



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

Case Reference : **LON/00AME/HMF/2020/0207**

HMCTS Code : **V: CVPREMOTE**

Property : **Flat 8 Ellington House, 148 Southwold Road
London E5 9IB**

Applicants : **Ms. Hayley McGovern
Mr. Belazs Varga**

Representative : **Mr. George Penny- of Flat Justice

Mr. Terence & Mrs. Ravena Sielman**

Respondent

Representative : **Unrepresented**

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
Mr Stephen Wheeler MCIEH**

Date of Hearing : **4 June 2021**

Date of Decision : **22 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 £4,200 (four thousand, and two hundred pounds).

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 Flat 8 Ellington House, 148 Southwold Road London E5 9 IBP (“the Property”). This is an application by two tenants, of a two bedroomed flat in London, for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016. The property they occupied was required to have an additional licence from London Borough of Hackney. An additional licensing scheme came into force on 10 May 2018; however the property was not licensed.
2. The tenants, who are the applicants in this matter were granted a shorthold assured tenancy commencing on 14 April 2019, until their occupancy of the tenancy ended on 13 October 2019. The tenants applied to the First-tier Tribunal (“FTT”) for Rent Repayment Orders on 9 October 2020.
3. 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.
4. Direction 11 stated:- 11. By 12 April 2021 the respondents must email to the Tribunal at London.Rap@justice.gov.uk and send to the applicant a digital indexed and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application. The documents must, so far as possible, be in chronological order. The subject line of the email must read:” "BUNDLE FOR DETERMINATION: [Case reference], [Property address]”. If a party is unable to produce a digital bundle it must contact

the case officer as soon as possible, explaining why, and alternative directions will be considered...”.

5. On 28 April 2021, the Tribunal made an unless order in respect of the Respondents’ failure to comply with paragraph 11 of the order, in respect of the requirement to produce a Respondent bundle. The order stated:- 4. Unless by 4pm on Thursday 6 May 2021 the Respondents comply with paragraph 11 of the Directions of 15 February 2021, they will be automatically debarred from the proceedings without further order, and the Tribunal will go on to determine all matters against them pursuant to rule 9(1), (3)(a), (7) and (8) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2021 (‘the Rules’). 5. If the Respondents fail to comply with paragraph 4 above, they will have until 4pm on Friday 4 June 2021 to make an application to lift the bar.
6. The Respondents did not comply with the order, and did not make an application to lift the bar. Accordingly, the Respondents were barred from participating and the hearing proceeded without the Respondents attendance. On x date a letter was sent by the Respondents. As they are barred from the proceedings, this letter was not considered as a defence to the Application for a repayment order, although the Tribunal noted its contents. However the burden of proof and the standard to which that burden had to be discharged remained on the Applicants, and the standard of proof was beyond a reasonable doubt.

7. Property Inspection

8. 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 the property is a 2-bedroom flat, in a block of flats, comprising 3 rooms with shared facilities.
9. The Tribunal makes no further assumptions regarding the accommodation.

10. 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

Section 40(3) of the 2016 Act lists 7 categories of offence and offence no 2 refers to Protection from Eviction Act 1977 section 1(2), (3) or (3A) eviction or harassment of occupiers:

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

11. The Applicants provided a copy tenancy agreement, for the rental of one room with shared facilities, (the kitchen and living room) a six-month shorthold assured agreement with the term starting on 14 April 2019. The monthly rent was payable on the 15th day of each month in the sum of £700 PCM.
12. During this time, the property was unlicensed as an HMO, and remained unlicensed until the Applicants left the premises. The premises were required to be licenced pursuant to a decision taken by the London Borough of Hackney. This decision was communicated via a Public Notice of a Designation of an area for additional licensing of housing, dated 10 May 2018. The subject property was required to be licensed under the additional licence scheme.
13. In the witness statement of Balazs Varga, he provides details, of the occupants of the premises. The property was occupied by himself and his partner, Hayley, and Graham Naser and Kelly Healey, who occupied the other bedroom, the couple who were unknown to him and his partner, shared the kitchen, living room and bathroom with them throughout the Applicants occupation of the premises.
14. In his statement Mr Varga set out that following a dispute with the co-occupants of the flat, which resulted in complaints to the landlords, and to the police. The Landlord, after specifying his intention to evict the other couple, changed his mind and firstly asked him to accept the tenancy of an alternative property, he asserted that the other tenants had been in the property prior to the applicants. As the alternative property's location was not convenient for Hayley McGovern's work the Applicants refused this offer. In the witness statement Mr Varga set out how Mr Naser and Ms Healey continued to harass the Applicants and as a result of the escalating harassment, it was necessary to call the police. Mr Varga set out how despite frequently contacting Mr Sielman, no action was taken to halt the harassment. The Landlord attended the property with a photographer who took photographs within the property without permission.
15. On 31 July 2019, Mr Varga wrote to the London Borough of Hackney asking for confirmation of whether the premises had been licensed. On the same date the Business and Technical Support Team for the L B of Hackney wrote to the Applicant and confirmed that the property was unlicensed.

16. The Applicants provided bank statements as proof of payment of the rent.
17. On 8th August due to the on-going harassment the Applicants went to stay with Mr Varga's family for a period of time. On 16 August 2019, the Landlord served a section 21 notice requiring the Applicants to leave the property. In response the Applicants set out their understanding of the law, that they were not required to leave without a court order. In his statement, Mr Varga set out that following his returning to the property on 9 September, the acts of harassment from both the tenants and the landlord continued. This included the tenants making false allegations against Mr Varga and interfering with the Applicants security camera when they were not at the premises.
18. Mr Varga in his witness statement set out how, in October on the expiry of the initial 6-months' period, Mr Sielman returned the Applicants' deposit in such a way that the Applicants believed their tenancy to have been terminated.
19. The Tribunal also had before it a statement from Ms McGovern, together with a transcript of conversations between the landlord Mr Sielman. Including details of their text message exchanges. In support of their claims.

The Respondent's Submissions

20. In an undated letter, the Respondents Mr & Mrs Sielman accepted that the property was unlicensed, and apologized for their failure to licence the property. In the letter they set out that the Applicants had acted with bad faith and alleged that they had not paid their share of the utility bills. The Respondents provided no evidence of their assertions, and have been debarred from participating in the proceedings.

The Hearing

21. At the hearing, the Tribunal also heard oral submissions from Mr George Penny, he submitted that although the Applicants had occupied the premises for six months, the Landlord had committed three offences, each of which could give rise to a separate rent repayment order, in support of this, he relied upon the evidence in the bundle.
22. He stated that if the Tribunal was not with him, it could make findings in respect of all three offences, and could apportion the rent repayment so that awards were made for each of the three offences. He however accepted that the sums awarded could not exceed 12 months rent.

23. In the statement of case Mr Penny set out the sum claimed as follows:- For the licensing offence: 6 months @ 700 pcm: $6 \times 700 = 4,200$. For the illegal eviction offence: 6 months @ 700 pcm: $6 \times 700 = 4,200$. For the harassment offence: 6 months @ 700 pcm: $6 \times 700 = 4,200$. $4,200 \times 3 = \text{£}12,600$. He considered that Tribunal could still award up to 12 months of the rent or alternatively acknowledge that the offences had been committed and make an order under each of the heads sought.
24. He further referred to the aggravating factors in this case, such as the failure to provide the tenants with gas safety certificates, the fire risk assessment, the electric compliance, and the failure to protect the rent deposit as required by law.
25. He referred to the letter from the landlord, and stated that Mr Naser had animosity towards the Applicants and that his assertion that they had missed payments of the utility bills was untrue.
26. Mr Penny also asked for an order for repayment of the hearing and application fees.

Tribunal Decision

27. 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. Whether the Respondents had committed an offence by reference to sections 1(2) (3) or (3A) of the protection from Eviction Act 1977.

(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.

28. 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.
29. The Tribunal in reaching its decision, also considered *Ficcaro and Ors -v- James* (2020) UKUT 289 and *Vadamalayan -v- Stewart and Others* (2020) UKUT 0183.
30. The Tribunal is required to take account of the conduct of both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
31. 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.

32. The Tribunal finds on the evidence before it, and on the admission of the respondents 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.
33. The Tribunal next considered whether the Applicants had been unlawfully evicted from the premises. The Tribunal accepted the evidence of the Applicants, that the Landlord did nothing to reassure them that he would deal with alleged harassment from the Mr Naser and Ms Healey, and that in response to the issues that arose served a Section 21 Notice, and returned their deposit.
34. However, the Applicants by that stage had been in contact with an advice agency (Flat Justice), and the police. The Applicants had also contacted the local authority regarding the licensing offence. The Tribunal considers that although the Applicants were under some stress, they were aware of their rights, and the legal requirement that they could not be evicted without a court order, they nevertheless decided to leave the premises.
35. The Tribunal considers that if they were unaware of the full nature of their rights, they had sufficient information of who they could get advice from and that a court order was necessary for them to be evicted. The Tribunal makes no criticism of the Applicants for deciding to leave the premises when they did without waiting for a court order, however, it finds that they were not unlawfully evicted.
36. The Tribunal next considered whether the Respondents actions amounted to harassment. The Tribunal noted that the Respondents, in particular, the first respondent failed to act on the complaints of the Applicants. He also , attempted to put a chain lock on the door, and put locks on Mr Naser and Ms Healey's door which they could control. He was aware of the dispute between the parties However, he did not proceed with the fitting of the chain lock although the Tribunal considers that he sided with Mr Naser and Ms Healey (" the other tenants")in the dispute and was not even handed.
37. The Tribunal also considered his actions, together with his service of the notice, and his untrue assertions that the tenancy had come to an end and this meant that the Applicants had to leave. The Tribunal has considered whether these acts are sufficient on their own amount to harassment. The Tribunal noted that Mr Sielman overly relied upon his previous dealing with the other tenants and had acted in accordance with his belief that the Applicants were at fault. He had no evidence for this. The landlord give preference to the other tenants in the dispute including some collusion and sharing of information with the other tenants, he failed to take action when the other tenants were harassing the Applicants, the attempts to fit a lock

that put the other tenants in control (even though that lock was not fitted in the end), he inappropriately served the s.21 notice and his behaviour towards Mr Vargas, as set out in the transcript was aggressive.

38. The Tribunal finds that Mr Sielman did not discharge his duties as a landlord in that he took no steps to investigate, the allegations of harassment, and gave undue weight to the other tenants he also joined in with the harassment by attempting to fit the chain lock, and by inviting a photographer into the premises to take photographs without the consent of the Applicants. The Tribunal finds the allegations of harassment proved beyond a reasonable doubt.
39. The Tribunal accordingly were satisfied beyond a reasonable doubt that the First Respondent had harassed the Applicants.
40. In respect of the rent repayment order, the Tribunal took into account *Vadamalayan -v- Stewart and Others (2020) UKUT 0183*. The Tribunal are satisfied that the correct starting point in this matter should be the full rent which was paid by the Applicants.
41. The Tribunal in making its decision was satisfied beyond reasonable doubt that the premises were unlicensed during the six-month period starting on that the Applicant's occupied the premises. The Tribunal also took into account *Ficcara and Ors -v- James (2020) UKUT*, in which the Upper Tribunal held that "Very clear guidance is provided by Section 44 as to the amount which may be ordered to be repaid under a rent repayment order. Section 44(3) sets the limit. The amount a landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period...It is significant that the limit is expressed by reference to a period of time, rather than by reference to a period of time, and the rent paid in respect of that period of time..."
42. The Tribunal therefore makes a Rent Repayment order in the sum of £4,200 (four thousand, and two hundred pounds) for the period 14 April 2019 to 13 October 2019. The Tribunal also makes an order for the cost of the Application fee of £100.00 and the hearing fee of £200.00 to be reimbursed.
43. **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: 22 July 2021