



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

<b>Case reference</b>	<b>:</b>	<b>LON/00AH/HMF/2018/0024</b>
<b>Property</b>	<b>:</b>	<b>Flat 6, 228 Bensham Lane, Thornton Heath, Surrey, CR7 7EP</b>
<b>Applicant</b>	<b>:</b>	<b>Ms. J. Grannell.</b>
<b>Represented by:</b>	<b>:</b>	<b>Justice for Tenants – Mr. A. McClenanhan.</b>
<b>Respondent</b>	<b>:</b>	<b>ABC Business Centres Limited.</b>
<b>Represented by</b>	<b>:</b>	<b>Mr. Ben and Mr. Paul Williams.</b>
<b>Type of application</b>	<b>:</b>	<b>Application for a Rent Repayment Order under S.41(1) and 41(2) Chapter 4 of Part 2 of the Housing &amp; Planning Act 2016.</b>
<b>Tribunal</b>	<b>:</b>	<b>Ms. A. Hamilton-Farey. Mr T. Sennett. MA FCIEH</b>
<b>Date and venue of hearing</b>	<b>:</b>	<b>23 January 2019 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	<b>:</b>	<b>23 January 2019.</b>

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**DECISION**

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**Decision:**

The tribunal makes a Rent Repayment Order totalling £4,430.00 in relation to the application. The reasons for the tribunal decision are detailed below.

**Background:**

1. On 17 September 2018 the tribunal received an application for a rent repayment order under the Housing and Planning Act 2016 from the

applicant Ms. Grannell. The applicant sought a re-payment of rent amounting to £8,659.32 for the period between 15 September 2017 to 26 May 2018.

2. The tribunal issued directions on 24 September 2018 that required amongst other things, for the parties to lodge bundles of documents on which they wished to rely in support of their case. The tribunal received bundles from both parties.
3. Although the applicant requested the matter be dealt with on the papers, the tribunal determined that the respondent should be given the opportunity to address the tribunal and listed the matter for a short hearing on 23 January 2019.
4. The issue that the tribunal must determine beyond reasonable doubt are: -
  - a. Whether in breach of S.95(1) of the Housing Act 2004 the respondent was in control or management of an unlicensed property during the relevant period (12 months ending with the date that the application was made?).
  - b. Did the offence relate to housing that, at the time it was committed, was let to the tenant?
  - c. What is the applicable 12-month period?
  - d. What is the maximum amount that can be ordered under S.44(3) of the Act?
  - e. What account should be taken of:
    - i. The landlord's conduct;
    - ii. The landlord's financial circumstances;
    - iii. Whether the landlord has at any time been convicted of an offence in relation to this matter?
    - iv. The conduct of the tenant?
    - v. Any other factors?
5. A hearing was held on 23 January 2019 at which the applicant appeared and was represented by Mr. McClenahan, Mr. Ben and Mr. Paul Williams represented themselves.

### **The Issues:**

#### Did the property require a licence?

6. There is no dispute between the parties that the London Borough of Croydon had introduced a Selective Licensing Scheme with effect from 1 October 2015. The subject property is situated within the areas contained within the Public Notice served by the London Borough of Croydon.

#### Was the property let to the tenant during the relevant period?

7. There is no dispute between the parties that the tenant had occupied the property between 26 February 2015 and the end of June 2018. The tribunal was informed that there was some doubt as to the actual end date of the tenancy, but the parties agreed that the tenant remained in occupation throughout the period for which the Rent Repayment Order is claimed.

Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

8. During the hearing the landlord confirmed that the subject property was a 'log cabin' situated in the garden area of what had formerly been a public house. The public house had been converted into five flats, all of which had been licenced under the Council's scheme, but that due to an over-sight no licence had been applied for, or obtained in relation to Flat 6 (the cabin). In the view of the tribunal, the landlord has therefore admitted the offence.

What is the maximum amount that can be ordered under S.44(3) of the Act?

9. The maximum that the tribunal can order is the total of 12-months' rent during the before the application was made. The tribunal is satisfied that the period for which the application was made is within that period.

What account must be taken of:

10. The conduct of the landlord: the applicant suggested that the landlord had harassed her during the tenancy, and that she was afraid of the landlord's presence in the property, citing an instance where she had called her son to the property when the landlord required access. No other evidence has been supplied to the tribunal to suggest any harassment, and from the copies of text messages supplied in evidence, it appears that the parties had a generally good relationship until the applicant requested that she be released from the tenancy early.
11. Mr. McClenahan also suggested that we take account of the fact that the applicant's deposit had not been protected in one of the statutory schemes; that the applicant had not been provided with a copy of the Prescribed Information or a copy of the EPC as required. Mr. Ben Williams denied this to be the case and said that, when each tenancy agreement was signed and counter-signed, a copy of this information was supplied to the applicant. Mr. Williams also said that the deposit had always been protected and re-protected when the tenancy was renewed, but that because the deposit had been transferred from his own name into that of the company, acknowledged that it might have been difficult for the applicant to find reference to the deposit on the DPS website. Although the tribunal determines that this is evidence of the landlord's conduct, this is a matter that must be dealt with elsewhere.

12. Finally, Mr. McClenanhan suggested that we consider the fact that the landlord was a large company, had not acted professionally during the tenancy and that the log cabin had been constructed without planning permission, without any evidence that it met safety standard or fire regulations.
13. Mr. Williams informed us that they had obtained a certificate of lawful use and provided a copy. This was dated 23 October 2018, after these proceedings started. In addition, he provided a copy of what he said was the licence for the property, and although this document was headed 'Proposed Croydon Private Rented Property Licence' it did state that the property was licenced from 16 October 2018 until 30 September 2020. The tribunal is satisfied from this that the property is now licensed, and to obtain this licence the property would have been inspected by the Local Authority as to its suitability for residential accommodation.
14. The financial circumstances of the landlord: the tribunal was told that the respondent was small family company with only two properties and mortgages on its properties. The loan on the 'log cabin' was between £400 and £500 per month, and that the rental included all electricity and water supplied to the property. It was admitted by the respondent that no Council Tax had been demanded or paid in relation to the property, and that the utilities were fed through the landlord's meter in the main house. The respondent confirmed that the other five flats were all separately metered, and considered that the cost of the electricity supply to the property was in the region of £1,200.00 to £1,500.00 per month, and that the cost of the water supply was in the region of £25.00 per month. Although no evidence was supplied to support these sums, the tribunal considers that they are within the range that one would expect for a one-bedroom dwelling such as this, and we therefore accept them.
15. The conduct of the tenant? The landlord suggested that the tenant had become hostile towards the end of the tenancy. Mr. Williams said that, it had been agreed, the applicant would pay the rent for June, but the schedule of rent due and paid showed only a non-payment for May 2018. The applicant had included within their bundle a copy of their bank statement showing the payment for May, and the respondent conceded that this might have been received after they had sent in their documents.
16. The respondent also claimed that the applicant had left the flat in a poor condition and had had to pay for rubbish to be collected, and general cleaning repairs undertaken; photographs were supplied in evidence, but these were undated and unsigned, and Mr. Williams confirmed that no check-out procedure had been followed. We do not consider that any deduction for rubbish removal etc. forms part of the Rent Repayment Order process and is more properly addressed as part

of a deposit dispute, if necessary. We therefore disregard the claim for £228.00 rubbish removal costs.

17. On balance the tribunal concludes that the conduct of the tenant has not been sufficiently poor to require us to make any deduction from the Rent Repayment Order in this respect.

### **Reasons**

1. It was not disputed by the respondent that no licence has been granted for the property, and although in their evidence the respondent said that the non-licensing was a matter between the landlord and the Local Authority, and that the application should not have been made, the tribunal disagrees. The legislation is clear that, where a landlord fails to licence a property that requires a licence, then the tenant may make an application to this tribunal for a Rent Repayment Order. This Order is separate to any penalty that the Local Authority might levy. The tribunal is satisfied therefore that it has jurisdiction to make an Order.
2. However, the tribunal is also required to consider not only the matters listed above, but the purpose of a Rent Repayment Order, which is not to be a windfall profit to the tenant, but a penalty to the landlord so that they obtain a licence where necessary. In this case the tribunal was told that the landlord has two properties for rent and was therefore not a 'professional' landlord in the usual term. The tribunal disagrees and considers that even a landlord with a small portfolio can be regarded as professional and therefore ought to either know, or seek advice on the legislation relating to those properties. In this instance the respondent confirmed that no such advice had been sought.
3. The tribunal considers that an Order of the quantum sought by the tenant is too high, and does not reflect the respondent's outgoings in relation to the property, or the fact that the property was licensed, apparently without any issue after this tenancy ended. We are not satisfied that the property was in poor condition, and no evidence has been supplied by the tenant to suggest that there were problems during the tenancy.
4. Taking the above into consideration, the tribunal considers that an Order representing 50% of the applicant's claim should be awarded to the applicant, and should be paid to the applicant within 28 days of today's date.

**Name:** Ms. A. Hamilton-Farey  
Mr. T. Sennett MA  
FCIEH

**Date:** 23 January 2019

