



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

Case reference : **LON/00AN/HMK/2019/0061**

Property : **43 Raynham Road London W6 0HY**

Applicants : **Catherine Back, Marine Chaplot,
Iain Duncan, Joseph Grist and
Gurdes Sidhu**

Representative : **Gurdes Sidhu**

Respondent : **Mr John Adams**

Representative : **Belvederes solicitors**

Type of application : **Application for a Rent Repayment
Order**

Tribunal members : **Judge Pittaway
Ms S Coughlin MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 January 2020**

DECISION

Decisions of the tribunal

- (1) The tribunal makes the following rent repayment order (“**RRO**”), namely that the Respondent shall refund the sum of £21,069.75 to the Applicants.
- (2) With the agreement of all the Applicants (who were all present at the hearing) the sum is to be paid to the lead tenant, Mr Iain Duncan.
- (3) The tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. On 6 August 2019 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) for RROs in respect of 43 Raynham Road, London W6 0HY (‘the **Property**’). The London Borough of Hammersmith and Fulham is the local housing authority.
2. The application has been brought by the Applicants jointly in respect of the period from September 2018 to August 2019 during which period the tenants jointly paid to Glenthorne Properties Limited (“**Glenthorne**”) as agent for the Respondent the sum of £35,380 by way of rent.
3. The tenants all occupied the property from September 2018 to August 2019. The total rent payable per month from September 2018 to February 2019 was £2925 per month and from February 2019 onwards it is £2,965 per month. Rent is payable monthly in advance on the first day of each month. All the applicants are named in the shorthold tenancy agreement dated 1 February 2018 and Iain Duncan is the lead tenant. The other tenants pay their share of the rent to him and he then transfers the total rent per month due to Glenthorne.
4. On 2 September 2019, the Tribunal issued Directions. These set out the issues which the Tribunal would need to consider. The Respondent was advised to seek independent legal advice. Both parties were directed to file bundles of documents with the Tribunal which they have done.

The law

5. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

6. The Applicants all attended the hearing and were represented by Mr Sidhu. The Respondent was represented by Mr Trebacz of Belvederes Solicitors.

7. The tribunal heard evidence from Ms Hancock of Glenthorne, and from Mr I Duncan and submissions from Mr Trebacz and Mr Sidhu.
8. The tribunal has had regard to the witness statements in the bundles, the evidence it has heard and the submissions on behalf of the parties in reaching its decision. As appropriate these are referred to in the reasons for the tribunal's decision.

The background

9. The Property is described in the Respondent's witness statement as comprising 9 (including a WC on the mezzanine) rooms over four floors, with a single bedroom on the ground floor, a double and single bedroom on the first floor and a double bedroom on the second floor.
10. Neither party requested an inspection and the tribunal did not consider that one was necessary.

The tribunal's decision and reasons

Offence under section 72(1) of the 2004 Act

11. The Property is an HMO falling within the definition in section 254(2) of the 2004 Act, falling within the "standard test" as defined by that section. In particular:
 - (a) it consists of one or more 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) two or more of the households who occupy the living accommodation share one or more basic amenities, namely the kitchen, a bathroom and a toilet.
12. The Respondent has admitted that from the start of the the Assured Shorthold Tenancy dated 1 February 2018, and before, the Respondent failed to licence the Property as a HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

The period during which the offence existed

13. Under section 72(4) of the 2004 Act a person has a defence if, at the material time, an application for a licence had been duly made under section 63 of the 2004 Act, provided that the application is still effective.
14. At the hearing the Tribunal heard evidence from the Respondent that, following Mr Sidhu being informed by the Council on 11 July 2019 that the Property was not licensed in accordance with the Housing Act 2004, Glenthorne applied to the Council for a licence on 18 July 2019.
15. Evidence that the licence application was made on 18 July 2019 was not in the bundles before the tribunal but Mr Trebacz was able to show the tribunal and the Applicants at the hearing a copy of an e mail from the Council to Glenthorne dated 18 July 2019 acknowledging receipt of an application for a HMO Licence. As a Licence being issued on 19 November 2019 pursuant to this application the tribunal consider that an application was duly made on 18 July 2019 and that accordingly the Applicants cannot seek a RRO in respect of rent paid after that date.

The rent in respect of which the RRO can be made.

16. By section 41(2) of the 2016 Act a tenant may only apply for a RRO if the offence was committed in the period of twelve months' ending on the day when the application was made. Here the application was received on 6 August 2019.. The offence was committed from September 2018 until 18 July 2019, the date on which the valid application for a licence was made. The applicants did not provide payment details prior to September 2018 so the tribunal can only take into account the period from September 2018 to July 2019.
17. The 2016 Act gives the Tribunal discretion as to the amount of the order. The amount must not exceed the rent paid by the tenants during the relevant period, less any award of universal credit paid to any of the tenants. In their application the Applicants confirmed that they were not in receipt of any state benefits and that they paid the rents from their earnings.
18. Accordingly the maximum sum that can be the subject of a RRO is £32,415; the rent paid in August 2019 being excluded.

The tribunal's discretion in making an RRO

19. Under section 43(1) of the 2016 Act the tribunal may make an RRO; it is not required to do so. In the circumstances of this case, in particular the failure of a professional managing agent to realise that a RRO licence was required the tribunal consider that it is appropriate to make an RRO.

20. In his witness statement Mr Stephen Giddings of Glenthorne stated that Glenthorne had believed mistakenly that as the tenancy was a single joint tenancy, with two tenants being a couple, the Property did not need a HMO licence. He stated that, "it is difficult when all the London boroughs and indeed local authorities throughout the country interpret the HMO regulations differently".
21. The tribunal do not accept that this is an acceptable reason for Glenthorne not having advised the Respondent of the need for a HMO Licence. The need for a licence here is for a mandatory licence, not an additional or selective licence. It falls within a national scheme which is not subject to alteration by individual housing authorities. There is no excuse for a firm of managing agents to be unaware of mandatory licensing requirements eleven years after the legislation has been brought in.
22. Accordingly, by reason of Glenthorne's failure to obtain a HMO licence, the tribunal consider that it is appropriate to make a RRO.

The amount of the RRO

23. In determining the amount the respondent might be required to repay the tribunal should have regard to section 44(4) of the 2016 Act, which requires the tribunal to have regard, in particular, to the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applies.
24. It was accepted by the Applicants that the Respondent had not been convicted of an offence to which the relevant chapter of the 2016 Act applies.
25. The conduct of the landlord:
 - (i) The Applicants and Ms Hancock of Glenthorne did not agree as to whether Ms Hancock had stated that the Property had a HMO Licence before four of the Applicants (with one other person no longer a tenant) entered into their previous tenancy agreement. In giving evidence Ms Hancock did accept that at that time she might not have known of the need for the Property to have a licence. There was in the bundle a copy e mail from Mr Duncan to Ms Hancock of 28 November 2017 which queried the existence of a HMO licence, which Ms Hancock said she had not previously seen. The tribunal heard evidence that Mr Duncan had assumed that the HMO licence existed when Ms Hancock had told him that there were no issues with the Applicants continuing as tenants and the Tenancy Agreement was subsequently completed.

- (ii) The Applicants complained that the Respondent and his builder had entered their bedrooms without having given them notice of his intention to do so, in breach of clause 3.17 of the Tenancy Agreement. In his witness statement Mr Adams stated that he had asked Glenthorne to notify the tenants of the proposed inspection. In his witness statement Mr Giddings stated that the landlord's request had been sent to a member of Glenthorne's staff who was on holiday so that the tenants were not given the requested notice.
 - (iii) Mr Trebacz drew the tribunal's attention to the amount of money that Mr Adams had expended on bathroom refurbishment during the relevant period (£18,000), which sum included some elements of repair and some of improvement to the bathroom fittings. He also drew attention to the fact that the landlord had obtained all necessary Gas Safety records and a Domestic Electrical Installation Certificate and Condition Report.
- 26. The conduct of Mr Adams himself has been good; he has clearly been prepared to invest in the Property. He is not a professional landlord but did employ a managing agent, who is his agent. Glenthorne should have been aware of the relevant HMO requirements. As a non-resident landlord Mr Adams should have been entitled to rely on Glenthorne behaving in a professional manner and he appears to have been let down by their conduct, both as to their knowledge of as to the requirements for mandatory HMO licences, and to passing on notice of his intended visit to the Property.
- 27. The financial circumstances of the landlord: The Directions invited the Respondent to provide a statement as to any circumstances that could justify a reduction in the RRO and evidence of any outgoings. The only evidence of outgoings to which the tribunal was referred was the cost of the bathroom refurbishment.
- 28. The tribunal do not consider that this is a cost that justifies a reduction in the amount of the RRO.
- 29. In determining the amount of any RRO, the tribunal has 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.

30. Taking into account the conduct of the landlord, but more particularly that of Glenthorne, his agent, the tribunal determines that the respondent should repay Mr Duncan, on behalf of the Applicants the sum of £21,069.75 by way of RRO.

Name: Judge Pittaway

Date: 21 January 2020

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

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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

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.

