



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)

Case Reference	:	LON/00BJ/HMF/2019/0099 CVPREMOTE
Property	:	99 Nimrod Road, London SW16 6TH
Applicant	:	Ms K Smale
Representative	:	In person
Respondents	:	(1) Mr. Tahir Ahmad (2) Pure Properties Management Ltd. (3) Kings Estates
Representative	:	Mr. A Dymond, counsel
Types of Application	:	Rent Repayment Order
Tribunal Members	:	Judge Tagliavini Mr. C Gowman MCIEH MCMi BSc
Date and venue of hearing	:	9 July 2020 CVPREMOTE

Date of Decision : 13 July 2020

DECISION

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPREMOTE. A face to face hearing was not held because it was not practicable

and no one requested the same or it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in the applicant's bundle of 80 pages and the respondents' bundle of 104 pages the contents of which we have recorded. The order made is described at the end of these reasons. The parties did not express any dissatisfaction with the hearing.

The tribunal's summary decision

- I. The tribunal finds that the applicant has failed to establish beyond all reasonable doubt that an offence has been committed as alleged, by the first, second or third respondent failing to obtain a HMO licence for 99 Nimrod Road, London SW16 6TH. Therefore, the application for a rent repayment order is refused and the application is dismissed.
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The application

1. This is a application for a rent repayment order (RRO) under sections of 40, 41, 43 and 44 of the Housing and Planning Act 2016.

Background

2. In an application dated 3 December 2019 the applicant asserted that the respondents* had committed an offence by failing to obtain a mandatory licence for premises known as 99 Nimrod Road, London SW16 6TH ("the premises") as it was a house in multiple occupation (HMO) as defined by section 254(2) of the Housing Act 2004 and required a licence under the mandatory licensing provisions being a house on three floors and occupied by five persons forming more than two households sharing kitchen, bathroom and toilet facilities; *Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006* (as amended).

****The applicant had initially joined only Mr. Tahir Ahmad as a respondent. In directions dated 18 December 2019, the tribunal joined the second and third respondents to the application.***

3. The subject premises comprise a house on three floors (including a converted loft space). By a written tenancy agreement dated 3 August 2017 made between the Kings Estates and the tenants Katie Smale, Emma Ernest, Sophie Shrimpton, Kiefer Moriarty-Short the tenants were granted an assured shorthold tenancy for a term of 12 months at a rent of £3,595 pcm. By a written tenancy agreement dated 7 August 2018 made between Pure Property Management Limited and Katie Smale, Sophie Shrimpton, Kiefer Moriarty-Short, Emma Ernest a tenancy term of 12 months of the premises was granted at a rent of £3,600 pcm.

4. The applicant asserts that Jordan Gallagher was a fifth tenant who at the direction of the first respondent Mr. Tahir Ahmad, was not added in writing to the first and second tenancy agreements in order to avoid the mandatory licensing provisions under the Housing Act 2004.
5. In her application, the applicant sought a rent repayment order in the sum of £86,400 representing the rent paid for the period 3 August 2017 to 15 August 2019 on which date, the applicant and the other joint tenants vacated the said premises.

The issues

6. The tribunal identified the issues between the parties were:
 - (i) Was the first and second tenancy validly created with four or five tenants?
 - (ii) If there were five tenants in occupation did the premises require a mandatory HMO licence?
 - (iii) If there were five tenants in occupation was the landlord aware of this?
 - (iv) Was an offence committed under the provisions of the Housing Act 2004?
 - (vi) If “yes” should a rent repayment order be made and in what amount?

Preliminary issues

7. Mr. Dymond submitted on behalf of the respondents that the correct respondent against which any rent repayment order could be made was Pure Properties Management Limited as it was that respondent whose name appears as the named landlord in the second tenancy agreement and not Mr. Tahir Ahmad.
8. Mr. Dymond submitted that in order for a RRO to be made all of the joint tenants had to be applicants to the application for a RRO pursuant to the provisions of section 41(2)(a) of the Housing and Planning Act 2016. Ms Smale as the sole applicant would otherwise receive a windfall were the total of all or any proportion of monthly be repaid to her alone.
9. Mr. Dymond also submitted that a RRO could only be made for the 12 months period prior to the date of this application and therefore was confined to the period 3 December 2018 to 15 August 2019.
10. Due to the remote video nature of the hearing the tribunal determined that it was appropriate to hear the entirety of the application and include in its final substantive decision its determinations on the preliminary issues raised on behalf of the respondents in order not to interrupt the remote proceedings.

The applicant's case

11. The applicant relied on an indexed and paginated bundle of documents which included her primary (undated) statement and a second signed statement dated 12 February 2020. Ms Smale told the tribunal that the subject premises had been advertised on Zoopla as a five bedroom house and had previously been used as such by the previous tenants. Ms Smale told the tribunal that after a visit to the premises with her joint tenants she contacted the respondents' agent 'Donna' to tell her they wanted to take the tenancy for the property. Ms Smale told the tribunal that Donna informed her that the landlord (Mr. Ahmad) had explicitly stated that only four names were to be recorded on the tenancy agreement although there would be five persons in occupation.
12. Ms Smale told the tribunal that the four persons whose names appeared on the first tenancy agreement each visited the agent's office at different times in order to sign the agreement and to pay the deposit. As the fifth tenant Jordan Gallagher was visiting family in Australia he was not available to sign the tenancy and in any event agreed that he would not be expressly included on the tenancy agreement in accordance with Mr. Ahmad's instructions.
13. Ms Smale told the tribunal that it had been decided to renew the tenancy at the end of the 12 months period as she and her joint tenants were busy students and young professionals and wanted to avoid the disruption of finding new accommodation. During the period of the second tenancy Emma Ernest decided to move out of the subject premises and was replaced by Rebecca Cornford on 23 April 2019, having first been approved by the landlord* after the carrying out of credit checks and receiving assurances from a guarantor.
14. Ms Smale told the tribunal that the landlord had been slow to carry out repairs to the ground floor toilet and had not inspected the premises during her occupation and had tried to withhold sums from the deposit that were not owed at the end of the tenancy. Ms Smale also told the tribunal that the landlord had not carried out any fire safety checks or provide fire door or other safety equipment that were required of a licensed HMO.
15. Ms Smale accepted that as she was the only applicant only her proportion of the rent paid could be ordered to be repaid by the respondents if a RRO was made by the tribunal. Ms Smale also accepted that any RRO would be limited to the period 3 December 2018 to 15 August 2019 which she calculated to be £6,120 having paid £720 pcm towards the total rent due of £3,600 pcm. Ms Smale relied on bank statements showing the transfer of £3,600 every month from the tenant's joint account to Pure Properties Ltd. As proof of the rent having been paid.
16. In support of the application Ms Smale also relied upon the oral evidence of Ms Sophie Shrimpton who had made a signed witness statement dated 12 February 2020. Ms Shrimpton told the tribunal that she had "loved living in the property" and had been sad to leave it. Ms Shrimpton drew the tribunal's attention to the various text messages from Jordan Gallagher to Mr. Ahmed and his nephew Omar chasing repairs to the ground floor toilet and the need to

replace a number of lightbulbs. Ms Shrimpton stated that these showed that Mr. Gallagher had been in occupation with the knowledge of Mr. Ahmad.

The respondents' case

17. The respondents also provided an indexed and paginated bundle of documents to the tribunal. Mr. Ahmad also gave oral evidence to the tribunal as well as relying on his signed witness statements dated 12 March 2020 and 8 June 2020. Mr. Ahmad told the tribunal he was the freehold owner of the subject premises, the sole director of Pure Properties Limited and also traded as Kings Estates. Mr. Ahmad told the tribunal he owned about 30 properties in the London area none of which required a licence.
18. Mr. Ahmad told the tribunal he had been a professional landlord for over 30 years and had purchased the subject premises in 2013 as he had primarily wanted to be able to use its garage for storage purposes. Mr. Ahmad stated he had converted the loft area of the premises and produced the building certificates showing the work that had been carried and approved. Mr. Ahmad told the tribunal that having not been able to sell the property after completion of the loft works he had decided to let it to tenants. Mr. Ahmed denied having giving Donna or anyone else an instruction to omit a tenant's name of the tenancy agreement and stated that he had been unaware of Mr. Gallagher's presence at the premises. He told the tribunal that since the applicant had moved out he had continued to let the premises to four tenants at the same level of rent.
19. My Dymond submitted that as the applicant had failed to produce any witness statement from Mr. Gallagher, there was no evidence that he had been a tenant at the premises at any time. Therefore, the applicant had failed to establish beyond all reasonable doubt that an offence had been committed by the respondents

The tribunal's decision and reasons

20. The tribunal finds that the applicant is entitled to make a claim for a rent repayment order in respect of the proportion of rent that she paid to the landlord only. The tribunal does not accept Mr. Dymond's argument that all joint tenants would have to be joined to the application in order to make such an application and finds that the legislation does not require it. The period for which any RRO could be made was not disputed at the hearing by Ms Smale or that any RRO order could only be made in respect of her contribution to the rent paid.
21. The tribunal finds that as at the commencement of the first tenancy on 3 August 2017 and throughout the period of the applicant's occupancy, the subject premises would have required a mandatory HMO license if occupied by 5 or more persons under the 2006 (Licensing) Order and as amended by The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 with effect from 1 October 2018. The tribunal finds that the subject premises were occupied throughout the period of the first and

second tenancy by 2 or more households and contained shared kitchen bathroom and toilet facilities.

22. The tribunal finds that the first and second tenancy was intended only to be granted to the four named tenants (including the 'substitution' of Emma Ernest with Rebecca Cornford). The tribunal finds that the lack of witness statements from the other joint tenants and particularly Mr. Gallagher to be surprising in light of the substantial sum that was originally claimed by the applicant. In the absence of this and other supporting evidence, the tribunal finds that the applicant is unable to prove, even on the balance of probabilities that Jordan Gallagher occupied the premises as the respondents' tenant during the period of the alleged offence.
23. While the tribunal finds that the applicant was able to establish that the rent was paid in full in accordance with the tenancy agreements, there was no evidence provided either of her individual contribution to the rent paid into the joint account or any rental contributions made by Mr. Gallagher.
24. In the absence of any inspections of the premises by the landlord or agents, the tribunal finds that there is insufficient evidence to show that the first, second or third respondents knew or could have known that the premises was being occupied by five tenants. The tribunal finds that the text communications from 'Jordan' to the landlord (Mr. Ahmad) or his agent are insufficient to demonstrate that he made it clear he was acting in the capacity as a joint tenant of the premises and not simply as a friend on their behalf.
25. In conclusion the tribunal finds that the applicant has failed to establish beyond all reasonable doubt that an offence was being committed by the first second or third respondents during the period 3 December 2018 to 15 April 2019. Therefore, the tribunal refuses to make any rent repayment order and dismisses the application.

Signed: Judge Tagliavini

Dated: 13 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 might 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 , such application must include a request for an extension of time and the reasons 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 these time limits.

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).