FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/HSD/2020/0001**
HMCTS code	**:**	**V: CVPREMOTE**
Property	**:**	**FFF & GFF, 57 Ivy Road, London NW2 6SY**
Applicant	**:**	**London Borough of Brent**
Representative	**:**	**LB of Brent Legal Department**
Respondent	**:**	**Mr. Hassan Elaadouli**
Type of application	**:**	**Application for a Rent Repayment Order** – section 40 of the Housing and Planning Act 2016
Tribunal members	**:**	**Judge Angus Andrew** **Mr Christopher Gowman**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**10 November 2020**

DECISION

Covid-19 pandemic: description of hearing

This was a remote video hearing to which both parties consented. The form of hearing was V: CVPREMOTE. A face-to-face hearing was not practicable and all issues could be determined in a remote video hearing.

Decision

1. We make rent repayment orders of £5,951.40 and £12,705.48 to be paid within 28 days.

The application and hearing

2. By an application dated 10 December 2020 the applicant sought rent repayment orders (RRO) under section 40 of the Housing and Planning Act 2016 ("the 2016 Act"). The applicant relied on the respondent having committed offences under section 95(1) of the Housing Act 2004 ("the 2004 Act"), namely a person having control of or managing a house which was required to be licensed under part 3 of the 2004 Act but was not so licensed during the period from 20 August 2018 to 18 August 2019. During that period the applicant paid housing benefit to the respondent of £5,951.40 in respect of the ground floor flat and £12,705.48 in respect of the first floor flat.

3. Directions were given on 29 January 2020 with a view to the application being determined at a face to face hearing. However as a result of the pandemic the directions were varied. The parties agreed to a video hearing and they were given notice that the application would be determined at a video hearing to be held on 26 October 2020, starting at 10 am. Both parties were given detailed joining instructions and guidance with the appropriate video link. The joining instructions included a telephone number should the parties wish to join by voice alone and also the case workers contact details for use if they had problems joining either by video or voice alone.

4. The respondent did not comply with the directions and did not submit either a statement of his reasons for opposing the application or a bundle of documents on which he relied. Although the directions and joining instructions were sent to the respondent at his correct address nothing was heard from him and he did not appear at the video hearing. Consequently we have determined the application on the basis of the applicant's case alone.

5. At the hearing the applicant's case was presented by Omotolani Robson who is a solicitor. We heard evidence from Robert French who spoke to two witness statements included in the applicant's document bundle, submitted in accordance with the directions. Mr French is a Chartered Member of the Chartered Institute of Environmental Health and is employed within the applicant's Private Housing Services Team.

6. Following the hearing we gave both parties the opportunity to make representations on our preliminary view that the offences were not committed after 13 January 2019 when the ground floor flat became empty. We have taken into account the representations made by Ms Robson on behalf of the applicant. No representations were received from the respondent.

The law

7. Part 3 of the 2004 Act provides for the licencing of houses in areas designated by the local housing authority as selective licensing areas. Sections 79 and 85 of the 2004 Act requires a house in a selective licensing area to be licensed if the whole of it is either occupied under a single tenancy or under two or more tenancies. Section 99 of the 2004 Act defines a house as *"a building or part of a building consisting of one or more dwellings"*.

8. Section 95(1) of the Act provides that a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part 3 but is not so licensed.

9. Sections 40-46 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 local housing authority where a landlord has committed a relevant offence – in this instance the offence set out in section 95(1) of the 2004 Act. Section 41 stipulates that a local housing authority may apply for an RRO only if the offence relates to housing in the authority's area and the authority has complied with section 42, by serving a notice of intended proceedings in accordance with that section and has considered any representations, before applying for a RRO.

10. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence, *"whether or not the landlord has been convicted"*. The amount of the order is set out in section 45 as a period not exceeding 12 months during which the landlord was committing the offence under section 95(1) of the 2004 Act. Where there has been a conviction section 46 states that an order in favour of a local housing authority should be the maximum that the tribunal has the power to order, subject to any exceptional circumstances which the tribunal considers would make it unreasonable to require the landlord to pay that amount.

The Evidence

11. The respondent purchased the property on 21 July 2000 and remains the registered proprietor.

12. Since 1 January 2015 the Applicant has designated certain areas within the Borough as selective licencing areas under part 3 of the 2004 Act. When an area

is designated, dwellings that are let either under a single tenancy or under two or more tenancies must be licenced. The property is within the Mapesbury ward and on 19 June 2017 the applicant designated that ward as a selective licencing area with effect from 1 January 2018.

13. The property comprises two flats on the ground and first floors. When the designation came into effect both flats were let on tenancies: the ground floor flat to Makki Osman and the first floor flat to Andrzej Gajo. Consequently after 1 January 2018 each flat should have been licensed. Mr French told us that the flats were not licensed and that they remain unlicensed.

14. On 31 October 218 and 22 November 2018 Mr French wrote to the respondent inviting him to apply for a selective licence for each flat. He told us that he did not receive a reply to either letter.

15. Although not directly relevant to this decision on 12 December 2018 the applicant served a Suspended Prohibition Order on the respondent. The order related to the ground floor flat and identified a number of category 1 hazards including structural collapse. Mr French told us that Mr Osman and his family were rehoused by the applicant on 13 January 2019.

16. Mr French produced a memorandum of conviction showing that on 13 June 2019 the respondent had pleaded guilty to two offences under section 95(1) and (5) of the 2004 Act, the summons having been issued on 8 May 2019. The period of the first offence was said to be from 1 July 2018 to 3 January 2019 whilst the period of the second offence was said to be from 1 July 2018 to 7 May 2019. We were told that the first offence related to the ground floor flat whilst the second offence related to the first floor flat. The respondent was fined £8,000, ordered to pay a surcharge of £170 to fund victim services and costs of £2,000.

17. Mr French told us that Mr Gajo and his family vacated the first floor flat on 18 August 2020. On 19 August 2019 the applicant served two notices of intended proceedings on the respondent under section 42 of the 2016 Act, relating to the ground and first floor flats. Both notices informed the respondent that the applicant would seek to recover Housing Benefit paid to the respondent between 20 August 2018 and 18 August 2019. The notice relating to the ground floor flat informed the respondent that the applicant would seek to recover £5,951.40: the notice relating to the first floor flat that it would seek to recover £12,705.48. Both notices invited representations to be made to Mr French by 19 September 2019. Mr French told us that he received no representations.

18. Mr French produced statements verifying the Housing Benefit paid to the respondent in respect of each flat. The statement in respect of the ground floor flat confirmed payments of £5,951.40 between 20 August 2018 and 13 January 2019, when Mr Osman and his family were rehoused. The statement in respect of the first floor flat confirmed payments of £12,705.48 between 20 August 2018 and 18 August 2019, when Mr Gajo and his family vacated the flat.

The issues and reasons for our decision

19. Given the evidence of the respondent's guilty pleas and convictions, there is clearly no doubt that the relevant offences had been committed. Notwithstanding the memorandum of conviction there is however an issue as to the periods during which the offences were committed not least because the memorandum of conviction confirms only that the offences were committed to 3 January 2019 and 7 May 2019 respectively.

20. We accept Mr Robson's argument that each flat is a *"house"* within the meaning of section 99. Consequently each flat should have been licenced and the offences continued whilst each flat was occupied. We accept Mr French's evidence that the occupation of the ground floor flat continued until 13 January 2019 and that the occupation of the first floor flat continued until 18 August 2019. Consequently we are satisfied beyond reasonable doubt that the respondent committed the offences until those dates.

21. The property is in the London Borough of Brent and therefore the remaining issues are whether the applicant has complied with section 42, whether the tribunal should make an RRO and if so, in what amount.

22. The Notices of Intended Proceedings as set out above, clearly complied with the provisions of section 42(2). The application for an RRO was not made until 10 December 2019, well after expiry of the period for representations. The final requirement of section 42 is that the notice may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates. As stated above, the offences were committed to 13 January 2019 and 18 August 2019 respectively. That means that the last days the notices could have been given would have been 12 January 2020 and 17 August 2020 respectively. The notices in this case were served on 20 August 2019 and were therefore in time.

23. Given Mr French's evidence and in the absence of any representations from the respondent, we consider it is appropriate to make the RROs. As there has been a conviction and in the absence of any exceptional circumstances, the amount is the maximum that we have the power to make.

24. Both the notices of intended proceedings and the application to the tribunal seek repayment of housing benefit from 20 August 2018 and we cannot therefore order repayment of housing benefit paid before that date. Section 45 provides that the period of any RRO must not exceed 12 months during which the landlord was committing the offence. Consequently our order in respect of the ground floor flat is limited to the period from 20 August 2018 to 13 January 2019 and in respect of the first floor flat from 20 August 2018 to 18 August 2019. Taking the payments in the Housing Benefit statements exhibited by Mr French we therefore make RROs in the sums of £5,951.40 and £12,705.48, to be paid within 28 days.

Name: Judge Angus Andrew **Date:** 10 November 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).