



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

Case reference : **LON/00AU/HMF/2019/0071 P**

HMCTS code : **P: PAPERREMOTE**

Property : **15 North Road, London N7 9EY**

Applicants : **Sergei Liski**

Representative : **Justice for Tenants**

First Respondent : **Smart Rent Limited**

Second Respondent : **Mr Amarjit Singh Gill,**

Type of application : **Application for a Rent Repayment Order
Section 41 Housing and Planning Act
2016**

Tribunal members : **Judge Pittaway**

Date of decision : **26 June 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented to by the applicant/ consented/not objected to by the respondents. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents that the tribunal was referred to are the application and documents included with it, the applicant's bundle of 141 pages, the first respondent's bundle of 42 pages and the applicant's response to the respondent's statement of case of 105 pages, the contents of all of which the tribunal has noted. The decision is set out below.

Decisions of the tribunal

- (1) The tribunal makes the following rent repayment order, namely that the first respondent shall refund the sum of £6,600 to the applicant.
- (2) The tribunal determines that the first respondent shall pay the applicant £300 in respect of the reimbursement of the tribunal fees paid by the applicant.
- (3) The above payments should be made within 28 days of this Decision,

The application

1. On 4 October 2019 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) for a rent repayment order (“**RRO**”) in respect of 15 North Road London N7 (“**the property**”). The London Borough of Islington is the local housing authority.
2. The application has been brought by the applicant in respect of the period from 5 September 2017 to 9 October 2018. The amount of repayment claimed is £7,200.
3. The application named the first respondent, the directors of the first respondent and the second respondent as respondents, and named their representative as Harris Brown Estate Limited.
4. The application stated that the applicant would be content with a paper determination.

Directions

5. A case management hearing was held on 12 November 2019 to determine the identity of the respondent. This was attended by Miss Robinson of counsel for the first respondent. No one attended on behalf of the second respondent.

6. The directions named both the first respondent and the second respondent as respondents in the application.
7. The directions set out the issues which the Tribunal would need to consider. The respondents were advised to seek independent legal advice. The parties were directed to file bundles of documents with the Tribunal which the applicant and the first respondent did. The second respondent did not file a bundle of documents.
8. On 16 June the parties were advised that the case would be determined on 22 June on the basis of the papers that had been received by e mail.

The Evidence

9. Attached to the applicant's application was
 - 9.1 an e mail from William Wallas, Senior Environmental Health Officer confirming that the HMO Licence Holder for the property is Harris Brown Estate Limited;
 - 9.2 a set of official copies showing the second respondent to be the freehold owner of the property;
 - 9.3 a schedule of rent showing twelve monthly payments of £600, the first of which was on 2 October 2017 and the last on 3 September 2018;
 - 9.3 a series of transfer confirmations from TransferWise confirming payment of the rent to Smart Rent Limited;
 - 9.4 a license to occupy for four months from 5 September 2017 made between Smart Rent Limited and the applicant, requiring the licence fee to be paid to Smart Rent Limited;
 - 9.5 a license to occupy for four months from 1 January 2018 made between Smart Rent Limited and the applicant, requiring the licence fee to be paid to Smart Rent Limited;
 - 9.6 an Assured Shorthold Tenancy dated 2 August 2018 made between Smart Rent Limited (in this agreement described as the "Agent") and the applicant for a double room at the property for a term of three months at a rent of £600 per month, to be paid to Smart Rent Limited. The identity of any Landlord is not specified.
10. In his witness statement dated 6 December 2019 the applicant states that 'at most points' there were seven people in the property, with rooms being vacant for the maximum of a week. He provided first names for a number of people

explaining who replaced whom but without giving specific dates of occupation for any of them.

11. The applicant's evidence bundle contains a document headed 'Full details of alleged offence'. This describes the property as a 3-floor house with 6 bedrooms with shared cooking, washing and bathroom facilities.

It alleges that

11.1 at all times during the period the subject of the application at least 6 people were living in the property;

11.2 that Smart Rent Limited were the occupant's primary point of contact and managed the house. Mr Gill was never mentioned to the applicant;

It states

11.3 that Mr Gill would be the most appropriate person to hold an HMO license for the property, referring to a tenancy agreement between Mr Gill and Smart Rent Limited having been brought to the case management hearing (without a copy being provided to the applicant) which showed that Mr Gill remained responsible for repairs required to keep the property up to the standards of a Mandatory HMO license.

It submits that it is correct for Mr Gill to be named as a respondent.

It confirms that application was made for an HMO license on 9 October 2018.

12. The applicant's evidence bundle contains a letter from L B Islington dated 14 November 2018 requiring the applicant to vacate the second floor rear left room as it is undersized.
13. The applicant requested the reimbursement of his application fee of £100 and hearing fee of £200.
14. In his witness statement of 13 January 2020 Mr D Gomez, a director of Smart Rent Limited
 - 14.1 explained that Smart Rent Limited are a property management and letting company familiar with the requirements under the HMO Regulations. The property had been let to Smart Rent Limited by Harris Brown Estate Agents on behalf of Mr Gill at an initial rent of £3,033 per calendar month, rising to £3,200 per calendar month. It was both parties' intention that the property should be sub-let.
 - 14.2 questioned the applicant's recollection of the number of occupants of the property;

- 14.3 claimed that the HMO application was made on 25 September 2018;
- 14.4 submitted that it was for the applicant to prove his allegations and to prove them beyond reasonable doubt.
- 14.5 That the application was made on 2 October 2019 so that the relevant twelve month period was from 2 October 2018 to 2 October 2019, during which time he submitted there had been no breach of the Act as an HMO licence had been applied for.
- 14.6 That if the tribunal found for the applicant the following costs of the first respondent should be taken into account
- | | |
|--------------------------------|---------------|
| Household equipment | £670 p.a |
| Council tax | £1651.32 p.a. |
| Rent paid to Second Respondent | £38,400 p.a. |
| Gas and electricity | £1400 p.a. |
| Water | £622.95 p.a. |
| Cleaning | £1200 p.a. |
| Virgin Broadband | £503.76 p.a. |
15. In his response to the first respondent's statement of case the applicant
- 15.1 asserted that the correct period for the application was 7 October 2017 to 6 October 2018.
- 15.2 submits that during which period the property required a mandatory HMO as it met the conditions set out in section 4 of The Licensing of Houses in Multiple Occupation (Prescribed Description)(England) Order 2018
- 15.3 submits that the first respondent is a person 'managing' the property for the purposes of s.263 Housing Act 2004, being a lessee of the property (from the second respondent) receiving rents or other payments from the tenants/occupants of the property; and that the second respondent is a 'person having control' of the property for the purposes of the same s.263, as he receives a rack rent for the property. Evidence of what would be a rack-rent for the property was attached.
16. The applicant also attached evidence from the first applicant's website to show that its primary business was renting rooms, not whole properties. He also attached e mails from the first applicant copied to various other occupants of the property at various times during the period in question to substantiate his assertion that at all points there were at least 6 'tenants' (sic) in the property. As to the date upon which the application for the HMO was duly made the applicant provided an e mail from Islington Council confirming the relevant date to be 9 October 2018.

17. As to the amount of any RRO the applicant submitted that it is the financial circumstances of the landlord that should be taken into account in determining the amount of any RRO (s44(4) Housing and Planning Act 2016) not the amount which the tribunal considers reasonable in the circumstances; and neither respondent has provided details of their financial circumstances.

18. **The law**

19. The relevant legal provisions are set out in the Appendix to this decision.

20. The tribunal has also had regard to the decisions referred to by the applicant, namely

Goldsbrough & Anor v CA Property Management & Ors [2019] UKUT 311 ('**Goldsbrough**'); and

London Corporation v Cusack Smith 1955 AC339

The tribunal's decision and reasons

Offence under section 72(1) of the 2004 Act

21. The tribunal finds as a matter of fact on the evidence provided to it that the property is an HMO falling within the definition in section 254(2) of the 2004 Act, falling within the "standard test" as defined by that section.

22. It is clear from the evidence provided that until the application was duly made for an HMO license the property was not licensed as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

The period during which the offence existed

23. Under section 72(4) of the 2004 Act a person has a defence if, at the material time, an application for a licence had been duly made under section 63 of the 2004 Act, provided that the application is still effective.

24. The tribunal finds that an application for a licence was duly made on 9 October 2018 as stated in the email from HMO Licensing at L.B. of Islington, and the applicant cannot (and does not) seek an RRO in respect of rent paid after that date.

Was an offence committed within twelve months of the application

25. By section 41(2) of the 2016 Act a tenant may only apply for a RRO if the offence was committed in the period of twelve months' ending on the day

when the application was made. Here the application was received on 4 October 2019. The offence was committed from October 2017 until 9 October 2018, the date on which the valid application for a licence was made.

26. Accordingly an offence was committed in the period of twelve months prior to receipt of the application.

The tribunal's discretion in making an RRO

27. Under section 43(1) of the 2016 Act the tribunal may make an RRO; it is not required to do so. In the circumstances of this case, in particular the failure of a professional property company to realise that a RRO licence was required, the tribunal consider that it is appropriate to make an RRO.

The amount of the RRO

28. The applicant has applied for a RRO in the sum of £7,200, providing evidence in his response to the first respondent's statement that the first month's rent claimed was paid on 2 October 2017 and the last payment on 9 October 2018.
29. By section 44(3) of the 2016 Act the amount that the landlord may be required to repay in respect of a period must not exceed the rent in respect of that period, less any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period. In his application the applicant confirmed that he was not in receipt of any state benefits.
30. Under section 44(2) of the 2016 Act where the offence is under section 72(1) of the 2004 Act the amount must relate to rent paid by the tenant in respect of a period, not exceeding twelve months, during which the landlord was committing the offence.
31. The landlord ceased to commit the offence on 9 October 2018 so that the maximum period in respect of which the tenant may seek a RRO is from 9 October 2017.
32. As the rent for the month from 1 October 2017 was paid more than twelve months before 9 October 2018 and the rent for the month from 1 October 2018 was paid on 9 October 2018, by when the HMO application had been duly made neither of these payments can be included in the application. So the maximum possible amount the subject of the RRO is £6,600. The 2016 Act does not provide for payments made outside the period to be apportioned.
33. The 2016 Act gives the Tribunal discretion as to the amount of the order. In determining the amount the respondent might be required to repay the tribunal should have regard to section 44(4) of the 2016 Act, which requires the tribunal to have regard, in particular, to 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 the relevant chapter of the 2016 Act applies.

34. The first respondent has asked for certain costs that it incurred (in relation to the property as a whole) to be taken into account. The only basis for deduction is section 44, which refers to the landlord's conduct or financial hardship, and whether it has been convicted of an offence. There is no suggestion in the papers before the tribunal that either respondent has been convicted of an offence. As to the conduct of the first respondent as a professional landlord it should have been aware that a property of six bedrooms let to non-related persons required a HMO and that room occupied by the applicant was too small for habitation.
35. No evidence of the financial circumstances of either respondent has been provided to the tribunal and so the tribunal makes no reduction from £6,600.

The relevant respondent

36. The applicant has not distinguished between the first respondent and second respondent in seeking the RRO. Goldsbrough makes it clear that there can be more than one landlord, as is the case here, but states that the relevant payer is a matter on which the applicant should address the tribunal. Here the applicant has submitted that both the first and second respondents are liable without any further submission in this regard.
37. The tribunal has considered the evidence before it; it accepts that the second respondent is the person who made the HMO application and that he, apparently, received a rack rent: from his tenant, the first respondent. Of the two respondents it is the first respondent who, as a lessee of the property, received the rent / licence fee from the occupants of the property. It did not receive this as the agent of the second respondent, but as the landlord of the applicant. That it had a lease arrangement with Mr Gill under which it pays him rent and under which Mr Gill is responsible for repair and obtaining the HMO is a separate issue.
38. The tribunal therefore considers it appropriate to make the RRO against the first respondent and to reimburse the applicant's fees of £300.

Name: Judge Pittaway

Date: 26 June 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).

Appendix of Relevant Legislation

Housing Act 2004

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application 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 a 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 had 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 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 this 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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.