



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

**Case Reference** : **LON/00BG/HMR/2020/0200**

**HMCTS Code** : **V: CVP REMOTE**

**Property** : **311 St Davids Square, London E14  
3WA**

**Applicants** : **Natasha Brewer (1)  
Mihaela Zhivkova (2)**

**Representative** : **Mr Alasdair McClenahan (Justice  
for Tenants)**

**Respondents** : **Ran Chen (1)  
Yan Zhou (2)**

**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  
Ms Fiona Macleod (Professional  
Member)**

**Date of Hearing** : **20 April 2021**

**Date of Decision** : **21 April 2021**

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**DECISION**

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## **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 123-page bundle of documents, produced by the applicants, the contents of which were noted.**

## **Decision of the Tribunal**

- 1. The Tribunal makes the following rent repayment orders:**
  - (a) The respondents shall repay £4,096 (Four Thousand and Ninety-Six Pounds) to the first applicant by 19 May 2021, and**
  - (b) The respondents shall repay £4,050 (Four Thousand and Fifty Pounds) to the second applicant by 19 May 2021.**
- 2. The respondent shall reimburse the Tribunal fees paid by the applicants in the total sum of £300. The respondent must pay this sum to the applicants by 19 May 2021.**

## **The application and procedural history**

3. The applicants each seek a rent repayment order ('RRO'), pursuant to sections 40, 41, 43 and 44 of the Housing and Planning Act 2016 ('the 2016 Act'). The application concerns their former tenancies of rooms at 311 St Davids Square, London E14 3WA ('the Property'). The application form is dated 09 June 2020 and names Ran Chen and Yan Zhou as the respondents. They are the registered leasehold proprietors of the Property.
4. The Tribunal issued directions on 08 February 2021 and the case was listed for a remote video hearing on 20 April 2021. Direction 5 required the applicants to file and serve a digital bundle by 15 March 2021, which they complied with. Direction 9 required the respondent to file and serve their bundle by 29 March. 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), including full details of any conduct by the tenant said to be relevant to the amount of the Rent Repayment Order sought. 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 during the period*”

5. The respondents did not comply with direction 9. The Tribunal issued a notice of intention to de-bar on 07 April 2021. This provided:

*“Following the Respondents’ failure to comply with the direction to file and serve evidence, the Respondents will be debarred from presenting evidence to the tribunal at the final hearing unless they provide an explanation for their failure by 16 April 2021.”*

No explanation was forthcoming, and the respondents did not attend the hearing on 20 April.

6. The Tribunal decided the application based on the documents in the applicants’ bundle, their oral evidence, and submissions from their representative. No documents were provided by the respondents.
7. The relevant legal provisions are set out in the appendix to this decision.

### **The background**

8. The Property is within the London Borough of Tower Hamlets (‘LBTH’). Under a designation dated 31 October 2018, the entire district of LBTH (excluding the pre 2014 wards of Weavers, Whitechapel, Spitalfields and Banglatown) was designated an area for additional licensing, pursuant to section 56 of the Housing Act 2004 (‘the 2004 Act’). Any house in multiple occupation (‘HMO’) in the designated area, except for a converted block of flats within section 257 of the 2004 Act, must be licensed. The Property is in the designated area. The scheme came into force on 01 April 2019.
9. The first applicant was granted an assured shorthold tenancy (‘AST’) of Room 3 at the Property on 18 January 2020. This was for a term expiring on 18 July 2020 months at a rent of £750 per calendar month. The second applicant was granted an AST of Room 2 at the Property on 18 January 2020. Again, this was for a term expiring on 18 July 2020 at a rent of £750 per calendar month. Copies of both tenancy agreements were included in the applicants’ bundle. The landlord was named as “*City Group Properties*” and their stated address was “*C/o City Group Properties LTD – Suite 4 Cochrane House Canary wharf E14 9UD*”. The bundle also included an official copy of the leasehold register for the Property, which show the respondents have been the registered proprietors since 17 September 2013.

## **The hearing**

10. The hearing took place by remote video conferencing. The applicants both attended and were represented by Mr McClenahan of Justice for Tenants. The respondents did not attend and were not represented.
11. Mr McClenahan outlined the facts and relevant law and the Tribunal then heard oral evidence from both applicants, who spoke to witness statements dated 11 March 2021. This gave details of their tenancies, occupation of the Property and dealings with City Group Properties Limited ('CGPL'), who had arranged the tenancies.
12. The applicants' statements also gave details of the Property and the occupation of the various rooms. It was originally a two-bedroom flat with separate sitting room, kitchen and main bathroom. One bedroom (Room 1) also has an en-suite bathroom. The sitting room was converted into two bedrooms, prior to the applicants' tenancies. This means the only communal rooms were the kitchen and main bathroom.
13. The bedrooms were occupied, as follows:  
  
Room 1 – occupied by 'Asllan' throughout the applicants' tenancies  
  
Room 2 – occupied by the second respondent  
  
Room 3 – occupied by the first respondent  
  
Room 4 – occupied by 'Meng' until early May 2020 and then occupied by a couple from early June 2020.
14. The applicants' statements also gave details of various issues during the early part of their tenancies, including a missing key fob, missing curtains in Room 3 and problems with the internet connection.
15. The applicants moved out early, on 30 June 2020, as they were experiencing problems with the new tenants in Room 4. By this time, there were five people living in the Property and the new tenants were smoking on the balcony and being generally disruptive. Further, there was an encounter in the kitchen when one of these tenants had intimidated both applicants.
16. The applicants reported their concerns to CGPL in numerous emails and via WhatsApp group messages. These were largely ignored but CGPL agreed they could vacate early.
17. The applicants paid their rent to CGPL and evidence of these payments was included in their bundle together with helpful rent schedules. The

rent paid by the first applicant totalled £4,096 and the rent paid by the second applicant totalled £4,050.

18. In response to questions from the Tribunal, the first applicant explained that the rent was a fixed monthly sum, inclusive of utility bills. Her understanding was that the bills were paid CGPL. The Tribunal found both applicants to be credible witnesses and have no hesitation in accepting their evidence.
19. The basis of the RRO application is that the respondents controlled or managed the Property as an unlicensed HMO for the duration of each tenancy, in breach of section 72(1) of the 2004 Act. The applicants' bundle included correspondence from LBTH, confirming the Property was unlicensed during their tenancies.
20. Mr McClenahan made further legal submissions at the end of the hearing and invited the Tribunal to make RROs for the full rent paid by each applicant. He submitted that the respondents are persons having control of the Property, within section 263(1) of the 2004 Act, as they are the registered proprietors and receive the rack-rent or would receive it if let at a rack-rent. They are also persons managing the Property, as they receive the rent (or would receive it) in accordance with section 263(3).
21. Mr McClenahan also addressed the parties conduct and highlighted the overcrowding at the Property, CGP's failure to address the applicants' concerns and the respondents' failure to engage with these proceedings. The applicants' bundle had been sent to the respondents at the Property, being the address given on the leasehold register and had also been sent to CGPL by email and post (both to their registered office and the address given on the tenancy agreements). There had been no response and no contact from the respondents or CGPL. In contracts, the applicants were blameless. They had paid their rent on time and complied with their tenancies. Further, they had complied with the Tribunal's directions.

## **Findings**

22. The Tribunal finds that the first applicant had a tenancy of Room 3 at the Property between from 18 January to 30 June 2020 and the second applicant had a tenancy of Room 2 for the same period. The Tribunal also finds that the Property was a licensable HMO throughout these tenancies and there was no licence during this period.
23. As far as the applicants are aware, the respondents have 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 72(1) of the 2004 Act in that the respondents controlled or managed an unlicensed HMO. The respondents have not participated in these proceedings or explained their relationship with

CGPL. It may be a 'rent-to-rent' arrangement or CGPL might have acted as their agent. However, it is clear the respondents were the registered leasehold proprietors of the Property throughout the tenancies. As such, they had control and management of the Property.

24. The offence occurred throughout the period 18 January to 30 June 2020, being the duration of the applicants' tenancies.

### **The Tribunal's decision**

25. Having satisfied itself that an offence had been committed under section 72(1) of the 2004 Act, the Tribunal then considered whether to make an RRO. Given the failure to licence throughout the tenancies and absence of any defence or evidence from the respondents, it is appropriate to make such an order.
26. This is an application under section 41 of the 2016 Act and the amount of the RRO is to be determined under section 44. There is no evidence the respondents have been convicted of any offence (s44(c)). The Tribunal could only consider the conduct of the parties (s44(4)(a)), as it was not given details of the respondents' financial circumstances (s44(4)(b)). It is no longer appropriate RROs to be limited to the repayment of the profit element of the rent (***Vadamalayan v Stewart and Others [2020] UKUT 1083 (LC)***). The amount of the RRO is a matter for the Tribunal's discretion but cannot exceed 100% of the rent paid. It will be unusual for there to be nothing to take into account under s44(4) (***Awad v Hooley [2021] UKUT 0055 (LC)***).
27. There has been clear misconduct on the part of the respondents. The Property was unlicensed for the duration of the tenancies and was unsuitable for occupation by four or five different tenants, being a two-bedroom flat. Further, the respondents have not engaged with these proceedings.
28. The respondents did not give details of any circumstances justifying a reduction in the maximum amount of the RROs.
29. The applicants have acted reasonably throughout and there was no evidence of any misconduct on their part that might reduce the amount of the RROs.
30. Having regard to all these factors, the appropriate order is that the respondents should repay 100% of the rent paid by each applicant for the period 18 January to 30 June 2020. This included utility charges, but the respondents did not provide 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 to the

first applicant is £4,096 and the sum to be repaid to the second applicant is £4,050. These sums are to be paid within 28 days of this decision.

31. At the end of the hearing Mr McClenehan 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 the respondents should bear these fees. The Tribunal orders the respondents to reimburse the sum of £300 to the applicant within 21 days of the date of this decision.

**Name:** Tribunal Judge Donegan **Date:** 21 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.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

- (1) A person commits an offence if he is a person having control or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if –
  - (a) he is a person having control of or managing an HMO which is licensed under this Part,
  - (b) he knowingly permits another person to occupy the house, and
  - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if –
  - (a) a notification has been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence has been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time –
  - (a) a notification has been duly given in respect of the house under section 62(1), or
  - (b) an application for a licence has been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or
  - (c) for failing to comply with the condition, as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine not exceeding £20,000.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.



- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either –
  - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
  - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are –
  - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice of licence (or against any relevant decision of the appropriate tribunal) has not expired, or
  - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

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### **263 Meaning of “person having control” and “person managing” etc**

- (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
  - (a) 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 receives the rents or other payments;

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

- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

## **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.

	<b><i>Act</i></b>	<b><i>section</i></b>	<b><i>general description of offence</i></b>
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.

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>the amount must relate to rent paid by the tenant in respect of</i></b>
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.