



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

Case reference : **LON/00AY/HMF/2020/0088**

**HMCTS code
(video)** : **V: CVPREMOTE**

Property : **153 Downton Avenue, London SW2 3TX**

Applicants : **(1)Samantha Cobb (2) Thomas Herring
(3) Fiona Fraser (4) Natasha Cutler (5)
Helena Cooke**

Representative : **Ms Clara Sherratt of Justice for Tenants**

Respondent : **Mr Nayyer Jahangir**

Representative : **Mr Daniel Wand, counsel**

Type of application : **Rent repayment order**

**Tribunal
member(s)** : **Judge Tagliavini
Ms R Kershaw**

**Venue & date of
hearing** : **10 Alfred Place, London WC1E 7LR
14 September 2021**

Date of decision : **14 September 2021**

DECISION & DIRECTIONS AS TO COSTS

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented 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. The documents that the Tribunal were referred to are in two bundles from the applicants pp.1-94 & pp.1-26 and a bundle from the respondent of pp.1-103 in addition to a Supplementary

Witness Statement dated 18/12/2020 the contents of which have been considered by the tribunal.

Summary decision of the tribunal

- 1. The tribunal dismisses the application due to the applicant's failure to prove its case.**
- 2. The tribunal gives further directions in respect of any application for costs/wasted costs.**

The application

1. This is an application seeking a rent repayment order ('RRO') pursuant to section 72(1) of the Housing Act 2004, for the period 19/08/2019 to 18/08/2020 in respect of premises situate at 153 Downton Avenue, London SW2 3TX ('the premises') due to the respondent's failure to obtain a HMO licence under the mandatory licensing scheme.
2. The applicants also sought reimbursement of the application and hearing fees.

Background

3. In a Statement of Case the applicants all asserted they had been in occupation of the premises under a tenancy dated 15 August 2018 during the period 19 August 2018 to 18 August 2019 at a rent of £3,300 per month payable to the respondent landlord (c/o Focus Estate Properties Ltd) and stated the rent repayment order was to be divided equally among the applicants.
4. This Statement of Case was adopted by the applicants all of whom made an undated statement of truth, but which recorded a date of 29.10.2020 saying

'I believe that the facts stated in this submission and this and any previous statement of case are true to the best of my knowledge and a copy has been served on the other party.'

5. In directions dated 29 September 2020 the applicants were under direction 2(h) required to include in their hearing bundle

'The name(s) of any witnesses who will give evidence at any hearing with a signed and dated

is *statement/summary of their evidence, stating that it true (and see the Notes below).*

The Notes stated

*‘(d) **Witness statements** should identify the name and reference number off the case, have numbered paragraphs and end with a statement of truth and the signature of the witness. Original witness statement should be brought to the hearing. In addition, witnesses are expected to attend the hearing to be questioned about their evidence, unless their statement has been agreed by the other party. The tribunal may decline to hear evidence from any witness who has not provided a statement in accordance with the above directions.*

6. The Applicants failed to comply with this direction and no witness statements on behalf of all or any of the applicants were included in the applicants’ hearing bundles.

Preliminary matters

7. At the opening of the hearing, Ms Sherratt brought it to the tribunal’s attention for the first time, and in response to points raised by the respondent, that at least two of the applicants had not been in occupation of the premises throughout the period of the RRO claimed, as they admitted they had each sub-let to others for periods of six months. Ms Sherratt also told the tribunal that the applicants had not all paid equal amounts of rent during their period of occupancy, although the Statement of Case stated that any RRO was to be shared equally among the applicants. Consequently, Ms Sherratt requested that a revised Schedule of Rent specifying the rent paid and for what periods should be permitted to be sent to the tribunal after the conclusion of the hearing. At the same time the applicants could put in further evidence and if necessary, an adjournment could be granted under the overriding objection provision of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (as amended).
8. This application for the admission of late and unseen evidence was opposed by Mr Wand, as he submitted it went to the central issue raised from the outset by the respondent, as to who was in the property and when, and subsequently the rent that had been paid by each applicant. Mr Wand submitted that reliance on unseen further evidence that undermined the credibility of what was said (and stated to be true) in the Statement of Case was too late. Mr Wand stated that the hearing had already had to be previously adjourned and in any event the applicants had more than ample time to provide this evidence and their failure to do so, could be said to amount to a deliberate attempt to mislead the tribunal.

The tribunal's decision

9. The tribunal carefully considered the application to adduce further evidence and/or an adjournment. In doing so the tribunal considered the overriding objective and the issues raised by admissions made by the applicants and the application to rely on further fundamental evidence that went to the substance of the application. Although the tribunal frequently exercises a degree of leniency to parties in respect of their compliance with directions, particularly where a party appears unrepresented, the tribunal determined that in this application, these matters should and could have been addressed at a much earlier stage by the applicants as they went to the substance of their application. The tribunal determined in the absence of any, or any compelling reason as to why this evidence could not have been provided earlier, that prejudice was caused to the respondent and to the tribunal's proper management of its resources. Therefore, the application to adduce further evidence and/or to adjourn was refused.

The applicants' case

10. The applicants sought to rely on the documents provided in their hearing bundles. Ms Sherratt also wished to call a least two of the applicants to give oral evidence about their sub-letting and rent payments, as all but Mr Herring had attended the hearing, although none of this evidence was contained in any witness statements on which they could be cross-examined by Mr Wand.
11. None of the applicants had complied with the tribunal's direction by making any witness statement on which they could rely as their evidence-in-chief. As the evidence on which the respondent would wish to cross-examine went to the substance of whether and when an offence was being committed, the tribunal considered it unfair and prejudicial to the respondent to allow the applicant to rely on oral witness evidence in the absence of any witness statement, and about which the parties had been warned in the tribunal's directions. The tribunal also considered that although the tribunal has a wide discretion when considering to admit evidence, it was nevertheless mindful of the fact that the applicants asserted that the respondent had allegedly committed a criminal offence, for which ramifications could be both wide-reaching and substantial. Therefore, the tribunal did not permit the applicants to give oral evidence to the tribunal as no witness statements were available to the respondents on which they could be cross-examined.

The respondent's case

12. Mr Hand submitted that the applicants had failed to prove their case and therefore the application should be dismissed. Mr Wand submitted that the applicants were not entitled to rely on a Statement of Case as their evidence in chief, as this not evidence, and in any event, the applicants had already accepted that parts of it were untrue. As the

applicants had provided no witness evidence as to their occupation of the premises, they were unable to prove an offence had been committed and when. Mr Wand also submitted that an adjournment should not now be granted to the applicants as they had ample time to deal with all these matters.

13. Ms Sherratt having initially requested an adjournment rather than the application being dismissed, later withdrew this request, and stated that the applicants wished to proceed on the documentary evidence and be allowed to give oral evidence. Ms Sherratt stated that other tribunals had allowed a Statement of Case to be relied upon as witness evidence and for oral evidence to be given, even where no witness statement had been made and that therefore, the tribunal should apply the overriding objective in the applicants' favour.

The tribunal's decision and reasons

14. The tribunal determines that in the absence of any witness evidence, which could be relied upon as evidence-in-chief, the applicants have failed to prove beyond all reasonable doubt that an offence was committed by the respondent. The tribunal also determines that in the absence of such evidence from the applicants, the respondent is not required to give evidence, which may or not be used by the applicants to 'prove their case.' Therefore, the tribunal dismisses the applicant's case.
15. On application by Mr Wand, the tribunal gives directions as to the issue of costs/wasted costs:

Directions

- (1) The respondent is to make any application for costs/wasted costs with all supporting evidence and submissions by **5 October 2021**. This is to be sent to the tribunal with a copy sent to the applicants.
- (2) The applicants are to provide any submissions in reply by **26 October 2021** to the tribunal with a copy to the respondent.
- (3) This tribunal of Judge Tagliavini and Ms Kershaw will determine any application for costs on the papers on the first available date after **26 October 2021**.

Name: Judge Tagliavini

Date: 14 September 2021

Rights of appeal from the decision of the tribunal

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).