



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

**Case reference** : **CAM/11UF/HMF/2019/0016**  
**HMCTS Code** : **CAM/11UF/HMF/2020/0003**  
**A: BTMMREMOTE**

**Property** : **1 Sabina Close, High Wycombe,  
Bucks HP12 3HF**

**Applicants** : **1. Vincent Taracha**  
**2. Paul Hart**  
**3. James Nwoseh**

**Respondent** : **Mr Ruksar Ahmed**

**Representative** : **Mr Toghil, Fairweather, Toghil and  
Whillis Solicitors**

**Type of application** : **Application for a Rent Repayment  
Order – section 40 of the Housing  
and Planning Act 2016**

**Tribunal member(s)** : **Judge Ruth Wayte**  
**Regional Surveyor Mary Hardman**

**Date of hearing** : **16 June 2020**

**Date of decision** : **30 July 2020**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote audio hearing (A:BTMMREMOTE) A face-to-face hearing was not held because it was not practicable given the pandemic and limited access to court buildings. A bundle was produced by Mr Taracha and Mr Ahmed, with additional documents provided by all of the parties by email. All parties attended the hearing with the exception of Mr Hart. The order made is described below.

### **Decisions of the tribunal:**

- 1. The tribunal makes a rent repayment order of £4,303 against the respondent, to be paid to Mr Taracha within 28 days.**
- 2. The tribunal does not make a rent repayment order in respect of Mr Hart.**
- 3. The tribunal makes a rent repayment order of £2,824 against the respondent, to be paid to Mr Nwoseh within 28 days.**

### **The applications**

1. The applicants seek a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 (“the 2016 Act”). The applicants relied on the respondent having committed an offence under section 72 (1) of the Housing Act 2004, namely being the landlord of a house in multiple occupation (HMO) without the necessary licence.
2. The first application was made by Mr Taracha of Room 1 and directions were given on 18 December 2019. Subsequent applications were made by Mr Hart (Room 3) and Mr Nwoseh (Room 5). They were consolidated and a further set of directions ordered on 18 March 2020. The hearing originally set for the first application on 26 March 2020 was postponed due to the pandemic and all three applications were listed to be heard together in a telephone hearing on 16 June 2020.
3. Unfortunately, there was an administrative error in that the parties were given an incorrect code and therefore there was a delay before the parties dialled in with the correct number. Mr Taracha and Mr Nwoseh represented themselves, Mr Ahmed was also present but was represented by his solicitor Mr Toghill. Mr Hart did not dial in or contact the office in respect of the incorrect details and attempts were made to contact him via telephone and email to no avail. Mr Hart subsequently rang the office and informed them of a change of address but has not been in contact again.

### **The law**

4. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence – in this instance the offence set out in section 72(1) of the Housing Act 2004, the control or management of an unlicensed HMO. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.

5. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO must relate to rent paid by the tenant in respect of a period not exceeding 12 months, during which the landlord was committing the offence. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:
  - 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 that part of the 2016 Act applies.
6. Following the hearing, the tribunal became aware of the Upper Tribunal's decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC). That decision, which is binding on this tribunal, sets out how applications under the 2016 Act are to be considered. In particular, Judge Elizabeth Cooke held that the starting point is the rent itself for the relevant period of up to 12 months. The previous practice of deducting landlord's expenditure should not be followed (apart from payment for utilities) and the only basis for deduction is section 44 itself, as set out above. The respondent's case had relied heavily on evidence of expenditure rather than his personal finances and the tribunal therefore gave him a further opportunity to provide relevant information and the applicants an opportunity to respond. Further information was received from the respondent on 2 July 2020 but no response has been received from any of the applicants as at the date of this decision. The respondent's financial circumstances are considered at paragraphs 18 and 19 below.

## **Background**

7. The property was described in Mr Taracha's application as a house with 7 bedrooms (it transpired that the garage had been converted into a bedroom). Mr Taracha, his wife and two children occupied two rooms, which included kitchen facilities but shared the bathroom with the other occupants. They moved into the property on 18 February 2016 and were eventually rehoused by the council in December 2019. Mr Hart moved into the property on 30 July 2016 and vacated on 16 April 2019. Mr Nwoseh moved into the property on 31 August 2016 and vacated on 3 September 2019.
8. Although as a two-storey property it did not initially require an HMO licence under the Housing Act 2004, there was no dispute that a licence was required from 1 October 2018 when the definition of an HMO was changed to include properties with two storeys or less. Until the

hearing, there was also no dispute that the respondent had applied for a licence on 14 April 2019, which would bring his period of offending to an end on that date. The respondent subsequently pleaded guilty to a number of offences in relation to this and another property on 29 January 2020.

9. At the hearing Mr Toghill submitted that the licence had actually been applied for online on 5 April 2019 and that the council had confirmed that the offence only ran to 6 April 2019. He sought to rely on a new document from the council to support that claim which had not been sent to the applicants or the tribunal and was not a memorandum of conviction. The tribunal decided, in the absence of the memorandum of conviction and in the light of the objections to the new evidence from Mr Nwoseh in particular, to refuse permission to allow this new evidence. There was no good reason why this evidence could not have been sent earlier and it was no better evidence than the letter from the council dated 14 November 2019 which confirms that the licence was applied for on 14 April 2019 (included in Mr Ahmed's bundle). Mr Toghill accepted the tribunal's ruling.

### **The issues**

10. Having decided that any RRO would therefore be based on rent paid from 1 October 2018 to 14 April 2019, the tribunal therefore also needs to decide whether to make an RRO and in determining the amount, to take into account the factors spelt out in section 44 of the 2016 Act. The tribunal considers each applicant's case in turn.

### **Mr Taracha**

11. The tribunal first considered the amount of rent paid during the relevant period. Mr Taracha's rent was £200 per week from 1 October 2018 through to 31 December 2019 and then increased to £225 from 1 January 2019. He had provided his bank statements as proof of payment and Mr Toghill pointed out that there appeared to be a gap from 12 April to 25 April 2019. In the circumstances the tribunal has determined that the rent paid during the relevant period was £5,858.13.
12. The tribunal considers that this is an appropriate case for an RRO. Mr Ahmed admitted the offence and produced no argument as to why the tribunal should refuse to make an RRO. Mr Taracha's rent was inclusive of utilities, however, and therefore a deduction needs to be made to reflect his usage before consideration of section 44 of the 2016 Act as set out above. The respondent had provided a schedule of expenses in his bundle. Mr Toghill argued that utilities and council tax amounted to £914.10 per tenant which should be deducted from the rent to produce the maximum amount. Mr Taracha did not object and in the circumstances the starting point for the RRO is £4,944.03.

13. As set out above, when considering the amount of the RRO the tribunal must take into account in particular the conduct of the landlord and tenant, the financial circumstances of the landlord and any conviction.
14. In terms of the landlords' conduct, it was clear that he had a good relationship with Mr Taracha before the claim for a RRO. In particular, Mr Ahmed allowed Mr Taracha to use his personal storage facility as well as giving him a separate secure storage shed at the property rent-free, extended his room by providing a private kitchen as well as a living area, paid his wife to clean the property and assisted his move to his new property, as well as allowing the couple to take their bed with them. Mr Taracha did not deny any of the assistance but felt Mr Ahmed could have helped him to be rehoused earlier and was angry about the refusal to return his deposit.
15. In terms of the tenant's conduct, Mr Ahmed felt that Mr Taracha had left his rooms "in a disgusting state" which cost him over £1,400 to remedy for the next tenant. That was the reason why he refused to return the deposit of £278. This was hotly contested by Mr Taracha who pointed out that he and his family had been there for almost 4 years.
16. The tribunal considers that Mr Ahmed's conduct in terms of the provision of additional services at no cost to Mr Taracha is something that should be taken into account in relation to the amount of the RRO. In particular; the storage, assistance with moving and the gift of the bed. The tribunal does not consider that any further deduction is due in relation to Mr Taracha's conduct given that his deposit was retained by Mr Ahmed as a contribution towards the cost of remedying any damage to the room over and above fair wear and tear.
17. In terms of the amount: Mr Ahmed had provided a schedule which valued the storage for the entire period of the tenancy at £1,673.10, the removal cost at £264 and the bed and mattress at £280. The actual period of the RRO is some 28 weeks which would reduce the storage cost to £236.60, the removal cost is documented but the price for the bed and mattress is for the new replacement rather than the bed that had been used by Mr and Mrs Taracha throughout their tenancy. Doing the best we can with the evidence before us, the tribunal determines that the sum of £640.60 should be deducted from the maximum amount, which allows £140 in respect of the value of the bed given to Mr Taracha.
18. Next, Mr Ahmed's financial circumstances. At the hearing, Mr Ahmed relied mainly on his schedules of expenditure in respect of the property, although he also produced his tax calculation which showed a profit from UK land and property for the year ended 5 April 2019 of £35,526. He gave evidence that he owned 6 properties in total. He was paying the fine of £17,000 he had received following his conviction for housing offences in respect of this and another property at the rate of £1,500 per month. He also stated that the Covid pandemic had reduced his

current income considerably, with 30% of rooms remaining empty and hardly any enquiries from new tenants. In the additional evidence provided after the hearing, he provided a copy of his current bank statement showing an overdraft of some £13k, evidence to support his claim of vacancies and evidence of increased rent arrears due to the pandemic, all to support his claim of financial hardship.

19. The tribunal accepts that the Covid pandemic has had an impact on the respondent's finances, although as the respondent's agent points out in his email dated 26 June 2020: "*The good news is that the applicant pool is filling up, we are getting phone calls and we are starting to get people through the doors.*" In the circumstances, the tribunal considers that the current problems with vacancies are likely to be short lived. Although the respondent has a large overdraft on at least one bank account and filed a return indicating a relatively modest profit for 2018/19, he does own 6 properties and it is therefore difficult to agree that he suffers from financial hardship in the real sense. In the circumstances and in the light of the very clear steer of the Upper Tribunal in *Vadamalayan*, the tribunal determines that no further reduction is due in respect of his financial circumstances.
20. Finally, the respondent's convictions. The fine for the property came to £9,000 in respect of the licensing offence plus 5 unspecified offences of failure to comply with regulations in respect of the management of an HMO. The Notice of Fine and Collection Order dated 30 January 2020 states that he must pay a total of £17,304 to include another three offences in relation to a different property, the victim surcharge and costs. As stated above, payment is by monthly instalments of £1,500 starting from 31 January 2020. At that rate the debt would be cleared within a year.
21. It is unclear whether the fact that the landlord has been convicted of a relevant offence is intended to point towards a higher or lower RRO. In *Vadamalayan*, the Upper Tribunal confirmed that there was no reason why any fine should be deducted from the RRO. In that case, the landlord had paid a financial penalty of £8,000. Judge Cooke stated at paragraph 55: "*There is nothing in the amount ordered that indicates to me that an unusually severe or lenient view was taken by the local housing authority, and so I do not think that the financial penalty takes matters any further.*" Mr Ahmed has stated that he was unaware of the change to the HMO licensing rules and that was the reason why he failed to licence the properties. Given that he is clearly in business as a landlord, that is no excuse, which is presumably why he pleaded guilty to the offences. That said, the fine does not indicate an unusually severe or lenient view taken by the magistrates' court and therefore, the tribunal does not consider that the convictions have any bearing on the amount of the RRO in this case.
22. Taking those issues set out in section 44 of the 2016 Act into account, the tribunal considers that an appropriate amount for the RRO for Mr Taracha is £4,303 (£4,944.03-640.60 rounded down). This is to be

paid within 28 days, the tribunal has no power to order payment by instalments.

### **Mr Hart**

23. Mr Hart had claimed a RRO for £7,540, however Mr Ahmed stated that only £390 had been paid by him personally, with the balance of his rent paid by Housing Benefit and Universal Credit. Section 44(3)(b) of the 2016 Act provides that universal credit should be deducted from the rent paid and section 51 states that a reference to universal credit includes housing benefit. Buckinghamshire Council had originally intended to make their own RRO application in relation to 1 Sabina Close but they notified Mr Ahmed on 4 May 2020 that they would not be taking any further action as they had missed the deadlines in the 2016 Act for action due to the Covid pandemic. It was not clear whether those proceedings related only to Mr Hart or included other tenants at the property.
24. An email from Mr Ahmed stating that the tenant had paid only £390 was sent to Mr Hart on 16 April 2020, with a further email dated 19 April 2020 enclosing details of the state of Mr Hart's room when he vacated the property. Mr Hart emailed the tribunal on 30 April confirming that he had allowed Mr Ahmed to keep his deposit of £290 to get his room professionally cleaned. He said nothing about the actual payment of rent. In the earlier email Mr Ahmed stated that Mr Hart had incurred rent arrears of £1,707.71, although he confirmed at the hearing that by the time Mr Hart left the property the arrears had fallen to £218.56.
25. As stated above and confirmed in the *Vadamalayan* case, as the rent was paid inclusive of utilities, a deduction is due from the rent paid which Mr Toghill estimated at £914.10 per tenant. Given that on the evidence Mr Hart only paid £390 personally and his arrears when he left the property, together with the deduction for utilities, the tribunal determines that it will not make a RRO in his favour.

### **Mr Nwoseh**

26. It was agreed that Mr Nwoseh paid £3,737.72 in rent during the relevant period. As stated above, the tribunal determines that a deduction is due to take into account the utilities enjoyed by the tenants and have set that deduction at £914.10, which Mr Nwoseh did not dispute. That leaves a maximum amount of £2,823.62.
27. For the same reasons as stated above in respect of Mr Taracha, the tribunal determines that it is appropriate to make an RRO in respect of this tenant and will therefore consider the conduct of the landlord and tenant, the financial circumstances of the landlord and the convictions as before.

28. On conduct, Mr Nwoseh was clear that he and Mr Ahmed had a decent enough relationship at the time. Mr Ahmed was equally clear that Mr Nwoseh was “a great guy”, although he complained about him smoking cannabis in his room, to which Mr Nwoseh made no comment. Mr Ahmed made reference to providing Mr Nwoseh with free storage but did not estimate any cost. In all the circumstances, the tribunal determines that no deduction is due in respect of conduct on either side.
29. On Mr Ahmed’s financial circumstances, the tribunal also determine that no deduction is due, for the same reasons as stated in respect of Mr Taracha above.
30. Finally, the tribunal also determines that no adjustment is due in respect of the convictions, as stated above.
31. In the circumstances, the tribunal considers that an appropriate amount for the RRO for Mr Nwoseh is £2,824 (£2,823.62 rounded up). This is to be paid to him within 28 days, the tribunal having no power to order payment by instalments.

**Name:** Judge Ruth Wayte

**Date:** 30 July 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).