FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AT/HMF/2019/0097**
HMCTS	**:**	**V: CVPREMOTE**
Property	**:**	**8 Hibernia Road, Hounslow, TW3 3RY**
Applicants	**:**	**Mr Malev Desai** **Mrs Melissa Desai**
Representative	**:**	**Mr Malev Desai**
Respondents	**:**	**1. Mr Inderjit Singh Bhangra** **2. Ms Marta Paulina Blaszczyk**
Representative	**:**	**1. Mr Parminder Singh** **2. Ms Marta Paulina Blaszczyk**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Robert Latham** **Mr Stephen Mason FRICS** **Mr Steve Wheeler**
Date and Venue of Hearing	**:**	**3 December 2020 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15 December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. 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 were referred are specified at [9] below.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against Inderjit Singh Bhangra in the sum of £5,715.

2. The Tribunal does not make a rent repayment order against Marta Paulina Blaszczyk.

3. The Tribunal determines that Inderjit Singh Bhangra shall also pay the Applicant £100 in respect of the reimbursement of the tribunal fees which he has paid.

4. Inderjit Singh Bhangra is to pay the said sums of £5,815 by 12 January 2021.

Introduction

1. The Tribunal is required to determine this application which has been made under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order ("RRO") in respect of 8 Hibernia Road, Hounslow, TW3 3RY ("the Property").

2. In two recent decisions, namely *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC); [2020] HLR 18 ("*Goldsborough*") and *Rakusen v Jepson and Others [2020] UKUT 298* (LC) ("R*akusen*"), the Upper Tribunal has confirmed that under the 2016 Act there may be more than one landlord against whom a RRO can be sought. This Tribunal is required to determine what RROs should be made when there are two such landlords.

3. On 23 September 1985, Mr Inderjit Singh Bhangra was registered as freehold owner of the Property. At the time this was a three bedroom, two storey, semi-detached house. Two additional bedrooms have been added. The Property has been managed by Mr Parminder Sidhu, a friend runs Highgrove Residential Ltd ("Highgrove").

4. On 27 September 2016, Mr Bhangra let the Property to Ms Marta Paulina Blaszczyk and her then partner Mr Jean-Paul Reece for a term of one year from 1 October 2016. The rent was £2,600 pm. The letting was arranged

by Mr Sidhu. On 1 October 2017, a second tenancy was granted to Ms Blaszczyk and Mr Reece for a term of two years at the same rent. On 1 October 2019, a third tenancy was granted to Ms Blaszczyk for a term of one year at the same rent. By this time, Mr Reece had left the Property and is currently in Vietnam. Ms Blaszczyk left the Property in June or July 2020. She is now living in Aberdeen with her current partner.

5. On 25 November 2018, Ms Blaszczyk and Mr Reece let the ground floor living room to Mr Desai and Ms Mazabraud (as she was known before they married). The term was from 16 December 2018 to 16 December 2019 at a rent of £650 pm. On 23 May 2019, Mr Blaszczyk, Mr Reece and Mr Zdzlslaw Sulikowski let the loft room to Mr Desai and Ms Mazabraud for a term of 23 May to 23 November 2019 at a rent of £850. The Applicants left the Property on 31 September 2019. They paid a total of £7,200 in rent. Rent was paid into the bank account of Mr Reece.

The Application

6. On 28 November 2019, the Applicants issued their application naming Mr Bhangra and Highgrove as respondents, apparently on the advice of Mr Nadeem Razak, a Regulatory Officer at the London Borough of Hounslow ("Hounslow").

7. On 17 February 2020, the Tribunal gave Directions at a case Management Hearing ("CMH") . The following attended: (i) Mr Desai; (ii) Mr Bhangra and (iii) Mr Sidhu on behalf of Highgrove. Mr Desai stated that he had never met Mr Bhangra or Mr Sidhu. The Tribunal explored the various tenancies that had been granted. As a result of this, Mr Desai applied to remove Highgrove but to add Ms Blaszczyk as a respondent.

8. The Case was set down for hearing on 5 May 2020. As a result of Covid-19, this was adjourned and in due course was refixed for a virtual hearing on 3 December. In the interim, various Directions were made as a result of which:

(i) On 26 August, a Procedural Judge debarred Mr Bhangra from further participation in the proceedings because of his failure to respond to correspondence. He subsequently applied for the bar to be lifted. This Tribunal agreed to deal with this as a preliminary issue and decided to lift the bar.

(ii) On 9 September, a Procedural Judge debarred Ms Blaszczyk's further participation in the proceedings because of her failure to respond to correspondence. On 15 October, a Procedural Judge agreed to lift the bar.

9. Each of the parties filed bundles for the hearing:

(i) The Applicants' Bundle extends to 54 pages. The offence on which they rely is one under section 72(1) of the Housing Act 2004 ("the 2004 Act")

namely that the respondents were persons having "control of" or "managing" and HMO which was required to be licenced, but was not so licenced. They seek a RRO in the sum of £7,200, namely the rent which they paid between 16 December 2018 and 31 September 2019. They provide bank statements confirming the rent that they paid into Mr Reece's account. On 10 November they provided a brief response to the issues raised by Ms Blaszczyk

(ii) The First Respondent's Bundle extends to 20 pages. He had previously provided the Tribunal with a paper bundle in April. The bundle includes a witness statement from Mr Bhangra. He states that Mr Sidhu had arranged the letting to Ms Blaszczyk and Mr Reece. It had been let to them unfurnished. On 5 August 2019, Hounslow had notified Highgrove that the Property required an HMO licence. Mr Sidhu contacted him to explain that Ms Blaszczyk had let out the rooms without his knowledge. On 14 August 2019, he applied to Hounslow for an HMO licence. He also provided invoices for works which he had executed to the property.

(iii) The Second Respondent has provided a Statement and 18 exhibits. Ms Blaszczyk states that Mr Sidhu knew that she and Mr Reece would be subletting rooms as they would not otherwise have been able to afford the rent. Mr Sidhu advised her to take photos of the tenant's ID's, so he knew who was living there. Mr Sidhu attended the Property on a number of occasions. Mr Bhangra and his father also visited the Property. She had had a good relationship with the Applicants. On 5 August, Hounslow had written to both Mr Reece and herself about the Property being an unlicenced HMO. She informed Mr Sidhu and understood that he would deal with it.

The Hearing

10. Mr Desai appeared on behalf of the Applicants. Mr Sidhu represented Mr Bhangra who also attended the hearing. Ms Blaszczyk represented herself. Mr Desai and Ms Blaszczyk joined by video; Mr Sidhu and Mr Bhangra by telephone. All gave evidence and asked each other questions. During the lunch adjournment, the parties provided a number of additional documents. No party objected to this late evidence, accepting that the Tribunal should have a full picture about the complex background to this case.

11. Mr Desai has worked as a van driver, but is currently unemployed. On 16 December 2018, he married Ms Mazabound. She has worked as a support worker. On 22 December 2019, their daughter was born. He confirmed that he had not met Mr Bhangra or Mr Sidhu until the CMH. He had met Mr Bhangra's father once and they had communicated in Punjabi. This was in May 2019, when a lock in the kitchen was broken. Mr and Mrs Desai now live in Muswell Hill. We found him a convincing witness.

12. Mr Bhangra lives in East Grinstead. He worked for British Airways as an engineer, but has recently been made redundant. His wife works part-time

for West Sussex County Council in special needs. They have a daughter, aged 25, who is a doctor and a son, aged 21, who is a student. They own their property which is subject to a mortgage. There is no mortgage on the subject Property. Mr Bhangra's father is aged 82. He lives close to the subject Property and has arranged for repairs. Some 10 years ago, Mr Bhangra acquired the property next to that of his father. This is a three-bedroom house which has been let to a family. This property is subject to a mortgage. Mr Bhangra accepted that he had visited the Property twice, once with an insurance agent and once to deal with some cracked tiles. The Tribunal does not accept his evidence that he was unaware of the sub-tenancies.

13. Highgrove has offices at 196 Hanworth Road, which is some 300m from the Property. Mr Sidhu managed the Property on behalf of Mr Bhangra. He had known Ms Blaszczyk for some years prior to granting her the tenancy at the Property in 2016. Between 21 November 2011 and 24 February 2014, he had arranged accommodation for her mother at 26 Catherine Gardens. The rent had been approximately £1,400 pm. The family had been evicted as the landlord had increased the rent to a level that the family were unable to afford. Hounslow secured accommodation for the mother. We are satisfied that Mr Sidhu knew that Ms Blaszczyk and Mr Reece would be sub-letting the other rooms at the Property. They could not have afforded the rent of £2,600 without doing so. The Property was let unfurnished, and Mr Sidhu knew that Ms Blaszczyk and Mr Reece would be furnishing all the rooms. Mr Sidhu suggested to the Tribunal that he had rarely visited the Property. However, in a letter to the Tribunal, date 28 January, he had referred to "3 month inspections" when everything had appeared normal. It was common ground that Mr Sidhu and Ms Blaszczyk had regularly bumped into each other outside the Property in view of the proximity of the Highgrove office. We are satisfied that Mr Sidhu was fully aware of the situation at the Property.

14. Ms Blaszczyk is now aged 26 (dob 18.3.94). In 2010, she came to the UK from Poland with her mother and two sisters, Isabella (8.8.87) and Roxanna (24.8.04). Mr Reece is 12 years older than her and took the lead in arranging the tenancy at the Property. Ms Blaszczyk was only 22 at this time. She has suffered from ill health. In 2016, epilepsy was diagnosed. She had a lumbar puncture to remove fluid between her brain and her skull. She has also had surgery on her leg on three occasions. In 2017, screws were installed in her left leg. These needed to be removed and replaced. She uses crutches. She left the Property in June/July 2020. By this time Mr Reece had gone to Vietnam. She moved to Aberdeen with her new partner. She was working as a supervisor in a restaurant in Aberdeen, but had been on sick leave for six weeks as a result of her leg injury and had now lost her job. She is still waiting to be paid full Universal Credit. We found her to be a convincing witness.

The Background

15. On 23 September 1985, Mr Bhangra acquired the freehold interest at the Property which was a two storey semi-detached property with three bedrooms. At the time, he was living in his property in East Grinstead. Mr Bhangra gave evidence that the Property was affected by subsidence. In 2010, he took the opportunity not only to address this, but also to add two additional bedrooms in the rear extension and the loft. The conversion was completed in 2012. Mr Sidhu carried out the works in exchange for 50% of the rental income over the next 10 years. There is no written contract, but this is a Gentlemen's Agreement. Mr Bhangra also agreed to pay Mr Sidhu a 15% commission for managing the Property.

16. In 2012, Highgrove arranged for the property to be leased to Clearspring Ready Homes, an organisation which accommodate asylum seekers on behalf of the Home Office. Mr Sidhu stated that it was occupied by a large extended Afghan family. However, by 2016, there were six bedrooms, as the living room also had a bed. There were locks to all rooms, including the living room. This is not entirely consistent with the Property being occupied by a single family.

17. In September 2016, Mr Sidhu arranged for the property to be let to Ms Blaszczyk and Mr Reece. Mr Sidhu already knew Ms Blaszczyk. However, she was only 22, whilst Mr Reece was 12 years older. Mr Reece was therefore the leading player. Ms Blaszczyk describes how Mr Sidhu provided a large bundle of keys for the locks to the six bedrooms. The Property was let unfurnished. The tenants therefore needed to secure furniture. The rent was £2,600 per month. The Tribunal is satisfied that Mr Sidhu knew that they would be subletting five bedrooms. They discussed this with him. They could not have afforded the rent on their own. Ms Blaszczyk's mother had been unable to afford a rent of £1,400 per month at 26 Catherine Gardens.

18. Ms Blaszczyk described how Mr Sidhu had approached her in May 2019 suggesting that she might like to accept a tenancy of another property which she could sub-let. She adduced evidence of text messages, dated 22 May. We accept her evidence.

19. On 25 November 2018, Ms Blaszczyk and Mr Reece let the ground floor living room to Mr and Mrs Desai. The agreement was described as a licence, but the substance and reality of the arrangement was that of a tenancy (see *Street v Mountford* [1985] AC 818). The term was from 16 December 2018 to 16 December 2019 at a rent of £650 pm. They used the toilet and shower on the ground floor. They shared the kitchen with all the other occupants.

20. There were a number of other tenants. On the first floor, there was Carlos Millan who paid £570 pm; Zdzlslaw Sulikowska who paid £570 pm; and Ross who also paid £570 pm. They shared the bathroom of the first floor.

Albie was occupying the loft and was paying £700 pm. He had his own bathroom. Ms Blaszczyk and Mr Reece were occupying the room in the left-hand side extension which had its own bathroom. They were receiving £2,940 pm from their sub-tenants, and were required to pay £2,600 pm to Mr Bhangra. They had had to furnish the Property. They were also responsible for the council tax, water charges, gas, electricity and the broadband. They were not making any significant profit. At best, they had some subsidy towards the rent which they would otherwise have to pay for their room.

21. In May 2019, Mr and Mrs Desai moved from the living room to the loft. Their rent increased from £650 pm to £850pm. They also paid £20 pm for the cleaning of the common parts, a service which was provided by one of the tenants. Ms Blaszczyk and Mr Reece added Mr Sullkowski as a landlord. Apparently, he had been a sub-tenant for some time. At this time, Mr Sidhu was suggesting that Ms Blaszczyk and Mr Reece might move out to manage another property. Had this occurred, Mr Sullkowski would have been on site to manage the Property.

22. We find that Mr Sidhu visited the Property at least once a quarter. The tenants would report disrepair repairs to Highgrove. Mr Sidhu would contact Mr Bhangra who would arrange for his father to arrange for repairs. The First Respondent has produced a number of invoices in respect of the works which were executed. Mr Bhangra Senior visited the property on a number of occasions. In May 2019, he met Mr Desai. Mr Bhangra also visited the Property on a number of occasions, albeit that he did not meet Mr or Mrs Desai. On one occasion, he attended with an insurance agent and met Ms Blaszczyk. Ms Blaszczyk met him on at least two further occasions, once when there was disrepair to the tiling in the rear extension and in August 2019 to replace the oven. We are satisfied that Mr Bhangra, his father and Mr Sidhu were fully aware that the Property was being occupied by six separate households. The arrangement suited all the parties.

23. In about June 2019, Mr Desai overheard an argument between Albie and Mr Reece. Albie complained about the conditions at the Property and asserted that it was an unlicenced HMO. This caused Mr Desai to make his own inquiries and in due course contact Hounslow. On 13 June, Mr Razak inspected the Property. On 24 July, Ms Blaszczyk texted his details to Mr Sidhu. She asked Mr Sidhu to take care of the situation which he agreed to do.

24. On 25 July 2019, Mr Desai sent an email to Mr Razak stating that he had checked the HMO database and discovered that the Property was unlicenced. There were currently nine people forming six households. He was also concerned about the security of his deposit.

25. On 5 August 2019, Mr Razak wrote to a number of parties informing them that the Property required an HMO licence and that failing to licence the

Property could result in a prosecution for an offence under section 72(1) of the 2004 Act. This letter was sent to Ms Blaszczyk, Mr Reece and to Mr Sidhu at Highgrove. It is probable that a letter was also sent to Mr Bhangra.

26. On 5 August 2019, Mr Reece also wrote to Mr Bhangra about disrepair to the cooker in the kitchen. On 7 August, Mr Bhangra arranged for this to be replaced.

27. Mr Bhangra states that he completed an application for an HMO licence on 14 August 2019. However, Hounslow only acknowledged receipt of the application on 1 October. Mr Razak emailed the tenants on 5 and 23 September stating that the application had not been received. On 2 September, Mr Sidhu emailed Mr Razak stating that he had dropped off the application "last week" but could not remember the day as he had been busy with his daughter's wedding. Mr Razak responded that his department was situated in a separate building, and that in due course it would be scanned to his team. We are satisfied that Mr Sidhu delivered the application to Hounslow Town Hall on about 1 September.

28. On 31 September 2019, Mr and Mrs Desai surrendered their tenancy. Ms Blaszczyk returned their deposit of £850.

29. On 6 February 2020, Mr Razak emailed Mr Sidhu stating that the application for an HMO was still awaiting allocation. There is no evidence that Hounslow has determined the application. However, the offence under section 72(1) of the 2004 Act ceased on the date that the application had been duly made.

Has either Respondent committed an Offence?

The Law

30. In considering against whom any RRO should be made, we have regard to the recent decision of the Upper Tribunal in *Rakusen* in which the Deputy President, Martin Rodger QC, upheld the earlier decision of Judge Elizabeth Cooke in *Goldsbrough*.

31. Section 40 of the 2016 Act provides:

> "(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, 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."

32. Section 40(3) a list of seven offences. This includes an offence under section 72(1) of the 2004 Act of "control or management of an unlicenced HMO".

33. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

34. Section 43 provides for the making of RROs:

> "(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)."

35. Section 44 is concerned with the amount payable under a RRO made in favour of a tenant. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months.

36. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that 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."

37. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

38. A licence under Part of the 2004 Act may be held by a person who is not the immediate landlord of the occupier of residential premises. Section 64 lays down no ownership condition for the grant of a licence. The local housing authority ("LHA") must be satisfied that an applicant is a fit and proper person to be the licence holder, and that, out of all the persons reasonably available to be the licence holder in respect of the house, they are the most appropriate person.

39. The expression "person having control" is defined in section 263(1) of the 2004 Act. It is relevant to this application in a number of different respects. It is used to identify the most appropriate person to hold a licence. Where a licence has been granted, the licence holder will be the person on whom any improvement notice will be served, and who may therefore commit the offence under section 30(1). It is also used to identify one of the two categories of persons who may commit the offences under section 72(1) of "having control" or "management" of an unlicensed HMO or house.

40. Section 263 defines the concepts of "person having control" and "person managing":

"(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.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(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–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) 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."

41. Section 263(1) is divided into two limbs: if a house is let at a rack rent the person having control is the person who receives the rack-rent; if the house is not let at a rack rent (for example because the only letting is at a ground rent) the person having control is the person who would receive the rack-rent if the premises were subject to a letting at a rack rent. The formula used in the definition has a considerable history going back at least to 1847 (as Lord Bridge of Harwich explained in *Pollway Nominees Ltd v Croydon LBC* [1987] 1 AC 79). The purpose of the definition is to identify the person (or group of persons who collectively have the relevant interest) who may be made subject to a statutory obligation to undertake work or make a contribution to the cost of public works.

42. In *London Corporation v Cusack-Smith* [1955] AC 337, Lord Reid considered a chain of leases and subleases where several were at a rack rent and was of the opinion that more than one person could be in receipt of a rack rent at one time. Where, as in this case, a house is let under a single tenancy at its full value, who then sublets the house either as a whole or as individual rooms to different sub-tenants, again at full value, both the superior landlord and the intermediate landlord will be in receipt of the rack rent of the premises and will satisfy the definition in section 263(1) of a person having control.

43. The status of "person managing" is more restrictive. The key qualification is the receipt of rent from the persons who are in occupation (whether

directly or through an agent or trustee). Where a superior landlord lets a house to an intermediate landlord who then sublets to tenants or licensees in occupation, ordinarily only the intermediate landlord receives rent from those tenants or licensees. The superior landlord will receive rent from the intermediate landlord, who is not an agent or trustee for the superior landlord, so the superior landlord will not be a "person managing" for the purpose of section 263(3).

44. In *Rakusen*, the Upper Tribunal noted (at [59]) that the policy of the London Borough of Camden is that licences will not be granted to landlords holding less than a five year term (that being the usual duration of a licence) and that Camden considers the most appropriate person to be a licence holder in such situations to be the superior landlord. Similarly, when deciding on whom to serve an improvement notice, a LHA is likely to consider the practicality of the recipient being able to carry out the necessary remedial works. If, as in this case, an intermediate landlord has no significant repairing obligations and no right to carry out major repairs to the building, the LHA may well consider that the appropriate recipient of an improvement notice is the superior landlord.

45. Section 72 of the 2004 specify a number of offences in relation to the licencing of HMOs. The material parts provide:

> "(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.
> ……..
>
> (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–
>
> > (b) an application for a licence had been duly made in respect of the house under section 63 …… and that … application was still effective (see subsection (8)).
>
> (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–
>
> > (a) for having control of or managing the house in the circumstances mentioned in subsection (1).

46. In *Rakusen*, the Deputy President considered the purpose of the 2016 Act before summarising his conclusion:

> "64. Finally, I bear in mind that the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live, and the main object of the provisions is deterrence rather than compensation. The scope of the additional

jurisdictions conferred on the FTT is defined by reference to the commission of specific offences, with the only qualification identified being that the person committing the offence must be a landlord. I can think of no policy reason why the objective of deterring such offences should extend only to immediate landlords and not to superior landlords. If such a limitation had been intended it could have been made clear, as it was in section 73(1), 2004 Act. The facts of this case are not unusual and the phenomenon of intermediate landlords taking relatively short leases of houses with few repairing responsibilities with a view to subletting them to occupational tenants is sufficiently commonplace to have acquired the recognised label "rent-to-rent". The effectiveness of rent repayment orders would be considerably reduced if the "rogue landlords" whom the orders are intended to deter could protect themselves against the risk of rent repayment by letting to an intermediate while themselves retaining responsibility for licencing and for the condition of the accommodation.

65. The conclusion I have reached, therefore, is that the FTT does have jurisdiction to make a rent repayment order against any landlord who has committed an offence to which Chapter 4 applies, including a superior landlord. There is no additional requirement that the landlord be the immediate landlord of the tenant in whose favour the order is sought. That appears to me to be the natural meaning of the statute and is consistent with its legislative purpose. The only jurisdictional filter is that the landlord in question must have committed one of the relevant offences, and before an order may be made the FTT must be satisfied to the criminal standard of proof that that is the case. Although a narrower interpretation is possible it would involve reading the language as prescribing an additional condition which is not clearly stated, and which would detract from the simplicity and effectiveness of the statutory regime."

Our Determination on Liability

47. Our starting point is section 263 of the 2004 Act (see [40] above):

(i) The "person having control": We are satisfied that both Mr Bhangra and Ms Blaszczyk fall within this definition. Both received the "rack-rent" of the Property. Mr Bhangra received a rent of £2,600 pm from Ms Blaszczyk. Ms Blaszczyk received full rents from her five sub-tenants.

(ii) The "person managing the property": Only Ms Blaszczyk falls within this definition. She is the person who received the rent from the persons who were in occupation of the Property. She did not receive this rent as agent or trustee for Mr Bhangra.

48. The Tribunal is satisfied beyond reasonable doubt that both Mr Bhangra and Ms Blaszczyk have committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) The Property was an HMO falling within the "standard test" as defined by section 254(2) of the 2004 Act which required a licence (see [36] above):

(a) it consisted of six units of living accommodation not consisting of self-contained flats;

(b) the living accommodation was occupied by persons who did not form a single household;

(c) the living accommodation was occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constituted the only use of the accommodation;

(e) rents were payable in respect of the living accommodation; and

(f) the households who occupied the living accommodation shared the kitchen, bathrooms and toilets.

(ii) The Property fell within the prescribed description of an HMO that required a licence (see [37] above):

(a) it was occupied by five or more persons;

(b) it was occupied by persons living in two or more separate households; and

(c) it met the standard test under section 254(2) of the 2004 Act.

(iii) Neither Mr Bhangra nor Blaszczyk licenced the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

(iv) The offence was committed over the period of 16 December 2018 (the date on which Mr and Mrs Desai took up occupation of the Property) and 31 August 2019 (the day before Mr Bhangra had made an application to Hounslow for an HMO licence).

(v) Neither Mr Bhangra nor Ms Blaszczyk have established a defence of "reasonable excuse" (see [45] above). In particular, the Tribunal is satisfied that Mr Bhangra was aware that the property was being sub-let by Ms Blaszczyk.

The Amount of any RRO

49. Section 43(1) of the 2016 Act provides that the Tribunal "may" make a RRO if satisfied, beyond reasonable doubt that "a landlord" has committed an offence. The Tribunal thus has a discretion as to whether to make a RRO against either Mr Bhangra and Ms Blaszczyk. We are satisfied that we would be entitled to make RROs against both of them.

50. The Tribunal have decided not to make a RRO against Ms Blaszczyk:

(i) We are satisfied that Mr Bhangra had the primary responsibility to ensure that the Property was licenced. Had Ms Blaszczyk applied for the licence, it is doubtful whether Hounslow would have considered her to be the most appropriate person to hold the licence (see [38] above). She only had a limited interest in the Property, her three assured shorthold tenancies being one, two and one year respectively. We note that some LHAs will not grant a licence to a person holding a term of less than five years. The appropriate person would rather have been Mr Bhangra or Mr Sidhu.

(ii) Ms Blaszczyk made little profit from the arrangement (see [20] above). She only sublet the Property so that she could afford the rent which she was required to pay to Mr Bhangra.

(iii) The effectiveness of RROs would be considerable reduced if the head landlord is able to avoid his liability by introducing an intermediary landlord such as Ms Blaszczyk.

(iv) We also have regard to the fact that Ms Blaszczyk was only 24 when the Property was sub-let to Mr and Mrs Desai. Mr Reece, who was 12 years older, played the leading role. He is now in Vietnam, and the Applicants have taken an informed decision that there would have been no practical purpose in joining him as a respondent.

51. Section 44 of the 2016 Act provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount of any RRO must not exceed the rent paid by the tenants during the relevant period, less any award of universal credit paid to any of the tenants. Mr Desai confirmed that the Applicants were not in receipt of any state benefits and that they paid the rents from their earnings.

52. We have found that the offence was committed over the period of 16 December 2018 and 31 August 2019. Mr and Mrs Desai paid rent of £7,200 over the period of 16 December 2018 and 30 September 2019. They paid rent of £850 in the last month, so our starting point is £6,350.

53. In determining the amount of any RRO, we have regard to the recent decision of the Upper Tribunal in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); [2020] HLR 38. Judge Elizabeth Cooke found that the provisions of the 2016 Act are more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore less scope for the balancing of factors that was envisaged in *Parker v Waller* [2012] UKUT 301 (LC). The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. A FTT is entitled to make a reduction for the cost of utilities, but not for the costs of any repairs or mortgage costs incurred by the landlord.

54. The Tribunal note that the rent paid by Mr and Mrs Desai included various costs which were borne by Ms Blaszczyk, namely council tax, water charges, gas, water and electricity. Rent is normally paid in respect of occupation of land. We are satisfied that we should reduce any RRO by the proportion of the rent attributable to these utilities. These utilities were for the benefit of the tenants of the five rooms and Ms Blaszczyk who occupied the room in rear extension. We are therefore satisfied that we should make a reduction of 10% which is our best estimate of the proportion of the rent that is attributable to these utilities. This reduces the figure of £6,350 to £5,715.

55. Section 44(3) of the 2016 Act requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord:

(ii) The conduct of the tenants;

(iii) The financial circumstances of the landlord;

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies. There are no relevant convictions in this case.

56. We first consider the conduct of the landlord. Mr and Mrs Desai had no contact with Mr Bhangra. Although, they make some criticism about the state of the Property, we note that Mr Bhangra replaced the oven as soon as Hounslow brought this to their attention. Mr Bhangra applied for a licence within one month of receipt of the letter from Hounslow. However, this is reflected by the fact that his liability for a RRO ceased when this application was made to Hounslow.

57. We must also have regard to the conduct of the tenants. Again, Mr Bhangra had no contact with Mr and Mrs Desai. Whilst Mr Bhangra described Ms Blaszczyk as being rude, he made no criticism of the Applicants. He made a suggestion of untenant-like behaviour: a broken tap, a broken key; and an occasion when the gas stopcock was turned off.

The Tribunal is not satisfied that any of these complaints reflected untenant-like behaviour by any of the occupants, least of all by the Applicants.

58. We finally consider the financial circumstances of the landlord. We have discussed the financial circumstances of Mr Bhangra at [12] above. He owns three properties, albeit that these are subject to various charges. We have regard to the fact that Mr and Mrs Desai paid their rent to Ms Blaszczyk, rather than Mr Bhangra. However, Mr Bhangra was receiving rent of £2,600 pm from Ms Blaszczyk in respect of this unlicenced HMO. No other tenant has sought a RRO. Having regard to the decision in *Vadamalayan v* Stewart, we do not consider it appropriate to make any reduction for the cost of repairs incurred by Mr Bhangra.

59. Having regard to all factors which we have discussed in our decision, we make a RRO against Mr Bhangra in the sum of £5,715. We further order that Mr Bhangra refund to the Applicants the tribunal fees which they have paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge Robert Latham
15 December 2020

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.