First-tier Tribunal
Property Chamber
(Residential Property)

Case reference	**:**	**CHI/00ML/HMF/2021/0007**
Property	**:**	**Upper Maisonette, 29 Egremont Place, Brighton BN2 0GA**
Applicants	**:**	**Molly Rimmer, Joshua Whitham and Adele Smith**
Respondents Representative	**:**	**Link Up Lettings Ltd. trading as The Property Shop Mr. Simmonds (director and lay representative)**
Application	**:**	**Application by tenants for a Rent Repayment Order following an alleged offence committed by the Respondent for having control or management of an unlicensed House in Multiple Occupation ("HMO") – Section 43 of the Housing and Planning Act 2016 ("the 2016 Act")**
Date of application	**:**	**24th February 2021**
Tribunal	**:**	**Bruce Edgington (lawyer chair) Peter Turner-Powell FRICS Tat Wong**
Date & place of hearing:		**26th May 2021 as a video hearing from Havant Justice Centre in view of Covid pandemic restrictions**

DECISION

Crown Copyright ©

1. Tribunal makes Rent Repayment Orders against the Respondent in favour of each Applicant in the sum of £3,600.00 i.e. a total sum of £10,800.00. These monies should be paid by **4.00 pm on the 25th June 2021.**

2. The Tribunal also makes an order that the Respondent pay an additional £300.00 to the Applicants or their nominee as reimbursement for fees paid to the Tribunal.

Reasons

Introduction

3. Rent Repayments Orders ("RROs") require landlords who have broken certain laws to repay rent paid either by tenants or by local authorities and are intended to act as a deterrent to prevent offending landlords profiting from breaking such laws.

4. The orders were originally made pursuant to the **Housing Act 2004** ("the 2004 Act") but this application is made under the later provisions contained in the 2016 Act. Section 41(1) of the 2016 Act says that "*A tenant.....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*".

5. Section 40 of the 2016 Act sets out the offences and prefaces the definition by saying "*an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord*". One of those offences described is under section 72(1) of the 2004 Act i.e. "*control or management of unlicensed HMO*" and this is the offence relied upon by these Applicants.

6. The Tribunal made a directions order on the 7th April 2021 timetabling the case to this hearing which has been by way of a video hearing because of the Covid pandemic.

Jurisdiction

7. Section 41 of the 2016 Act says that the Tribunal has jurisdiction if "*the offence was committed in the period of 12 months ending with the day on which the application is made*". In this case, the evidence is that the offence was certainly being committed on the 11th February 2020 when Brighton & Hove City Council e-mailed the Respondent, trading as The Property Shop, informing them that the property needed an HMO licence and sending them an application form. As will be seen, it was undoubtedly being committed before then.

8. Until an application for a licence is made, the offence continues to be committed on a daily basis which, in this case, would be included within the period of 12 months ending with the date of this application. The evidence is that the application for an HMO licence was received by the local authority on the 22nd February 2021. The Tribunal has to be satisfied that an offence has been committed using the criminal standard of proof i.e. beyond a reasonable doubt.

9. Section 44 of the 2016 Act says that the RRO can "*relate to rent paid during....a period, not exceeding 12 months, during which the landlord was committing the offence*".

The Hearing

10. Those attending the hearing were all 3 Applicants together with Mr. Simmonds who said that he is a director of the Respondent. The Tribunal case officer introduced the attendees. The Tribunal chair then introduced himself and the Tribunal members. He then said that he had some questions to raise on the papers filed. He would do that and then ask the parties to put their cases and, finally, he would ask the other Tribunal members to ask any questions they had. That is in fact how the hearing was dealt with although, at the end, he did ask any party if they had anything else to say. They said that they did not.

11. The Applicants filed a joint written statement, including a statement of truth, which recorded that they had moved into the property on the 14th April 2018. They had a visit from a council officer from Brighton & Hove City Council on the 6th February 2020 who was enquiring about the status of the property as it required an HMO licence. They heard nothing further and contacted the housing office on the 15th February 2021 who told them that no HMO licence had been applied for.

12. The rent they had each paid in the maximum 12 month period was £600 each per month making a total of £7,200. Thus the 3 of them were asking for the maximum amount being a total of £21,600. They produced evidence of the payments they had made. 2 of them had paid Link Up Lettings and the 3rd had paid The Property Shop. In other words all 3 had paid the Respondent.

13. Other evidence before the Tribunal was a copy of the tenancy agreement dated 14th September 2019 naming Mr. A. Meherali as the landlord on the front but naming both Mr. Meherali and the Respondent as landlord within the wording of the agreement itself. This confirmed that the rent was £1,800 per calendar month between the 3 Applicants. The term was 6 months only but was presumably renewed either verbally or in writing.

14. Ms. Rimmer spoke on behalf of the Applicants and said none of the Applicants had met or spoken to Mr. Meherali. However, when certain problems with the property arose, they verbally asked for Mr. Meherali's address but the Respondent refused to give that information. All communications were with the Respondent. The Applicants had complained about some damp and mould. On the first occasion, they said that the problem was "*sort of sorted out*" but then resumed in the following year when the Respondent did attend again. It was agreed that the main problem was condensation although some dispute about the recommended solution.

15. The Respondent should note that if the Applicants had asked for Mr. Meherali's details in writing then the failure to supply them would have been an offence pursuant to section 1 of the **Landlord and Tenant Act 1985**.

16. The Applicants also complained that there was no gas boiler safety check until the last year and no carbon monoxide detector. Apart from these problems, the property is in a good location and was "*in generally good nick*".

17. Mr. Simmonds then said that Mr. and Mrs. Meherali were very elderly and had been renting the property with the Respondent for about 15 years. The Respondent did everything for them. As far as the gas boiler safety check was concerned, this was undertaken every year and he would be happy to supply copies of the certificates if needed. Mr. Simmonds was unaware of any e-mail from Brighton & Hove City Council in 2020 although he accepted that it may have arrived without him seeing it. If he had seen it, he would have put in the application for the HMO licence straightaway, as he had done following the contact in 2021.

18. In fairness to Mr. Simmonds, he acknowledged that the property should have had an HMO licence from at least the start of the tenancy and his company had failed to put this in hand.

19. There was also a statement by Ross Findlay, a Private Sector Housing Officer employed by Brighton & Hove City Council. It is endorsed with a statement of truth and records that an additional licensing scheme for HMO's in the area in which the property is situated came into effect in March 2018. Mr. Findlay called at the property on the 6th February 2020. He concluded that it was an HMO because this was a 2 storey maisonette housing 3 or more tenants in 2 or more households who share facilities i.e. the definition of an HMO in the additional licensing scheme. He e-mailed the Respondent on the 11th February 2020 to inform it of this and included a link to an application form. He sent them a reminder on the 17th February 2021 and the application was lodged on the 22nd February 2021.

20. Finally, the Applicants also produced a copy of a planning appeal decision relating to 29 Egremont Place, Brighton BN2 0GA dated 23rd September 2014 from which it is clear that such appeal had been lodged by "*Mr S Simmonds, The Property Shop*" which is corroborative evidence that the Respondent was controlling or managing the property at that time.

Conclusion as to Primary Liability

21. The Tribunal is reminded of the words of Judge Cooke in the Upper Tribunal case of **Paulinus Chukwuemera Opara v Marcia Olasemo** [2020] UKUT 96 (LC) when she criticised a First-tier Tribunal of being over cautious in considering the words 'beyond reasonable doubt'. She said this:

> "*...For a matter to be proved to the criminal standard it must be proved 'beyond reasonable doubt'; it does not have to be proved 'beyond any doubt at all'. At the start of a criminal trial the judge warns the jury not to speculate about evidence that they have not heard, but also tells them that it is permissible for them to draw inferences from the evidence that they accept...*".

22. On the evidence produced and discussed above, the Tribunal is satisfied beyond a reasonable doubt that an offence was being committed by the Respondent Link Up Lettings Ltd., trading as The Property Shop under section 72 of the 2004 Act as it was both in control and/or had management of the building at the relevant time, received all the rent, but it failed to apply for an HMO licence until 22nd February 2021 despite being reminded to do so by the local authority over a year beforehand. The Tribunal finds that the reminder was sent in 2020 although it accepts that Mr. Simmonds himself may not have seen it.

23. It is also satisfied that such company was a landlord at the relevant time and that a RRO should be made. It was not an owner of the freehold title because the Applicants produced a copy of the proprietorship register from the Land Registry showing that the freehold owners are Parinbanu Meherali and Arif Ferozali Meherali both of 29 Egremont Place, Brighton BN2 0GA i.e. the property, where they do not in fact live. However, despite the tenancy agreement saying on a number of occasions "*the Landlord*

and or Landlord's agent (The Property Shop)" it was defined as a landlord at the commencement of the tenancy agreement and received all the rent paid.

Discussion as to Amount Payable

24. On the question of quantum, the 2016 Act changed the way in which Tribunals should consider the calculation of an RRO. Under the 2004 Act, the Tribunal's calculation had to be tempered by a requirement of reasonableness. For example, the landlord should only be ordered to repay any profit element from the rent. As was confirmed in the Upper Tribunal case of **Vadamalayan v Stewart** [2020] UKUT 183 (LC), section 44 of the 2016 Act says, in effect, that the Tribunal should no longer consider such matters as what profit would have been earned by the rent paid. In other words, expenses incurred by the landlord as a result of obligations to keep a property in repair, insured etc. under the terms of an occupancy agreement would have had to be incurred in any event and should not be deducted.

25. The starting point is therefore the actual rent paid during the relevant period. Such matters as the parties' conduct or the landlord's financial hardship can be used to assess any claim. There is no evidence of financial hardship on the part of the Respondent.

Conclusion as to the Amount of any Order

26. The Tribunal is aware of another First-tier Tribunal case relating to the top floor flat at 9 Dover Place, Bristol BS8 1AL. This is the case of **Ahmed and others v Rahimian** CHI/00HB/HSD/2020/0002 which was determined by Regional Judge Tildesley OBE.

27. Another First-tier Tribunal decision is not binding on this Tribunal. However, this Tribunal agrees with that decision and reasoning. It sets out at length the law and reasons for a determination of about half of the maximum amount which could have been awarded i.e. £10,000 ordered as opposed to the maximum of £19,803 which could have been awarded. The £10,000 was split equally amongst the 3 Applicants and the Tribunal also ordered the Respondent landlord to reimburse the £300 in Tribunal fees paid.

28. Judge Tildesley OBE in **Ahmed** said, in awarding £10,000 (paragraphs 102 & 103);

> "*This is not a case which justifies an award of the maximum amount of £19,803.00. The Tribunal normally considers such an award where the evidence shows that the landlord was a rogue or criminal landlord who knowingly lets out dangerous and sub-standard accommodation. The Respondent did not meet that description….The Tribunal here is dealing with two sets of decent honourable persons who are separated by the fact that the Respondent failed to licence the HMO and thereby committed an offence…*"

29. This Tribunal determines that a similar proportion of the rent paid should be ordered in this case. Despite the slight conflict between the parties about the damp and mould issue, there is no question of the Respondent being a rogue or criminal landlord letting out dangerous and sub-standard accommodation. Mr. Simmonds accepted without reservation that an HMO licence should have been applied for but his company had simply failed to do so.

30. The rent paid and claimed by the Applicants is as stated above i.e. £7,200 each making a total of £21,600, being rent for 12 months paid when the offence was being committed. Part of that sum was paid in the 12 month period immediately prior to this application. The amount ordered by the Tribunal to be repaid is £3,600 to each Applicant making a total of £10,800.

31. In view of this decision, the Tribunal also orders the Respondent to reimburse the fees paid to this Tribunal in the sum of £300.00.

....
Judge Edgington
27th May 2021

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.