



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

Case Reference	: LON/00AP/HMF/2021/0102
Property	: 160C Muswell Hill Road, N10 3NG
Applicant	: (1)James Watson, (2)Charly Leake and (3)Elsa Andre
Representative	: Elizabeth Dwomoh
Respondent	: Jalay Enterprises Limited
Representative	: Ashok Patel
Type of Application	: Application for a Rent Repayment Order
Tribunal Members	: Judge Shepherd Louise Crane MCIEH
Date of Decision	: 26th October 2021

1. This is an application for a Rent Repayment Order (RRO) made by the Applicants: James Watson, Charly Leake and Elsa Andre (“The Applicants”). The Respondent to the application is Jalay Enterprises Limited (“The Respondent”) whose Director is Mr Ashok Patel.

2. The Applicants were all tenants of 160C Muswell Hill Rd N10 3NG (“The premises”). The application is made pursuant to s41(1) Housing and Planning Act 2016. It is alleged by the Applicants that contrary to s72(1) Housing Act 2004 the Respondent committed the offence of being in control or management of an unlicensed House in Multiple Occupation (“HMO”). The Tribunal were asked to make a rent repayment order amounting to £23,880 with any universal credit payments to be deducted from the award for the 3rd Applicant.
3. The premises consist of a self-contained three bedrooomed flat with a shared kitchen, shared bathroom and one ensuite bathroom. On 12 February 2019 Haringey designated the whole of the borough as subject to additional HMO licensing. This scheme became operative on 27 May 2019. The Applicants case is that during the course of their tenancy the premises were always occupied by at least three persons and that therefore a licence was required under the additional licensing scheme. The Respondent denied that the property needed to be licensed.
4. On 26 February 2019 the Respondent granted a tenancy to Mr Watson and Mr Leake. It is the Applicants’ case that a third occupier, Hiren Chauhan was also in occupation but was not named on the tenancy agreement. It was a point of dispute between the parties as to whether the Respondent was aware of Mr Chauhan's occupation of the premises. It is the Applicant's case that notwithstanding the fact that Mr Chauhan was not named on the tenancy agreement the Respondent knew that he was in occupation. The Respondent denies this.
5. Mr Chauhan vacated the premises on the 30 November 2019 and was replaced by the 3rd Applicant Elsa Andre. On 27 February 2020 the Respondent granted all three of the Applicants a fresh six-month assured short hold tenancy at the premises. The second pertinent factual issue between the parties arises because notwithstanding the grant of the tenancy to 3

individuals the Respondent sought to argue that Mr Leake and Ms Andre were married or at least this is what they had told him. This was denied by Mr Leake and Ms Andre. Ms Andre says that she obtained the premises through Spare Room independently of Mr Leake.

6. On 26 March 2021 the Applicants made an application for an RRO. The application was received on 31 March 2021. The application was heard on 10 September 2021.

The law

7. Pursuant to section 72(1) Housing Act 2004 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.
8. Under section 254 Housing Act 2004 a building or part of the building meets the standard test for an HMO if...

(a) it consists of one or more units of living accommodation not consisting of self-contained flat or flats;

(b) The living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation.

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

9. The Housing Act 2004,s.56 empowers a local authority to designate its entire district or part of its district as subject to additional licensing. There was no dispute that this had happened in Haringey at the relevant time. The scheme in Haringey became operative on 27 May 2019. This extended licensing to HMOs in the district by requiring licensing of HMOs occupied by three or four persons including section 257 HMOs.
10. Section 40 of the Housing and Planning Act 2016 Act gives First-Tier Tribunal jurisdiction to make RROs where a landlord has committed an offence including failing to license premises. An RRO is an order requiring the landlord to repay an amount of rent paid by a tenant.
11. Under S.44(2) Housing and Planning Act 2016 the amount payable under an RRO must relate to the rent paid during the period mentioned. The Applicants in the present case seek an order in the sum of £23,880 for the 12 month period between August 2019 and September 2020. Deductions of universal credit apply in relation to the 3rd Applicant.

12. Under section 44 for of the 2016 Act the Tribunal must have regard to the following matters in considering the amount of the RRO:

(a) The conduct of the landlord and tenant

(b) The financial circumstances of the landlord, and

(c) Whether the landlord has anytime been convicted of an offence to which this chapter applies.

The Application

13. The Applicants alleged that the premises were an HMO because they consisted of a split-level self-contained three-bedroom flat with a shared kitchen, shared bathroom and *ensuite* bathroom occupied by three separate individuals. They submit that none of the Applicants formed a single household or were married or in a civil partnership or even related.

14. There were two operative fixed term tenancies involved in this case, the first dated 26th February 2019 and the second dated 27th February 2020. Periods of occupation under the tenancy were alleged by the Applicants to be the following :

a) Mr Watson was in occupation between 1 March 2019 and 27th August 2020 and was a named party on both fixed term agreements.

- b) Mr Leake was in occupation between 5 March 2019 and 27th August 2020 and was a named party on both fixed term agreements.
 - c) Mr Chauhan was in occupation between 26 February 2019 and 30th November 2019. He was not named on the first tenancy but the Applicants say that the Respondent was aware of his occupation.
 - d) Miss Andre was in occupation between 1 December 2019 to 27th August 2020. She was a named party on the Second fixed term agreement.
15. The Applicants case was that the premises were required to be licensed under section 72(1) of the 2004 Act but were not licensed during the period in question. They rely on an email dated 12th November 2020 from Glayne Russell the Senior Environmental Health Officer for Haringey which confirmed that the Respondent had not obtained or applied for a license.
16. The RRO application was dated 26 March 2021 and was received by the Tribunal on 31 March 2021. The tenancy of the premises ended on 27 August 2020 and the premises were not licensed at this stage according to the Applicants therefore the offence was still being committed within the 12 month period of the application be made. There are therefore no issues as to limitation.
17. The Applicants' case was that the Respondent is carrying out a business as a professional letting agent. He had no excuse for not obtaining a licence as he should have been aware of the need for one. Although the Respondent had purported to apply for a licence there was no evidence before the tribunal that a valid license has ever been applied for.

The hearing

18. As indicated earlier the principal issues at the hearing were factual issues relating the Respondent's knowledge about who was in occupation at the relevant time.

19. Elizabeth Duomo of Counsel represented the Applicants and Mr Patel represented the Respondents. Each of the Applicants gave oral evidence as did Mr Chauhan. The Tribunal were impressed by their evidence which appeared factually sound and honest. Mr Watson gave evidence first and said that he'd found the premises being advertised on Spare Room and he and Mr Leake and Mr Chauhan had moved in. He and Mr Leake had been school friends and he knew Mr Chauhan through his employment. Mr Chauhan was not named on the tenancy because of uncertainty about his employment situation. Mr Watson said that Mr Chauhan's occupation was made clear to the Respondent and their agents.

20. Mr Patel said that he was not aware of Mr Chauhan being in the premises and alleged that Mr Watson and Mr Leake had sublet without his permission. This was denied by Mr Watson. He pointed to evidence which showed that the Respondent had been aware of Mr Chauhan's occupation in particular Mr Chauhan had contacted the Respondent about a break in at the premises at the start of the tenancy.

21. Mr Leake gave evidence. He corroborated the evidence of Mr Watson. He said that the occupiers of the premises had paid different amounts depending on the size of the room that they occupied.

22. Mr Chauhan gave evidence. He also corroborated the account of Mr Watson. He described the incident when there had been a break in and he had spoken to the Respondent. He said that the Respondent had contacted him and they

had a discussion about where he was from and he checked his immigration status.

23. Ms Andre gave evidence. She detailed the Universal Credit that she had received namely £401 in April 2020, £303 in May 2020 and £98 in June 2020. She denied that she and Mr Watson were married or even in a relationship.

24. Mr Patel gave evidence on behalf of the Respondent. He said he'd owned the property since 1989 and it had always been let out to tenants. He was a director of Jalay Enterprises Ltd. He said that his brother ran the organisation until he died and he was now running it. Jalay Enterprise Limited had been incorporated since 1971. It was a lettings business.

25. It was put to Mr Patel that he was aware of Mr Chauhan because he asked for his passport and wanted to check his immigration status and he had spoken to him about the break in. Mr Patel denied this and alleged that Mr Chauhan was lying. He then retracted that slightly by saying that he could not recall if Mr Chauhan was in occupation. In relation to Ms Andre he maintained his account that he was told that Miss Andre and Mr Leake were married.

26. Mr Patel claimed that he had sought to make an application for a licence to the local authority. The evidence of this was inconclusive. It would appear that some sort of attempted application was made by the Respondent but that it was not the correct application and the local authority had confirmed that no application had been made. (See the letter from Glayne Russell dated 12th November 2020). The Respondent sought to argue that he had tried to make an application but because of the pandemic and errors by the local authority the application had not been accepted. In fact it does not appear that the application was paid for until 10th May 2021. Further there was no evidence of a valid application being made.

27. The Applicants relied on compelling Whatsapp messages which supported the fact that Mr Chauhan had been in touch with Mr Patel at the start of the tenancy. Further Mr Patel had asked to see Mr Chauhan's passport to verify his immigration status. In the face of this evidence the Respondent retained a robust stance alleging that Mr Chauhan was not telling the truth and that Mr Leake and Ms Andre were married despite what they said. He also maintained that he tried to make an application for a licence and it was not his fault that the application had not been successful.

Determination

28. The tribunal considered that the Applicants gave honest evidence of their occupation of the premises. In contrast the tribunal were not impressed by Mr Patel's evidence which was inconsistent and unreliable. He was happy to allege that others were lying and attribute blame to the local authority when this was not justified. He is an experienced manager of properties. He will have been aware of the requirements in relation to licensing. In the Tribunal's view he was aware of the occupation of the premises by Mr Chauhan at the relevant time. In the Tribunal's view he was also aware of the occupation of Miss Andre and was never led to believe that she was the spouse of Mr Leake. In any event this was a red herring because the premises would still have been an HMO had the two people been in a relationship. The fact that Mr Patel had sought to allege that they were spouses when there was no supporting evidence of this merely reinforces the Tribunal's view that the Respondent was seeking means of avoiding liability when he knew he should have had the premises licensed. On the balance of probabilities the main factual issue must be decided in the Applicants' favour. They were in occupation of an unlicensed's HMO. The Respondent knew about their occupation and they are prima facie entitled to a rent repayment order.

29. The Applicants were seeking an RRO of £23078 having deducted the Third Applicant's Universal Credit. This was made up of the following:

£23,880 for the 12 month period between August 2019 to September 2020 (6 months' rent at £1,950 per month and 6 months' rent at £2,030 per month). Deductions of Universal Credit are made at a total of £802 equating to £23078.

30. In light of the tribunal's findings it is not considered that any deduction from the award claimed is appropriate in this case. As indicated the Respondent is an experienced manager of properties who should have been aware of their responsibility to license the premises. The Tribunal were not impressed by the fact that Mr Patel had sought all means to avoid liability including making spurious allegations about the Applicants. In addition there was no evidence before the Tribunal as to the Respondent's financial circumstances. On its face the premises is in a desirable area and will be worth a considerable amount of money. On the basis of this alone there is no reason to doubt that the Respondent's financial circumstances would cause the tribunal to reach any other decision in relation to the rent repayment order than allowing the award of £23,078 pounds.

Summary

31. The respondent is required to pay the sum of £23078 to the Applicants within 14 days.

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.