



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

Case Reference : **LON/00AL/HMF/2020/0037**

**HMCTS code
(paper, video,
audio)** : **V: CVP VIDEO**

Property : **10 Walmer Terrace, London SE18 7EG**

Applicant : **Ms Ruth Gabriel**

Representative : **In person**

Respondent : **Ms Ifunanya Erokwu**

Representative : **In person**

**Type of
Application** : **Application for a rent repayment order
by tenant**
Sections 40, 41, 43, & 44 of the Housing and
Planning Act 2016

Tribunal Members : **Judge N Hawkes
Ms S Coughlin MCIEH**

**Venue and date of
hearing** : **10 Alfred Place, London WC1E 7LR on 4
December 2020**

Date of Decision : **6 January 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. 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 that we were referred to are contained in numerous email attachments and bundles which were sent piecemeal to the case officer, the contents of which we have noted. The order made is described below.

Decision of the Tribunal

The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £1,376.35.

The background

1. By an application dated 17 March 2020, Ms Ruth Gabriel (the Applicant) applied for a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent to this application is Ms Ifunanya Erokwu, the Applicant’s landlord.
2. On 17 June 2020, the Tribunal issued Directions leading up to a final hearing (“the Directions”). The Directions provided for the Applicant to serve a bundle by 17 July 2020, for the Respondent to serve a bundle by 14 August 2020, and for the Applicant to serve a “brief reply” by 28 August 2020. No further documents should have been served.
3. Neither party complied with these Directions and Respondent continued to send documents to the Tribunal up until the day before the hearing.
4. Both the Applicant and the Respondent attended the hearing in person. The Applicant was accompanied by Ms Blythe of Greenwich Housing Rights for part of the hearing.
5. The Applicant experienced technical difficulties in participating in the hearing by video. Accordingly, the Tribunal adjourned the hearing in order to enable the Applicant to seek to resolve these issues with the assistance of the video hearing Support Officer. Following this adjournment, the technical issues remained and so the Applicant re-joined the hearing by telephone.
6. At the commencement of the hearing, the Tribunal carefully considered whether to extend time for the service of documents to enable the parties to rely upon the documents which they had served outside the timetable set out in the Directions.

7. The Tribunal had regard to its overriding objective, to the nature of the documents, to the fact that both parties were acting in person, and to the fact that both parties were in breach of the Directions.
8. Taking all of these factors into account the Tribunal concluded that it was fair and just on the facts of this particular case to exercise its case management powers under rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 so as to admit all of the documents which were relied upon by the parties.
9. The Tribunal and the parties then considered each of the issues set out in the Annex to the Directions in turn. The Tribunal heard oral evidence from both the Applicant and the Respondent.

The issues

10. Section 40 of the 2016 Act provides that a Rent Repayment Order (“RRO”) is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.
11. Statutory guidance for Local Housing Authorities concerning RROs under the 2016 Act was published on 6 April 2017 (“the Statutory Guidance”). The Tribunal has had regard to the Statutory Guidance in determining this application.
12. Section 41 of the 2016 Act provides:

(1) A tenant ... 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.”
13. Section 43 of the 2016 Act provides:

43 Making of 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 has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

Whether the Tribunal is satisfied beyond reasonable doubt that the Respondent has committed a relevant offence

14. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) of controlling or managing an unlicensed house in multiple occupation (“HMO”).

15. Section 72 of the 2004 Act provides, so far as is material:

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.

...

(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)

16. By section 263(3) of the 2004 Act:

(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 ... 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.

17. The Respondent accepted that the Property should have had a licence during the relevant period and that she did not make an application for a licence until 19 November 2019. The Tribunal was also provided with correspondence from the Royal Borough of Greenwich which confirms that a licence was required.
18. The Respondent apologised for having omitted to apply for a licence until 19 November 2019 and stated that she had been unaware of the Royal Borough of Greenwich's selective licensing scheme ("the Scheme").
19. The Respondent did not seek to argue that her lack of knowledge of the Scheme is a defence under section 72(5) of the 2004 Act and the Tribunal is not satisfied that the Respondent's lack of knowledge of her obligations as a landlord amounts to a reasonable excuse for having control of and managing an unlicensed HMO. In all the circumstances, the Tribunal is satisfied beyond reasonable doubt that an offence has been committed.
20. This application was made in March 2020 and the offence was committed up until 19 November 2019. The offence was therefore committed in the period of 12 months ending with the date on which the application was made and the Applicant may therefore apply for a RRO in accordance with section 41(2) of the 2016 Act.
21. Subsection 43(1) of the 2016 Act gives the Tribunal a discretion as to whether or not to make a RRO if satisfied beyond reasonable doubt that a landlord has committed a relevant offence. It is common ground that the Property should have been licensed from the start of the Applicant's tenancy in May 2019 until a licence application was made in November 2019 and, in all the circumstances, the Tribunal is satisfied that it is appropriate to exercise its discretion to make a RRO in the present case.

Did the offence relate to housing that, at the time of the offence, was let to the tenant?

22. The parties agree that, at the material time, the property was let by the Respondent to the Applicant and the Tribunal has been provided with a copy of the tenancy agreement which is dated 2 May 2019.
23. Accordingly, the Tribunal is satisfied that the offence relates to housing that, at the time of the offence was let to the tenant. The Tribunal was informed that the Applicant was one of four tenants.

What is the applicable period and what is the maximum amount which can be ordered under section 44(3) of the 2016 Act?

24. The amount of any rent repayment order must relate to rent paid by the Applicant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) of the 2016 Act).
25. By section 44(3) of the 2016 Act:
- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—*
- (a) the rent paid in respect of that period, less*
- (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.*
26. Both parties agree that the rent paid by the Applicant in respect of the relevant period and the maximum amount of any rent repayment order is £1,740.

The amount of the rent repayment order

27. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that in certain circumstances the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
28. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:
- (4) In determining the amount the tribunal must, in particular, take into account—*
- (a) the conduct of the landlord and the tenant,*
- (b) the financial circumstances of the landlord, and*
- (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.*
29. The Tribunal is aware that the County Court may, in the future, be asked to determine claims concerning allegations of disrepair and personal injury. The hearing in the present case was allocated a time estimate of three hours, which is proportionate having regard to the nature and value of the issues in dispute in this application.

30. The decision reached by this Tribunal on the evidence before us (which did not include any expert evidence) is entirely separate from any decision which may be reached by a Court or Tribunal applying a different legal test to the evidence which is presented in other proceedings.

The conduct of the landlord

31. The Applicant complained of at least two instances of flooding at the Property and, at times during her evidence, she described the flooding as constant. The Applicant stated that, after she moved into the Property in May 2019, a flood occurred in June or July. She said that, after repairs were carried out by the Respondent, the ceiling collapsed. She gave evidence that the kitchen/dining room, a corridor and her own bedroom were affected, and that water on the floor caused her to slip and fall thereby injuring herself. The Applicant could point to one email in which she had complained to the Respondent of water penetration.
32. The Respondent accepted that two or three leaks occurred during the relevant period from the upstairs bathroom into the kitchen below. She stated that she carried out repairs promptly and she disputed the Applicant's case concerning the nature and extent of the water penetration. The Respondent also disputed the Applicant's case concerning her injury. She submitted that the Council would not have granted her a licence if she had not been a responsible landlord.
33. Both parties sought to rely upon photographs but none of the photograph was clear enough to be of any significant assistance. The Respondent referred the Tribunal to text messages passing between the parties in which there was no mention of the water penetration or of the injury. In response, the Applicant stated that it had not been necessary to refer to these matters in the text messages because the Respondent was already aware of them.
34. Doing our best on the basis of the limited evidence available, the Tribunal finds that it is likely on the balance of probabilities that three leaks occurred during the material period and that the nature and extent of the resulting disrepair was approximately mid-way between the two accounts which were given by the parties. We have insufficient evidence before us to satisfy us on the balance of probabilities that the Applicant's case concerning the claimed injury (which the Applicant asserts was significant) has been made out. In particular, no medical evidence was produced.

The conduct of the tenant

35. It is common ground that the Applicant failed to keep up with her rent payments during the relevant period. The Respondent told the Tribunal the Applicant assured her that the rent would be paid and that her son would pay the rent but, despite these assurances, arrears built up. The Respondent also stated that the Applicant informed her that she had applied for universal credit to cover the rent when the Applicant was not in fact entitled to receive universal credit. She accused the Applicant of lying.
36. The Applicant accepted that she fell behind with her rent payments but she denied that she told the Respondent her son would pay the rent. She accepted she told the Respondent she would apply for universal credit and stated that she had genuinely believed that she was entitled to universal credit at that time. She said that she later discovered she was not entitled to universal credit due to her immigration status.
37. The Respondent also claimed that the Applicant had lied in stating that one of the bedrooms at the Property was just a box room which should not be rented out. However, on being referred to the licence in respect of the Property, she accepted that the rear bedroom had been found to be too small for use as sleeping and living accommodation for a person over the age of 10. She accepted that she was under an obligation to stop using the room in this manner after a certain period of time and said that this was a “new rule” with which she was happy to comply.
38. The Tribunal accepts that the Applicant failed to keep up with her rent payments and finds on the balance of probabilities that it is likely that assurances were made to the Respondent concerning the making of payments which were broken, in particular concerning the universal credit application.

The financial circumstances of the landlord

39. The Respondent initially stated that she had two tenanted properties in the Royal Borough of Greenwich and no other tenanted properties. She also stated that she has credit card debts, loans, and tenants who are in rent arrears.
40. The Respondent gave evidence that, in addition to the Applicant’s rent arrears, another tenant has arrears of over £1,000 and one of her other tenants is paying only 80% of their rent due to difficulties encountered as a result of the covid 19 pandemic. The Respondent stated that she herself has two dependants, having given birth to twins in April 2020.
41. The Respondent gave evidence that she used to be a mortgage advisor but that she now guides people through the process of buying properties and refers them to a mortgage advisor.

42. The Respondent informed the Tribunal that she moved into a property at Flat 2, 78 Oatlands Drive, Slough in 2016. She stated that she bought the Property at 10 Walmer Terrace in 2001; she lived at the Property until 2005; she then moved to a friend's house and let out the whole of the Property before moving to Slough in 2009. She first lived at 9 Scholars Walk with a partner and then she moved to a property at 9 Orchard Lodge. Finally, she moved to a flat at 78 Oatlands Drive which was purchased in 2016. The Respondent stated that she first starting letting out the Property on a room-by-room basis in 2017.
43. The Respondent was unable to satisfactorily explain why the official Land Registry copy of the register of title for the Property records that the Respondent "of Flat 2, 78 Oatlands Drive, Slough SL1 3HU" purchased the freehold interest in 10 Walmer Terrace on 16 May 2001. She claimed that she did not even know where Slough was in 2001.
44. After the Tribunal had noted that the 2019 gas certificate in respect of the Property records that the landlord's address is 9 Goodrich Green Kingsmead, the Respondent stated that she in fact lives with a partner at the Kingsmead address and is renting out Flat 2, 78 Oatlands Drive. Accordingly, although the Respondent initially informed the Tribunal that she has only two tenanted properties both in Greenwich, she is the landlord of at least three tenanted properties.
45. Due to the lack of clarity and consistency in the Respondent's evidence concerning her financial circumstances together with the fact that no documentary evidence was provided to conclusively show how much rent the Respondent receives from her three rental properties, the Tribunal has not placed any significant weight on the evidence which the Respondent gave concerning her financial circumstances.
46. As regards, the Respondent's outgoings in respect of the Property, in *Vadamalayan v Stewart* [2020] UKUT 183 (LC) the Upper Tribunal stated at [14] that it is not possible to find any support for limiting a RRO under the 2016 Act to the landlord's profits. At [15] and [16] the Upper Tribunal stated:

15. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything the landlord has spent on the property during the relevant period. That expenditure will have repaired or enhanced the landlord's own property, and will have enabled him to charge a rent for it. Much of the expenditure will have been incurred in meeting the landlord's obligations under the lease. The tenants will typically be entitled to have the structure of the property kept in repair and to have the property kept free of damp and pests. Often the tenancy will include a fridge, a cooker and so on. There is no reason why the landlord's costs in meeting his obligations under the lease should be set off against the cost of meeting his obligation to comply with a rent repayment order.

16. In cases where the landlord pays for utilities, as he did in Parker v Waller, there is a case for deduction, because electricity for example is provided to the tenant by third parties and consumed at a rate the tenant chooses; in paying for utilities the landlord is not maintaining or enhancing his own property. So it would be unfair for a tenant paying a rent that included utilities to get more by way of rent repayment than a tenant whose rent did not include utilities. But aside from that, the practice of deducting all the landlord's costs in calculating the amount of the rent repayment order should cease.

47. The Respondent gave evidence that she made payments during the relevant period in respect of the following costs which do not relate to the maintenance or enhancement of the Property: council tax payments; waste and water charges, gas and electricity charges; and broadband costs.
48. The council tax bill for the year 2019 to 2020 is £1,324.05 in total and the council tax costs were therefore £333.96 for the 3 month period which is under consideration. As stated above, the Applicant was one of four tenants. Accordingly, the sum attributable to the Applicant's tenancy during the relevant period is £83.50.
49. The annual water bill was £420.01 for the year and the water costs were therefore £105.87 for the 3 month period which is under consideration. Accordingly, the sum attributable to the Applicant's tenancy during the relevant period is £26.47.
50. No gas and electricity bills were provided but the Tribunal was instead referred to payment receipts. Approximately £50 per month appears to have been paid for gas and approximately £55 per month for electricity. This amounts to £165 a month and £315 per quarter. The figure attributable to the Applicant's tenancy during the relevant period is therefore £79. The broadband charges are £29 per month and £87 per quarter. The figure attributable to the Applicant's tenancy is therefore £21.75.
51. Accordingly, a deduction in the sum of £210.72 falls to be made from the rent paid in the sum of £1,740, leaving a net rent in the sum of £1,529.28 before the other factors are taken into account.

Whether the landlord has at any time been convicted of an offence to which this Chapter applies

52. It is not suggested that the Respondent has been convicted of any criminal offence.

Conclusion

53. Having considered the Statutory Guidance and all of the circumstances of the present case, including the specific findings set out above concerning the conduct of the parties, the Tribunal makes a rent repayment order in the sum of £1,376.35. This represents 90% of the net rent paid by the Applicant during the relevant period.

Name: Judge Hawkes

Date: 6 January 2021

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).