



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

Case reference : **LON/00AG/HMF/2019/0060**

Property : **Flat 14 Hogarth Court, St. Pancras
Way, London NW1 9EH**

Applicant : **Mr Alan Mejia-Maza**

Representative : **Mr Langwallner - Counsel**

Respondent : **Zuhoor Bakir Marikar (1)
Qadir Marikar (2)
RentaroominLondon Limited (3)**

Representative : **Non-attendance**

Type of application : **Application for a rent repayment
order by tenant Sections 40, 41, 43, &
44 of the Housing and Planning Act 2016**

Tribunal : **Tribunal Judge Dutton
Mr M Mathews FRICS**

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

Date of hearing : **5th February 2020**

Date of decision : **5th February 2020**

DECISION

DECISION

The Tribunal determines that by reason of section 40(3) of the Housing and Planning Act 2016 (the 2016 Act) and section 72(1) of the Housing Act 2004 an offence has been committed of failing to licence the property at Flat 14 Hogarth Court, St. Pancras Way, London NW1 9EH (the Property) and that a Rent Repayment Order in the sum of £8,326 should be paid by the Respondents, on a joint and several basis, to the Applicant within 28 days of the date of this decision.

BACKGROUND

1. The tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) on 4th September 2019.
2. The application alleged that the first and second Respondents, the leasehold owners of the Property, and RentaroominLondon Limited, their agents, had the control and management of the Property and had failed to obtain a licence for same. It is said that the Property required to be licensed under Camden Council's borough wide additional licensing scheme introduced in December 2015 (the Scheme). This required that any property within the Council area having three or more persons sharing a property, who were not a family, was required to be licensed as it was an HMO. It is suggested by the applicant that in addition the respondents have fallen foul of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (the Order).
3. The history of the occupancy is briefly as follows and is taken from the applicant's witness statement dated 5th September 2019. It would seem that he entered into an AST in August 2017 with the first and second respondent, the third respondent signing same on their behalf and receiving the deposit and subsequently the rent, although it appears to be paid to Mr S Hussain, a director of the third respondent. Initially the agreement was for 12 months commencing 4th August 2017 at a monthly rent of £737.00 inclusive of cleaning at £24 per month and utilities estimated at £13 per month. No copy of the agreement was supplied despite the applicant requesting same. The applicant moved into the Property on 4th September 2017 and remained until April 2019 when it appears that notice to quit was served in March 2019 and there then followed the removal of sanitary ware and doors from the Property.
4. The statement at paragraph 16 sets out the rent paid in the period 8th May 2018 to 30th April 2019. In the last two months the rent claimed is reduced by the sums of £40 and £60, being the electricity costs the applicant met,

which were refunded to him, it seems by way of set off against the rent. The applicant sought the sum of £8,400, being 12 month's rent at the net figure of £700 per month.

5. The Respondents, either individually or collectively, have failed to participate in these proceedings. The only address for the first and second respondents appears to be the Property address as the register of title shows no other address for them. Nonetheless papers were sent to that address by the tribunal. The third respondent has an address at 6 Domingo Street, London, EC1Y 0TA to which documents have been sent by the tribunal, without response. It appears that the applicant's representative, LegalRoad Limited had sent the applicants bundle for the hearing to all three respondents. It would appear that an application to licence the Property was made on 1st May 2019, although it is not known who made the application.
6. In the bundle prepared for the hearing, which was in good order, the following documents were provided; the application; the applicants witness statement with exhibits; copies of the Company register for the third respondent; copy bank statements showing the monthly rental paid; receipts for the electricity the applicant paid for; a letter from Camden confirming the offence and sundry other papers.

HEARING

7. Mr Langwallner represented the applicant. He submitted that the respondents were in breach of their licensing obligation, in particular the failure to licence the Property under the Council's Scheme. It was also suggested that there was a failure to licence under the 2018 Order but this was not pursued at the hearing.
8. We were referred to the applicant's witness statement to assess the liability of the respondents under an RRO. It was said that the applicant was entitled to recover 12 month's rent for the period 8th May 2018 to 30th April 2019. As stated above the application was issued on 4th September 2019 and the offence under s72(1) and the 2016 Act had been committed within the 12 month period of the application and accordingly the sum claimed was due and owing.
9. In answer to questions from the tribunal the applicant confirmed that the cleaning costs were £24 per month for him and that he had estimated his contribution to extras, that is to say electricity and Wi-Fi, was £13 per month, based on the payments he made for electricity for the whole flat in March and April of 2019.
10. Mr Langwallner asked that there be a refund of the tribunal fees totalling £300 and that the applicant had spent in monetary terms some £500 on preparing the hearing bundle, although no receipts were available. We were also told that the fee arrangement he had with LegalRoad Limited resulted in them receiving a share of the award, although presumably not until the

award has actually been paid by the respondents. A claim for costs was raised and the applicant was advised of his entitlement to seek costs under the provisions of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 (rule 13).

FINDINGS

11. We accept that the Property falls within the definition requiring licensing under the Council's Scheme. As to whether there is also an offence under the Order is not clear. The Council, at the time of their inspection on 20th March 2019, found that there were five tenants in four households. However, it is not clear how long that may have been the situation. It seems to us it matters little as there appears to be no doubt that an offence has been committed under the Council's Scheme. Such an offence continues until the application for a licence was made on 1st May 2019. It would appear that the offence commenced in August 2017 and continued until the applicant vacated in April 2019. The period for which the RRO is claimed therefore complies with the 2016 Act requirements, as set out below.
12. We therefore need to consider the amount that we should order by way of RRO. We have no input from the respondents. We have accepted the applicants case that he has paid 10 months of rent at £737 per month and two months at a reduced rate of £697 and £677 per month, to reflect the credit for the electricity he paid for. From the £737 we accept that a reduction of £37 appears appropriate to reflect the cleaning and utility costs, thus reducing the sum for the 10 month period to £700 per month. In respect of the month of March 2019 not only should there be a reduction, already conceded, of £40 in respect of the rebate made by the respondents for the electricity, but it should be further reduced by £24 to reflect the cleaning, giving an amount claimed of £673. In respect of April 2019, the same reductions must be made for cleaning giving a sum due of £653.
13. There are no issues of conduct on the part of the applicant. The same cannot be said of the respondents given the conduct surrounding the removal of sanitary ware and doors and the notice to quit, which would not appear to allow the two month period required by statute.
14. The maximum amount that can be awarded is £8,844. We have considered the judgment in Parker v Waller. In our finding this is still good law, notwithstanding the introduction of the 2016 Act. From the maximum sum we can make deductions to reflect the utilities and cleaning, as has already been properly conceded by the applicant. After making such allowance we find that the sum required to be paid by way of RRO is £8,326. This differs slightly from the amount discussed at the hearing but only as a result of a mathematical error of £4 on our part, for which we apologise. There is no reason before us to further reduce this amount as we have no information from the respondents as to their collective or individual financial circumstances.

15. As to liability, it is clear that the first and second respondents are the applicant's immediate landlords. It is also clear that the third respondent is their agent and received the rent. We therefore find that the liability to pay the RRO is a joint and several one and it will be for the respondents to resolve between themselves who pay what amount. The sum we have found as payable should be paid within 28 days of the date of this decision.
16. We also consider it would be appropriate for the respondents, again jointly and severally to refund to the applicant the application and hearing fee totalling £300, again within 28 days of the date of this decision.
17. We will leave to the applicant to consider whether there has been such conduct as to entitle him to apply for costs. He is referred to the case of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC), for guidance as to how the tribunal exercises its discretion in these cases.

Name: Tribunal Judge Dutton **Date:** 5th February 2020

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

The Relevant Law - Housing and Planning Act 2016

⁴¹Application 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 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).

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.

<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 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

47 Enforcement of rent repayment orders

(1) An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2) An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3) The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.