



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

**Case Reference** : **MM/LON/00AG/HMF/2020/0193**

**HMCTS Code** : **V:KINLY Remote**

**Property** : **1 Colva Walk, London N19 5DB**

**Applicant** : **Adam James Pirmohammed  
Lauri Haf Lewis  
Douglas Robert Philip Norton  
Adam John Terract McGuinness  
Eva Lorelei Brout**

**Representative** : **Adam James Pirmohammed**

**Respondent** : **Nicholas Adam Howell Martyn**

**Representative** : **Andrew Dymond- Counsel**

**Type of Application** : **Applications for Rent Repayment Orders by  
Tenants  
Sections 40, 41, 43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Members** : **Judge Daley  
Mr C Gowman MCIEH**

**Date of Hearing** : **5 March 2021**

**Date of Decision** : **7 April 2021**

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## DECISION

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### Decision

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £19,000 (Nineteen thousand pounds).

### Introduction

1. This is an application by five tenants of a house in London N19 5DB for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a mandatory House in Multiple Occupation (HMO) licence from Camden Council, but was not so licensed. The tenants were due to vacate the property on 17.9.2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 29 September 2020.
2. The Tribunal issued Directions on 18 December 2020, under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents.

### Property Inspection

3. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property, however, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a 3 bedroom semi -detached house with shared facilities.
6. The Tribunal makes no further assumptions regarding the accommodation.

### Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:
  - (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.

8. Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: *'control or management of unlicensed HMO.'*
9. Section 72(1) of the 2004 Act 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... but is not licensed.'*
10. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).
11. Section 44 of the 2016 Act sets out the amount of order:
  - (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 under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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.

### **The Applicants' Submissions**

12. The Applicants provided copy tenancy agreement that ran from 18 September 2019 to 17 September 2020. The monthly rent of £2,120.00 excluded gas, electricity, water and internet bills.
13. During this time, the property had not been licensed as an HMO as confirmed by a letter dated 18 September 2020 from London Borough of Camden.

14. The Applicants provided bank details of their individual payments to the Respondent for the period of the tenancy from 18 September 2019 to 17 September 2020.

### **The Respondent's Submissions**

17. Mr Martyn defended the proceedings on the basis that he had a reasonable excuse in failing to apply for a license, Mr Martyn was not a professional landlord and he was working abroad as a teacher in Kenya, and had firstly delegated making the application to his managing agents, and when they failed to make an application he had experienced practical difficulties and connectivity issues in making the application from his residence in Kenya. Accordingly, he had not committed an offence under the Act (Housing Act 2004).

### **The Hearing**

18. At the hearing, we heard from Mr Pirmohammed who was authorised to represent the applicant's, also present with Mr Pirmohammed was Mr Douglas Norton. Mr Pirmohammed, stated that he had not understood that Section 40 (3) of the 2016 Act meant that he could not claim for the periods of rent which were outside the 12 months of the date the application was made. However he was willing to concede the rent due for this period. He also accepted that a Temporary Exemption Notice Application had been made on 8 September 2020, and also conceded that he was not entitled for rent repayment after that date.
19. The Applicant stated that they had rented the premises from an agency and had had no direct dealings with Mr Martyn they had in total paid £25,440.00 rent during the period of their occupancy. Mr Pirmohammed informed us that the property had been occupied by two couples, and the single room had been let to Mr Adam McGuinness who had paid £530.00 per calendar month, the occupants of the other two rooms had split the rent in the following way the slightly larger room contributed £805.00 PCM towards the rent and the smaller of the two double was rented for £785.00 PCM.
20. All of the tenants had signed the tenancy agreement. They had also paid for the utility bills such as the gas, electricity and water. He provided information about the condition of the property. He stated that when they first moved in there had been no carbon monoxide alarm and that the garden was quite overgrown, he stated that had in fact vegetation had grown through the window of the conservatory. He stated that there had been items such as a mattress and other old and discarded rubbish from the previous occupant.
21. Mr Pirmohammed referred to the inventory. He also clarified that when the applicants left they the tenants had not left their rubbish and debris, this had been the previous tenants rubbish and belongings which had remained in the garage and at the side of the house during their tenancy. He stated that they had left it in better condition than when they had moved in. He stated that the Applicant had wanted to renew their tenancy because they had not wanted to move during the middle of the pandemic. They had applied for a rent repayment order because they had been informed by the London Borough of Camden when Mr Martyn applied

for a temporary exemption notice that the property was unlicensed. Mr Pirmohammed had included a letter from LB of Camden dated 18 September 2020 which confirmed that during the relevant period the premises had been unlicensed and that a TEN had been applied for on 8 September 2020.

22. Mr Pirmohammed, in his response and in his cross-examination stated that he did not accept that Mr Martyn had a reasonable excuse for his failure to apply for an application. He considered that Mr Martyn had had sufficient time to make his application when he became aware that the agents had not made the application on his behalf and cited that he could have asked someone in the UK or telephoned the council to seek guidance on making the application.
23. Mr Martyn was represented by Mr Dymond, he explained that Mr Martyn was not a professional landlord although he had previously rented the house to two individuals. He lived and worked in Kenya where he was a teacher at a boarding school and had wanted a full management service. Mr Martyn stated that he had asked Greene & Co to undertake the management as Greene & Co had previously managed the property on behalf of Mr Martyn. Mr Martyn had ticked for the full management service. He had also ticked for Additional Services including "HMO Licence fee", for £200.00, under the mistaken belief that the managing agent's would apply for the HMO licence on his behalf, although he accepted that he was not charged for this. He was charged a fee for the property management of 14% plus admin fee.
24. We were taken through a series of email chains dated from 28 August 2019 which clarified that a HMO licence was needed and that Mr Martyn needed to apply for the licence. On 17 September 2019 in answer to a query about whether he had applied for a licence he stated that he had been too busy to apply and that nothing was going to change in the next month, and that he would have to ask their people to make the application for a fee. On 18 October 2019 Sofia Williams indicated that making the application was something that Mr Martyn would need to do himself. In December 2019, Mr Martyn indicated that he was looking into the process, in January 2020 Mr Martyn indicated that he was attempting to make the application however he was having internet connectivity problems with the Camden website. There was then email correspondence between Mr Martyn and the managing agents in which he had asked for additional information and there was a delay in supplying it.
25. Mr Martyn was informed that Greene & Co were being taken over by Hamptons and was firstly informed that Hampton's could not make the application on his behalf, and finally he was informed that it was possible for the application to be made if he paid for the "gold package". On 11 June 2020 Mr Martyn agreed to the gold package, prior to the HMO license being applied for he indicated that his position had changed and a Temporary Exemption Notice was applied for in September 2020.
26. Mr Dymond submitted on behalf of Mr Martyn he was claiming that he had a reasonable excuse for his delays in applying for a HMO license and that if the Tribunal did not accept that this was the case for all of the period then we should consider the periods when Mr Martyn reasonably believed that the managing agents were making the application.
27. Mr Dymond had calculated the daily rental as £69.58 so this mean that the sum of £764.59 should be excluded from the rent repayment calculation and for the period when the licence was applied for on 8 September 2020 the sum of £695.80 for the 10 day period. Mr Dymond in referring to the schedule of expenses,

concede that the case of *Vadamalayan and Stewart (2020)UKUT 183*, meant that those expenses ought not to be taken into account when accessing the rent repayment order.

## **Tribunal Decision**

28. In considering its decision as to the amount of the rent repayment order, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants – not applicable in this case.
29. The Tribunal considered the application in four stages –
  - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
  - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
  - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
  - (iv) Determination of the amount of any order.
30. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
31. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
32. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
33. The Tribunal determined that on the written evidence in the form of a letter from Mr Seamus McCarthy of London Borough of Camden, and upon the admission of Mr Martyn the property was unlicensed and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.
34. The Tribunal next considered whether in all the circumstances Mr Martyn had a reasonable excuse, for his failure to licence the premises. The Tribunal heard and accepted his evidence that he had originally thought that obtaining the licence was to be included within the management of the premises, and that in June 2020 once it was established that the managing agents had agreed to act on his behalf he reasonably believed that they had taken responsibility and would apply for a licence expeditiously. Mr Martyn also sought to rely upon delays caused by connectivity and the fact that he had sought a full management service as he had

recognised that pressures at work and distance would prevent him managing the property.

35. The Tribunal found Mr Martyn to be an honest witness who provided a full paper trail of what had occurred. Accordingly the Tribunal was satisfied that between September to the 18 October 2019 Mr Martyn reasonably believed that the managing agents would apply for a licence. The Tribunal also finds that after Mr Martyn instructed Hampton's to apply for the HMO and paid for the Gold Service, he was entitled to believe that they would make an application on his behalf, however the Tribunal consider that Mr Martyn should have made enquiries by mid- August as to progress with regard to the application.
36. In accordance with section 41(2), the Respondent was committing the relevant offence from 17 September 2019 to 8 September 2020, when the property was let to the Applicants and that although the offence was committed **the** Tribunal has taken the following into account:-
- the fact that the application for a rent repayment order was not applied for until 29 September 2020.
  - That the application to LB of Camden was made on 8 September 2020. the period of 12 months during the time of the tenancy;
  - And Mr Martyn had reason to believe that for some periods during the tenancy the managing agents were acting on his behalf in respect of the Licence application
- .
37. The Tribunal was satisfied that there it was appropriate for an order to be made for the period of 9 months as the Tribunal has decided that Mr Martyn was not exempt by reason of having a license neither did he had have a lawful reasonable excuse in relation to that period. The Tribunal finds that there was a short period during the early part of the tenancy when Mr Martyn was entitled to believe that the Agent was making an application on his behalf, also a longer period at the end of the tenancy. The tribunal finds that Mr Martyn failed to take sufficient necessary steps to contact Camden and also to liase with the agents, there was no evidence to explain why there such a long delay in applying for the TEN.
38. The Tribunal therefore makes a Rent Repayment order of £19080.

Tenants	Amount paid	RRO
Mr Pirmohammed & Lauri Haf Lewis	£9660.00	£7245.00
Douglas Robert Philip Norton and Eva Lorelei Brout	£9420.00	£7065.00
Adam John Terract	£6360.00	£4770.00

McGuinness		
		Total:£19,080

Payment should be made in full within 28 days of the date of this decision.

39. 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.
40. 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.
41. 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.
42. 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.

**Judge:** Monica Daley