



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

Case reference : **LON/00BG/HMF/2020/0205**

HMCTS code : **V: VIDEO CONFERENCE.**

Property : **36 Sidney House, Old Ford Road,
London E2 9QB.
Mr. James Cummings**

Applicants : **Ms. Stefania Seba**

Representative : **Justice for Tenants – Mr. McClenahan
Ref: 8948.
Mr. Jobrul Ahmed**

Respondent : **Mrs. Farhana Begum Bina**

Representative : **In person.**

Type of application : **Application for a Rent Repayment Order
("RRO") by tenant Sections 41 of the
Housing and Planning Act 2016
Tribunal Judge Hamilton-Farey**

Tribunal members : **Tribunal Members Ms. S. Coughlin
MCIEH.**

Date of Hearing : **31 March 2021**

Date of decision : **22 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were the applicants' and respondents' bundles of documents, including the witness statement of Mr. Armel Collard of London Borough of Hammersmith and Fulham.

The tribunal has noted the contents of these documents and the submissions of the parties at the hearing when making its decision.

Decisions of the tribunal

1. The tribunal determines that the applicants are entitled to a Rent Repayment Order in the sum of **£11,730.00**, which should be paid by the respondents within 28 days of the date of this decision. It is for the applicants to apportion the award between themselves in relation to the rent paid and their dates of occupation.
2. The tribunal determines that the respondent shall pay the applicants **£300** in reimbursement of the tribunal fees paid by the applicants.

The background

3. The tribunal received an application dated 16 September 2020 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order ('**RRO**') in respect of 36 Sidney House, Old Ford Road, London E2 9QB, ('**the property**') a three-bedroom self-contained flat within a purpose-built block owned by the respondents. The London Borough of Tower Hamlets is the local housing authority, and they designated the area in which the property is located as an Additional Licensing Area from 1 April 2019.
4. The application has been brought by the applicants jointly. They allege that in respect of the period 4 April 2019 to 4 April 2020 the respondent committed an offence under section 72(1) of the Housing Act 2004 (the '**2004 Act**') in controlling or managing a House in Multiple Occupation without a licence. They seek repayment of the rent paid in that period amounting to £15,640.00 for that period.
5. The applicants also seek repayment of their application fee of £100 and their hearing fee of £200.
6. In their application the applicants named Mr. Ahmed and Mrs. Begum Bina as landlords, however Mr. Ahmed confirmed that his wife Mrs. Begum Bina was more involved in the property than he was.
7. On 18 December 2020, the Tribunal issued directions.

8. The directions set out the issues which the Tribunal would need to consider. The respondent, having been sent the application and supporting documents by the tribunal, was advised to seek independent legal advice. The parties were directed to file a bundle of documents for use by the tribunal. The applicants submitted a bundle of 197 pages and the respondents bundle extended to 41 pages.

The Property

9. The Property is described in the application as a 4-bedroom flat in a purpose-built block. However, the lease plan shows the flat to be a 3-bedroom flat with living room. Alterations are restricted by the lease to those with the consent of the landlord (LBTH), but no consents were sought, or alterations agreed. It appears that the living room was being used as a bedroom, giving the impression that the flat had 4 bedrooms.

The tribunal's decision and reasons

10. Mr. McClenaghan of Justice for Tenants represented the applicants in this matter. He outlined the relevant legislation, the terms of the applicants' tenancies and the various research that had been done into the dangers faced by tenants in houses of multiple occupation.
11. He said that this property was within an area of Additional Licensing and had not been licensed by the respondents, despite them letting the flat since 2017. He called Ms. Saba to give evidence.

Ms. Saba's evidence:

12. Ms. Saba said that she shared the property with James Cummings, Robin Alexander, and Colin. She believed that both James and Colin were plumbers.
13. She said that her room suffered from mould and damp. The fridge was broken as was the washing machine. She said that it took about a month for the agent to see to the washing machine and the fridge was never repaired or replaced. She also said that her deposit was not properly protected or returned to her at the end of the tenancy.
14. She was unfortunately unable to confirm how often her landlord 'Mrs. Bina' attended the property, but thought it was about 3 or 4 times during her tenancy. She did not recognise Mr. Ahmed and thought that she had never seen him.
15. She said that Mrs. Bina would attend every 3-4 weeks and pick up any mail and then leave, but she thought that she had mentioned the issues to the person who picked up the mail who she thought was the 'owner'.

Mr. Ahmed and Mrs. Bina's evidence:

16. Mr. Ahmed and Mrs. Bina both gave evidence. Mr. Ahmed said that he was shocked by the whole case; he sympathised with the tenants and expected certain standards from the agents. He thought the application for a Rent Repayment Order was unfair as he had no contact with the tenants except over the washing machine.
17. He felt like this application was going behind the back of Thamlet, but they had decided to look after the tenants themselves now.
18. He confirmed that this was their first experience of lettings and this was their only property, being originally their home. Since the tenancies had ended, they had actually moved back into the flat and now occupy it themselves, He said they had chosen Thamlet to act on their behalf
19. , because they offered £200 per month more in rental, and because Mr. Mohammed was a religious man, they thought he would act honourably and were naïve in the circumstances.
20. Mrs. Bina was more involved with the property than her husband, and she attended the property every 3-4 weeks to collect mail She said that occasionally she met some of the tenants, but she did not need to contact them for access because she had retained her own keys to the flat.
21. Neither of the respondents appeared to be aware of the licensing system in the Borough before these proceedings. They did confirm that they still used Thamlet despite the problems they now faced, although they said they had attempted to find new agents but had so far been unsuccessful.
22. It was confirmed to the tribunal that rent was paid to Thamlet either by BACS or sometimes in cash directly to Mr. Mohammed/Thamlet, but receipts were not available to us to show that this had been the case.
23. The respondents reiterated that they felt sympathy for the tenants.

Mr. McClenahan's response:

24. Mr. McClenahan said that an HMO License would have been required whether the living room in this property had been used as a bedroom or not, because of the effect of Selective Licensing Scheme.
25. He said that naivety was not a defence to the lack of licensing and that there was a high demand for property in the area which was supplied by people who had no real interest in the property. He said that the respondents had not produced any documents to support their case, they had not done any due diligence on the agency, despite the poor reviews that existed on social media. He said that these should have been a 'red flag' to the respondents for due diligence.

26. He also said that the respondents considered they had done nothing wrong, they did not understand their obligations as a landlord and that with the exception of the fact that they repaired the washing machine, there was no conduct on their part to suggest that any deductions should be made from the rent paid by the tenants.

Summary:

27. We find that the respondents having entered into a Rent-to-Rent agreement and in accordance with the relevant case law, are appropriate landlords in relation to any Rent Repayment Order. If they wished, they could act against Thamlet for the return of any award we might make.

Quantum

28. Having regard to the decision in *Vadamalayan* the starting point for the tribunal in calculating the RRO is the 'rent itself for the relevant period of up to twelve months' (paragraph 12).
29. The tenants say that they should receive the full amount for the period in question, and the landlord says that this is unfair.
30. Insofar as the quantum of the RRO the tribunal is bound by the decision in *Vadamalayan*. Accordingly, the starting point for the calculation of the quantum is the rent paid during the relevant period (to a maximum of 12 months) less the deductions permitted by that decision. Following the decision in *Vadamalayan* the tribunal are not able to deduct mortgage costs from the rent paid for the period. Accordingly, the maximum amount the tribunal may order in repayment is £15,640.00.

Factors that may be considered in assessing quantum

31. Section 72(5) of the 2004 Act contains a statutory defence of 'reasonable excuse' to the offence of being in control/management of an unlicensed HMO.
32. Section 44(4) of the 2016 Act provides that in determining the amount of any RRO the tribunal must, in particular, consider
- (a) The conduct of the landlord and tenant,
 - (b) The financial circumstances of the landlord
33. In respect of the landlord's conduct, we do not find this to be in any way within the definition of 'rogue'. We are however not satisfied the landlord carried out repairs as and when necessary, and some remained outstanding at the end of the tenancy, which is clearly unacceptable.

34. The landlord also confirmed that this was their only property and we do not consider them therefore to be ‘professional landlords’, but this does not excuse their lack of knowledge of the licensing system.
35. In the circumstances, and taking all of the above into account, we make a deduction of 25% from the total that we could award, to reflect the fact that the landlords are not rogue, the accommodation was of a reasonable standard, the landlords are not ‘professional landlords’ and some recognition should be made of those factors. Had we received financial information from the landlords the deduction might have been higher, but in the circumstances, we consider the total amount payable by the landlords to the tenants is **£11,730.00** this should be paid within 28 days to the tenants, who shall apportion the amount between themselves to reflect the rent payments and periods of occupation.

Fees

36. As the tribunal has made an RRO in favour of the applicants it is appropriate that they should have their fees refunded and the landlords shall pay to the applicants **£300** within 28 days of this decision.

Name: Judge Hamilton-Farey **Date:** 23 April 2021.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of Relevant Legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—

- (a) they are HMOs to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

- (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
- (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(1) 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 (see section 61(1)) but is not so licensed.

(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,

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 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.