



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

Case reference : LON/00AN/HMF/2020/0092
HMCTS code (video) : V: CVPREMOTE

Property : 46A Broughton Road, London SW6 2LA

Applicants : (1) Brent Cullen (2) Benjamin Miller
(3) Kaitlyn Wilson (4) Chris Molloy (5)
Jack Chambers (6) Vincent Murie

Representative : Mr A McClenanhan of Justice For
Tenants

Respondents : (1) Belle Sarah McKnight and Thomas
Alan McKnight (2) Farida Selatna

Representative : N/A

Type of application : Rent repayment order

Tribunal members : Judge Tagliavini
Mr S Wheeler

**Venue & date
of hearing** : 10 Alfred Place, London WC1E 7LR
V: CVPREMOTE.
15 January 2021

Date of decision : 29 January 2021

DECISION

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: CVPREMOTE**. 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 the tribunal was referred to are in a bundle pages 1 to 523 the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The tribunal finds beyond all reasonable doubt that the first respondents committed an offence under section 72(1) of the Housing Act 2004 by reason of having the control and management of an HMO that required an additional licence but was otherwise unlicensed. The first respondents are to pay the following sums to the applicants by way of a rent repayment order.**
 - (i) Brent Cullen: £1,950.00**
 - (ii) Benjamin Miller: £7,159.29**
 - (iii) Chris Molloy: £4,373.57**
 - (iv) Kaitlyn Wilson: £4,680.00**
 - (v) Vincent Murie: £6,359.51**
 - (vi) Jack Chambers: £11,725.71**

- (2) The application against the second respondent is dismissed.**

The application

1. This is an application dated 26 June 2020 for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016. It is alleged that the first and second respondents had the control or the management of an unlicensed house in multiple occupation in contravention of the Additional Licensing Scheme that had been brought into effect by the London Borough of Hammersmith and Fulham as of 5 June 2017.

Preliminary matters

2. In an order of the tribunal dated 29 December 2020, the first and second respondents were debarred from defending the claim for a RRO due to their non-compliance with the tribunal's previous directions. No application had been made to the tribunal by the

first and second respondents seeking their reinstatement.

Background

3. The subject premises are a four bedroom flat in a two-storey terraced house containing one other flat. The subject flat has a shared kitchen and bathroom. The premises were said to have been occupied by at least three people at all points during the relevant period. Each tenant occupied their own room on a permanent basis each with separate occupation agreements. The applicants were said to be separate, unrelated individuals each paying rent and occupying their rooms as their only place of residence.

The hearing

4. At the oral hearing the applicants were represented by Mr A McClenahan of Justice for Tenants. Neither the first or second respondents appeared or were represented.

The applicants' case

5. The applicants asserted that the appropriate licence under the Additional Licensing Scheme was not held during the relevant period and that no application for a licence was made at any point during the Applicant's tenancy. Therefore, the calculation of the RRO for each applicant was as follows:
 - (i) The amount of the RRO applied for by Brent Cullen is £1,950.00 for the period of 19/11/2019 until the 02/01/2020.
 - (ii) The amount of the RRO applied for by Benjamin Miller is £7,159.29 for the period of 07/03/2019 until the 19/11/2019.
 - (iii) The amount of the RRO applied for by Chris Molloy is £4,373.57 for the period of 30/08/2019 until the 04/02/2020.
 - (iv) The amount of the RRO applied for by Kaitlyn Wilson is £4,680.00 for the period of 07/03/2019 until the 07/09/2019.
 - (v) The amount of the RRO applied for by Vincent Murie is £6,359.51 for the period of 04/04/2019 until the 06/02/2020.
 - (vi) The amount of the RRO applied for by Jack Chambers is £11,725.71 for the period of 25/02/2019 until the 04/02/2020.

Therefore, the total amount of rent being applied for by all the applicants is £35,540.14.

6. The tribunal was provided with the applicants' 'Licence Agreements' and accompanying Booking Receipt in which DMCK Rooms Ltd was described as the 'licensor' and provided with the company's details in which to make payments for their occupation. Although none of the applicants had provided the tribunal with detailed witness statements setting out their dealings with the respondents and the nature and length of their occupation, the tribunal heard oral evidence from Mr Chambers; Mr Miller; Ms Wilson; Mr Murie; Mr Molloy and Mr Cullen.
7. The evidence from the applicants was largely consistent in that they had variously found the subject property advertised on Spare Room or through Facebook. Keys to the property were collected from the 'office' of DMCK Rooms Ltd. A number of the

applicants told the tribunal that they had met persons called 'Floriana' and 'Alice' and a 'Geraldine Lucas' who appeared to work for DMCK Rooms Ltd as they had provided their email addresses but who thereafter would be unresponsive to emails and telephone calls. On leaving the property, the applicants were expected to find a replacement tenant who in turn would be required to sign the tenancy agreement and deposit form. During their occupation none of the applicants saw any mail arrive that was addressed to the first respondents and none of them were aware of the McKnights' connection to the subject property or any connection between the McKnights and DMCK.

8. The applicants told the tribunal that throughout the period of their own occupation there were at least three persons in occupation of the subject premises and confirmed that they each formed an individual household and shared kitchen and washing facilities and that the accommodation was their only home.
9. It was submitted by Mr McClenanhan that Belle Sarah McKnight and Thomas Alan McKnight are an appropriate respondent for this application because they are the beneficial owner of the subject premises as shown by the Land Registry a copy of which had been provided to the tribunal and that was up to date as of 12 December 2019. The tribunal was also provided with a copy of the tribunal's decision after an application for a RRO was made by previous occupiers in LON/00AN/HMF/2019/0024 and in which Beverly McKnight had been made the subject of a RRO for the subject property. Therefore, the tribunal is satisfied that Beverley and Thomas McKnight are a 'person having control' of the premises as they would receive the rack-rent if the premises were let.
10. Mr McClenanhan also asserted that Farida Selatna as the sole Director of DMCK Rooms Limited, as shown on the up to date records of Company House is also the landlord for the purpose of a rent repayment order. Therefore, in accordance with section 251 Housing Act 2004 which states that directors can be held individually responsible for a breach of the Housing Act 2004, Farida Selatan was correctly named as a respondent to the application. Mr McClenanhan therefore submitted that any RRO should be made in the name of all respondents.
11. Mr McClenanhan also submitted that the applicants had conducted themselves well throughout the period of their tenancies and had complied with the terms of the agreement and paid rent as required. Therefore, the applicants sought the tribunal's determination that 100% of the rent paid during a 12 months' period is awarded to each respective applicant as none of the applicants were in receipt of a housing element of Universal Credit or Housing Benefit and provided proof of rental payments made by way of the production of bank statements and screen shots of rental payments made in the various applicants names. The applicants also requested the reimbursement of the cost of the application fee and the hearing fee.
12. As well as the copies of the tenancy/licence agreements, booking forms and bank statements the tribunal was also provided with the requirements of the Additional Licensing Scheme implemented by the London Borough of Hammersmith and Fulham (LBH&F). This Scheme had been introduced borough wide from 5 June 2017 and required the persons having control or management of a house in multiple occupation (HMO) that was occupied by 3 or 4 persons in two or more households to apply for a licence under its Additional Licensing Scheme. A letter dated 8 January 2020 from the LBH&F confirmed that no application for a licence in respect of the subject property had been made.

The tribunal's findings and decision

13. The tribunal finds that the subject property was a HMO that required a licence from LBH&F under its Additional Licensing Scheme throughout the period of the applicants' occupation.
14. The tribunal did not have evidence of a relationship between the first respondents and the applicants and the applicants were not aware of the first respondents ownership of the subject property. However, the tribunal is nevertheless satisfied that the first respondents were the registered proprietors of the subject property until 12 December 2019 being the date on the copy of the Official Register that was provided.
15. Further, the tribunal is able to infer from the evidence provided by the applicants and in the absence of any evidence to the contrary, that the first respondents retained ownership of the subject property throughout the periods of the applicants' occupation; *Oparo v Olasemo* [2020] UKUT 96 (LC). Therefore, the tribunal finds that as the registered owners of the subject property the first respondent Bella and Thomas McKnight were persons having the management or control of the subject property and the persons likely to receive the rack rent from its letting; *Rakusen v Jepsen* [2020] UKUT 298 (LC)
16. The tribunal finds that the second respondent is the sole director of DMCK Rooms Ltd which is the company named on each of the applicants' agreements and Booking Forms. However, the second respondent is not a 'landlord' for the purpose a rent repayment order under section 40 of the Housing and Planning Act 2016 although may otherwise be found to have committed an offence; section 251(1) of the Housing Act 2004 states:

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate, or

(b) a person purporting to act in such a capacity,

he as well as the body corporate commits the offence and is liable to be proceeded against and punished accordingly.

17. Therefore, the tribunal finds that the second respondent is not liable to a rent repayment order and the application against Farida Selatna is dismissed.
18. The tribunal is satisfied beyond all reasonable doubt that the first respondents did not apply to the LBH&F for a licence under its Additional Licensing Scheme during the period of the applicants' occupation. Therefore, the tribunal is satisfied so that it is sure that the first respondents had the control or management of an unlicensed HMO and committed an offence pursuant to section 72(1) of the Housing Act 2004.
19. In the absence of any evidence of any defence of 'reasonable excuse' by the first respondent and evidence of their financial or other circumstances, the tribunal determines that an offence has been committed and that it is appropriate to make the rent repayment orders sought by the applicants. Therefore, the tribunal orders the first respondents to be equally liable to pay the following sums:
 - (i) Brent Cullen: £1,950.00

- (ii) Benjamin Miller: £7,159.29
- (iii) Chris Molloy: £4,373.57
- (iv) Kaitlyn Wilson: £4,680.00
- (v) Vincent Murie: £6,359.51
- (vi) Jack Chambers: £11,725.71

20. These sums are to be paid by the first respondents within 35 days of the date of this decision.

Name: Judge Tagliavini

Date: 29 January 2021

Rights of appeal from the decision of the tribunal

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).