FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BC/HMF/2020/0195**
HMCTS	**:**	**V: CVPREMOTE**
Property	**:**	**28 Kensington Gardens, Ilford, Essex, IG1 3EL**
Applicant	**:**	**Ivanas Murnikovas**
Representative	**:**	**Valdas Murnikovas (his son)**
Respondent	**:**	**Kulsoom Akbar Malik**
Representative	**:**	**Ferhan Malik (her son)**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant**
Tribunal Member	**:**	**Judge Robert Latham** **Steve Wheeler MCIEH**
Date and Venue of Hearing	**:**	**16 April 2021 at** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**19 April 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: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. Both parties have filed Bundles of Documents.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £5,280.

2. The Tribunal determines that the Respondent shall also pay the Applicants £100 in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application, dated 28 October 2020, the Applicant seeks a Rent Repayment Order ("RRO") against the Respondent pursuant to Part I of the Housing and Planning Act 2016 ("the 2016 Act"). The Respondent is the freehold owner of 28 Kensington Gardens, Ilford, Essex, IG1 3EL ("the Property").

2. On 8 February 2021, the Tribunal gave Directions. Pursuant to the Directions, both the Applicant and the Respondent have filed Bundles of Documents which includes their Statement of Cases. In this decision, the prefix "A.__" will be added to documents in the Applicant's Bundle (51 pages) and "R.__" to the Respondent's Bundle (15 pages).

The Hearing

3. The Applicant, Mr Ivanus Murnikovas, was represented by his son, Mr Valdas Murnikovas. His second son, Mr Audrius Murnikovas, who is named as a joint tenant on the tenancy agreement, also gave evidence. The Murnikovas family came to the UK from Lithuania some twenty years ago. The Applicant has worked as a carpenter. His wife, Mrs Nijole Murnikovas has worked as a cleaner. Neither have been able to work as a result of Covid-19. An interpreter, Ms Laura Simkute, translated when Mr Murnikovas gave evidence. The Tribunal also heard evidence from Valdas and Andrius.

4. The Applicant has not paid the monthly rent of £2,200 since 28 February 2020. There are now 13 months of arrears (£28,600). Mr and Mrs Murnikovas currently occupy this seven bedroom Property on their own. Mr Murnikovas had been earning £2,000 per month, whilst his wife earned £1,000 per month. It is difficult to see how they could have afforded the rent even had they been able to work. The Respondent suggested that they had been subletting a number of the bedrooms. Mr Murnikovas denied this.

5. The Respondent, Mrs Kulsoom Akbar Malik, was represented by her son, Mr Ferhan Malik. Both gave evidence. Mrs Malik lives with her son at 48 Valentines Road, Ilford. She does not work. She relies on the rental from

the Property as her sole source of income. Her husband died in 2004. He had bought the property at Valentines Road in 1985 and the Property at Kensington Gardens in 1990. Both properties are now in the name of the Respondent. The Respondent lives at Valentines Road with Ferhan, his wife and three children and a second son. Ferhan works as an accountant. There is no mortgage on the property at Valentines Road. In 2016, the Respondent took out a buy to let mortgage on the Property in the sum of £339k. This is an interest only mortgage. The monthly instalments are £900 which the Respondent has been unable to pay because the non-payment of rent on the Property.

6. In his application form, the Applicant stated that the Respondent had committed an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") in respect of an unlicenced HMO. Valdas stated that this had been a mistake and the Applicant's Statement of Case refers to an offence under section 95(1), namely an unlicenced house. In his application form, the Applicant had not specified the period for which a RRO was sought. In her Directions, the Procedural Judge identified this defect and indicated that he should provide the details in his Statement of Case. He failed to do so.

7. The Applicant, at the instigation of the Tribunal, applied to amend his application to rely on an offence under section 95(1). He also stated that he was seeking a RRO in the sum of £26,400 for the period 31 October 2018 to 30 October 2019. It is to be noted that the period was selected to coincide with that when rent was being paid. The Respondent did not oppose this application. The Tribunal granted permission for these amendments.

8. The Directions highlighted, for the benefit of the Applicant, that the tribunal would need to be satisfied beyond reasonable doubt that an offence had been committed. The Applicant's bundle should therefore include full details of the alleged offence, with supporting documents from the local housing authority. The Applicant did not heed this advice and adduced no evidence of the licencing scheme introduced by the London Borough of Redbridge ("Redbridge"). The Applicant was fortunate in that the Respondent conceded that Redbridge had introduced a licencing scheme for all rented houses in the authority from 31 October 2018. The Respondent had learnt of this in February 2020, when Ferhan had approached an agent to manage the Property. The Respondent had applied for a licence on 31 August 2020, from which date any offence under section 95(1) of the 2004 Act ceased to be committed. Ferhan attributed the delay in making the application to difficulties in obtaining the relevant paperwork, the need to obtain a gas safety certificate, and then problems in accessing the Redbridge portal. Covid-19 had created a number of challenges for his family. On 23 February 2021, Redbridge licenced the Property.

The Housing and Planning Act 2016 ("the 2016 Act")

9. Section 40 provides:

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

10. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". These include the offence under section 95(1) of the Housing Act 2004 ("the 2004 Act") of control or management of an unlicenced house.

11. Section 41 deals with applications for RROs. The material parts provide:

> "(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.

12. Section 43 provides for the making of RROs:

> "(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)."

13. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(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.

14. Section 44(4) provides:

"(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."

15. Section 56 is the definition section. This provides that "tenancy" includes a licence.

The Housing Act 2004 ("the 2004 Act")

16. Part 3 of the 2004 Act relates to the selective licensing of residential accommodation. By section 80, a local housing authority ("LHA") may designate a selective licencing area.

17. Section 95 specifies a number of offences in relation to the licencing of houses. The material parts provide:

"(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85 (1)) but is not so licensed.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time -

(b) an application for a licence had been duly made in respect of the house under section 87,

and that … application was still effective (see subsection 7).

18. Section 263 provides:

"(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

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

The Background

19. The Property at 28 Kensington Gardens is a substantial double fronted property on two floors with a roof extension. In his application form, the Applicant describes the Property as having seven bedrooms. On the ground floor, there is a living room, through lounge, spare bedroom, a kitchen and a shower/toilet. On the first floor there are five bedrooms and a bathroom/toilet. In the roof extension there are two additional bedrooms and a bathroom which has been sealed off for a number of years.

20. Since 2006, the Respondent has let out the property. The first tenants left the Property in a very poor condition. Since 30 October 2012, the Applicant has rented the Property. The Respondent described him as an excellent tenant, until difficulties arose in Mach 2020. Rent was paid promptly in cash.

21. The initial tenancy is dated 30 October 2012 (at A.37). The named tenants were the Applicant and Mrs Laura Adomomyte. Mrs Adomomyte was Audrius' partner at the time. The Property was let for a term of 12 months

at a rent of £2,050 per month. The letting was arranged by Clifford Reid Estates who returned the deposit of £2,050 to be held by the Respondent, rather than place it in a Tenancy Deposit Scheme. Clifford Reid Estates are no longer in business.

22. There have been two subsequent tenancies:

(i) On 30 June 2015 (at A.34) the rent was increased to £2,090 per month for a term of 12 months. The named tenants were the Applicant, Audrius and Mrs Adomomyte;

(ii) On 30 September 2016 (at A.32) the rent was increased to £2,200 per month for a term of 2 years. The named tenants continued to be the Applicant, Audrius and Mrs Adomomyte;

23. Valdas told the Tribunal that Mrs Adomomyte had left the Property in October 2015 and Audrius had left in October 2017. It was not entirely clear why Mrs Adomomyte had been included on the 2016 tenancy. Ferhan stated that the Respondent was not clear who had been living there. The Tribunal suspects that the additional tenants had been named as the Respondent recognised that Mr and Mrs Murnikovas could not afford the rent on their own. They needed additional occupants to contribute towards the rent.

24. Valdas has not lived at the property. He owns his own property at 32 Holgate Road in Dagenham. Audrius has also bought his own two bedroom property in Dagenham. He lives there on his own, albeit that a girlfriend occasionally stays with him. He is also a carpenter and has been able to work part-time despite Covid-19. He has an outstanding mortgage of £210k on his property. He stopped paying the instalments for four months, but in recent months has been able to maintain the payments. He was surprised to be informed by the Tribunal that he was also liable for the rent in respect of the Property as he remained a joint tenant.

25. The Applicant promptly paid his rent in cash up to 28 February 2020. Since that date, no rent has been paid. In April 2020, the Applicant offered to pay £1,000, an offer which was refused. Valdas referred to an incident on 30 April 2020 when Ferhan had attended the Property with his wife and had tapped on the windows to attract the attention of the Applicant. The Tribunal does not accept that this amounted to harassment. The Respondent complains that the Applicant has failed to engage in any discussion as to how the arrears should be discharged.

26. On 26 June 2020, the Applicant wrote to the Respondent, having discovered that the initial deposit of £2,050 had not been placed in a Rent Deposit Scheme and that no licence had been obtained. The Applicant stated that they wanted to live at the Property rent free until the end of October 2020, that the arrears should be waived and the deposit should be returned. In the absence of this, the Applicant threatened an application for an RRO. On 18 August 2020 (at A.23), the Respondent replied. She stated that the family had been excellent tenants since October 2012.

There was reference to additional people who had been allowed to occupy the flat. She was sympathetic to the problems that Covid-19 had created. She invited the Applicant to discuss a way forward.

27. On 28 October 2020, the Applicant issued his application for an RRO. On 26 January 2021 (at A.29) Solicitors wrote on behalf of the Applicant demanding that the Respondent should waive the arrears of rent. The Respondent sought to utilise the services of the Property Redress Scheme. However, the Applicant insisted that their proposed terms should be met in full.

28. On 10 February 2021, the Respondent issued a money claim in the County Court against both the Applicant and Audrius Murikovas for arrears of rent. This action had been listed for hearing in May, but has been rearranged because of Eid.

29. The Applicant suggested that the Respondent had neglected the property. Only two items of repair had been executed during the eight years of the tenancy. Ferhan responded by listing a range of works which had been executed. His account was not challenged. The Applicant complained that he had maintained the garden and decorated the property. However, these would normally be the responsibility of the tenant.

30. The Tribunal is satisfied that this application would not have been brought, but for the financial difficulties in which the Applicant finds himself. Covid-19 has created financial problems for all the parties involved in this application. Mr and Mrs Murnikovas have both received three grants under the furlough scheme. They have not made any claims for housing benefit or universal credit. Mr Murnikovas stated that he was unaware that he might have been entitled to any benefits. His English is poor. He was unaware how long the Covid-19 lockdown would last. He is now aged 66 and is planning retirement.

31. The Respondent concluded the hearing by describing how this dispute is taking its toll on her family. She is suffering from high blood pressure. She would like to be able to pay her mortgage instalments. The rent is her only income. No payment has been made for thirteen months. The whole experience had shaken her trust in people.

Our Determination

32. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95(1) of the 2004 Act, having both "control of" and "managing" an unlicenced house. The offence has been committed between 31 October 2018 (when Redbridge introduced their licencing scheme) and 31 August 2020 (when the Respondent applied for a licence.

33. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the

landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that the Applicant was not in receipt of any state benefits.

34. The Applicant seeks a RRO in the sum of in the sum of £26,400 for the period 31 October 2018 to 30 October 2019. We are satisfied that he promptly paid his rent in cash throughout this period. Arrears only started to accrue from 29 March 2021.

35. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord.

(ii) The conduct of the tenant.

(iii) The financial circumstances of the landlord.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.

36. Having regard to these factors and our findings above, we have concluded, after some hesitation, that we should make a RRO, albeit one at the lowest end of the appropriate scale, namely 20% of the rent paid, namely £5,280. We have had regard to the recent guidance provided by the Upper Tribunal, and in particular the most recent decision in *Awad v Hooley* [2021] UKUT 55 (LC).

37. We have had particular regard to the following maters:

(i) The conduct of the landlord. We reject any criticism which has been made about the conduct of Mrs Malik and her son in respect of their Management of the Property. No licence was required when the tenancy began in October 2012. Redbridge only introduced their Selective Licencing Scheme on 31 October 2018. A licence was required, not because this was an HMO as was originally suggested by the Applicant, but because this was a house. Upon learning that a licence was required, the Respondent applied for a licence. There was some delay before it was submitted to Redbridge, but this is understandable given the difficulties created by Covid-19.

(ii) The conduct of the tenant. There has been no criticism of the Applicant until March 2020. No rent has been paid since 28 February 2020; the next rent became due on 29 March 2020. We accept that Covid-19 has created problems for the Applicant and his wife. However, he has refused to

engage with his landlord to discuss a rent repayment plan or to pay any rent. The Applicant cannot expect to stay at the Property for an indefinite period paying no rent. The Applicant has made no attempt to investigate what social security payments may be payable. We question whether Mr and Mrs Murnikovas could have paid the rent even if they were able to resume their jobs. It is probable that they have only been able to meet the rent by subletting rooms at the property. We were told that they are currently living on their own in this seven bedroom property. We note that Valdas has a two bedroom property which he occupies on his own. Audrius is a joint tenant, but has made no contribution towards the rent. He also owns a property.

(iii) The financial circumstances of the landlord. We accept that the rental income is Mrs Malik's sole source of income. She has been left with no means either to support herself or to service the instalments of £900 per month which are due in respect of the mortgage. She has had to rely on support from Ferhan.

38. The Applicant has paid tribunal fees of £300. He has only had partial success. He claimed a RRO of £26,400; only £5,280 has been awarded. We therefore order that the Respondent reimburse the Applicant 33% of the tribunal fees that he has paid, namely £100.

The Next Steps

39. The Tribunal has made a RRO in the sum of £5,280 and has ordered the reimbursement of tribunal fees of £100. The total sum payable is £5,380.

40. However, this Tribunal has not addressed the rent arears of £28,600 which are outstanding. The effect of our determination is merely to reduce the sum that the Applicant owes to the Respondent. This is now a matter for the County Court.

41. The Respondent and his wife must recognise that they cannot continue to live at the Property rent free. They should also recognise that their joint tenant, Audrius Murnikovas, owns a property against which any judgment debt could be enforced.

Judge Robert Latham
19 April 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.