



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

Case References : **LON/ 00BB/HSH/2019/0003.**
P:REMOTE

Property : **27 Chesterton Road London E13 8BA**

Applicants : **London Borough of Newham**

Representative : **Mr P Mishkin**

Respondent : **Mr R Bempong (landlord)**

Representative : **In person**

Type of Application : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM
Mrs S Redmond MRICS**

Date of paper consideration : **10 March 2021**

Date of Decision : **10 March 2021**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicant in the sum of £8,323.15.**

Reasons

- 1 This application made on 13 December 2019 is made by the Applicant under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as 27 Chesterton Road London E 13 8BA (the property) for the period 06 August 2018 to 05 August 2019 during which time the property was unlicensed.
- 2 The subject property falls within the area specified by a selective licensing order made by Newham Borough Council requiring all properties within that area to be licensed as from March 2017.
- 3 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 4 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered however that the matter was capable of determination without a physical inspection of the property.
- 5 The hearing took place by way of a paper consideration (to which neither party had objected) on 10 March 2021.
- 6 In January 2018 the Applicant received a complaint from the tenant living at the property and on investigation found that the property which should have been licensed did not have a licence. The Respondent was identified as the landlord of the property.
- 7 Warning letters were sent to the Respondent by the Applicant in July and August 2018 (pages 15-25) but no response was received from the Respondent.
- 8 On a visit to the property in June 2019 the Applicant established that the property was in disrepair, that it fell within the category of property which required a selective licence at the relevant time and that the tenant had a tenancy agreement.
- 9 On the following day (5 June 2019) the Respondent contacted the Applicant and asked them to send him an application form for a licence which was delivered to his address by hand on the 6 June 2019 (see pages 10 and 37). The Tribunal infers from this conduct that the Respondent acknowledged that the property required a licence and that it did not have one.

- 10 The Respondent telephoned the Applicant on 11 June 2019 and acknowledged receipt of the application form and asked whether he could pay the fee by instalments (page 11).
- 11 Despite other conversations between the parties during the next few months the Respondent failed to complete an application for a licence and on 6 August 2019 was served with a final notice and warning of intended enforcement proceedings (page 51).
- 12 The Respondent wrote to the Applicant on 4 September 2019 by way of appeal against the penalty and cited a number of financial issues which he said meant that he was unable to pay the penalty (pages 61-64). Although the Tribunal regards these issues sympathetically it is unable to take them into account because they are not supported by evidence.
- 13 Since then there has been no further response from the Respondent and no evidence offered of financial hardship.
- 14 The Tribunal is, therefore, satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that he had been in control or management of an unlicensed house.
- 15 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 favour of the Applicant for the 12-month period commencing on 06 August 2018. Any award could not exceed the universal credit of £8,391.39 (representing rent) payable to the Respondent for this period of time.
- 16 As to the amount of the order, the Tribunal had regard to the following circumstances under section 45 of the Act.
- 17 The Tribunal understands that the Respondent's financial circumstances may have influenced his failure to apply for a licence but this is not a defence under the Act and has not been substantiated by evidence.
- 18 The Respondent's failure to engage with these proceedings is unfortunate but is not a defence under the Act.
- 19 According to the Applicant the property was inadequately maintained and in disrepair.
- 20 That, despite being made aware of the need for a licence the Respondent failed to complete an application for licensing.
- 21 The Tribunal did not have details of the Respondent's financial circumstances other than that housing benefit had been paid directly to him by the Applicant (page 58). No evidenced plea of financial hardship has been made in these proceedings.
- 22 The Applicant is asking the Tribunal to make an order in the sum of £8,391.39 which represents the amount of housing benefit paid directly to the Respondent during the period 6 August 2018 to 7 August 2019 (page 58). The amount which the Tribunal can award cannot exceed one year's universal credit and the amount claimed by the Applicant exceeds the one year limit by 3 days.
- 23 The Tribunal calculates the daily rate for July/August 2019 to have been £22.08 and deducts £66.24 (representing 3 days excess) from the total sum claimed by the Applicant leaving a net award to the Applicant of £8,323.15 which is the sum awarded under this Order.

24 Relevant Law
Making of rent repayment order

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: local housing authorities

16. Section 45 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)

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

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

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 the amount of universal credit that the landlord

received (directly or indirectly) in respect of rent under the tenancy for 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.”

Name: Judge Frances Silverman
as Chairman **Date:** 10 March 2021

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.