



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

**Case reference** : **LON/00AE/HMF/2018/0011**

**Property** : **76 Whitmore Gardens, London  
NW10 5HJ**

**Applicant** : **Maciej Musiaik**

**Representative** : **Ms Yates**

**Respondent** : **Arshad Mehmood**

**Representative** : **Simon Noble Solicitors**

**Type of application** : **Application for a Rent Repayment  
Order – section 40 of the Housing  
and Planning Act 2016**

**Tribunal member(s)** : **Ruth Wayte (Tribunal Judge)  
Trevor Sennett**

**Date and venue of  
hearing** : **29 November 2018 at 10 Alfred  
Place, London WC1E 7LR**

**Date of decision** : **10 December 2018**

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**DECISION**

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## **Decisions of the tribunal**

The tribunal makes a rent repayment order of £250, to be paid within 28 days.

## **The application**

1. The Applicant seeks a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 (“the 2016 Act”). He occupied the property from 25 January 2017 to 11 August 2018 and relied on the Respondent having committed an offence under section 72 (1) of the Housing Act 2004, namely being the landlord of a house in multiple occupation (HMO) without the necessary licence.
2. The hearing was attended by the Applicant and his witness Ms Day, with Ms Yates acting as his representative. Mr Rbee Mehmood attended on behalf of his father, the Respondent, together with their witness Mr Khan. The Respondent was represented at the hearing by counsel Mr Samuel Frimpong.

## **The law**

3. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence – in this instance the offence set out in section 72(1) of the Housing Act 2004, the control or management of an unlicensed HMO. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made. Although the Respondent’s witness statement had denied that these criteria were met, that position changed at the start of the hearing when it was accepted that the offence was committed between 6 February 2017 and 31 May 2018. The application for an RRO was made on 12 July 2018.
4. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that 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. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:
  - the conduct of the landlord and the tenant;
  - the financial circumstances of the landlord and

- whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

## **Background**

7. The Applicant moved in to the property on 25 January 2017, renting a room on the ground floor for £800 per month including all utilities. He stated that Rbee Mehmood insisted on the rent being paid in cash which meant that the Applicant had to go to the office of Marble Sales and Lettings each month to pay his rent personally. Although the property was empty when he moved in, by February 2017 there were 5 people in the three storey house, from at least two separate households, sharing kitchen and bathroom facilities. That meant that from that date an HMO licence was required.
8. The Applicant's evidence was that from the start of his tenancy he had issues with the electrical supply to his room, in particular the central light was faulty and he had to rely on an extension lead from the hallway due to faulty sockets in his room. The central light was repaired but by way of a loose wire running externally from the light to the switch. This was eventually replaced but towards the end of the tenancy. He also complained about the heating and hot water and broadband service.
9. Matters came to a head on 24 April 2018 when the Applicant moved out of his room for a day at the request of Rbee, who wanted to present the Applicant's room as a sitting room to the surveyor of his father's mortgage company. Rbee and his helper arrived to move the Applicant's possessions but as he hadn't packed in advance, they were transferred at speed into builder bags and boxes. It was a rainy day and the Applicant stayed in a café until Rbee told him the surveyor had gone. On his return to the property the Applicant was distressed to see that his belongings had been left in the hallway and stated that when he unpacked he discovered that some items had been damaged. He became very upset and called his partner Ms Day.
10. Rbee had given him £100 for the inconvenience but having spoken to Ms Day the Applicant asked for an additional £250, to be deducted from the rent for May 2018. In the absence on any response, Ms Day sought advice as to the Applicant's rights and discovered that the property was an HMO without a licence. She also became concerned that the property did not have the valid gas or electricity certification or fire safety precautions. This led to more correspondence and requests for compensation. The Applicant also stopped paying the rent from May until he moved out of the property on 11 August 2018. The Applicants' claim was for 12 months' rent at £800 per month, amounting to £9,600.

11. As stated above, the Respondent had initially denied that the property was let as an HMO before 31 May 2018 but this position changed at the start of the hearing. The evidence given was that Rbee Mehmood was not only the son of the Respondent but also a Director of Marble Sales and Lettings, who entered into the tenancy on his behalf. Marble did not formally manage the property but did assist with attending to works. The property had previously been converted into 6 studio flats in breach of planning permission and had to be reconverted into a house, taking some 6 months. The plan had originally been to let to a single family but in the absence of any suitable enquiries, Rbee started to let the rooms individually, triggering the requirement for an HMO licence. The application for an HMO licence was delayed due to issues with the mortgage and finally made on 31 May 2018. Rbee maintained that the property was “HMO compliant” in terms of fire precautions, gas and electricity certification throughout the period of the Applicant’s tenancy.
12. Rbee’s account of the events on 24 April 2018 was that he was surprised the Applicant had not packed as the date had been arranged at his convenience. As the surveyor was booked to arrive shortly, the packing had to be done at once. The Applicant did not have anything to pack his belongings into so Rbee used builders’ bags from the van he brought to move the belongings and any boxes he could obtain from local shops. Rbee had offered to help unpack but the Applicant said he wanted to do it himself. Rbee completely denied that he had caused any damages to the Applicant’s possessions or simply left them in the hallway. When the emails started to arrive requesting additional compensation he sought legal advice which was not to respond.
13. In terms of the expenditure incurred by his father in renting the property, receipts had been provided for the majority of the regular costs such as the mortgage, utility bills and council tax amounting to some £32,667 over a 12 month period or £2,722 per month. The gross rental income was £47,400 over 12 months or £3,950 per month, leaving a net income of £14,733 (or £1,228 per month) after deduction of the expenses. This property was his father’s only rental property and he was not a professional landlord, he relied on his son to manage the property on his behalf.
14. The other witness for the Respondent was Mr Khan, another director at Marble Sales and Lettings. Mr Khan stated that his role was to deal with complaints for the company. He had seen the Applicant attending the office in a state of agitation and decided to see whether he could broker an agreement between him and Rbee. He met the Applicant and Ms Day in a coffee shop on 13 June 2018. He had understood Ms Day to be the Applicant’s legal adviser and she handed him a document setting out the Applicant’s claim which had now increased to £20,000. He listened to their side of the story and then went back to the office to speak to Rbee who pointed out that the Applicant had often been late with his rent and had not paid anything at all since May 2018. After the

meeting there were several telephone calls with the Applicant, who reduced his claim to £12,800 but Mr Khan came to the conclusion that an agreement was not going to be possible and advised Rbee to seek legal advice.

15. The application was received by the tribunal on 27 July 2018.

### **The issues**

16. Given the concession as to the commission of an offence from 6 February 2017 to 31 May 2018, the remaining issues were whether to make an RRO and if so, in what amount. The tribunal considers that this is an appropriate case for an RRO. The Respondent may not be a professional landlord but his son is and acts on his father's behalf. The decision not to apply for a licence until 31 May 2018 was deliberate and the occupiers could have been limited in number to provide some income but avoid the commission of an offence prior to that date.
17. The maximum amount of the RRO is 12 months rent or £9,600. However, when considering the amount of the RRO the tribunal must take into account in particular the issues set out in paragraph 4 above, namely the conduct of the landlord and tenant and the financial circumstances of the landlord. There is no conviction to take into account in this case.
18. In terms of the landlord's conduct, Mr Frimpong pointed out that the authorities in respect of RROs indicate that the relevant conduct is in respect of licensing issues as opposed to any failure to repair. The tribunal considers that the clearly dangerous repair of the Applicant's main light is relevant, as the works would not have been passed by any competent electrician or on inspection by the local authority. The tribunal also considers that the events around 24 April 2018 are relevant, given the link made by Rbee between the mortgage and the HMO licence. The tribunal takes a dim view of the Respondent deceiving his mortgage company as to the number of occupiers in the property but do not consider that Rbee's conduct towards the Applicant on the day was particularly reprehensible. Given that the Applicant had not packed up his room in advance there was bound to be a degree of disorder around the process, as illustrated by the photograph in the Applicant's bundle.
19. On the part of the tenant, he was in breach of his contractual obligation to pay his rent from May 2018. Ms Day tried to justify it on the basis of a rebate due for the problems with the electricity and other disrepair. The rent schedule also shows a pattern of late payment, although that was partly driven by Rbee's insistence of payment of the rent in cash which meant that the Applicant had to personally attend the office to pay his rent. The tribunal accepts the Applicant's evidence that he was upset by the events on 24 April 2018 and that Ms Day's investigations were motivated by a desire to help her partner and alleviate his distress.

That said, the increasing demands for compensation were both excessive and threatening in tone, particularly the written statement for the meeting with Mr Khan. The tribunal appreciates that Ms Day is not legally qualified and may not have meant the statement to be read that way, but the amount sought was over double the maximum claim for an RRO. The statement also has the air of holding the Respondent to ransom, by reference to further fines, claims by the other occupiers and even imprisonment.

20. In terms of the Respondent's financial circumstances, the expenditure on the property in respect of the mortgage and utilities was not disputed by Ms Yates for the Applicant. The Applicant's rent was some 20% of the total paid in respect of the property; deducting 20% of the expenditure set out in paragraph 13 above provides a net income for the Respondent of £256 per month or £3,072 over a 12 month period. However, the Applicant admitted rent arrears of £2,847 which the Tribunal considers should also be taken into account. This would leave some £225.
21. As set out above, the events on 24 April 2018 triggered the breakdown in relations between the parties and led to the application for an RRO. Ms Day said in her evidence that none of that would have happened if Rbee had agreed to an additional £250 as compensation for that day and, taking all the circumstances into account, the tribunal considers that would be an appropriate amount for the RRO in this case.

**Name:** Ruth Wayte

**Date:** 10 December 2018

### **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).