



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

Case Reference : **LON/00BB/HMG/2021/0003**

HMCTS : **V: CVPREMOTE**

Property : **22 Durham Road, London E16 4NF**

Applicants : **Jenny Dos Santos (1)
Margarita Gandara (2)**

Representative : **In person**

Respondent : **L Hub London**

Representative : **Ms Catherine James**

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

Tribunal Member : **Anthony Harris LL.M FRICS FCI Arb
Appollo Fonka MCIEH CEnvH MSc**

**Date and Venue of
Hearing** : **4 August 2021 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **4 August 2021**

DECISION

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: 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 and Respondent each filed a Bundle of Documents and to which references are made in this decision.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £7260 in favour of the 1st Applicant and £7800 in favour of the 2nd Applicant. This is to be paid by 10 September 2021.
2. The Tribunal determines that the Respondent shall also pay the Applicants £300 by 10 September 2021 in respect of the reimbursement of the tribunal fees paid by the Applicants.

The Application

3. By an application, dated 27 January 2021, the 1st Applicant, Ms Dos Santos seeks a Rent Repayment Order (“RRO”) in the sum of £7,260 against the Respondents pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the Manager of the 22 Durham Road E16 (the House).
4. By an application, dated 27 January 2021, the 2nd Applicant, Ms Gandara seeks a Rent Repayment Order (“RRO”) in the sum of £7,800 against the Respondents pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the Manager of the House.
5. On 24 March 2021, the Tribunal gave Directions. Pursuant to the Directions, each party has filed a Bundle of Documents.

The Hearing

6. The 1st and 2nd Applicants appeared via video link.
7. The Respondent dialled into the hearing.

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 (emphasis added):

“(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 designation of areas subject to additional licensing of houses in multiple occupation (HMO). By section 56, a local housing authority (“LHA”) may designate the area of their district or an area of the district is subject to Additional Licensing in relation to the designated HMOs specified.

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

“(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

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. These definitions are wide enough to include a number of different people in respect of a property. Where there is a chain of landlords, more than one may be liable. It may also extend to a managing agent.

18. Section 263 provides (emphasis added):

“(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.”

19. In *Rakusen v Jepson and Others [2021] EWCA Civ 1150*, the Court of Appeal, in a judgement handed down on 22 July 2021, reversed the decision of the Upper Tribunal which upheld the decision of the First-tier Tribunal in concluding that an RRO could be made against a superior landlord. In its judgement, the Court of Appeal concluded that section 40(2)(a) only enables an RRO to be made against an immediate landlord and not a superior landlord.
20. The decision of the Court of Appeal is binding on this tribunal and it is not open to the tribunal to make an order against the freeholder.

The Evidence

21. On 15 June 2017, the London Borough of Newham introduced an Additional Licencing Scheme designating areas for Additional Licensing of all Houses in Multiple Occupation which included the ward in which the House is situated. The scheme came into force on 1 January 2018 and runs until 31 December 2022. We are satisfied that the House required a licence under the Scheme as an HMO. It was common ground that the House was not licensed.
22. The Respondent referred the tribunal to an email exchange with the freeholder in July 2016 referring to the need for a licence for the property. This was before the additional licensing scheme came into force and it is not clear what category of licence it refers to. An email dated 14 July 2016 states that the Respondent would be prepared to take care of the licensing

requirement and pay the costs of the licence subject to the freeholder agreeing a revised management agreement. The exchange concludes without a clear decision. However, the Respondent continue to manage the property.

23. The 1st Applicant signed a tenancy agreement for room at 5 at the House dated 20 August 2018 naming L Hub London as the landlord. The rent reserved was £605 per month and the term was 6 months start starting on 27 August 2018 for a term of 6 months from 1 September 2019 until 29 February 2020.
24. The 2nd Applicant signed a tenancy agreement on the same date for room 8 at the House at a rent of £650 per month but otherwise on the same terms as the 1st Applicant.
25. Both agreements state that services are to be paid for by the tenant including water, council tax, gas, electricity, broadband and TV licence. No utilities or services were included in the rent. It was stated in evidence that during the tenancy the arrangements for council tax changed, and each tenant paid a proportion of the council tax bill to the managing agent who discharge the total bill to the local authority. As the tenants in effect paid the council tax bill, no adjustment needs to be made to any RRO for this factor
26. The House was stated to be a four-bedroom house and initially was occupied by four persons. This later reduced to three but during the whole of the period for which the RRO is claimed, 1 January to 31 December 2020, three persons were in occupation forming at least two households thus satisfying the licensing condition.

Licensing Scheme

27. The Additional Licensing Scheme applies to all properties which are occupied by three or more persons, comprising two or more households. The tribunal is satisfied beyond reasonable doubt that the House comes within the scheme and was required to be licensed.
28. It was common ground between the parties that the property was not licensed and no licence had been applied for.
29. 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

30. 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.

31. The tribunal is satisfied that the offence was committed during a period of the tenant's occupation commencing on 1 January 2020 which was within the period of 12 months ending on the day the application was made which was 27 January 2021.

The relevant landlord

32. The definition of a landlord is discussed above under section 263 of the Housing Act and amplified by the decision of the Court of Appeal in *Rakusen v Jepson and Others*. The tribunal is satisfied beyond reasonable doubt that the Respondent is the landlord for the purposes of section 263.
33. The tribunal notes also that the Respondent is named as the landlord on the tenancy agreement. We also note from the evidence that rent payments were made to the Respondent. We are therefore satisfied beyond reasonable doubt that the Respondent also falls within the definition of a landlord.

Repayment Order

34. 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.
35. The tribunal has no evidence of a conviction.
36. The amount of rent paid in the relevant period is by the 1st Applicant was £7,260 and the amount paid by the 2nd Applicant was £7,800.
37. The Respondent submitted evidence which was stated to show that the Respondent is in a poor financial position and made losses in the year to 31 December 2020 of £49,875. The Respondent also submitted that they had made efforts to get the property licence but were unable to get the freehold's cooperation in this matter which made their position impossible.
38. The tribunal has considered the evidence and in particular that the Respondent knew the property required a licence which they could have obtained in their own name but did not and the tribunal is therefore satisfied there is no conduct on the part of the Respondent or the financial

circumstances of the Respondent justify a reduction in the level of rent to be repaid.

39. The tribunal finds no evidence of any conduct on behalf of the tenant which is relevant to this assessment.

Our Determination

40. The Tribunal is satisfied beyond reasonable doubt that the Respondents have 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 licence under Newham's Additional Licencing Scheme. At no time during the 1st and 2nd Applicants period of occupation, was it so licenced.
41. We are further satisfied that the Respondents were "persons having control" of the House as they received the rack-rent of the premises from the Applicants.
42. The tribunal makes a rent repayment order in favour of the 1st Applicant in the sum of £7260 and in favour of the 2nd Applicant in the sum of £7800.
43. We are also satisfied that the Respondents should refund to the Applicant's the tribunal fees of £300 which have been paid in connection with this application.

**A Harris LLM FRICS FCI Arb
Valuer Chair
4 August 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.