



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

Case Reference : **LON/00AB/HMF/2019/0029V:CVP**

Property : **Flat 210 Academy Court, 566
Longbridge Road, Dagenham RM8
2AR**

Applicants : **Mr William Ife and Ms Philippine
Bredon**

Representative : **Mr Alasdair McClenahan of Justice
for Tenants**

Respondents : **Mr Marco Martini (“First
Respondent”) and Ms Francesca
Monti (“Second Respondent”)**

Representative : **Not represented and not present at
hearing**

Type of Application : **Application for Rent Repayment
Order under the Housing and
Planning Act 2016**

Tribunal Members : **Judge P Korn
Mr T Sennett MA FCIEH**

Date of Hearing : **24th August 2020**

Date of Decision : **14th September 2020**

DECISION

Description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V:CVP**. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in a series of electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading “Decisions of the tribunal”.

Decisions of the tribunal

- (1) The tribunal orders the Second Respondent (Ms Monti) to repay to the Applicants jointly the sum of £15,000 by way of rent repayment.
- (2) The tribunal orders the Second Respondent to pay to the Applicants by way of reimbursement the application fee of £100 and the hearing fee of £200.

Introduction

1. The Applicants have applied for a rent repayment order, initially against the First Respondent but later against the Second Respondent, under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. On 29th July 2017 the Applicants jointly entered into an assured shorthold tenancy agreement with, as they believed at the time, the First Respondent. A copy of the tenancy agreement is in the hearing bundle. A Ms Romana Scala of Kirai Limited signed, or purported to sign, the tenancy agreement on behalf of the First Respondent.
3. Subsequent investigations led the Applicants to the conclusion that the First Respondent had no freehold or leasehold interest in the Property and possibly did not even exist. It also led them to the conclusion that their true landlord was the Second Respondent. At the hearing the Applicants’ representative confirmed that they were now seeking a rent repayment order against the Second Respondent and were no longer seeking a rent repayment order against the First Respondent.
4. The basis for the application is that, according to the Applicants, the Second Respondent was controlling an unlicensed house which was required under Part 3 of the Housing Act 2004 (“**the 2004 Act**”) to be licensed at a time when the Property was let to the Applicants and was therefore committing an offence under section 95(1) of the 2004 Act.
5. The claim is for repayment of rent paid during the period from the beginning of June 2018 to the end of May 2019 totalling £15,000 in aggregate.

Applicants' case

6. In written submissions the Applicants state that the Property was situated within a selective licensing area as designated by Barking & Dagenham Council on 1st September 2014, pursuant to a power afforded to local housing authorities by section 80 of the 2004 Act.
7. The Applicants were tenants of the Property from 1st July 2017 and the Property should have been licensed from that date. However, the appropriate licence was not obtained and nor was it applied for at any point during the tenancy.
8. Included in the Applicants' hearing bundle is a copy of an email from the local housing authority dated 2nd May 2019 confirming that the Property had never had a licence and that no application for a licence had ever been made. There is also a copy of a letter dated 29th November 2018 from the local housing authority to the First Respondent stating an intention to pursue legal proceedings in connection with the failure to obtain a licence.
9. The Applicants have provided a calculation of the amount of rent paid in respect of the period of claim, together with copy bank statements showing that £1,250 was paid each month.
10. As regards the parties' conduct, the Applicants state that they have been polite and reasonable and paid all rent. The Respondents, by contrast have failed to provide legally required documentation such as the Prescribed Information, have failed to protect the rent deposit, have failed to engage with any attempts at settlement or mediation and have shown no remorse for their failings.
11. As regards the question of who is the appropriate Respondent, Land Registry entries show that the Second Respondent holds a long leasehold interest in the Property. There are no documents filed with the Land Registry linking the First Respondent with the Property in any way, nor has any evidence been provided by either Respondent linking the First Respondent to the Property in any way.
12. The Applicants have provided a copy of a letter from Ideal Locations, and they comment that the arrangement appears to be that Ideal Locations collect the rent on behalf of the landlord and Kirai Limited manage the Property on behalf of the landlord. The director of Kirai Limited is the director of many different companies relating to property management, and these companies between them appear to constitute an informal group. The Applicants state that these arrangements are unnecessarily complex, and they submit that the name of the First Respondent would have been put on the tenancy agreement in order to

make it harder to take legal action and that it may simply be a fake name.

13. The Applicants have also provided details of correspondence sent to the Respondents with a view to getting them to engage with the process.
14. Mr McClenahan for the Applicants referred the tribunal to the decision of the Upper Tribunal in *Goldsbrough v CA Property Management Limited (2019) UKUT 311 (LC)* on the question of who is a landlord for the purposes of the 2016 Act.
15. As regards the Second Respondent's financial circumstances, Land Registry entries show that she purchased the Property for £250,000 in 2011 with no mortgage.

Respondents' case

16. Neither the First Respondent nor the Second Respondent has made any written submissions. They did not attend, and were not represented at, the video hearing and they have not engaged with the tribunal proceedings at any stage.

Relevant statutory provisions

17. Housing and Planning Act 2016

Section 40

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has 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 ...
- (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 by that landlord.

	Act	section	general description of offence
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
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

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

- (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.

Housing Act 2004

Section 95

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part ... but is not so licensed.

- (4) In proceedings against a person for an offence under subsection (1) ... it is a defence that he had a reasonable excuse ... for having control of or managing the house in the circumstances mentioned in subsection (1)

Tribunal's analysis

18. The Applicants have provided evidence that the Property required a licence throughout the period in respect of which they claim a rent repayment and that it was not so licensed. The Respondents have not made any submissions to counter this.

The defence of "reasonable excuse"

19. Under section 95(4) of the 2004 Act, it is a defence that a person who would otherwise be guilty of the offence of controlling or managing a house which is licensable under Part 3 of the 2004 Act had a reasonable excuse for the failure to obtain a licence. As stated by the Upper Tribunal in *I R Management Services Limited v Salford City Council*, the burden of proof is on the person relying on the defence. The Respondents have made no submissions and there is no basis for the tribunal to conclude that the Respondents did have a reasonable excuse for failing to licence the Property.

The offence

20. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed house under section 95(1) of the 2004 Act is one of the offences listed in that table.

21. Under section 41(2), a tenant may apply for a rent repayment order only if the offence relates to housing that, at the time of the offence, was let to the tenant and the offence was committed in the period of 12

months ending with the day on which the application is made. Having determined that the Respondents did not have a reasonable excuse for failing to license the Property, we are satisfied beyond reasonable doubt that an offence has been committed under section 95(1), that the Property was let to the Applicants at the time of commission of the offence and that the offence was committed in the period of 12 months ending with the day on which the application was made.

22. We now turn to the question of whether a rent repayment order can be made against the Second Respondent. Under section 43, the First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence listed in the table in sub-section 40(3). The Upper Tribunal in *Goldsbrough v CA Property Management Limited* considered the question of who can be liable to a rent repayment order under the 2016 Act. Judge Cooke stated in that case that the only conditions set out by the 2016 Act are first that the person concerned is “a landlord” and secondly that the person has committed a relevant offence. Her conclusion was that the person in question must be a landlord of the property in question but that they do not necessarily need to be the relevant tenants’ immediate landlord.
23. In this case it is clear that the Second Respondent is a landlord in the sense that she holds a long leasehold interest in the Property herself and is therefore either the Applicants’ immediate landlord or a more remote landlord. But has she committed a relevant offence? An offence has clearly been committed and so the issue is whether it has been committed by her (whether or not others have also committed that offence).
24. A person commits an offence under section 95(1) of the 2004 Act if that person is a person having control of or managing a house which is required to be licensed but is not so licensed. Section 263 of the 2004 Act defines “person having control” and “person managing” respectively as follows:-
 - (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.
 - (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises – (a) receives (whether directly or through an agent or trustee) rents or other payments from ... in the case of a house to which Part 3 applies ... persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or would so receive those rents or other payments but for having entered into an arrangement ...

with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

25. The definitions in section 263 are very wide and are clearly designed in part to catch people who make elaborate arrangements to try to avoid liability. In the present case, the Second Respondent is the only known landlord and therefore the only person known to be entitled to receive the rent from the tenants in the absence of credible evidence of the existence of an intermediate landlord. The evidence indicates that she either receives the rent from the agent, who does not claim to be receiving the rent on its own behalf, or that she would be entitled to receive it if she had not entered into an arrangement with another person. In our judgment, whilst the positive evidence in this regard is not sufficiently compelling by itself it is rendered sufficient by the Second Respondent's total failure to engage with this process. It would have been a very simple matter for her to raise some basic objection but she has not done so, and accordingly we are satisfied beyond reasonable doubt that the Second Respondent has committed an offence under section 95(1) of the 2004 Act.

Amount of rent to be ordered to be repaid

26. Based on the above findings, we have the power to make a rent repayment order against the Second Respondent.
27. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount 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. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.
28. In this case, the claim does relate to a period not exceeding 12 months during which the landlord was committing the offence, and there is no evidence of any universal credit having been paid. The Applicants' unchallenged evidence, plus supporting documentation, shows that the rent paid for that period amounts to £15,000 and the tribunal has no reason to find otherwise. Therefore, the maximum amount of rent repayment that can be ordered is £15,000.
29. Under sub-section 44(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 the relevant part of the 2016 Act applies.

30. The Upper Tribunal decision in *Vadamalayan v Stewart (2020) UKUT 0183 (LC)* is a leading authority on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. Importantly, it was decided after the coming into force of the 2016 Act and takes into account the different approach envisaged by the 2016 Act.
31. In her analysis in *Vadamalayan*, Judge Cooke states that the rent (i.e. the maximum amount of rent recoverable) is the obvious starting point, and she effectively states that having established the starting point one should then go on to work out what sums if any should be deducted. She departs from the approach of the Upper Tribunal in *Parker v Waller (2012) UKUT 301*, in part because of the different approach envisaged by the 2016 Act, *Parker v Waller* being decided in the context of the 2004 Act. Judge Cooke notes that the 2016 Act contains no requirement that a payment in favour of a tenant should be reasonable. More specifically, she does not consider it appropriate to deduct everything that the landlord has spent on the property during the relevant period, not least because much of that expenditure will have repaired or enhanced the landlord's own property and/or been incurred in meeting the landlord's obligations under the tenancy agreement. There is a case for deducting utilities, but otherwise in her view the practice of deducting all of the landlord's costs in calculating the amount of the rent repayment should cease.
32. In Judge Cooke's judgment, the only basis for deduction is section 44 of the 2016 Act itself, and she goes on to state that there will certainly be cases where the landlord's good conduct or financial hardship will justify an order less than the maximum.
33. Adopting Judge Cooke's approach and starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence. We will take these in turn.

Conduct of the parties

34. The Applicants' conduct appears to have been good. The Second Respondent's conduct, by contrast, has not been. She did not apply for a licence at any point during the tenancy, she appears to have failed to provide legally required documentation such as the Prescribed Information, has failed to protect the rent deposit and has not engaged with the tribunal proceedings at all. No excuse has been offered for the failure to obtain a licence.

Financial circumstances of the landlord

35. According to Land Registry records, the Second Respondent was able to afford to purchase the Property for £250,000 in 2011 with no mortgage.

Whether the landlord has at any time been convicted of a relevant offence

36. There is no evidence that the Second Respondent has been convicted of a relevant offence, although there is evidence that the local housing authority was considering taking legal proceedings against the First Respondent (on the assumption that it was he who was committing the offence).

Other factors

37. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal “must, in particular, take into account” the specified factors. One factor identified by the Upper Tribunal in both *Parker v Waller* and *Vadamalayan v Stewart* as being something to take into account in all but the most serious cases is the inclusion within the rent of the cost of utility services, but there is no evidence in the present case that the rental payments include any charges for utilities.
38. On the facts of this case we do not consider that there are any other specific factors which should be taken into account in determining the amount of rent to order to be repaid. Therefore, all that remains is to determine the amount that should be paid based on the above factors.

Amount to be repaid

39. The first point to emphasise is that a criminal offence has been committed. There has been much publicity about licensing of houses and the Second Respondent has offered no excuse for her failure to obtain a licence.
40. Secondly, whilst the Applicants may not have suffered much by way of direct loss through the failure to obtain a licence, it is clear that a large part of the purpose of the rent repayment legislation is deterrence. If landlords can successfully argue that the commission by them of a criminal offence to which section 43 of the 2016 Act applies should only have consequences if tenants can show that they have suffered actual loss, then this will significantly undermine the deterrence value of the legislation.

41. In her decision in *Vadamalayan* Judge Cooke states that the total amount of rent paid for the relevant period is the obvious starting point for a rent repayment order, subject to any deductions being appropriate. In this case we do not consider that any deductions are appropriate. The Second Respondent is not entitled to a deduction due to her conduct, as this was poor, nor due to the Applicants' conduct, which was good. She is not entitled to a deduction due to her financial circumstances as these seem to be quite healthy on the basis of the evidence that we have seen. As regards whether she has been convicted of any relevant offences, there is no evidence that she has but we do not consider that a landlord is entitled to a deduction simply by virtue of not having been convicted of an offence. Had she been convicted of an offence then that would have been an aggravating factor to have been weighed against any positive factors (had there been any). There are no other factors that we consider need to be taken into account.
42. Accordingly, there is no basis for making any deductions and we therefore order the Second Respondent to repay to the Applicants the sum of £15,000.

Cost applications

43. The Applicants have applied for an order, pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that the Second Respondent reimburse their application fee of £100 and the hearing fee of £200. The Applicants have been wholly successful in their claim for a rent repayment order and the Second Respondent has not engaged with this process at all. Accordingly, it is appropriate to, and we hereby do, order that the Second Respondent reimburse to the Applicants the application fee of £100 and the hearing fee of £200.

Name: Judge P Korn

Date: 14th September 2020

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.

- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.