral evidence from the applicant, who spoke to a statement dated 25 October 2018. The statement gave details of his AST and dealings with KME. The applicant occupied Room 1 from 10 August 2017 until 10 February 2018 and paid his rent, every month, to KME. The statement also gave details of the respondent’s failure to register the tenancy deposit. The applicant answered a number of questions from the Tribunal and gave details of the utilities at the Property, so far as he could recall. The Tribunal found him to be a credible witness and have no hesitation in accepting his evidence.

14. The basis of the RRO application is that the respondent controlled or managed the Property as an unlicensed house for the duration of the AST, in breach of section 95(1) of the 2004 Act. The applicant's bundle included evidence of licensing enquires made by LRL and a list of the properties in Settles Road that are licensed by THC. This did not include the Property.
15. Mr Mackenzie invited the Tribunal to make an RRO in the total sum of £5,100, representing 6 months rent at £850 per month.

### **Findings**

16. The Tribunal finds that the respondent granted an AST of Room 1, forming part the Property, on 10 August 2017 and the applicant was a tenant of this room from that date until 10 February 2018. The Tribunal is satisfied that that the respondent was the applicant's landlord throughout this period. Although she was not named in the tenancy agreement, she has been he registered leasehold proprietor of the Property since 14 October 2011, as evidenced by an official copy of the register in the applicant's bundle.
17. The Tribunal also finds that the Property was a licensable house throughout the AST and there was no licence during this period.
18. The respondent has not been convicted of any offence in relation to the Property. However, the Tribunal is satisfied (beyond a reasonable doubt) that an offence has been committed under section 95(1) of the 2004 Act in that the respondent controlled or managed an unlicensed house. The respondent has not engaged in these proceedings in any way and has not sought to excuse her failure to licence.
19. The offence occurred from 10 August 2017 until 10 February 2018, being the full duration of the AST.

### **The Tribunal's decision**

20. Having satisfied itself that an offence had been committed under section 95(1) of the 2004 Act, the Tribunal considered whether to make an RRO. Given the prolonged failure to licence, it is appropriate to make such an order.
21. When deciding the amount of the RRO, the Tribunal had regard to the conduct of the parties and all the circumstances of the case. It could not take account of the respondent's financial circumstances or the outgoings for the Property, as no details were provided.

22. The respondent has not been convicted of any offence but there has clearly been misconduct on its part. She failed to licence for a period of at least 6 months and has not engaged in these proceedings.
23. The respondent did not give details of any circumstances justifying a reduction in the maximum amount of any RRO.
24. The applicant has acted reasonably throughout and there has been no misconduct on his part that might reduce the amount of the RRO.
25. Having regard to all of these factors, the appropriate order is that the respondent should repay 100% of the rental element of the sums paid by the applicant for the period 10 August 2017 to 10 February 2018. These payments included all bills (utilities and any council tax). In the absence of any evidence as to these costs, the Tribunal used the members' own knowledge and expertise and estimated that the applicant's share of the bills was £50 per month. It deducted this sum from the monthly payments to arrive at a rental element of £800 per month. The sum to be repaid to the applicant is £4,800 (6 months at £800 per month) with repayment to be made within 28 days of the date of this decision.
26. At the end of the hearing, Mr Mackenzie mentioned a possible costs application under Rule 13(1) of the 2013 Rules. The Judge explained that any such application should be made after the Tribunal issues its written decision. Mr Mackenzie did apply for reimbursement of the Tribunal fees, pursuant to Rule 13(2). He suggested that these totalled £400. However, it appears from the Tribunal file that the fees were actually £300 (£100 for the application and £200 for the hearing). Given the outcome of this case, it is entirely appropriate that the respondent should bear these fees. The Tribunal orders the respondent to reimburse the sum of £300 to the applicant within 28 days of the date of this decision.
27. Any application for a costs order under Rule 13(1) must be made within the time limited specified at Rule 13(5).

**Name:** Tribunal Judge Donegan **Date:** 03 December 2018

## **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**

#### **80 Designation of selective licensing areas**

- (1) A local housing authority may designated either –
  - (a) the area of their district, or
  - (b) an area in their district,as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

...

#### **95 Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.
  - (2) A person commits an offence if –
    - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6); and
    - (b) he fails to comply with any condition of the licence.
- ...
- (4) In proceedings against a person for an offence under subsection (1), or (2) it is a defence that he had a reasonable excuse –
    - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
    - (b) for failing to comply with the condition,as the case may be.

...

### **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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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
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, a 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.

<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 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.