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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/OOAH/HMG/2019/0025**
Property	**:**	**58a Chapel View South Croydon CR2 7LF**
Applicant	**:**	**Guna Liepa (1) and Martin Ollington (2)**
Representative	**:**	**In person**
Respondent	**:**	**Marie Potter (Formerly Naine)**
Representative	**:**	**In person**
Interested person	**:**	**-**
Type of application	**:**	**Application by Tenant for a rent repayment order under the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge Professor Robert Abbey** **Mr Trevor Sennett MA FCIEH**
Venue and date of hearing	**:**	**10 Alfred Place, London WC1E 7LR** **6 January 2020**
Date of decision	**:**	**08 January 2020**

DECISION

Decision of the tribunal

(1) The tribunal finds that a rent repayment order be made in the sum of £2500 in favour of the applicants, the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence

pursuant to s.95 of the Housing Act 2004, namely that a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part three of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

Reasons for the tribunal's decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **58a Chapel View South Croydon CR2 7LF**.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.

3. The hearing of the application took place on Monday 6 January 2020. Both parties appeared in person and therefore were representing themselves.

4. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

The law

5. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence described in Part three of the Act and in that regard section 95 of the 2004 Act states

> *95 Offences in relation to licensing of houses under this Part*
>
> *(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.*

6. Under section 41 (2) (a) and (b) of the 2016 Act 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. The application to the Tribunal was made on 12 September 2019. The respondent confirmed in her witness statement that on 27 June 2019 she had applied for an appropriate licence from

the London Borough of Croydon and the licence was duly issued on 31 July 2019. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

7. Therefore, the offence relates to the absence of a licence of residential accommodation pursuant to the requirement for a selective licence. This arose from the designation for selective licensing of the whole of Croydon on the 16th March 2015 and which came into force on 1 October 2015.

Background

8. The property is covered by the legislation that requires a selective licence under the Housing Act 2004. Indeed, the property was licenced but that licence was not issued until the date set out above following the application that was made on 27 June 2019. Accordingly, it would appear that the property was unlicensed for a significant period of the tenancy.

The Offence

9. There being a house as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part three of the Act but is not so licensed. The respondent conceded in her witness statement that "*I have ostensibly committed an offence under section 95 (1) of the Housing Act 2004 (as amended by Paragraph 4, Schedule 9 of the Housing and Planning Act 2016) as I was in control of an unlicensed property, however, as soon as I was aware of my obligation, I took immediate steps to rectify the situation*".

10. The applicants confirmed that they had lived in the property from 17 September 2018 until 16 July 2019 paying £900 each month in rent. The Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council until 31 July 2019 after the respondent made an application on 27 June 2019. Therefore, the Tribunal concluded that this was an unlicensed house prior to that date. Accordingly, the tribunal had no alternative other than to find that the respondent was guilty of the criminal offence contrary to s.95 of the Housing Act 2004.

The tribunal's determination

11. The amount of the rent repayment order was extracted from the amount of rent paid by the applicants during the period of occupancy as set out above. The applicants were able to prove payment by reference

to copy bank statements produced to the Tribunal. The total of the rent paid for the above period appeared to amount in total to the sum of £8395.90. (The period was nine months and 10 days so the amount in question was nine months at £900, being £8100 plus 10 days at £29.59 a day being £295.90. Hence the total in question of £8395.90).

12. Furthermore, the tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the tribunal consider a reasonable order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the respondent was not a professional landlord. (The respondent confirmed in reply to an enquiry from the Tribunal that this property was the only one she owned and that since the end of the letting to the applicants she had relinquished her interest).

13. Moreover, there is no presumption of a starting point of a 100% refund being made. (In the case mentioned above an award at 75% was considered reasonable). In *Fallon v Wilson and Others* [2014] UKUT 300 (LC) it was confirmed that the tribunal must take an overall view of the circumstances in determining what amount should be reasonable. The Upper Tribunal here supported the view set out in *Parker* that the this Tribunal "*must take an overall view of the circumstances determining what amount would be reasonable*".

14. The Applicants asserted that there were several issues about the property that caused problems for the tenants as a consequence of the behaviour of the lessor. First there was a problem with the door lock that the tenant could not operate and which meant that they were locked in. The landlord said that the lock when tested was fully operative. There was a dispute about the provision of bins but this probably arose from poor communication between the parties. There was an issue about the garden fence as the tenant had to secure it with a supportive band. The tenant said that the windows were defective in that they would not operate properly. The landlord confirmed that they were all working properly at the start of the tenancy. Some mould appeared in the property. The cause of the mould was unclear to the Tribunal. However, it was treated by the respondent and the affected area repainted.

15. One significant issue was about the oven at the property. The applicants said that it was working when they moved in but that subsequently the oven door came off its hinges, fell to the floor and one sheet of glass in the door broke. They say that the respondent took time to deal with this. However, the lessor in the end inspected the damage and thought

it had been caused by the applicants. Eventually a replacement oven was installed in April 2019.

16. Finally, another significant issue arose about the maintenance and condition of the garden. Even though the garden was not specifically described in the tenancy agreement as being part of the demised property the agreement included a clause for the tenant to deal with that said "*You must maintain the garden in good order according to the season of the year*". The tenant said this was not possible as there were no tools provided by the landlord to carry out the maintenance works. The respondent asserted that there had been no request by the applicants for any gardening tools. The Tribunal noted that the occupants of the ground floor commercial premises had access to the garden to get to the ground floor toilet and that the tenants thought the garden was a communal area. The provisions of the tenancy agreement were not well drafted when considering the garden area but it is not for this Tribunal to make a definitive finding in this regard. Clearly the poor drafting was a contributory factor in this element of the dispute .

17. Notwithstanding the above issues it was clear to the Tribunal from the many photos in the trial bundles that the property was a perfectly acceptable flat maintained to a reasonable standard without any obvious defects. The Tribunal recognised that the lessor did try to respond to issues raised by the lessee and the dispute probably arose from a lack of effective communication between the parties.

18. Consequently, the Tribunal concluded that a rent repayment order be made in the sum of £2500 the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.95 of the Housing Act 2004, namely that a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part three of the 2004 Act but is not so licensed.

19. Taking into account all this guidance and the circumstances of the claim, the tribunal considered that for the above period a reasonable amount should be £2500. Accordingly, it is this amount of £2500 that the tribunal considers reasonable and appropriate and it should be the amount of the rent repayment order. The rent repayment monies are to be paid by the respondent to the applicants within 28 days of the date of this decision.

Name: Judge Professor Robert Abbey Date: 08 January 2020

Annex

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).

Appendix of relevant legislation

95Offences in relation to licensing of houses under this Part

(1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

(2)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 90(6), and

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

(3)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 86(1), or

(b)an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4)In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,

as the case may be.

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

(6)A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A)See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B)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.

(7)For the purposes of subsection (3) 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 (8) is met.

(8)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.

(9)In subsection (8) "relevant decision" means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

s41 Housing and Planning Act 2016

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.