FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BG/HMK/2019/0072**
Property	**:**	**242 Leamore Court, 1 Meath Crescent, London E2 0QA**
Applicant	**:**	**Missab Tariq Jilani (1) Peter Nicholas Hartshorn (2) and Geraint Davies (3)**
Representative	**:**	**Miss Jilani**
Respondent	**:**	**Ms Omelia Poala Bertoli Hart**
Representative	**:**	**In person**
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 D Jagger MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**17th February 2020**
Date of decision	**:**	**17th February 2020**

DECISION

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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 242 Leamore Court, 1 Meath Crescent, London E2 0QA (the Property) and that a Rent Repayment Order in the sum of £6,600 should be paid by the Respondent to the Applicants 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 Ms Jilani for a rent repayment order (RRO) on 20th November 2019. On 19th December 2019 Mr Hartshorn and Mr Davies counter signed the application and were then parties to the application (the Applicants).

2. The application alleged that the Respondent, the leasehold owner of the Property 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 Tower Hamlets additional licensing scheme introduced on 1st April 2019 (the Scheme). This required that any property within the Council area having three or more persons sharing a property, in two or more households, was required to be licensed as it was an HMO.

3. The history of the occupancy is briefly as follows. On 11th May 2019 the Applicants entered into an assured shorthold tenancy for a term of 12 months less one day, expiring on 10th May 2020. The monthly rental was £1,950. It is said by the Applicants that they were unaware that the Respondent had retained premises within the flat for her own use and occupation. Further, it would seem that there was only one electricity meter for the flat and the Applicants were paying for the electricity used by the Respondent when she occupied, which we were told was about one week per month.

4. Prior to the hearing on 17th February 2020 we were provided with bundles of papers from both parties. The Applicants bundle included a statement of case, the tenancy agreement, copies of the Land Registry details for the Property, two letters from Tower Hamlets, the first dated 10th October 2019 addressed to the tenant/occupier and the second dated 25th October 2019 addressed to the Respondent at her Nine Elms address. There were copies of emails passing between the parties concerning payment of the licence fee and allegations of nuisance, correspondence with the letting agents and with the Property Ombudsman and other documents, the contents of which we noted. Evidence of payment of rent during the period for which it is said the offence was committed was also included.

5. The Respondent's bundle contained a statement of case, in which she accepted that the Applicants were entitled to an RRO, documents common to both sides, such as the tenancy agreement, evidence of rental payments, details of the Property and copies of correspondence with the tribunal and the directions. In addition, we were provided with documents said to go to the financial position of the Respondent to which we shall return.

HEARING

6. Ms Hart told us that she had applied for a licence as soon as she was aware that one was required, which was not until October 2019. She had employed an agent and they had not told her a licence was required for the Property. She thought that as she occupied a self-contained part a licence was not required. Further, that as the tenants were included in one agreement they were in effect 'related' and constituted one household. She admitted that she had become somewhat confused as to the requirement to licence the Property but had applied for a licence on 31st October 2019 and paid for same shortly thereafter.

7. She told us that the Applicants were aware that she occupied part of the Property, which she used when she came to London for medical treatment, about one week a month. She owns two other properties, 92 Crimsworth Road, London SW8 4RL, which it would seem her daughter occupies and lets for her, the Respondent receiving the income and a property in Devon, which is also let.

8. Allegations were made that the Applicants had been troublesome, playing music loudly and apparently installing a punch bag on the balcony, although it would seem this was removed when requested.

9. We were told that her only income was from the lettings, which was in excess of £3,000 per month. She had a substantial mortgage obligation and service charge payments to make, as evidence by documentation in support.

10. In response Ms Jilani denied that they were aware the Respondent was intending to reside at the property, nor were they aware that the electricity was from one meter and that they were paying for the Respondent's usage. She complained that the respondent had made complaints about music and the punch bag, the latter having been removed as soon as the complaint was raised.

FINDINGS

11. The Respondent accepted that the Property required a licence and that an offence had been committed for which an RRO could be made. She sought to ameliorate her position by arguing that she was not aware of the licensing requirements, which only came into effect on 1st April 2019. Further she did not initially consider that she needed to licence the Property because she lived there, albeit in a self-contained unit and that the Applicants were one unit and not three individuals sharing. She does now accept the need to licence the Property and as soon as she discovered the need she applied for

same. Email correspondence in which the Respondent suggests the Applicants could be one unit, or that they should pay for the licence were noted.

12. We accept that the Property falls within the definition requiring licensing under the Council's Scheme. It was accepted by the parties that the period for which an RRO could be made was from 11th May 2019 to 31st October 2019, some 173 days. This gave a maximum sum payable of £11,090 was agreed by the parties. This is based on a daily rate. If one calculated the rent on a monthly basis it would be 5 months at £1,950 (£9,750) and 20 days at £1,258 giving a total of £11,008.

13. We therefore need to consider the amount that we should order by way of RRO. In truth there is no conduct on either party's behalf that we consider needs to be considered. The allegations against the Applicants are not relevant, nor is the conduct of the Respondent. The electricity liability is questionable. The Applicants say they were not aware of the resultant obligation to pay the Respondent's share and the Respondent made no offer to reimburse the Applicants, although it would seem she was only there for about one week a month. Although it was raised as an issue by the Applicants they did not suggest an answer.

14. We accept that the Respondent was not aware of the obligation to licence the flat. When she discovered that requirement she proceeded to apply for a licence. The attempts to suggest that the Applicants were one family was, we find, consistent with the misplaced understanding she had, but clearly erroneous. The request that the Applicants pay for the licence was not of any relevance in our determination as it was soon brought to her attention that this was not the case.

15. From the maximum sum we can make deductions that are relevant. We do not consider that there should be any deduction for the mortgage, which appears to have been taken out to not only replace the original mortgage but to produce funding. In respect of the service charge account at the Property, this is an expense the Respondent would have whether the Property was rented or not. It is clear from the bank account produced that the Respondent is usually overdrawn and although large credits are shown these seem to be paid away, to where it is not known. The Applicants will presumably continue to occupy until the tenancy ends in May this year. Further, it is not suggested that the Property was anything other than a well maintained and well appointed unit of accommodation, as reflected in the photographs annexed to the inventory provided to us.

16. The Act requires that we take into account, in particular, the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of an offence. As we have indicated above we do not consider there are any issues of conduct for us to consider, save perhaps the failure of the Respondent to make some offer to reimburse the Applicants for electricity, although no figure was put to us. The financial circumstances of the Respondent would appear to show that her income is largely derived

from rent and that she operates frequently on overdraft. There is no conviction.

17. The intent of the legislation is to penalise Landlords who do not follow the law and fail to licence properties. We accept that the Respondent is not a professional landlord and would appear to have just the one property in Tower Hamlets. However, that does not obviate the need for her to keep abreast of developments in the private rental market and she should have been aware of the need to licence at the time she entered into the letting with the Applicants.

18. Taking the matter in the round we consider that a penalty of £6,600, being 60% or thereabouts of whatever figure one takes as the maximum, would be the appropriate amount to award to the Applicants to be paid within 28 days of the date of this decision.

Name: Tribunal Judge Dutton **Date:** 17th 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.

43Making 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).

44Amount 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*

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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

47Enforcement 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.