



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

Case Reference : **LON/00AG/HMF/2018/0028**

Property : **21 Newton House, Abbey Road,
London NW8 0AH**

Applicant : **Gregory Muller,
Jack Revell,
Alice Markham,
Alice Northcott**

Respondents : **The Estate of David Aarons
(Deceased)
Chalk Farm Investments Limited**

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

Tribunal Member : **Judge Robert Latham
Mr Peter Roberts Dip Arch RIBA
Mrs Jackie Hawkins**

**Date and Venue of
Hearing** : **26 March 2019 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **26 March 2019**

DECISION

Decision of the Tribunal

(i) The Tribunal makes a rent repayment orders ('RRO') against the Estate of David Aarons (Deceased) in the sum of £4,159. The said sum is to be paid to the Applicant by 23 April 2019.

(ii) The Tribunal determines that the said Respondent shall also pay the Applicants £300 by 23 April 2019, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

1. On 1 October 2018, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for RROs in respect of 21 Newton House, Abbey Road, London NW8 OAH. This is a four bedroom flat in a four storey block owned by the London Borough of Camden (“Camden”). Camden is also the local housing authority
2. The application has been brought by the following tenants: Gregory Muller, Jack Revell, Alice Markham and Alice Northcott who occupied the flat as joint tenants pursuant to a tenancy agreement dated 1 October 2017 for a term of one year at a monthly rent of £2,101.66. The landlord is given as Chalk Farm Investments Limited. The tenants were obliged to pay the outgoings in respect of electricity, gas, water, and council tax, etc.
3. On 1 November 2018, the Tribunal gave Directions. These set out the issues which the Tribunal would need to consider.
4. The Tribunal was uncertain as to whether the correct Respondent was Mr Aarons or Chalk Farm Investments limited and joined the latter as a party. On 26 November, Mr Aarons filed a statement confirming that he is both the landlord and the long leaseholder of the flat. Chalk Farm Investments Limited is merely a management company owned and directed by Mr Aaron. He also filed a full response to the claim. He did not dispute the offence, but rather disputed the size of the RRO that is sought.
5. On 8 January 2019, Mr Aarons died. The Executors are Mr Geoffrey Jayson and Mr Sean Williams. On 8 March, the Tribunal informed the Executors that the case would be determined on the papers in the week commencing 25 March.

Our Determination

6. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act. We are satisfied that:
 - (i) On 8 December 2015, Camden introduced an additional licencing scheme for HMOs. Under this scheme all HMOs in the borough are required to be licenced.
 - (ii) The flat is an HMO falling within the definition falling within the “standard test” as defined by section 254(ii) of the 2004 Act. In particular:

- (a) it consists of four 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;
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable in respect of the living accommodation; and
- (f) the households who occupy the living accommodation share the living room, kitchen, a bathroom and a toilet.

(iii) The Respondent has failed to licence the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

(iv) The offence was committed over the period of 1 October 2017 to 30 September 2018.

(v) The offence was committed in the period of 12 months ending on 1 October 2018, namely the date on which the application was made.

7. The 2016 Act gives the Tribunal has a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenants during this period, less any award of universal credit paid to any of the tenants. All the Applicants confirmed that they were not in receipt of any state benefits and that they paid the rents from their earnings. The Applicants have paid rent totalling £25,200 during this period of 12 months.

8. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord: We consider this below.

(ii) The conduct of the tenants: There is no criticism of the conduct of the tenants.

(iii) The financial circumstances of the landlord: We consider this below.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40: There is no relevant conviction.

9. In determining the amount of any RRO, we have had regard to the guidance given by the Upper Tribunal in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the 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 a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. 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 register 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.
10. It is common ground that the landlord received rent totalling £25,200 from these tenants. Mr Aarons paid out expenses totalling £8,563 in respect of: (i) interest on mortgage: £2,538; (ii) Service Charges demanded by Camden: £1,615; (iii) Maintenance costs: £2,520; and administration costs: £1,890. The net rent received is £16,637.
11. Mr Aarons was a professional landlord in that he owns and lets a number of properties. He stated that he owned two HMO buildings in Camden, both of which were licensed. He was unaware that flats needed to be registered until Camden inspected the flat on 4 September 2018. He received a letter from Camden at the beginning of October notifying him that the flat need to be registered. He did not re-let the flat and promptly applied for it to be licensed. There are no aggravating features. The deposit was placed in a rent deposit scheme. There is no complaint of disrepair. The tenants renewed their tenancy after the initial period of one year.
12. Taking all these factors into account, the tribunal makes a RRO in the sum of £4,159, namely 25% of the net rent received by Mr Aarons.
13. The Tribunal furthers order that the Respondent should refund the tribunal fees of £300 paid by the Applicants pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Robert Latham
26 March 2019

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

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless-

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if-

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if-

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);

- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

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 |

| | <i>Act</i> | <i>section</i> | <i>general description of offence</i> |
|---|------------|----------------|---|
| 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 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.