



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

Case Reference : **LON/00AE/HMF/2020/0252**

HMCTS Code : **V: CVPREMOTE**

Property : **29A Christchurch Avenue, London NW6 7QP**

Applicant : **Joseph Landes
Alex Parker
Lauren Rosenberg**

Representative : **Ms. Francesca Nicholls (BPT Student) Flat
Justice**

Respondent : **Mr. Robert Hallet**

Representative : **Mr. Michael Field - Counsel**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **Judge Daley
Mrs L Crane MCIEH**

Date of Hearing : **3 June 2021**

Date of Decision : **6 July 2021**

DECISION

- I. 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: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
- II. The Applicants have produced a Combined Bundle of Documents which totals 420 pages. Page references in this decision are to the electronic page number in the Bundle.
- III. **Decision**

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £11,712.75 (eleven thousand seven hundred and twelve pounds seventy- five pence).

Introduction

1. The Tribunal is required to determine this application which has been made under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order (“RRO”) in respect of 29 Christchurch Avenue, London NW6 7QP (“the Property”). This is an application by three tenants of a house in London for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied was required to have an additional House in Multiple Occupation (HMO) licence from Brent Council, but was not licensed. The tenants were granted a shorthold assured tenancy commencing on 13 September 2019 for one year, the tenancy came to an end on 13.09.2020. The tenants applied to the First-tier Tribunal (“FTT”) for Rent Repayment Orders on 11 November 2020.
2. The Tribunal issued Directions on 4 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 were also directions regarding how the Respondent should prepare including a direction regarding the provision of any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both his personal circumstances and those relating to non-recoverable costs in respect of the ownership, maintenance and running of the property, along with any other relevant representations and documents. On 27 April 2021, the Tribunal made an unless order in respect of the Respondent’s failure to comply with paragraph 11 of the order in respect of the requirement to produce a

Respondent bundle, however the Respondent subsequently complied with this direction.

3. Property Inspection

4. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an
5. inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties, the Tribunal understands that the property is a lower ground floor flat, in a converted house, comprising 3 bedrooms with shared facilities.
6. The Tribunal makes no further assumptions regarding the accommodation.

7. Relevant Law

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

- a. 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 —
 - i. 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.

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.'

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.'

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).

Section 44 of the 2016 Act sets out the amount of order:

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—

- ii. the rent paid in respect of that period, less
- iii. 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—

- iv. the conduct of the landlord and the tenant,
- v. the financial circumstances of the landlord, and
- vi. whether the landlord has at any time been convicted of an offence to which this

Chapter applies.

The Applicants' Submissions

8. The Applicants provided copy tenancy agreement for the period from 13 September 2019 to 13 September 2020. The monthly rent which was £2,058.33 excluded gas, electricity, water and internet bills.
9. During this time, the property was unlicensed as an HMO, until 2 April 2020. Pursuant to a decision taken by Brent Council, the property was required to be licensed under the additional licence scheme. As a result of disrepair to the shower at the property, and the landlord's failure to respond, the Applicants contacted the council on 10 March 2020, Brent Council contacted the landlord on 1st April 2020, and also informed the tenants that the property was unlicensed. By way of an email Mr Raymond Reid, Enforcement officer of Brent Council confirmed that a licence application was received on 3 .04.2020.
10. The Applicants provided bank details of their individual payments to the Respondent for the period of the tenancy from 13 September 2019 to April 2020.

The Respondent's Submissions

11. The Respondent accepted that the property was unlicensed between the relevant dates, however, Mr Hallet, in his evidence and in submissions made on his behalf by his counsel Mr Field, relied upon having a reasonable excuse for failing to licence, in accordance with Section 72 (5) of the Housing Act 2004.

The Hearing

12. At the hearing, the Tribunal decided that as the offence was admitted by the Respondent, the Tribunal could find that the offence was committed beyond reasonable doubt. Accordingly, rather than hearing from the Applicants the Tribunal would hear directly from the Respondent on whether he had a reasonable excuse for failing to licence the property. In written submissions, prepared by Mr Fields the Respondent accepted that the sums of rent claimed had been paid by the Applicant.
13. The Tribunal heard from Mr Field, on behalf of the Respondent, he submitted that in considering whether there was a reasonable excuse, there was no prescribed circumstances or legal burden other than the balance of probabilities. He referred to R v LB of Waltham Forest and Secretary of State for Housing Community and Local Government (2020) EWHC 1083, he referred the Tribunal to the Judgement of Lord Justice Dingemans. In the written submissions at paragraph 8, he stated as follows:-: *...The Tribunal is also referred to the decision of the High Court in the case of R (Mohamed) v Waltham Forest LBC [2020] EWHC 1083 (again relating to the similar defence of reasonable excuse under Section 72(5) of the Act). In his judgment, Dingemans LJ stated that "if a Defendant did not know that there was an HMO which was required to be licenced, for example because it was let through a respectable letting agency to a respectable tenant with proper references who had then created the HMO behind the Defendant's back, that would be relevant to the defence.....the existence of the statutory defence and the fact that a reasonable excuse for not having a licence cannot be made out, lessens the need to have the mental element as part of the defence. The dicta in Cannock District Council v Grant recognising that such an absence of such a knowledge might be relevant to the defence of reasonable excuse is incompatible with a requirement to prove knowledge that there was an HMO requiring to be licenced".*
14. He submitted that the defence of reasonable excuse applied for the following reasons,
the respondent was not a professional landlord,
the Respondent has a busy international career as a music promoter who travelled extensively abroad and had no specific base.
The Respondent employed a respected agent, NorthWest6 of 6 Kilburn Bridge, Kilburn High Road London NW6 6HT. In support of this point, he noted that the property had previously been let to families, and given this Mr Hallet was unaware of the need for a licence.
The Respondent was a responsible landlord who was not informed by the managing agent that a licence was required.
15. As soon as Mr Hallet was made aware of the need for a licence he applied for a licence.

16. Finally in his written submissions he stated that -: The Respondent took all reasonable precautions to avoid this. The Respondent's position is similar to the example presented by Dingemans LJ above. This was a respectable letting agency letting to respectable tenants with proper references. The Respondent had every reason to rely upon the agent and was let down by them..."
17. Mr Fields also had an alternative submission which he set out in paragraph 10 of his written submission, in which he stated-: If the Tribunal are not persuaded on the statutory defence under s.74(4) and/or "reasonable excuse" under s.72(5), the full amount of the Rent Repayment Order otherwise payable should be reduced considering the criteria in Section 44(3) of the Housing and Planning Act 2016.
18. Mr Fields invited the Tribunal to hear from the Respondent, Mr Hallet, directly.
19. Mr Hallet had also provided a witness statement. Mr Hallet told the Tribunal that he works with well-known bands and is a global touring expert. In his capacity he works with household names and developing artist. He stated that he went on the road with these bands and at any one time he might be responsible for the logistics of a tour involving 120 people. He informed the Tribunal that in 2019, he had been on the road for 2 1/2 months straight with 22 stage shows, and did not return to the UK until September 2019. However, because of the nature of his work and the fact that he was travelling abroad for a large part of the year, and he was not a professional landlord, he had used the same letting agency Northwest 6, to let the property for the last 15 years.
20. The agency had previously let the premises to families, and this was the first occasion that they had let to sharers in this way. He stated that this was his only rental property and that he had no reason to know of the legal requirements, and that was why he had used a letting agency. He had purchased the property in 1986 and had lived in it prior to letting it out about 17 years ago. He stated that he did not live in the borough and was unaware and uninformed about the legal requirements for letting the property. He had trusted the managing agents to keep abreast of these requirements.
21. Mr Hallet was asked about his role and the type of service provided by the agents on his behalf. He explained that they marketed the property and vetted the tenants. As he had been in the country, he had signed the tenancy agreement.
22. However, he had no idea or the nature of the relationship between the sharers, and considered that the HMO had been created behind his back.
23. Mr Hallet was referred to the correspondence which had taken place between himself and the tenants. He confirmed that he had been responsible for dealing with any repairs, and referred to someone called Robin who carried out repairs (a handyman) who he used. Although he could not be sure, he felt that he might have given the tenants Robin's direct number so that they contact him directly about repairs.
24. He stated that he had responded to any complaints and concerns about repairs at the property in a timely manner. He also stated that he had informed the tenants on many occasions about the break clause in the

contract which meant that if they were unhappy, they had the ability to terminate the contract earlier, and they never did.

25. He referred to the marketing photographs of the property. He stated that this had been the condition of the property on letting. He then stated that he had no idea when the photographs produced by the Applicants had been taken. He referred to the inventory report which he stated fairly set out the condition of the property.
26. In his second witness statement, he informed the Tribunal that the Applicants had changed the utilities supplier from E-on, without informing him contrary to the tenancy agreement. He also stated that they had tampered with the boiler and that as a result he had to replace it.
27. Mr Hallet stated that as soon as he had been informed of the need to apply for an additional licence he had done so. He stated that he had since letting the property to the applicants, changed managing agencies as he had felt let down by the agents, whom he had believed to be reputable.
28. In answer to a question from the Tribunal, he accepted that the arrangement with the agency had been ad Hoc, in that they had marketed the property whilst Mr Hallet had undertaken some of the management, whilst he was in the UK.
29. We heard from Mr Field, he reminded the Tribunal of Parker -v- Waller and Others [2012] UKUT 301, and the factors that the Tribunal should take into account. He noted that Mr Hallet had not been convicted of a previous offence. He submitted that Mr Hallet had a reasonable excuse for failing to licence, which had been outlined which the Tribunal should take into account. He stated that the Tribunal should take the conduct of the parties into account, he noted that the property was in good condition, and referred to the breaches by the tenant in relation to changing the utilities, and the damage to the boiler.
30. He noted that although the full amount of rent paid was the starting point, the Tribunal had discretion to make deductions, and as such were not bound to award the full rent paid. He noted that none of the circumstances set out in Section 44 (4) applied. He submitted firstly that Mr Hallet had a reasonable excuse, and that if the Tribunal did not accept that, the Tribunal should still exercise its discretion to reduce the amount of the award.
31. Ms Nicholls, on behalf of the Applicants rejected the respondent's analysis, she stated that Mr Hallet had been involved in letting his property for over 15 years and as such, as he derived an income from his property, he was a professional landlord. She noted that he had chosen to let the property notwithstanding his work, and as such his work did not form a reasonable excuse.
32. She noted that the intention in the Housing and Planning Act 2016, had been enacted by parliament with a different intention to that of the Housing Act 2004, given this the act was intended to punish landlord for their failure to licence. She noted that the offence of failure to licence had come to light because Mr Hallet had failed to carry out the repairs, and this had led Mr Parker to contact Brent Council. She noted that the landlord had failed to licence the property. He was responsible for ensuring that it was licensed notwithstanding his absences abroad.

Ms Nicholls stated that he had been dismissive of his duties as a landlord. She also referred to *Vadamalayan and Stewart (2020) UKUT 183*, as authority that the full rent paid was the starting point for the repayment order, and that the point of an order was to serve as a deterrent and to have a punitive effect on the landlord.

33. Ms Nicolls also asked for an order for repayment of the hearing and application fees.

Tribunal Decision

34. The Tribunal 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) And finally, the Tribunal was required to make a Determination of the amount of any order.

35. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.

36. 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. Although the Tribunal heard that Mr Hallet's work had been affected by the pandemic, there was no information before us, on how this had affected him.

37. 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.

38. The Tribunal finds on the evidence before it, and on the admission of the respondent that the property was in an area covered by licensing provisions and that the premises required an additional licence. The premises were unlicensed during the material period, and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.

39. The Tribunal next considered whether in all the circumstances Mr Hallet had a reasonable excuse, for his failure to licence the premises. The Tribunal heard and accepted his evidence that he was unaware of the need to licence the property and had employed a reputable managing agent.

40. However, the Tribunal finds that the Respondent used the managing agents to provide letting services, and as such his arrangement with them was ad hoc and during the material time, Mr Hallet had assumed the day-to-day management of the premises. Mr Hallet had signed the tenancy agreement, and had taken responsibility for repairs. Mr Hallet was aware that his career meant that in reality he had little time for the finer details of management, and that he was absent from the country for long periods of time, given this, Mr Hallet's absence from the country and lack of experience of property management does not amount to a reasonable excuse.
41. The Tribunal noted that no information had been provided concerning Mr Hallet's financial circumstances for the Tribunal to take into account. The Tribunal finds that on the information before it, Mr Hallet did not have a reasonable excuse for failing to license the property, he was the de facto day to day manager, and ought to have fully delegated the responsibilities to manage the property if he was unwilling and unable to do so.
42. The Tribunal have noted that the property was in a fairly good condition, and notwithstanding the tenants' complaints, and Mr Hallet's counter complaints we find no adverse conduct on behalf of either party. Nevertheless, we consider that nothing that has been put before the Tribunal mitigates the failure to licence or provides a reasonable excuse.
43. The Tribunal therefore makes a Rent Repayment order in the sum of £11,712.75 and an order for the cost of the Application fee of £100.00 and the hearing fee of £200.00 to be re-imbursed.
44. Payment should be made in full within 28 days of the date of this decision.

Right 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.

Signed: Judge Daley

Dated: 6/07/2021