



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

Case Reference : **MR/LON/00AG/HMF/2018/2027**

Property : **49 Cartmel, Hampstead Road,
London NW1 3SH**

Applicants : **(1) Tim Weber, (2) Mariusz Malecki,
(3) Wojciech Wujcikowski and (4)
Maria Teresa Llusia Qeral**

Representative : **In person**

Respondent : **(1) Elliot Gambino
(2) Moshahid Miah
(3) Monsoon Properties Limited**

Representative : **Mr P Shannon for Mr. Miah &
monsoon Properties Limited**

Type of Application : **Rent Repayment Order**

Tribunal Members : **Judge Tagliavini
Mr. M Cairns MCIEH**

**Dates and venue of
hearing** : **4 February 2019 and 1 March 2019
10 Alfred Place, London WC1E 7LR**

Date of decision : **14 March 2018**

DECISION

The tribunal's summary decision

I The tribunal finds that Mr. Elliott Gambino is liable to a rent repayment order as the landlord of property at 49 Cartmel, Hampstead Road, London NW3 to the Applicants in the following amounts:

Tim Weber: £3,345 for the period 27/09/17 to 7/5/18.

Maria Queral: £3,531 for the period 18/2/2018 to 26/09/18

Mariusz Malecki and Wojciech Wucjikowski: £3,640 for the period 26/05/2018 to 26/09/2018 .

The application

1. This is an application by the four Applicants seeking a rent repayment order in varying amounts for the rent paid during their different periods of occupation of 49 Cartmel, Hampstead Road, London NW1 3SH ("the property") under the provisions of sections 41 to 44 of the Housing Act and Planning Act 2016.

The background

2. The subject property comprises a four bedroom flat on the third floor of a purpose built block of flats. The long leaseholder is Mr. Mosh hid Miah who by a written agreement dated 1/10/2017 Mr. Miah entered into a Guaranteed Rent Agreement ("the Agreement") with Monsoon Properties Limited ("Monsoon") whereby he agreed to the whole of the subject property to Monsoon for a term of 12 months at a guaranteed rent of £2500 per calendar month.
3. In this Agreement, Monsoon acquired the right to sublet the subject property to whoever it chose without recourse to Mr. Miah. Subsequently, Monsoon let the property to Mr. Elliott Gambino for a period of 12 months from 25/09/2017 to 24/09/2018 under an Assured Shorthold Tenancy (AST) at a rent of £3,200 per calendar month with clause 1.7.4 prohibiting subletting and providing Monsoon's address at 81 Turnpike Lane, N8 oDY as the address for services of notices as required by sections 47 and 48 of the Landlord and Tenant Act 1987. Mr. Gambino in turn entered into the following tenancy agreements with the Applicants.

(i) AST dated 27/9/17 made between Mr. Elliott Gambino as landlord's agent for "LDN Rooms" and Tim Weber and Andrada Enciulescu for the letting of a room at 49 Cartmel, for a term of 6 month from 27/9/17 at a rent of £900 per calendar month together

with an agent's fee of £150 and a deposit of £200. Rent to be paid in the account of Mr. Gambino.

(ii)AST dated 14/02/18 made between Mr. Elliott Gambino as Landlord's agent and Maria Teresa Llusia Queral for a room at 49 Cartmel from 18/2/18 for a period of 3 months at a rent of £650 per calendar month together with an agent's fee of £100 and a deposit of £200. Rent to be paid to Crown Managed.

(iii)AST dated 19/5/18 made between Mr. Elliott Gambino as landlord's agent and Mariusz Malecki and Wojciech Wucjikowski for a room at 49 Cartmel for a period of 6 months from 26/5/18 at a rent of £910 per calendar month together with an agent's fee of £150 and a deposit of £200. Rent to be paid to Crown Managed.

4. On 13th August 2018 a new application for a 'selective' licence was received by the London Borough of Camden from Mr. Miah as set out in a letter dated 24/08/2018 from the London Borough of Camden.

The Applicants' evidence – hearing of 4 February 2019

5. In addition to providing oral evidence to the tribunal, the Applicants relied upon a number of documents in support of their application which included copies of the tenancy agreements entered into by themselves and Mr. Gambino together with a Statement in support. The Applicants told the tribunal that they had moved into the property at varying times and had each found the subject property through the internet on accommodation rental sites.
6. The Applicants told the tribunal that on taking up occupation, the subject property was arranged as five bedrooms with locks on each of the bedroom doors and the occupiers shared a kitchen bathroom and w.c. and that there were two broken windows that required repair and a missing bedroom door. Mr. Weber also stated that as at the date of taking up his tenancy on 27/9/17 there were already other occupiers in the property but who are not part of this dispute. The deposit, agent's fee and monthly rent were paid to Mr. Gambino's account (as evidenced by the bank statements provided to the tribunal) or as directed on the tenancy agreements, as he throughout their tenancies represented himself as the landlord's agent, although LDN Rooms had been dissolved on 28/03/17 according to HM Companies House registry. The Applicants stated that they communicated with Mr. Gambino through text messages and reported items of disrepair in that way. In return appointments for contractors to attend the property to carry out items of repair were communicated by Mr. Gambino to the applicants.
7. At the first hearing held for the determination of this application it was accepted by the Applicants that they had not been able to send or arrange to have sent the application and related documents to Mr. Gambino as they were unaware of his address.

The second and third respondent's evidence – hearing of 4 February 2019

8. At this hearing Mr. Miah attended and was represented by Mr. Patrick Shannon who represented both Mr Miah and Monsoon Properties Limited. In addition to oral evidence from Mr. Miah, the respondents also relied on a number of documents provided to the tribunal.
9. The tribunal was provided with a statement dated 11 January 2019 signed by Mr. Miah in which it was stated *“The position of the Landlord & Owner Mr Mosh hid Miah and the Agent is already set out in a Monsoon Properties Ltd letter dated 07 Dec 2018 signed by both the Agent and also the Landlord and sent to the Property Chamber.”* This statement went on to state *Monsoon Properties Ltd did their usual assessment at the time of the Tenancy commencement* and did not perceive any particular reason to be ‘on enquiry’ as to the credibility of the Tenant* at that time.* This statement also informed the tribunal that *“Monsoon Properties Ltd are not the Owner or Landlord and receive only fees for professional services and do not have significant profits.*

**Mr. Elliot Gambino*

10. The tribunal was provided with a copy of the AST agreement dated 25/09/2017 entered into by Landlord's/Agent's: Monsoon Properties Limited and Elliott Gambino (Lead Tenant) for a “Furnished House” at 49 Cartmel for a term of 12 months from 25/09/2017 to 24/09/2018 at a rent of £3200 per calendar month with rent to be paid to the Agent/Landlord. The tribunal noted that his agreement did not identify Mr. Miah as the landlord.
11. The tribunal was also provided with a document headed “Guaranteed Rent Agreement” (“the Agreement”) made between Monsoon Properties Ltd (“the Company”) and Mr. Moshadid Miah (“the Owner”) and dated 10/10/2017. This agreement provided that for the period of 10/08/2017 until 10/08/2018 that:

“5. The company will seek and find tenants

6. The Company may grant tenancies in its own name and have the right to sublet. The subletting will create either an Assured Short Hold Tenancy or a Formal License in accordance with the occupation by the licensee residents

*7. The Company has absolute discretion as to whom they may let/provide accommodation for in The Property***

8. The company will pay the guaranteed rent in 1 month advance.

9. The Company will pay the agreed sum of £2500 per calendar month. This is a net figure into The Owners specified account.....”

25. If the property falls under the Multiple Occupation under the Housing Act 2004. The Property Owner will work with the Agent i.e. given the agent sufficient time to resolve this issue. The Owner will be responsible for all cost related to Multiple Occupations Act.....

26.The Owner may inspect the property periodically but only in accordance with the terms of the subletting agreement.....”

***defined as 49 Cartmel, Hampstead Road, NW1 3sH*

12. The tribunal noted that there was no provision in the Agreement for Mr. Miah to be paid in excess of £2500 per calendar month should the rental achieved be in excess of that sum. Similarly, the tribunal noted that Mr. Miah was not required to pay any sum to Monsoon for their services during the period of this Agreement and there the Agreement provided no definition of the “Agent.”
13. Mr. Miah told the tribunal that he had entered into similar agreements with Monsoon over the previous three or four years and renewed these when necessary with the intention that the subject property be let by Monsoon to a single household. Mr. Miah stated that he had not installed either directly or indirectly individual locks on the bedroom doors and had given all of his ‘fob’ keys to the communal front entrance door to the block to Monsoon. Mr. Miah stated he had applied for an HMO licence in August 2018 with a view to increasing the rental income in the future. Mr. Miah told the tribunal that he had let the property to Monsoon in order to guarantee an income of £2,500 per calendar month and that that in allowing Monsoon to sublet it, Monsoon became the landlord and looked after the property on a day to day basis.
14. In light of the integral role played by Mr. Gambino and the conflicting position emerging between Mr. Miah and Monsoon, as to who was the landlord of this property at any given time, with Monsoon asserting it was only ever the agent whilst continuing to purport to represent Mr. Miah’s interests, the tribunal decided that the matter should be adjourned part-heard with a view to Mr. Gambino being sent the application and all supporting documentation, as he had already been joined as a party to these proceedings together. A search of the publicly available companies’ data base gave an address for Mr. Elliott Gambino at Girdlestone Walk, and subsequently the tribunal sent the application, the documents and notice of the new resumed hearing date to that address. The tribunal of its own motion joined Monsoon to the application as a respondent and also gave further directions for the production of documents relating to inspections and inventories carried out by Monsoon and the checks carried out on Mr. Gambino regarding his financial suitability as a tenant during the period of his tenancy.

1 March 2019 – the adjourned hearing

15. Mr. Gambino did not appear and was not represented although the tribunal was told that he had in recent weeks tried to contact the Applicants. A document from the third Respondent in the form of an internet news document from London Property Licensing, revealed Crown Properties Limited and its director Mr. Elliott Gambino had been fined £30,000 on 7 February 2019 in the Highbury Corner Magistrate’s Court for failing to license three houses in multiple occupation in Camden and

located in Camden Road, Marsden Street and Castlehaven Road, with his personal address recorded as Girdlestone Walk, London. Therefore, the tribunal was satisfied that Mr. Gambino had been sent and received all of the relevant documents and was aware of the resumed hearing date.

16. At the resumed hearing, three of Applicants appeared in person (Ms Queral being unable to attend), and Mr. Shannon represented the second and third Respondents, with Mr. Miah in attendance and with Mr. Uddin a director of Monsoon, also being present. The Applicants provided a further statement in which they described furniture being moved in and out of the subject property throughout their tenancies and a tenant being unlawfully evicted by Mr. Gambino.
17. At the hearing Monsoon again took the position that it was only ever the agent for the subject property and Mr. Miah remained throughout the landlord. In a statement dated 27 February 2019 signed by Kamal Uddin, director and Showeb Ahmed on behalf of Monsoon, it was stated that Mr. Miah was the owner and landlord and that Monsoon as a Letting and Management Agent acted as his agents with the fees received for professional services provided to Landlords/Owners as set out in the accompanying documents and that in his witness statement dated 11 January 2019 Mr. Miah had accepted in a letter dated 7 December 2018 that Monsoon was his agent. The letter of 7 December 2018 from Monsoon to the tribunal stated *“We as the agent to Moshahid Miah let the property to a single tenant Mr. Elliott Gambino who then in breach of Cause (sic) 1.7.4 of the Assured Shorthold Tenancy Agreement apparently engaged in a sub-let arrangements with the Tenants who have now pursued a Rent Repayment Order Claim.....The property was let and managed by our Agency did not require a License under any of the Licensing Schemes operated by LB of Camden and hence there is no breach on the part of Monsoon Properties Ltd in any event, as they merely received fees for services rendered to the property owner, as set out in the attached Financial Schedule.”*
18. At the resumed hearing Mr. Uddin produced the Financial Schedule which stated that rent had been paid by Mr. Gambino to Monsoon in the total sum of £38,400, that that residual profit received by Monsoon was nil (£0). However, a brief financial statement from Mr. Miah stated he received £2,500 rent in respect of the subject property on which he had outgoings of £1563.43 in respect of mortgage payments, loan payments of £366.81 and buildings insurance of about £400 per year. Mr. Miah told the tribunal he had not received rental income for the subject property of £38,400 as claimed in Monsoon’s financial statement.
19. The tribunal was also provided with a landlord gas safety record dated 08 May 2018; an electrical condition report dated 13/09/2018 together with a pre and post tenancy inventory, an employment and financial statement in respect of Mr. Gambino who recorded his annual salary as £25,000 as an office manager. The tribunal noted that the inventory for the subject property signed by the first and third Respondents dated 25/09/17 and

29/09/18 indicated that it was set up as a five bedroomed property and without a living room throughout the period of Mr. Gambino's tenancy.

The tribunal's decision and reasons

20. The tribunal makes the following factual findings:
- (i) The Guaranteed Rent Agreement entered into by Mr. Miah and Monsoon Properties Limited creates an agreement, whereby Monsoon becomes the landlord of the property for the duration of the agreement, as it controls who the occupiers are to be, under what rent and what terms without having to defer to Mr. Miah for his approval.
 - (ii) Mr. Miah received the guaranteed rent of £2,500 per calendar month and was not the beneficiary of any sum in excess of that figure paid to Monsoon by Mr. Gambino.
 - (iii) The subject property was let to Mr. Gambino as a five bedroom property as set out in the inventory.
 - (iv) The agreement to sub-let to Mr. Gambino for use as an HMO was within the knowledge of Monsoon, as the rental figure of £3,200 per calendar month (£38,400 per annum) could not have been paid in its entirety from the annual salary of £25,000 declared to Monsoon by Mr. Gambino and no further enquiries were made as to his ability to meet the monthly rental commitment.
 - (v) The subject property was subject to some disrepair (broken windows and a missing door) before the property was let to the Applicants.
 - (vi) Mr. Gambino was the Applicant's landlord, as his purporting to be an agent for a company that no longer existed (LDN Rooms) or any other company was a sham. Rent was paid directly into Mr. Gambino's personal bank account or an account controlled by him.
 - (vii) Throughout the period of the Applicants' tenancies, the subject property was required to be licensed as an HMO by the London Borough of Camden's additional licensing provisions.
 - (viii) Throughout the periods of the Applicants' tenancies, Mr. Gambino was not the holder of a licence to let this property to tenants as an HMO.
 - (vix) The tribunal is satisfied beyond reasonable doubt that Mr. Gambino has committed an offence (although not convicted) to which the provisions of Chapter 4 of the Housing and Planning Act apply.
 - (xx) The monthly rental payments due from the Applicants was paid in full to Mr Gambino throughout the period of their occupancy (with £450 paid by Mr. Weber representing 50% of the £900 payable).

The relevant legislation

20. Sections 43 of the Housing and Planning Act 2016 states:

(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).

21. Section 44 of the Housing and Planning Act 2016 requires the tribunal when considering the amount of the rent repayment order, the rent paid by the Applicants during the relevant period, being not in excess of a 12 month period ending with the date of the application to the tribunal. The tribunal also has a regard to the amount of rent paid and takes into account the conduct of the landlord and tenants; the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which Chapter ___ applies.

22. In the absence of any evidence from Mr. Gambino and in light of his conduct, in pretending to be an agent in respect of the Applicants' tenancies and his conduct throughout and without evidence of his financial circumstances, the tribunal finds it appropriate to award the following sums by way of rent repayment orders:

Tim Weber: £3,345 for the period 1/10/17 to 7/5/18.

Maria Queral: £3,531 for the period 17/2/2018 to 26/09/18

Mariusz Malecki and Wojciech Wucjikowski: £3943.40 for the period 3/4/2018 to 26/09/2018 .

23. The tribunal directs that Mr. Gambino is to pay the sums as set out in paragraph 22 above within 21 days of the date of this decision.

Signed: Judge Tagliavini

Dated: 14 March 2019