



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

Case Reference : **LON/00BH/HMK/2020/0024**

HMCTS Code : **V: CVP REMOTE**

Property : **Flat 5, 227A Hoe Street, London E17
9PP**

Applicant : **Dr Elizabeth Allman**

Representative : **Mr George Penny (Flat Justice)**

Respondent : **Mr Mahmood Ahmed**

Representative : **Unrepresented**

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 Donegan
Mr Christopher Gowman MCIEH
(Professional Member)**

Date of Hearing : **29 January 2021**

Date of Decision : **01 February 2021**

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: CVP REMOTE. A face-to-face hearing was not held due to the current lockdown restrictions and all issues could be determined at a remote hearing. The Tribunal was referred to a 72-page bundle of documents, produced by the applicant, the contents of which were noted.

Decision of the Tribunal

- 1. The Tribunal makes the following rent repayment order ('RRO'):**
 - (a) The respondent shall repay the total sum of £8,200 (Eight Thousand, Two Hundred Pounds) to the applicant; and**
 - (b) The sum of £8,200 is to be repaid to the applicant by 22 February 2021.**
- 2. The respondent shall reimburse the Tribunal fees paid by the applicant in the total sum of £300. The respondent must pay this sum to the applicant by 22 February 2021.**

The application and procedural history

3. The RRO application was dated 26 June 2020 and relates to Flat 5, 227A Hoe Street, London E17 9PP ('the Property'), which is a top floor studio flat. The application named Mr Mahmood Ahmed as the respondent. He is the freeholder of 227 Hoe Street, which is a four-storey terrace property with a shop on the ground floor. He, or a family member, runs this shop.
4. The applicant was a tenant of the Property from 18 August 2018 until 13 July 2019. She complains that the Property was unlicensed throughout her tenancy.
5. The Tribunal issued directions on 08 October 2020 and the case was listed for a remote video hearing on 29 January 2021. Direction 5 required the applicant to file and serve a digital bundle by 06 November, which she complied with. Direction 8 required the respondent to file and serve his bundle by 04 December. Direction 10 listed the documents to be included in his bundle, including:
 - “(f) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see Annex). If reliance is placed on the landlord’s financial circumstances, appropriate documentary evidence should be provided (redacted as appropriate);*

- (g) *Evidence of any outgoings, such as utility bills, paid by the landlord for the let property”.*
6. The respondent did not comply with direction 8. The Tribunal wrote to the parties on 25 January 2021, stating that the hearing would proceed on 29 January and the respondent would have to make an application for permission to rely on any documents. No such application was made.
 7. The Tribunal decided the application based on the documents in the applicant’s bundle, her oral evidence and written and oral submissions from her representatives. No documents were provided by the respondent.
 8. The relevant legal provisions are set out in the appendix to this decision.

The background

9. The Property is within the Hoe Street Ward of the London Borough of Waltham Forest (‘LBWH’). Under a designation dated 24 June 2014, LBWH designated an area for selective licensing, pursuant to section 80(1) of the Housing Act 2004 (‘the 2004 Act’). This requires all privately rented properties in the designated area to be licensed. The Hoe Street Ward is in the designated area. The scheme came into force on 01 April 2015 and expired on 31 March 2020. A new scheme came into force on 01 April 2020 and expires on 31 March 2025.
10. The applicant was granted an assured shorthold tenancy (‘AST’) of the Property on 18 August 2018. This was for a term of 12 months at a rent of £800 per calendar month. A copy of the tenancy agreement was included in the applicant’s bundle. This gave the respondent’s name as Mr S Mahmood. However, the bundle also included official copies of the freehold register for 227 Hoe Street, dated 19 June 2020, which show the respondent has been the registered proprietor since 04 February 1993.

The hearing

11. The hearing took place by remote video conferencing and commenced at 10.00am on 29 January 2021. The applicant attended and was represented by Mr Penny of Flat Justice. The respondent did not attend.
12. The Tribunal members were supplied with a helpful skeleton argument from Flat Justice, outlining the facts of the case and the relevant law. Mr Penny expanded on these in his opening submissions and the Tribunal then heard oral evidence from the applicant, who spoke to a statement dated 06 November 2020. This gave details of her AST and dealings with Mr Sajid Mahmood, who appears to be related to the respondent. She occupied the Property from 18 August 2018 until 13 July 2019 and paid her rent, monthly, to Mr S Mahmood. There was an agreed deduction of

£205.98 in January 2019, to reflect the cost of a fridge freezer, toilet seat and spare keys that she purchased for the Property.

13. The applicant's statement also gave details of various problems with the Property, including temperamental electrics, a broken heater and the discovery of cockroaches (towards the end of the tenancy). In addition, she raised concerns about fire safety and whether her deposit had been protected.
14. The applicant answered questions from the Tribunal and gave details of the utilities at the Property. She paid the water rates but not the electricity charges. There is no gas supply. The Tribunal found her to be a credible witness and have no hesitation in accepting her evidence.
15. The basis of the RRO application is that the respondent controlled or managed the Property as an unlicensed house for the duration of the AST, in breach of section 95(1) of the 2004 Act. The applicant's bundle included correspondence from LBWH, stating that a licence had been in place from 13 October 2016 until 13 October 2017 but this was limited to 12 months, due to planning issues. A licence application was refused on 06 September 2019, for planning breach.
16. Mr Penny made further legal submissions at the end of the hearing and invited the Tribunal to make an RRO in the total sum of £8,200, representing the full rent paid by the applicant (with credit for the items purchased in January 2019).
17. Immediately after the hearing the case officer supplied the Tribunal with an email from Mr Sajid Mahmood. This had been sent to her at 10.01 that morning and is recited below:
"Dear Amber
Due to the current lockdown restrictions opposed world over, Mr Mahmood Ahmed is unable to attend the meeting, as he was unable to fly back from Pakistan in time for this meeting. I would greatly appreciate your kind consideration, this forsaken disease has hampered society and the day-to-day dealings. I would hope that we can re arrange this hearing for a more suitable time.
Stay Safe!!
Kindest Regards
Sajid Mahmood S/O Mahmood Ahmed".
18. The email was disregarded by the Tribunal, as it was sent after the hearing started and only seen after the hearing finished. Further, it was not copied to the applicant or her representatives. Had the Tribunal received the email just before the hearing, it would have refused an adjournment. The request was made far too late; the hearing date having been fixed in the directions (October 2020). The respondent has breached these directions

and failed to engage with the proceedings. His current stay in Pakistan is no excuse for his absence, as the hearing was conducted by video and he could have attended remotely. Alternatively, he could have arranged separate representation.

Findings

19. The Tribunal finds the applicant had a tenancy of the Property from 18 August 2018 until 13 July 2019. Her immediate landlord was Mr S Mahmood, as named in the AST. However, the respondent is also 'a landlord' for the purposes of section 43(1) of the Housing and Planning Act 2016 ('the 2016 Act'), being the registered freeholder of 227 Hoe Street. The Tribunal notes that the 29 January email was sent by Mr Mahmood on behalf of the respondent.
20. The Tribunal also finds that the Property was a licensable house throughout the tenancy and there was no licence during this period.
21. The respondent has not been convicted of any offence in relation to the Property. However, the Tribunal is satisfied (beyond a reasonable doubt) that an offence has been committed under section 95(1) of the 2004 Act in that the respondent controlled or managed an unlicensed house. The respondent has largely ignored these proceedings and not sought to explain or excuse this failing.
22. The offence occurred throughout the period 18 August 2018 to 13 July 2019, being the duration of the applicant's tenancy.

The Tribunal's decision

23. Having satisfied itself that an offence had been committed under section 95(1) of the 2004 Act, the Tribunal considered whether to make an RRO. Given the prolonged failure to licence and lack of any evidence from the respondent, it is appropriate to make such an order.
24. This is an application under section 43 of the 2016 Act and the amount of the RRO is to be determined under section 44. The Tribunal could only consider the conduct of the parties (s44(4)(a)), as it was not given details of the respondent's financial circumstances (s44(4)(b)). The starting point, following the Upper Tribunal's recent decision in ***Vadamalayan v Stewart and Others [2020] UKUT 1083 (LC)***, is to allow 100% of the rent paid during the offence. The Tribunal should then consider whether to make a deduction under section 44(4).
25. The respondent has not been convicted of any offence but there has been misconduct on his part. The Property was unlicensed for the duration of the AST and there were the various problems with the Property, as

outlined by the applicant. Further, there appears to have been a planning breach.

26. The respondent did not give details of any circumstances justifying a reduction in the maximum amount of the RRO.
27. The applicant has acted reasonably throughout and there was no evidence of any misconduct on her part that might reduce the amount of the RRO.
28. Having regard to all of these factors, the appropriate order is that the respondent should repay 100% of the rent paid by the applicant for the period 18 August 2018 to 13 July 2019. This included electricity but there were no details or evidence of these charges, despite the clear prompt in the directions. In the absence of this information, the Tribunal makes no deduction from the rent. The sum to be repaid by the respondent is £8,200, which includes the sum of £205.98 deducted in January 2019.
29. At the end of the hearing Mr Penny applied for reimbursement of the Tribunal application and hearing fees totalling £300, pursuant to rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Given the outcome of this case, it is entirely appropriate that the respondent should bear these fees. The Tribunal orders the respondent to reimburse the sum of £300 to the applicant within 21 days of the date of this decision.

Name: Tribunal Judge Donegan **Date:** 01 February 2021

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.

Appendix of relevant legislation

Housing Act 2004

80 Designation of selective licensing areas

- (1) A local housing authority may designated either –
 - (a) the area of their district, or
 - (b) an area in their district,as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

...

95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.
 - (2) A person commits an offence if –
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6); and
 - (b) he fails to comply with any condition of the licence.
- ...
- (4) In proceedings against a person for an offence under subsection (1), or (2) 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), or
 - (b) for failing to comply with the condition,as the case may be.

...

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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.

- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (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.

- (3) A local housing authority may apply for a rent repayment order only if –
 - (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

...

43 Making of a rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond, a reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had 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 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).

44 Amount of order: tenants

- (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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	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 –
 - (a) the rent 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.