



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

Case reference : **LON/00AL/HMF/2020/0218**

Property : **63 Charlton Church Lane London SE 7
7AB**

Applicant : **Joanne Jia Wen Ooi**

Representative : **N/A**

Respondent : **Nareshh Gopal**

Representative : **N/A**

Type of application : **Application for a rent repayment order
by tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016**

**Tribunal
member(s)** : **Judge H Carr
Mr S Wheeler MCIEH, CEnvH**

**Date and venue of
hearing** : **28th May 2021 and 17th August 2021 –
virtual**

Date of decision : **23rd 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: SKYPEREMOTE. A face-to-face hearing was not held it was not practicable and all issues could be determined in a remote hearing. The tribunal were provided with an electronic bundle prepared by the applicant comprising 38 pages, and a supplementary bundle provided by the applicant comprising 29 pages. These documents were read and taken account of by the tribunal in reaching its determination. The respondent did not provide a bundle as required by the directions. He provided some documents and a statement subsequent to the tribunal barring him from taking further part in the proceedings.

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum of £5,525.
- (2) The tribunal determines that the respondent reimburse the applicant for her application and hearing fees, totalling £300.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenant seeks a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).
2. The applicant originally sought a RRO in the sum of £5,600. That represents the total of the rent paid during the period less deductions agreed with the landlord. At the tribunal hearing on 17th August the tribunal asked the applicant if she wished to amend her application taking into account the definition of rent set out in the statute at s.52(2) which provides the definition of rent set out in s.52(2) of the Housing and Planning Act 2016. 'For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.' The applicant told the tribunal that she had originally intended to make a claim on that basis but had been given advice that she could only claim what she had actually paid. She requested that the tribunal amend her application so as the RRO

claimed was £6,000 which represents 4 months rent at £550 and 8 months rent at £475. The tribunal agreed to amend the application.

3. The period for which the RRO is sought is from 19th October 2019 to 18th October 2020. The applicant made her application on 18th October 2020.
4. The applicant alleges that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s,72(1) of the Housing Act 2004.
5. In her application form she stated that Mr Gopal had been convicted of an offence. This was a mistake. Mr Gopal has not been convicted of an offence.
6. Directions were issued in this matter on 18th February 2021.
7. The respondent failed to comply with the directions and the tribunal sent him notice of intention to bar him from taking further part in the proceedings on 5th May 2021. There was no response from the respondent and therefore, using its powers under rule 9(7) of the procedural rules, the tribunal barred him from taking further part in the proceedings via a notification dated 13th May 2021. The respondent was informed that he could apply for the lifting of the bar pursuant to the rules, by making an application in writing to be received by the tribunal within 28 days.

The hearing

8. Ms Jia Wen Ooi attended the hearing on 28th May 2021. Mr Gopal also attended the hearing. Neither were represented. Mr Gopal said that he had not received communications from the tribunal because they were sent to an incorrect email address. He therefore claimed that he had no knowledge of the directions or of the barring order.
9. The tribunal determined to adjourn the hearing to enable Mr Gopal to apply for the lifting of the bar by an application in writing and to provide a response to the application.
10. The tribunal determined that it would decide whether to lift the bar at the reconvened hearing on 17th August 2021.
11. Ms Ooi attended the reconvened hearing on 17th August 2021 alongside Mr Tanyi, Environmental Health Officer with the Royal Borough of

Greenwich. Mr Gopal did not attend the hearing. Therefore the bar on him taking further part in the proceedings remains in place.

12. Subsequent to the hearing the tribunal received a message from the respondent that he had tried and failed to log into the hearing. The tribunal clerk called the number provided and spoke to a friend of the respondent who was no longer present. The tribunal clerk stated that there had been no attempt by the respondent to log into the hearing.
13. A statement from the respondent was received by the tribunal at 10.15 on the day of the hearing. This was not taken into account at the hearing because the respondent was barred from participating in the proceedings. Even if the respondent had not been barred it would not have been taken into account as it was received too late.

The background

14. The statement provided by Mr Solomon Tanyi in the applicant's supplementary bundle, described the property as follows:

The property is a mid-terraced 3 storey property consisting of two bedrooms, a kitchen a WC and a utility room on the ground floor, with a cellar leading from the kitchen in which there are the electricity and gas meters. The mezzanine floor consists of one bedroom and a bathroom. There are two bedrooms on the first floor and a bedroom on the second floor. Some of the bedrooms had door numbers and there was an information board in the ground floor hallway.

15. Mr Tanyi exhibited a floor plan to his statement and provided some photographs.
16. The freeholders of the property are S Layan Singh Hora, Gurparkash Singh and Narinder Sing Hora.
17. The applicant became a tenant in December 2014. She paid a rent of £550 to a co-tenant who was managing the property on behalf of the landlord. She was given no written agreement.
18. At some time at the beginning of January 2020 Mr Gopal took over the management of the property from the co-tenant.
19. The applicant provided a photograph a tenancy she signed on 14th January 2020 The agreement appears to be an Assured Shorthold Tenancy. The rent payable was £475 pcm.

20. Mr Naresh Gopal has signed the agreement as the landlord and the rent was paid either to his agency or directly to him.
21. The HMO Regulation Team at Greenwich council received a complaint about the property on 10th August 2020. On the 11th August 2020 Mr Tanyi visited the property unannounced and obtained a witness statement from the applicant.
22. Greenwich Council provided written confirmation that the property required licensing and was not licensed during the period of the claim.
23. In addition Greenwich Council served a notice on the landlord dated 1st October 2020 in respect of statutory nuisance because of a leak from the kitchen ceiling and in close proximity to the electrics and water ingress from the external walls into the kitchen and laundry room.

The issues

24. The issues that the tribunal must determine are;
 - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
 - (iii) Should the tribunal refund the applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

25. The applicant provided documentation from Greenwich Council which included a statement from Mr Solomon Tanyi. Mr Tanyi inspected the property on 11th August 2020 and realised that the property was occupied by three or more individuals, forming two or more households who used the property as their main dwelling and whose sole use of the property is as living accommodation. He deduced that the occupiers share both the bathrooms and the kitchen.
26. He states that the property met the standard test for a House in Multiple Occupation and therefore required a licence under the Additional Licensing Scheme that has been operational through the Royal Borough of Greenwich since 1st October 2017.
27. Mr Tanyi states that the witness statements and the tenancy agreement point to Mr Naresh Gopal, the respondent, being the person having control and /or managing the HMO and he receives the rack rents. The total rents received from three of at least four occupiers at the property was found to be around £1491 per month. Mr Tanyi also stated that there was sufficient evidence to suggest that the respondent was running the HMO without consent from the freeholders.
28. As at the date of the hearing there had been no application for a licence.
29. The applicant confirmed to the tribunal that the property was her main residence. She stated that the only times she had not lived in the property was when conditions were too bad to remain.
30. The applicant also provided evidence that she had paid rent monthly over the period for which she is claiming a RRO.
31. The applicant gave evidence to the tribunal about the occupation of the property during the period of her claim. She said that in October 2019 all six rooms of the property were occupied and she believed that there were 7 occupiers in total. This level of occupation remained until Mr Gopal took over the management of the property and commenced to evict some occupiers. Whilst she states that there were six or seven occupiers in November and December 2019 she is unsure whether there were only two or three in January 2020. In February 2020 she told the tribunal there were definitely three occupiers, herself Johnson and Lukas. In March 2020 the occupancy level rose to 4 as Innocence became an occupier and those four remained the tenants in April and May. In June a further tenant moved in making five occupiers and there were five occupiers until September when it reduced to four. It

remained at four occupiers until 18th October 2020 when the applicant moved out of the property.

The decision of the tribunal

32. The tribunal determines that the respondent has committed the alleged offence in 11 of the 12 months of the applicant's period of claim. The month there was no offence was January 2020.

The reasons for the decision of the tribunal

33. The tribunal relies on the evidence from the applicant, the statement from Mr Tanyi and the information provided by the local authority.
34. The tribunal was impressed by the applicant who provided thoughtful and clear evidence about her occupancy of the property.
35. It relies on the evidence of Mr Tanyi the applicant and the tenancy agreement to determine that the respondent was a person in control of the property for the purposes of the legislation.
36. It determines that for 11 of the 12 months of the claim there were at least 3 occupiers of the property. However it determines that there is insufficient evidence to substantiate that the property was an HMO in the month of January 2020. The applicant was uncertain of the number of occupiers that month.

Should the tribunal make an award of a RRO? If so, for what amount?

37. The applicant seeks a RRO in the sum of £6000. The period for which the RRO is sought is from 19th October 2019 to 18th October 2020. The applicant made her application on 18th October 2020.
38. The applicant has provided evidence that she made the following payments of rent:
- (i) September 2019 - £550
 - (ii) October 2019 £550
 - (iii) November 2019 £550
 - (iv) December 2019 £150

- (v) January 2020 £150
- (vi) February 2020 £475
- (vii) March 2020 £ 425
- (viii) April 2020 £450
- (ix) June 2020 £237.50
- (x) July 2020 £450
- (xi) August 2020 £237.50
- (xii) September 2020 £450

39. She paid rent to Mr Gopal's agent A. S. Popoola who was a co-tenant from September to December 2019. In November/December 2019 Mr Gopal took over management of the property from Mr Popoola.
40. In December 2019 the applicant only paid rent of £150 because the house was uninhabitable because of substantial repair works which meant as there was no electricity or water.
41. In January 2020 the landlord cut the electricity and the water and the applicant was forced to seek temporary alternative accommodation. This is why only £150 was paid in that month.
42. In January 2020 the applicant paid £475 deposit to the respondent. This was at the time she signed a new tenancy agreement for rent at £475.
43. In February 2020 the applicant paid the contractual rent.
44. In March the applicant paid reduced rent because it was agreed with the landlord there would be a £25 deduction because of no internet and a £25 deduction ,for early payment. So the contractual rent was £475 but £425 was paid.
45. The deduction for the lack of internet continued until the applicant left the property.
46. The respondent agreed that the rent for June and August should be reduced by 50% because the house was uninhabitable.
47. The final payment of rent was £450 which was paid using the deposit.

48. She argues that the conduct of the respondent has been poor. In particular

- (i) The property was in a very poor condition. This is substantiated by the evidence of Mr Tanyi who provided evidence that the LB of Greenwich had taken statutory nuisance proceedings because that provided a speedy way of improving conditions in the property. Mr Tanyi said that the local authority was intending to carry out works in default and only did not do so because the property became vacant. Mr Tanyi said that the property's condition was in the worst 25% of properties within the private rented sector.
- (ii) The applicant was forced to spend money on Airbnb because the property was uninhabitable.
- (iii) The circumstances of leaving the property. The applicant says that continuing to live in the property became untenable and that the respondent was harassing her to leave.

The decision of the tribunal

49. The tribunal determines to make a rent repayment order of £5525. This represents four months of contractual rent at £550 and 7 months contractual rent of £475.

The reasons for the decision of the tribunal

50. The tribunal makes no RRO for the month of January 2020 when it has determined that there was no offence committed.

51. The tribunal has made an award at the contractual rent level for the other 11 months of the claim. This is because

- (i) The tribunal notes the definition of rent set out in s.52(2) of the Housing and Planning Act 2016. 'For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.' It determines that all of the rent reductions agreed between the landlord and the tenant were

deductions in lieu of rent either because of very poor conditions, because of failures to provide services included in the rent or because of agreeing to pay rent in advance of the due date.

- (ii) The premises were in very poor condition, were uninhabitable for a significant period and were without the necessary fire precautions
- (iii) The tribunal accepts the evidence of Mr Tanyi that the respondent failed to cooperate with the local authority.
- (iv) The tribunal has identified no factors which would point to the RRO being reduced. In particular there was no evidence of the financial circumstances of the respondent and there was no evidence of good conduct by the landlord.
- (v) There was no evidence that the tenant's conduct was anything but good.

52. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicant her application fee and hearing fee.

Name: Judge H Carr

Date: 23rd August 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).