



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

Case reference : **LON/00AG/HMF/2019/0001**

Property : **Flat 28 Laney House, Portpool Lane,
London EC1N 7UL.**

Applicant : **Mr. J. Bridge.
Mr. O. Patterson.
Mr. A. K. Miyashiro.
Mr. V. Ovenshi
Mr. C. Uysal.**

Represented by: : **Mrs. J. Bridge.**

Respondent : **Mr. M. K. Miah**

Represented by : **In person.**

In attendance : **Mrs. Bridge on behalf of the
applicants.
Mr. O. Paterson
Mr. V. Ovenshi
Mr. A. Miyashiro.
On behalf of the respondents:
Mr. C. Oakley of Carter Reeves
Mr. M. Miah
Ms. A. Begum – Mr. Miah’s daughter**

Type of application : **Application for a Rent Repayment
Order under S.41(1) and 41(2) Chapter
4 of Part 2 of the Housing & Planning
Act 2016.**

Tribunal : **Ms. A. Hamilton-Farey.
Mr. D. Jagger FRICS**

**Date and venue of
hearing** : **27 January 2020
10 Alfred Place, London WC1E 7LR**

Date of decision : **27 January 2020.**

DECISION

Decision:

- a. The tribunal makes a Rent Repayment Order (“RRO”) amounting to **£32,760.00** in relation to the above application, representing 70% of the rent paid during the period from 1 August 2017 until 31 July 2018.

Background:

1. By an application dated 1 December 2018, the applicants applied for a Rent Repayment Order (“RRO”) under the Housing and Planning Act 2016 in relation to the subject premises during the period when the property required an HMO Licence but did not have one. The amount claimed in the application is £46,800.00 and relates to the 12-month period beginning on 1 August 2017 and ending on 31 August 2018, that is however a 13-month period and the tribunal considers the appropriate period to have ended on 31 July 2018.
2. Directions were issued by the tribunal on 10 January 2019. Following correspondence from the respondent, a preliminary hearing was held on 20 March 2019 for the purposes of identifying the landlord in these proceedings. The landlord attended that hearing in person, the tenants were represented by Ms. Bridge. By a decision dated 25 April 2019 the tribunal identified the landlord as Mr. Mohammed Khalique Miah.
3. Further directions were issued by the tribunal on 2 May 2019.
4. The respondent sought leave to appeal the tribunal’s preliminary decision, the tribunal refused leave to appeal on 26 July 2019, with the respondent being informed of their right to make a further application to the Upper Tribunal (Lands Chamber). No appeal was made and the preliminary decision of the tribunal therefore stands.
5. The tribunal varied directions to bring this matter to hearing, today 27 January 2020 and required the parties to provide bundles of documents on which they wished to rely. The applicants provided their bundle in good time for the hearing, but nothing further was heard from the respondent after a letter of 1 October 2019.
6. At one time the respondent was represented by Ingram Winter Green LLP, Solicitors, but they came off the record on 20 August 2019 since which time the tribunal and applicants have corresponded directly with the respondent.

7. Having not hearing from the respondent and not received a bundle, the tribunal debarred him from taking any further part in the proceedings by a decision of 1 November 2019. The respondent took no action with respect to that debarring order, and he was therefore barred from taking any further part in the proceedings.

The Hearing:

8. The tribunal held a hearing on 27 January 2020. The parties present at the hearing are identified on this decision.
9. Mr. Oakley of Carter Reeves, the respondent's letting agents, attended on behalf of the respondent who also attended in person, accompanied by his daughter Ms. Begum.
10. The applicants were again represented by Mrs. Bridge, with Mr. Paterson, Mr. Ovenshi and Mr. Kanaris in attendance.

Application to lift the bar against Mr. Miah.

11. At the start of the hearing, the tribunal discussed with Mr. Miah why he had not responded to correspondence or filed a bundle. He replied that he had a poor command of English and could not read or write. He informed us that his daughter helped him with matters, but that he had relied on Carter Reeves in relation to the licensing of the property. He confirmed that he had been represented by Ingram Winter Green LLP, but that when they requested further funds, he de-instructed them and they handed back all the papers. He told the tribunal that he did not understand the term bundle or what evidence he had to provide to prove his case.
12. Mrs. Bridge opposed the lift of the bar preventing Mr. Miah from presenting his case. She said that the case had been postponed on several occasions due to the respondent not complying with directions, that she had telephoned him directly and asked him for his bundle whereupon Mr. Miah said that he did not know anything about the matter. She said that Mr. Miah frequently denied any knowledge of the proceedings.

Decision in relation to the application to lift the bar.

13. The Tribunal confirmed to the parties that it was not satisfied with Mr. Miah's explanation as to why he had not complied with directions or responded to correspondence since October 2019. Mr. Miah said that he relied on his agents and daughter, both of whom were at the hearing.
14. We therefore confirm the bar against Mr. Miah presenting any evidence to the tribunal. Later in the hearing we did allow Mr. Oakley to put his case in relation to the application.

Substantive Hearing and Decisions:

15. All references in this decision to documents in the bundle are identified by page numbers within [] brackets.
16. A brief history of this matter is that in July 2017, one of the tenants, Mr. Paterson identified a property on Rightmove that would accommodate himself and his four companions. A holding deposit was paid to the agents, Carter Reeves with the balance of the fees and first months' rent being paid on or around 2 August 2017.
17. The tenants collectively say that they attended the agents' offices and signed the tenancy agreement, but were not given the Right to Rent booklet or a copy of the signed agreement. The tenancy commenced on 1 August 2017 and the tenants occupied in stages over a short period of time. A check-in inspection was attended by Mrs. Bridge on behalf of her son John at which she identified several issues with the property.
18. A copy of the report of the identified defects dated 31 August 2017 is in the bundle at page [44]. In this report, Mrs. Bridge identified dirty fixtures and fittings, a lack of mattresses, a broken window to bedroom 3, defects with furniture, the lack of an operational shower and the toilet cistern not operating correctly.
19. At the start of the tenancy, the tenants say they were told by Mr. Michael Miah of Carter Reeves that if they had any problems they were to inform him, and that he had an 'informal arrangement' with the landlord to get matters resolved and that the landlord was a 'fair' man. Mr. Bridge then contacted the agents to report the lack of progress with repairs and says that he found the agents to be aggressive and less than helpful, and although some of the issues were subsequently resolved the problem with the shower and toilet remained until the end of the tenancy.
20. The tenants received a 'round-robin' letter from the London Borough of Camden on or around 27 June 2018, suggesting that the property was an HMO and did not have a licence. The letter at page [E1] states that the landlord has been instructed to apply for a licence, or provide evidence that the property was not an HMO.
21. A standard enquiry form was sent to the respondent who replied [E5] that the agents were retained on a 'let only basis' and that he was confused about the difference types of HMO, and that he had applied for a licence immediately. It appears from this response that the respondent was aware of the need to obtain an HMO licence, and the tribunal notes that one was issued to a Mrs. Miah on 14 June 2019, subject to certain conditions [F60]. It has been noted by the tribunal that this licence permits the property to be occupied by a maximum of three persons.
22. Because of failure to licence the Local Authority served a Notice of Intent to impose a financial penalty on 3 December 2018. This was

preceded by correspondence from the Local Authority regarding the alleged offence of operating an HMO without a licence. A Final Notice has been served on the respondent, and he has made an application to this tribunal against that penalty. Those proceedings have been stayed pending this decision. The tribunal will therefore inform the parties that application in relation to the financial penalty will no recommence and if necessary further Directions will be issued.

23. The tribunal heard from Mr. Paterson who confirmed the history above and outlined the problems the tenants had encountered with the property. He said that the tenants considered they should receive 100% of their rent in the Order because of the condition of the property and the lack of maintenance by the landlord. He also said that originally it had been agreed the monthly rent of £3,900 would include utilities and WiFi, but these did not materialise and the tenants paid for their own supplies.

Mr. Oakley:

24. Mr. Oakley although stating that he was a barrister confirmed that he was part qualified. He also confirmed that he had only been instructed on this matter on 24 January 2020 and had not had sufficient time to prepare. We consider he did the best he could in the circumstances.
25. He said that a repayment of 100% of the rent would cause the respondent serious financial hardship, although he did not elaborate on his client's financial circumstances.
26. He accepted that there had been a 'clerical' error between the landlord and the agents. He suggested that the respondent had instructed the agents to obtain the requisite licence, but that the relevant person within the agency may have left the practice without doing so. This does not in our view, excuse the landlord from obtaining a licence at the relevant time.
27. Mr. Oakley also said that any repayment should be based on how much the applicants had been inconvenienced during the tenancy and that, they had applied to the landlord for a rent reduction at the end of the term, with a view to renewing the tenancy. We do not have any evidence to support this statement.
28. He also suggested that the lack of shower/toilet facilities were a 'minor inconvenience' and the tenants should have had the repairs carried out themselves and presumably deducted any costs from the rent. The tribunal suggested to Mr. Oakley that, in practice, this would not be a tenant's usual course of action, because the landlord would likely deduct any withheld rent from the deposit at the end of the tenancy.
29. He also felt that, if the tenants had noticed the disrepair at the start of the tenancy, they should have asked for their money back and not taken up occupation. We disagree. The tribunal is dealing with 'novice'

tenants. In our experience if the tenants had suggested to the agents they be released from their tenancy and not take up occupation, there would have been a financial penalty for doing so, and that the respondent would not have refunded all the money as claimed. We find that proposition to be not based on any evidence.

Mrs. Bridge:

30. Mrs. Bridge on behalf of the applicants says that the strongest penalty possible should be levied against the respondent due to his blatant disregard of the licensing laws and security of the tenants.
31. She continued that any RRO should be a strong penalty and should cause financial hardship so that the landlord would manage his properties in accordance with the relevant legislation.

The Tribunal's determination and reasons:

32. The tribunal matters for which the tribunal must be satisfied, 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?

33.

34. We are satisfied therefore from the applicants' evidence and the lack of dispute by the respondent in relation to the property that it was let as an HMO, and was subject to the mandatory licensing scheme, and was not licensed.

35. We have considered the evidence submitted by the parties.

Did the property require a licence?

36. There is no dispute between the parties that the property was a licensable HMO.

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

37. There is no dispute between the parties that the tenants had a tenancy agreement from 1 August 2017 until 31st August 2018, and it is therefore not disputed that the tenants were in occupation during the period for which the RRO is claimed.

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

38. The tribunal is satisfied that the property required a licence and had not been licensed during the tenancies, and that it is only since the end of the tenancy that a licence has been given, subject to conditions, and this is not in the name of the Respondent. The tribunal is therefore satisfied that an offence has been committed.

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

39. The maximum that the tribunal can order is the total of 12-months' rent during the period before the application was made. The tribunal is satisfied that the period under consideration is 1 August 2017 to 31 July 2018 (a 12-month period).

40. The maximum amount that can be order is $12 \times \text{£}3900.00 = \text{£}46,800.00$.

What account must be taken of:

41. The conduct of the landlord: the applicants have shown to the satisfaction of the tribunal that the landlord knew of the requirement to licence the property, but failed to do so.

42. Sufficient opportunity was given to the landlord to make a reply to the application and deal with the procedural matters, but he has failed to do on more than one occasion. This has resulted in inconvenience to the applicants, through attendances at hearings and attempting to deal with the application.

43. It is not sufficient in this tribunal's view for the landlord to rely on an excuse of 'miscommunication' between himself and his agents. One must assume without evidence to the contrary, that the landlord understands the relevant legislation in the letting of HMO's, and that if he does not, then he has had an opportunity to take professional advice.

44. The financial circumstances of the landlord: the tribunal was told that the order for the full amount claimed would cause the landlord financial hardship, but no evidence of this has been supplied.
45. The conduct of the tenant? Mr. Oakley suggested that the tenants should have done more for themselves in attending to repairs (to the toilet), we find on our experience that tenants would generally not do so, and are prevent from doing so under the terms of the usual AST. In this case, we find the tenants could have at least threatened to have repairs carried out and deduct the cost from their next rental payment, but appear to have been content to fill up the toilet manually, and shower away from the property. Given the levels of rent being charged to each tenant (£780.00 per room), we find this lack of some action to be reflected in any Order.
46. We also take into consideration that most of the repairs complained of at the start of the tenancy were remedied, albeit in a haphazard manner (window being boarded up instead of replaced), and that there is no evidence before us of the reports of further disrepairs that were not attended to.
47. Although the tenants now say that their occupation of the property was stressful, they have not provided any evidence to demonstrate any additional dissatisfaction or how they contacted the agents/landlord to have matters resolved.
48. On balance the tribunal concludes that the lack of action on the part of the tenants until the end of the tenancy should be taken into consideration.
49. We therefore make a Rent Repayment Order of 70% of the amount claimed which in our view reflects the difficulties encountered by the tenants during the tenancy and the behaviour of the landlord in respect of the licensing requirements. The sum payable to the tenants is therefore **£32,760.00**. The landlord should pay this sum to the tenant's representative within 28 days of this decision, the representative will then deal with any apportionment between the tenants concerned.

Name:

Ms. A. Hamilton-Farey
Mr. D. Jagger FRICS

Date:

27 January 2020