FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AL/HMF/2019/0045 & 0046**
Property	**:**	**84 Garland Road, London SE18 2PN**
Applicants	**:**	**Rasif Bin Islam** **Harrison Woodgate**
Respondents	**:**	**Adeola Kusimo** **Ade Kusimo**
Type of Application	**:**	**Rent Repayment Order**
Tribunal	**:**	**Judge Nicol** **Mr L Jarero BSc FRICS**
Date and Venue of Hearing	**:**	**6th January 2020;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**7th January 2020**

DECISION

Rent Repayment Orders are made for the Respondents to pay the following amounts:

1) **£4,200 to the first Applicant, Mr Rasif Bin Islam; and**

2) **£5,400 to the second Applicant, Mr Harrison Woodgate.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. The Respondents let out rooms at the subject property, 84 Garland Road, London SE18 2PN, a converted terraced house. In 2018 there were 5 tenants: the two Applicants, Mr Jason Bernard, Mr Victor Mbasogo and a man called Tunde. This made it subject to the

Additional Licensing scheme for Houses in Multiple Occupation of the local authority, the London Borough of Greenwich. By letter dated 9th April 2019 Greenwich notified the Applicants that the property should be licensed but was not. By letter dated 15th May 2019, Greenwich further notified them that they had served an Improvement Notice on the Respondents. On 12th August 2019 each Applicant applied to this Tribunal for a Rent Repayment Order.

2. By letter dated 19th August 2019 the Tribunal notified the parties and each of the remaining tenants (Tunde had left by this point) of the applications. The Respondents told the Tribunal at the hearing on 6th January 2020 that they were away at this point in sunnier climes for Mr Kusimo's health (he has arthritis in one knee). They had left their son, an accountant working in London, in residence at their home to deal with any correspondence which arrived. In relation to the subject property, he was to pass anything relevant on to the Respondents' managing agents, Top Move. In relation to the Tribunal's letter, he appears to have done his job because Mr Kusimo told the Tribunal that Top Move contacted him about it in August 2019. He further told the Tribunal that he had told Top Move to deal with it themselves.

3. On 18th September 2019, the Tribunal issued directions which included the following:

> 2. By **14th October 2019** the respondent must send **three** copies of a bundle of documents for use at the hearing to the tribunal and **one** copy to the applicant.
>
> 3. The bundle must be in a file, indexed and numbered page-by-page, and it must include:
>
> (i) A full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advanced by the applicant, and dealing with the issues identified above
>
> (ii) A copy of the tenancy agreement
>
> (iii) Evidence of the amount of rent received in the period (less any universal credit/housing benefit paid to any person), with details of the occupancy by the tenant on a weekly/monthly basis
>
> (iv) A copy of all correspondence relating to any application for a licence and any licence that has now been granted
>
> (v) The name(s) of any witnesses who will give evidence at any hearing, with a signed and dated statement/summary of their evidence, stating that it is true (and see Notes below)
>
> (vi) 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

(viii) Any other documents to be relied upon at the hearing.

NOTES

(c) If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.

4. The Respondents did not demur from the suggestion that the same system was in operation for dealing with this correspondence as with the earlier correspondence but there is no evidence that either they or their agents took any action in relation to the directions until 3rd December 2019 – there is a one page document of that date, on Top Move headed paper, making some submissions about the applications. The Tribunal did not see this document until the Respondents sent it in by email on 3rd January 2020.

5. By letter dated 17th December 2019 the Tribunal asked the Respondents why they had not complied with the directions and invited submissions as to why they should not be debarred from defending the applications.

6. By email dated 27th December 2019, the Respondents replied that they had only returned to the UK on 23rd December 2019 (they showed the Tribunal a flight ticket from Accra to London on that date). By email on 2nd January 2020, they provided some documents, not indexed or paginated, which might be said to fall within category (viii) in paragraph 3 of the above-quoted directions but nothing that could be said to fall within any of the other 7 categories. By email dated 3rd January 2020 they said they would be coming to the hearing with a witness, Mr Mbasogo, but provided no witness statement for him.

7. The hearing was held on 6th January 2020. All the parties attended representing themselves. Mr Kusimo spoke on behalf of himself and his wife. Mr Mbasogo also attended but did not give evidence.

8. A rent repayment order may be made when the landlord has committed one or more of a number of offences listed in section 40(3) of the Housing and Planning Act 2016. The following appeared to be relevant:

(a) The first Applicant suggested in his written representations to the Tribunal that he had been forced out of his tenancy prematurely by the Respondents and their agents. Although he did not say so expressly, this raised the question of whether there had been an offence under section 6(1) of the Criminal Law Act 1977 (violence for securing entry) or section 1 of the Protection from Eviction Act 1977 (eviction or harassment of occupiers). The Respondents objected strenuously to any such allegation and Mr Kusimo focused his submissions on this. In fact, the first Applicant's only evidence in this regard was some email correspondence in which the agents did ask him to move out early but there was nothing which could have established the commission of any relevant offence.

(b) The Respondents' small bundle of documents included some evidence of repair or improvement works apparently carried out at Greenwich's insistence. The Respondents could and should have provided far more evidence to establish that they had complied with the Improvement Notice but, as with all criminal offences, the offence of failure to comply under section 30(1) of the Housing Act 2004 must be established beyond a reasonable doubt. The Applicants could not provide any evidence of their own on this issue and so the Tribunal was not satisfied to the requisite standard that the Respondents had committed this offence.

(c) Under section 72(1) of the Housing Act 2004, it is an offence to control or manage an HMO which should be licensed but is not. The Respondents conceded at the hearing that this offence had been committed.

9. Mr Kusimo asserted at the hearing that an application for an HMO licence had been made to Greenwich. This would constitute a defence under section 72(4)(b) for the period from the date of such an application but the Respondents were unable to put a date on it with any degree of certainty – the best Mr Kusimo could do, after much umming and erring, searching his memory, was to guess that the agents must have applied in or about June 2019. No notice had been given of this assertion and so the Applicants had had no opportunity to obtain any evidence in response. The Tribunal could not be satisfied on the evidence or in fairness to the Applicants that any application had been made during any period in which the Applicants were in occupation and for which they claimed a Rent Repayment Order.

10. Therefore, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make Rent Repayment Orders on these applications. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301. Amongst other matters, it was held that an RRO is a penal sum, not compensation, and that the Tribunal should take an overall view of the circumstances, including whether the landlord has already been fined for the offence and whether the rent includes items the tenant has had the benefit of.

11. The circumstances of this case are that the Applicants became tenants at the property in June and September 2018 respectively. They paid monthly rent of £350 and £450 respectively. The Respondents had no excuse for not licensing the property from this time. They claim to have taken the appropriate action as soon as Greenwich notified them of their obligations but they are professionally represented and advised so there is no reason why they had to wait until such notification.

12. The Respondents' attitude to the licensing system, neglectful at best, contemptuous at worst, is amply demonstrated by their lackadaisical response to the Tribunal proceedings. Of course, it cannot have helped that they were abroad for much of the time since the applications were issued but they knew of them from soon after issue. Mr Kusimo told the

Tribunal that he would be able to obtain all the evidence he needed within two or three days which begs the question as to why he didn't do so by the time of the hearing, let alone within the period directed by the Tribunal. The directions specifically told the Respondents what kind of documents and evidence they needed but they appear to have ignored them completely, to their own detriment as much as to the detriment of the Applicants and the administration of justice.

13. The Tribunal decided not to debar the Respondents from defending the applications purely on the basis that their case was so poor and completely lacking in any evidence that it would not make any difference to the outcome of the proceedings. During the hearing, the Tribunal carefully explained the requirements of the legislation in relation to RROs and invited both Respondents to make whatever submissions they wished on the relevant issues. Mr Kusimo made some specific submissions which ought to be addressed:

(a) Mr Kusimo repeatedly asserted that he had left management of the property to his agents, Top Move. He eschewed any idea that this absolved the Respondents of their responsibility so it was unclear how he thought it was relevant to the making or amount of any RRO. He made little complaint of the service he had received from Top Move and conceded that they had at least told him of the Tribunal proceedings at the time they commenced. There was no other evidence of what they did or did not do and no submissions on what they could or should have done. Therefore, the Respondents' case is not improved by considering such issues.

(b) Mr Kusimo claimed that compliance with Greenwich's requirements had put him into debt. However, amongst his documents was a statement of account dated 27th September 2019 from Top Move indicating that the Respondents would almost be able to cover the cost of the licence and the repairs just from the Applicants' rent payments from the previous quarter (being short only £116). After taking into account the rent the Respondents would have received since June 2018 from all 5 tenants, it is difficult to identify any financial shortfall.

(c) Mr Kusimo claimed never to have met either Applicant. Both Applicants were listening to his submissions and were clearly very surprised by this assertion – the surprise appeared to the Tribunal to be spontaneous and genuine. In their submissions they said that they had met him at least twice. Mr Kusimo did not demur. If it were relevant, the Tribunal would have preferred the Applicants' evidence on this point.

(d) In their submissions at the hearing, the Applicants mentioned that they were students, only in order to explain why they would not be liable to pay council tax. It was a point of minor relevance at most but Mr Kusimo in reply sought to claim that the Applicants were not students and had told the agents they were employed, even going as far as to produce false pay slips. This was the first time any such allegation had been made and was completely unsupported by any evidence. Such

serious allegations must be supported by equally weighty evidence and the Tribunal has no hesitation in rejecting this allegation.

(e) Mr Kusimo claimed he had been told that the Applicants were a nuisance to neighbours. No details were provided. Again, this was the first time any such allegation had been made and was completely unsupported by any evidence. The Tribunal accepts the Applicants' response that they were unaware of any such allegation and concluded that it could not be taken into account.

14. In these circumstances, the Tribunal was minded to make the maximum RRO for each Applicant, that is £350 and £450 per month respectively for the maximum period of 12 months – the first Applicant was a tenant for around 16 months until he left on 23rd October 2019 while the second Applicant left exactly one year after his arrival in September 2019. The Tribunal is unaware of any other proceedings against the Respondents so they would not be subject to any further financial penalty.

15. Top Move used two different templates for tenancies at the property. One of them indicated that all utility bills and council tax were the tenants' responsibility but the Applicants accepted that, save for the wi-fi, such bills were included within the rent, as stated in the other template. The Tribunal considered whether to make deductions from the amount for each RRO to take this into account. However, it had no evidence on which to make such a deduction. The Applicants had never seen any relevant bills and had no idea what the amount might be. The Respondents provided no submissions or evidence as what the amount might be either. In the circumstances, including the fact that an RRO is penal, not compensatory, the Tribunal concluded that no such deductions should be made.

16. Therefore, the Tribunal concluded that the Rent Repayment Orders should be in the sums of £4,200 for the first Applicant and £5,400 for the second Applicant.

Name: NK Nicol **Date:** 7th January 2020

Appendix of relevant legislation

Housing Act 2004

Section 30 Offence of failing to comply with improvement notice

(1) Where an improvement notice has become operative, the person on whom the notice was served commits an offence if he fails to comply with it.

(2) For the purposes of this Chapter compliance with an improvement notice means, in relation to each hazard, beginning and completing any remedial action specified in the notice–

(a) (if no appeal is brought against the notice) not later than the date specified under section 13(2)(e) and within the period specified under section 13(2)(f);

(b) (if an appeal is brought against the notice and is not withdrawn) not later than such date and within such period as may be fixed by the tribunal determining the appeal; and

(c) (if an appeal brought against the notice is withdrawn) not later than the 21st day after the date on which the notice becomes operative and within the period (beginning on that 21st day) specified in the notice under section 13(2)(f).

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse for failing to comply with the notice.

(5) The obligation to take any remedial action specified in the notice in relation to a hazard continues despite the fact that the period for completion of the action has expired.

(6) In this section any reference to any remedial action specified in a notice includes a reference to any part of any remedial action which is required to be completed within a particular period specified in the notice.

(7) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(8) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

Section 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.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) 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 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either–

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are–

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has 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 by that landlord.

	Act	section	general description of offence
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).

Section 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.

Section 43 Making of 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 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).

Section 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 the table.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
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 paid 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, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.