



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

**Case Reference** : **NS/LON/00AR/HMF/2020/0225**

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

**Property** : **3 Bideford Close, Romford Essex, RM3 8 H2**

**Applicant** : **Mrs. C Siddique**

**Representative** : **~~In person~~**

**Respondent** : **Empire Property Managers Limited**

**Representative** : **No representation**

**Type of Application** : **Applications for Rent Repayment Orders by  
Tenants  
Section, 41, of the Housing and Planning Act  
2016**

**Tribunal Members** : **Judge Daley  
Mr A Fonka- Professional Member**

**Date of Hearing** : **16 April 2021**

**Date of Decision** : **6 May 2021**

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**DECISION**

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The Tribunal makes a rent repayment order in favour of the Applicant for the sum of £1,675.00 (one thousand six hundred and seventy-five pounds).

## **Introduction**

1. This is an application by Mrs Siddique in respect of 3 Bideford Close, Romford Essex RM3 8H2 for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have a licence from Havering Borough Council, but was not so licensed. Mrs Siddique occupied the property on 23. 1. 2020 on an assured tenancy and was shortly joined by 3 further households thereby creating a house in multiple occupation.
2. The Tribunal issued Directions on 15 February 2021, 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, 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 but, based on the application form, the tenancy agreement and submissions of the parties the Tribunal understands that it is a 4-bedroom terraced house arranged over three storeys, with shared facilities. The property has a kitchen on the ground floor which is accessible through a shared living room. On the first floor were two occupied bedrooms with one being the Applicant's, and on the second floor two further bedrooms and a shared bathroom/WC.
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 Hearing Applicants' Submissions**

12. The hearing was attended by Mrs Siddique by video link, she represented herself. The hearing was also attend by an observer, Mr Patel who also attended by video link
13. The Tribunal was provided with an electronic bundle, which included a copy of the tenancy agreement dated from 23 January 2021. This was a Room- by-Room Lettings Assured Shorthold Tenancy (AST) Room Only agreement between Empire Property Managers and the Applicant. The monthly rent for room 1, the Applicant's room was £825.00 per month. Mrs Siddique set out how she had come to occupy the property and explained that she had initially been charged rent of £850.00 per month.-However, sometime after Mrs Siddique moved into the property she asked for, and was given a tenancy agreement. Mrs Siddique had agreed that the rent would include gas, electricity and water bills, however this was not what was stated in the agreement. Mrs Siddique only made one payment of £850.00 and had negotiated a reduction of £25.00 per month.
14. Mrs Siddique informed us that there had been problems from the outset of her occupation, when she moved into the premises, both the gas and electric had been provided via a paid meter, and the gas had needed topping up and the managing agent had not had a key, or card, this had meant that the property had been without gas. As they were unable to top up the meter, she had been provided with an electric kettle and a wash basin. Mrs Siddique stated that she had understood that she would be renting a room only and that other tenants would be moving

into the property. Although she was unclear on the dates, her clear evidence was that shortly after she moved into the property. The other room on the first floor was let to a couple, who had a young baby. The second floor was then let to a young man and approximately two months before she left the property the second room on the ground floor was rented to a woman. Mrs Siddique, knew the tenants opposite her as Brittany Barnforth and Tony Harding, and the man upstairs as Richard, however she had not known the name of the young woman.

15. Mrs Siddique informed the Tribunal that the condition of the property had been run down with heavy wear and tear, she stated that there was laminate flooring which was worn, there was a broken floor board outside her room. She had been unable to open the window in her room as the window edges were covered in something which she described as black and sticky. The curtain rail within her room had fallen down.
16. Within the bathroom there had been broken tiles, and additionally leaking to the plumbing works. As her room had been directly underneath the bathroom this had periodically caused leaking through her light fitting, and this continued to make “fizzing and popping noises” which she took to be electricity possibly coming into contact with water, which was potentially very dangerous. She had complained about this but it had not been fixed. Mrs Siddique was asked about the doors and fire alarms in the property. She confirmed that to her knowledge, the kitchen did not have a fire door and there had been no alarm except for an old unused one in the kitchen.
17. Mrs Siddique explained that she had been intimidated and threatened by the other tenants, and also by James Filtness, whom she had known prior to moving in the property and who ran the managing agent’ company because she was in rent arrears. She stated that although she had applied for and received the payment for housing benefit as part of her Universal Credit after March 2020 when her work dried up due to the Coronavirus, she had not passed this on to the landlord and had instead saved the money so that she could use as a deposit for another property.
18. Mrs Siddique was aware that the property was subject to the licensing provisions under the Housing Act 2004, and had written to Havering Council to enquire whether the premises was licensed.
19. She had received confirmation that the property either required a Mandatory HMO licence, or alternatively, was within an area which required an additional licence and had not been licensed. On 13 July 2020, the London Borough of Havering had written to the occupants informing them that the property required a licence. Mrs Siddique had taken a photograph of the letter and had included it within her bundle.
20. Mrs Siddique had received an email dated 20.07.2020, from the managing agents asking her to vacate the property by 31 August 2020.
21. On 31 July 2020 Mrs Siddique had written to the London Borough of Havering to enquire among other things if the managing agent was acting on the orders of the council by trying to illegally evict her from the property. On 22 October 2020, Mrs

Siddique received a reply to her enquiry in the form of an email from Wendy Laybourn a Senior Public Protection Officer, informing her that her landlord had been asked to return the property to a single-family dwelling. This email also informed her that she could not be evicted without the landlord following the correct eviction procedure, and also informing her that there was a stay on evictions until 20 September 2020.

22. However Mrs Siddique stated that she had decided to leave the property as she had received threats from the couple residing at the property and from Mr Filtness. She added that the decision was also because she had been able to afford the deposit for another property which was outside London rather than because of the email from the Landlord requesting that she leaves the property.
23. Mrs Siddique, had also included within the bundle, an electronic record of two payments that she had sent to James Filtness. The first payment was of £850.00 on 30.1.2020 and one of £825.00 on 1.03.2020.

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

24. No written submissions or confirmation of receipt of the Application has been received from the respondents who received the rental payments.

17. The Tribunal wrote to the Applicant's solicitor as follows:-

- (a) The address given for the Respondent Company (and to which the application and directions were sent) is not the registered address of the Respondent. Accordingly, there is doubt as to whether the Respondent has been properly served with this application
- (b) Upon looking at the Company Register at Companies House, it appears that the Respondent company faces striking off
- (c) An email sent to the Respondent has bounced back
- (d) The Respondent's website does not appear to work

The Tribunal noted that if this application were to proceed and a Rent Repayment Order made, such an order may be impossible to enforce.

25. The Applicant had provided details of land registry entry which provided details of the registered owner; however the act provides, that an order may be made against *a person having control of or managing an HMO which is required to be licensed under this Part... but is not licensed.*

### **Tribunal Decision**

26. In considering its decision as to whether to make a rent repayment order, the Tribunal has 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.

27. The Tribunal has reminded itself that the fact that the Applicant will have had the benefit of occupying the premises during the relevant period is not a material consideration.
28. 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.

*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.*

33. The Tribunal was provided with evidence of the landlord in the form of the tenancy agreement which confirmed that the Landlord was Empire Property Managers, who were named as the landlord in the tenancy agreement dated 23 January 2020.
34. The Tribunal also had sight of a copy of a letter from Havering Council dated 13 July 2020, confirming that the property was required to be licensed, and that the landlord had failed to obtain a licence in accordance with Section 72(1) of the 2004 Act. The Tribunal heard that this was also confirmed by the email to Mrs Siddique dated 22 October 2020. The Tribunal is accordingly satisfied on the evidence before it, to the required standard beyond reasonable doubt, that the Respondent, Empire Property Manager, was at the relevant time in control of the property, for which a HMO licence was required.

*(ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.*

35. The Tribunal next considered whether in all the circumstances Mrs Siddique was entitled to a rent repayment order. The Tribunal bore in mind the purpose of the legislation, heard and accepted Mrs Siddique evidence concerning the agreement between herself and the landlord, and the nature and occupancy of the premises. Accordingly the Tribunal is satisfied on the evidence before it that the Applicant is entitled to an order.

*Whether the Tribunal should exercise its discretion to make a rent repayment order.*

*(iv) Determination of the amount of any order.*

36. The Tribunal found Mrs Siddique to be an honest witness who provided a full paper trail of what had occurred. Accordingly the Tribunal was satisfied beyond

reasonable doubt that Mrs Siddique had occupied a room within the premises which required a licence, and had made two rent payments between January and March 2020.

37. In accordance with section 41(2), the Respondent was committing the relevant offence from January to October 2020, when the property was let to the Applicant and that although the offence was committed the Tribunal has taken the following into account:-
- Mrs Siddique claim.
  - That the landlord did not apply for a HMO Licence from the London Borough of Havering as required by law.
38. The Tribunal was satisfied that it was appropriate for an order to be made for the full amount of Mrs Siddique's claim.
39. The Tribunal therefore makes a Rent Repayment Order of £1,675.00 for which payment should be made in full within 28 days of the date of this decision.

**Signed:** Judge Daley

**Dated:** 6 May 2021

### **Rights of Appeal**

40. 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.
41. 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.
42. 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.
43. 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.