



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

**Case Reference** : **LON/00BA/HMF/2020/0226**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Property** : **73 Kenley Road, Morden, SW19 3DU**

**Applicant** : **Gurkripal Kaur Bawa**

**Representative** : **In Person**

**Respondent** : **(1)Ausrys Siliauskas  
(2)ASLC Property Ltd**

**Representative** : **Ausrys Siliauskas**

**Interested Party** : **Richard Lyn**

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

**Tribunal Members** : **Valuer Chairman Mr Ian Holdsworth  
FRICS  
Trevor Sennett MA FCIEH**

**Date and Venue of Hearing** : **27 August 2021  
Remote**

**Date of Decision** : **1 September 2021**

---

**DECISION**

---

**Covid-19 pandemic: description of hearing:** This has been a remote video hearing, which had not been objected to by the parties. The form of the remote hearing was V: Skype remote. A face-to-face hearing was not held because it was not practicable under the current covid restrictions. The documents the Tribunal referred to are contained in a single bundle submitted by the Applicant.

## **Determination**

1. The tribunal is satisfied beyond all reasonable doubt that, during the period 2 March 2019 until 2 October 2019, 73 Kenley Road, Morden SW19 3DU (“**the property**”) was a House in Multiple Occupation (“HMO”) and the property was unlicensed. The Applicant is entitled to a rent repayment order. The amount of rent we order to be paid back to the applicant by the Respondent is **£4,400**.
2. The tribunal determines that the Respondent shall pay the Applicant £300 within 28 days of this decision in respect of reimbursement of the tribunal fees paid by the Applicant.

## **Application**

3. This is an application seeking a Rent Repayment Order under sections 41(1) and (3) of Chapter 4 of part 2 of the Housing and Planning Act 2016.

## **Hearing**

4. A video hearing was held on 27 August 2021.
5. Ms Bawa, the Applicant and the Respondent, Mr Siliauskas the principal of ASLC Property Ltd represented themselves at the hearing and gave evidence to the tribunal.

## **Background**

6. The property is a two storey dwelling with three bedrooms, two reception rooms, kitchen, bathroom and one outdoor toilet.
7. On 2 March 2019 the Respondent granted a tenancy of a room in the property to the Applicant. This tenancy was to run for a period of 4 months from 2 March 2019 until 1 June 2019. The tenancy was subsequently extended until 31 October 2019.
8. Chapter 4 of the Housing and Planning Act 2016 makes provision for rent repayment orders to be made against a landlord where that landlord has committed certain offences.
9. The Applicant has made an application to the tribunal dated 10 October 2020 for a rent repayment order. The Applicant’s case is that officers from the London Borough of Merton inspected the property on 22 August 2019. They subsequently confirmed the property was a HMO and required licencing.
10. A failure to register the property as a HMO would constitute an offence entitling the Applicant to apply for a rent repayment order against the Respondent. The relevant legislation is set out in more detail below.

## **The legislation**

11. Where the occupation of a property is shared by a number of individuals, each of them is regarded as a separate household: s.258 Housing Act 2004.
12. ss.254-260 of the 2004 Act define a mandatory HMO. However, the London Borough of Merton elected to introduce additional licensing throughout the borough under powers given by s.56 of the 2004 Act. This was effective from October 2018. This means that any HMO in Merton requires a licence where the property has two or more storeys, is occupied by four or more persons in two or more households and where some or all of the facilities are shared or lacking. It is not disputed by either party that if there are five occupiers the property fits into this category. By s.262(6)(a) of the 2004 Act an “occupier” means a person who occupies premises as a residence.
13. s.61 of the 2004 Act requires an HMO to be licensed. By s.72 of the 2004 Act a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed, but is not so licensed. By s.263 of the 2004 Act a person has control of premises if he receives the rack-rent.
14. s.40(1) Housing and Planning Act 2016 confers powers on the tribunal to make a rent repayment order where a landlord has committed an offence, including a breach of s.72 of the 2004 Act. s.40(2)(a) of the 2016 Act provides that a rent repayment order is an order requiring the landlord to repay an amount of rent paid by tenant.
15. By s.43 of the 2016 Act, the tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which Chapter 4 of the 2016 Act applies (this includes a breach of s.72 of the 2004 Act).
16. By s.44(2) of the 2016 Act, the amount of the rent repayment order must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. In this case the period is of 8 months from 2 March 2019 until 31 October 2019.
17. By s.44(3) of the 2016 Act in determining the amount of a rent repayment order 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 anytime been convicted of an offence to which Chapter 4 applies.

## **The applicants’ evidence and submissions**

18. The Applicant explained to tribunal that she occupied the property from 2 March 2019 until early October 2019. A monthly rent of £650 was paid to ASLC Property Ltd during these 8 months and the payments were evidenced by bank statements included in the bundle.

19. The rent payment included the costs of any gas, electricity, water and wi-fi charges at the property. It also included the Council Tax charge for each resident and the costs of cleaning the common areas at the property.
20. The Applicant told tribunal she approached the Local Authority about the licencing of the property in June 2019. The letter from London Borough of Merton at page 43 of the bundle refers to her enquiry. She drew the attention of tribunal to this letter and an email from Maya Rhodes of LB Merton dated 26 September 2019. This email confirmed that “ *During my inspection on the 22 August .....73 Kenley Road was occupied as a house in multiple occupation.....As such the property required to be Licenced*”.
21. Ms Bawa told the tribunal how uncomfortable she had found the premises during her stay. The property had suffered from mould growth on internal wall surfaces and over household effects including her bed and mattress. The mould spores had aggravated her respiratory condition. She vacated the premises during part of her tenancy because of the conditions. She also claimed the service supply at the property provided by the landlord was intermittent.

### **The Respondent’s evidence**

22. The Respondent had not complied with any of the tribunal Directions issued on 20 June 2021. He claimed he had not received any correspondence from the tribunal on this matter. Emails sent to the address held and used by the tribunal were received on the morning of the hearing. A pdf copy of the bundle was sent by email to the Respondent at the outset of the hearing. He received this document and relied upon it during the hearing.
23. The Respondent to questioning from the tribunal acknowledged he was aware of the HMO licencing requirements of LB Merton and that these regulations applied to this property from October 2018.
24. Mr Siliauskas acknowledged that the Local Authority contacted him after the 22 August inspection requiring the property to be licenced. He said he approached Mr Richard Lyn the property owner about carrying out the requisite works to comply with the licencing requirements. He alleges his contract with Mr Lyn did not authorise expenditure on such works. Mr Siliauskas told tribunal Mr Lyn refused his request to undertake the works on his behalf.
25. The Respondent explained he then agreed with Mr Lyn to end his arrangement to manage the property. However, he confirmed tenants remained in the unlicenced property until October. He confirmed his day to day management role ended in mid-October 2019.
26. The tribunal asked the Respondent about the costs of providing the services at the property. He said it cost £100 per room per month or £500 per month for the entire property. As an approximate guide to whole property costs, he offered:

Gas and electric charges: £250 per month

Water and waste charges: £70 per month

Wi-fi charges: £30 per month

Community Charge: £250 per month

27. The Respondent also confirmed to tribunal that ASLC Property Ltd had a tenancy agreement with the Applicant and received the monthly rent of £650 per month.
28. The Respondent refuted the complaints made by the Applicant about the condition of the property. He told tribunal the he was diligent in his response to any request from the residents to carryout repairs, cleaning or waste disposal. His opinion is that the property was in good repair and habitable throughout her tenancy.
29. No written evidence was submitted to tribunal by the Respondent to verify and validate any of his statements.

### **Discussion and conclusion**

30. The parties both agree that the property required a HMO licence from October 2018.
31. The property was not licenced as a HMO despite the direction of the Local Authority following their inspection on 22 August 2019. This is confirmed by the LB Merton correspondence and email dated 14 August and 26 September 2019 respectively.
32. It was also common ground that the Applicant held a valid tenancy from 2 March 2019 to October 2019 at the property. She paid £650 per month rent and this was received by ASLC Property Ltd. The role of ASLC Property Ltd as the landlord of the property is not disputed.
33. The rent included the cost of supplying gas, electricity, water and wi-fi to the property. It also covered the community charge for all residents. This was agreed by both parties.
34. The tribunal are satisfied beyond reasonable doubt that the landlord, ASLC Property Ltd committed an offence by failing to secure a HMO licence for the property.
35. We consider it appropriate to order a repayment of the rent paid between 2 March until 31 October 2019. There is no dispute about the identity of the property landlord in this matter.

36. The tribunal accept the evidence of the Respondent that the costs of providing the inclusive services at the property during this period was £800 (8 x £100 per room per month). This sum is deducted from the monies repayable.

37. The tribunal has weighed the evidence and are not minded, to reduce further the repayable sum. The tribunal were unable to identify any mitigating circumstances arising from the landlords actions.

38. The sum repayable is calculated as follows:

- 8 x monthly rent of £650 = £5,200 **less**
- 8 x monthly costs of provision of services at £100 per month = £800

39. We order a repayment of £4,400 to the Applicant.

#### **Application and hearing costs**

40. The tribunal pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 can order reimbursement of application and hearing fees paid by the Applicant. In the light of the above determination the tribunal orders the Respondent to refund the fees of £300 paid by the Applicant within 28 days of the date of this decision.

**Name:** Ian B Holdsworth

**Date:** 1 September 2021

#### **ANNEX - RIGHTS OF APPEAL**

i. 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.

ii. 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.

- iii. 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.
- iv. 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.