



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

Case Reference : LON/00BJ/HMF/2021/0047 (1) &
LON/00BJ/HMF/2021/0050 (2)

HMCTS : V: CVPREMOTE

Property : 254 Earlsfield Road, London SW18
3DY

Applicants : Mathilde Blanvillain & Danuthiran
Lingeswaran (1)
Charlotte Correa (2)

Representative : In person

Respondent : Mr Philip Griffiths (1) & (2)

Representative : In person

Type of Application : Application for a Rent Repayment
Order by Tenant

Tribunal Members : Mr A Harris LLM FRICS FCI Arb
Mr S Wheeler MCIEH, CEnvH

**Date and Venue of
Hearing** : 30 July 2021 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 30 July 2021

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing. The form of remote hearing was V: CVPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant has filed a Bundle of Documents which totals 551 pages and to which page references are made in this decision. Written submissions were made on behalf of the Respondent with a bundle of 31 pages.

Decision of the Tribunal

1. The Tribunal makes rent repayment orders against the Respondent in favour of each applicant for the amounts set out in the table below

Tenant	RRO
Mathile Blanvillain & D Lingeswaran	£8,822.00
Charlotte Correa	£4,143.90

This is to be paid by 21 August 2021.

2. The Tribunal determines that the Respondent shall also pay the Applicants £300 by 21 August 2021 in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

3. By an application, dated 8 February 2021, the 1st Applicants sought a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the freeholder of 254 Earlsfield Road SW18 3DY (“the House”).
4. By an application, dated 15 February 2021, the 2nd Applicant sought a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the freeholder of 254 Earlsfield Road SW18 3DY (“the House”).
5. On 23 March 2021, the Tribunal gave Directions. Those Directions were amended on 25 May 2021 consolidating both cases as they cover the same issue. Pursuant to the Directions, the 3 Applicants filed a Bundle of Documents. The Respondent has also filed a bundle.

The Hearing

6. At the hearing it was established as common ground that the House was an HMO being occupied by 5 persons who formed more than 2 households, that it required a licence from the local authority, that it did not have a licence and that no application for a licence had been made.
7. It is also accepted as common ground that the period of the tenancies was from 4 February 2020 to 30 December 2020. The rent paid by the 1st Applicants was £9900 and the rent paid by the 2nd

applicant was £5125.10. The 2nd applicant had also received universal credit in the sum of £442.

The Housing and Planning Act 2016 (“the 2016 Act”)

8. Section 40 provides:

“(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has 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.”

9. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include the offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed HMO.

10. Section 41 deals with applications for RROs. The material parts provide:

“(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.

11. Section 43 provides for the making of RROs:

“(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 has been convicted).”

12. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to

rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

13. Section 44(4) provides:

“(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.”

14. Section 56 is the definition section. This provides that “tenancy” includes a licence.

The Housing Act 2004 (“the 2004 Act”)

15. Part 2 of the 2004 Act relates to the licensing of houses in multiple occupation (HMO).

16. Section 72 specifies a number of offences in relation to the licencing of houses. The material parts provide:

“(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.

(4) In proceedings against a person for an offence under subsection (1), it is a defence that at the material time

(a) a notification had been duly given in respect of the house under section 62 (1) or

(b) an application for a licence had been duly made in respect of the house under section 63

(5) in proceedings against a person for an offence under subsection (1)... 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) ...

17. It is to be noted that this section does not use the word “landlord”. Section 263 defines the concepts of a person having “control” and/or “managing” premises.

18. Section 263 provides:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

The Evidence

19. The Applicants produced a joint bundle for the hearing. Given the common ground established at the commencement of the hearing it was not necessary to prove the requirements for licensing, the period of the tenancy or the rents paid. For the 1st Applicants it was stated that for a period of 3 months when the washing machine was not working, they used a launderette and paid a lower rent, the amount in question totalling £110.

20. The Applicants allege that the property was let in a filthy and unhealthy state including a rat infestation, mould on the living room wall, shower head and other areas, faulty electrics and plumbing, and old redundant boiler which broke many times and fake or not working fire alarms. Photographs were provided of some of the alleged deficiencies.
21. In response, the Landlord disputed the allegations of poor repair and produced photographs showing the reception room common areas and top floor bedroom. The other 2 tenants in the property were in occupation before the Applicant moved in and still remain there. If the property was that bad, why would they stay. Copies of whatsapp messages were shown dealing with timing of repairs.
22. The Respondent states he was not aware of the need for an HMO licence and accepts that is not an excuse. It is for Landlords to know the law. The Respondent stated he had been a landlord in London since 1998 and had never been subject to any enforcement action before now. He considers he is a good landlord and goes over and above his duties to help the tenants of property in challenging times including making allowances in respect of rent for repair issues and allowing for late payment of rent. He believed that the 1st Applicants were classed as one household and did not fail to licence it intentionally. He has received no financial gain as a result of his failure to licence and the tenants have suffered no prejudice.
23. The Respondent stated that the rents were inclusive of utility bills and that the total outgoings for the property including gas, electricity water rates and council tax amounted to £245 per month. This was not disputed.
24. The Respondent states he is a basic rate taxpayer and that he has 2 children for whom he pays child maintenance. As a result of Covid using the challenging financial position due to unpaid rents from tenants. He is currently in receipt of a bounceback loan under Covid arrangements by the government and that his outgoings by way of loan repayments exceed his income.
25. The level of a Rent Repayment Order seems disproportionate and stacked against landlords. If the property were as bad as suggested it is surprising the tenants took on the tenancy at all.
26. The tribunal is satisfied, beyond reasonable doubt, that the House was an HMO, it was required to be licensed and was not licensed.

The period of the offence

27. Under section 41(2)(a) of the Housing and Planning Act 2016 a tenant may apply for a rent repayment order if 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 was made.

28. The tribunal is satisfied that the offence was committed during the period of the tenant's occupation commencing on 4 February 2020 which was within the period of 12 months ending when the tenancy is terminated on 30 December 2020.

The relevant landlord

29. The definition of a landlord is discussed above under section 263 of the Housing Act. The tribunal is satisfied beyond reasonable doubt that the Respondent is the freeholder of the property and is the landlord for the purposes of section 263.

Repayment Order

30. The tribunal is satisfied that the conditions for the making of a Rent Repayment Order have been made out. Under section 44 of the 2016 Act the amount the landlord may be required to repay must not exceed the rent paid in that period. The tribunal must also take into account the conduct of the landlord and tenant and the financial circumstances of the landlord and whether the landlord has been convicted of an offence. It must also consider whether the Respondent has a reasonable excuse.
31. The tribunal has no evidence of a conviction.
32. The Respondent stated he was unaware of the requirement for licensing of an HMO but the tribunal considers this is a well-known requirement dating from the 2004 Act and that ignorance of the law is no excuse. The tribunal does not consider that the Respondent has a reasonable excuse.
33. Although the bundles contained considerable evidence relating to the condition of the property it is not necessary for this tribunal to deal with those matters as disrepair cannot increase the level of a repayment order.
34. The tribunal considers that the reduced rent paid by the 1st Applicants is by way of reimbursement of costs incurred while the washing machine was out of order and that the gross rent should be considered for the purposes of a rent repayment order.
35. The tribunal accepts the unchallenged evidence of the level of outgoings paid by the Respondent and deducts this from the rent on a pro rata basis at £49 per person per month.

36. The tribunal has considered the evidence supplied by the Respondent of his financial position, but as the owner of multiple properties the tribunal is satisfied there are no financial circumstances to justify a reduction in the level of rent to be repaid.
37. The tribunal finds no evidence of any conduct on behalf of the Applicants or the Respondent which is relevant to this assessment.

Our Determination

38. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act of control of an unlicensed HMO. The House was a property that required a mandatory licence. At no time during the Applicant’s period of occupation, was it so licenced.
39. We are further satisfied that the Respondent was “a person having control” of the House as they received the rack-rent of the premises the Applicants.
40. The tribunal makes a rent repayment order in favour of the 1st Applicant in the sum of £8822 and in favour of the 2nd applicant in the sum of £4143.90 as set out below. Payments are to be made by 21 August 2021.

Tenant	date started	date ended	rent paid	Utilities	Universal Credit	RRO
Mathile Blanvillain & D Lingeswaran	04/02/2020	30/12/2020	£ 9,900.00	£ 1,078.00	£ -	£8,822.00
Charlotte Correa	04/02/2020	30/12/2020	£ 5,125.00	£ 539.00	£ 442.10	£4,143.90

41. The Tribunal determines that the Respondent shall also pay the Applicants £300 by 21 August 2021 in respect of the reimbursement of the tribunal fees paid by the Applicant.

**A Harris LLM FRICS FCIArb
Valuer Chair
30 July 2021**

RIGHTS 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.