



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

**Case reference** : **LON/00AG/HMF/2020/0069**

**HMCTS code (paper, video, audio)** : **P: CVPREMOTE**

**Applicants** : **Phung, Russo, Costa, Keys, Casella & Varia**

**Representatives** : **Mr Mcclenahan**

**Respondents** : **(1) Eduardo Trujillo & Luz Marina Trujillo  
(2) Flat Sharing Limited  
(3) Rena Begum**

**Representative** : **Did not attend and was not represented**

**Type of application** : **Application under sections 40, 41, 43 & 44 of the Housing & Planning Act 2016 in respect of a Rent Repayment Order**

**Tribunal members** : **Tribunal Judge I Mohabir  
Mr A Parkinson MRICS  
Miss J Dalal**

**Date of hearing** : **29 January 2021**

**Date of decision** : **10 February 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

### ***Introduction***

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondents in respect of Flat 2c, Gate Street, WC2A 3HP (“the property”).
2. The property is described as being four bedroom self-contained flat above commercial premises in a 4-storey building with communal cooking and toilet and washing facilities for the occupiers.
3. The First Respondents are the registered proprietors of the property.
4. Flat Sharing Limited trading as Flintons granted the following licence agreements to the Applicants:

#### **Room B**

Scarlett Morgana (Keys) & Nicola Casella

Term: 26 March 2019 to 23 September 2019

Rent: £1,083.33 per month

The period in respect of which a rent repayment order is claimed is from 25 March 2019 to 26 July 2019 at a total cost of £4,332.65.

#### **Room B**

Lara Russo & Guiseppe Costa

Term: 24 April 2018 to 23 September 2019

Rent: £1,083.33 per month

The period in respect of which a rent repayment order is claimed is from 24 October 2018 to 1 April 2019 at a total cost of £5,436.

#### **Room C**

Mr Phung

Term: 14 January 2019 to 13 January 2020

Rent: £910 per month

The period in respect of which a rent repayment order is claimed is from 14 January 2019 to 22 August 2019 at a total cost of £6,370.

#### **Room C (Flat C)**

Jay Varia

Term: 2 September 2018 to 3 May 2019

Rent: £975 per month

The period in respect of which a rent repayment order is claimed is from 22 August 2018 to 3 April 2019 at a total cost of £7,325.

5. The occupants of the property varied from time to time in the following way:

On 24 September 2018 – 14 January 2019:

Jay Varia, Lara Russo and Giuseppe Costa together with a Canadian international student. Miss Russo and Mr Costa cohabited in the same room. There were 4 people living in the property.

On 14 Jan 19 – 26 March 2019:

Mr Phung replaced the Canadian student. There were 4 people living in the property.

On 26 March 2019- 3 May 2019:

Miss Russo and Mr Costa moved out. Scarlett Keys (Morgana) and Nicola Casella moved in. There were 4 people living in the property.

On 3 May 2019- 26 July 2019: Jay Varia moved out and another international student moved in. There were 4 people living in the property.

On 26 July 2019: Scarlett Keys (Morgana) and Nicola Casella moved out. There were only 2 occupants and, therefore, there was no requirement for the property to be licensed as a house in multiple occupation (“HMO”).

6. During this period of occupation by the Applicants, the property fell within the additional licensing area as designated by the London Borough of Camden. The additional licensing scheme came into force on 6 December 2015 and ran until 8 December 2020.
7. As such, the property required a licence to operate as an HMO. By an email dated 14 February 2020, Camden Council confirmed that the property was not licensed as an HMO.
8. The Tribunal was told that Flat Sharing Limited has now ceased trading and is in administration. Apparently, the Third Respondent, Miss Begum, was a Director of this company.
9. By an application dated 24 April 2020, the Applicants made this application for a rent repayment order against the Respondents.

### ***Procedural***

10. The Tribunal issued directions on 7 October 2020. These were not complied with by any of the Respondents. Therefore, on 21 December 2020, the Tribunal made an unless order that if the Respondents did not file and serve their evidence by 8 January 2021, they would be debarred from defending the case.

11. No such evidence has been filed and served by the Respondent and the Tribunal determined the application on the basis of the Applicants' unchallenged evidence.
12. It should be noted that permission was given to the Respondents to make an application for relief from sanction by 8 February 2021. At the time the hearing took place on 29 January 2021, no such application had been made by any of the Respondents. In any event, the Tribunal deferred its decision until after 8 February on the basis that it would be procedurally unfair on the Respondents to issue its decision before this date thereby denying them the opportunity to make an application for relief.

### ***Relevant Law***

#### ***Making of rent repayment order***

13. Section 43 of the Housing and Planning Act 2016 ("the Act") provides:  
  
“(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.  
(3) The amount of a rent repayment order under this section is to be determined in accordance 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).

#### ***Amount of order: tenants***

14. Section 44 of the Act provides:  
  
(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 the table.

##### ***If the order is made on the ground that the landlord has committed***

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

***the amount must relate to the rent paid  
by the tenant in respect of***

the period of 12 months ending with the date of  
the offence

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 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.

(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.”

***Hearing***

15. The hearing in this case took place on 29 January 2021. The Applicants were represented by Mr Mcclenahan from Justice for Tenants. None of the Respondents attended nor were they represented.
16. The issues before the Tribunal were whether an offence had been committed by the Respondent under section 40 of the Act and whether it was appropriate to make a rent repayment order. If so, the amount of any such order in respect of each of the Applicants.
17. Based on the unchallenged evidence presented by the Applicants, the Tribunal made the following findings:
  - (a) The Applicants were one of 4 separate “households” occupying the property at the relevant time sharing communal facilities; and
  - (b) The property was an HMO within the meaning of Part 7 of the Housing Act 2004.
  - (c) The property was not licensed by Camden Council at the relevant time in breach of section 61(1) of the Housing Act 2004.

18. The Tribunal was, therefore, satisfied beyond reasonable doubt that the Respondents' had committed an offence under section 72(1) of the Housing Act 2004 (as amended), namely, that they had been in control or management of an unlicensed HMO.
19. It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in respect of each of the Applicants for the periods of time set out at paragraph 4 above.
20. As to the amount of the order, the Tribunal must regard to the criteria in section 43(4) of the Act:
  - (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).
21. Guidance was given by the Upper Tribunal in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. The starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matter set in section 43(4).
22. In relation to the Respondents, there was no evidence of conduct or their financial circumstances to which the Tribunal could have regard to. In other words, there was no mitigating evidence, which would allow the Tribunal to reduce the amount of the order. There was no evidence that the Respondents had been convicted of any offence and the Applicants did not contend as such.
23. Accordingly, the Tribunal made a rent repayment order in favour of each of the Applicants for the amounts set out at paragraph 4 above save that the correct amount to be repaid to Mr Phung for the period 14 January 2019 to 26 July 2019 is £5,841.61.

### ***Correct Respondents – Enforcement of the Award***

24. Section 72(1) of the Housing Act 2004 provides:

“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) and is not so licensed.”

25. Section 263 of the Housing Act 2004 provides the following definitions of persons having control of, or managing, premises:
- “(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 includes, where those rents or other payments are received through another person as agent or trustee, that other person.”
26. The Tribunal went on to consider which of the Respondents fell within the definition of “person having control” and/or “person managing” in section 263 and, therefore, against whom the Applicants could enforce the order.
27. The Tribunal was satisfied that the Third Respondent, Miss Begum, as a Director of the Second Respondent cannot be personally liable because the ‘corporate veil’ has not been lifted.
28. Having granted the licence agreements to the Applicants, it is beyond doubt that the Second Applicant was their immediate landlord.
29. The point as to whether the First Respondents could be “a landlord” with the meaning of the Act was considered in ***Goldsborough & Anor v CA Property Management Ltd & Ors*** [2019] UKUT 311 (LC). Factually, the relationship between the Respondents was identical to that of the First and Second Respondent here. At paragraphs 32 to 34 of the judgement, HJJ Cooke held:
- “32. Where I part company with the FTT is in its restriction of liability to an RRO to “the landlord” of the occupier. That is not what the 2016 Act says. The only conditions that it sets for liability to an RRO are, first, that the person is “a landlord” and second that that person has committed one of the offences. Certainly the person must be a landlord of the property where the tenant lived; section 41(2)(a) requires that the offence relates to housing that, at the time of

the offence, was let to the tenant. It does not say that the person must be the immediate landlord of the occupier; if that was what was meant, the statute would have said so.

33. The 2016 Act is in this respect rather simpler than the 2004 Act. Its choice of different wording from that employed in the 2004 Act is clearly deliberate and there is no need to import any definitions from elsewhere. The word “landlord” is straightforward, there is no need to assess who is the “appropriate person”, and therefore no need to determine, as between CAPM and the freeholders, which landlord is entitled to receive the rent on their own account, as section 74(10) would require.

34. So in these cases, CAPM is a landlord, but so are Mr and Mrs Gardner. The appellants have chosen to make their applications, in respect of the HMO licensing offence, against the freeholders and not against CAPM. It will be for the appellants to prove to the FTT that Mr and Mrs Gardner have committed that offence, and it is at that stage that the definitions of “control” and “management” under the 2004 Act become relevant.”

30. The decision is, of course, a binding authority on the Tribunal. It adopted the same reasoning here and concluded that the First Respondents were “a landlord” within the meaning of the Act. It is arguable whether they were “persons having control” within the meaning of section 263(1) of the Housing Act 2004, as the Tribunal was not provided with any evidence of what “rack-rent” was in fact received by them and whether this was not less than two-thirds of the full net annual value of the premises.
31. However, the Tribunal was satisfied that they were a “person managing” within the meaning of section 263(3) because it can reasonably be inferred that they would have received rent or other payments from the Second Respondent as a result of the occupation by the Applicants.
32. It follows, that the rent repayment order made in favour of the Applicants is enforceable jointly and severally against the First and Second Respondents.

Tribunal Judge I Mohabir

10 February 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).