



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

Case References : **LON/ 00AG/HMG/2021/0015
V:VHS REMOTE**

Property : **44 York Rise London NW5 1SB**

Applicants : **Isobel Allen
Harold Vakatalai
Thomas Serre
Ben Gilbey
Laura Paolino
Connor Kendrick
Mia Holt**

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

Respondent : **Dr Paul Alan Banks**

Representative : **In person**

Type of Application : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM
Mr C Gowman MCIEH**

Date of video hearing : **08 October 2021**

Date of Decision : **18 October 2021**

DECISION AND ORDER

Decision and Order of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of Connor Kendrick in the sum of £8,100.**
- 2. The Tribunal makes a rent repayment order against the Respondent and in favour of Isobel Allen in the sum of £8,100.**
- 3. The Tribunal makes a rent repayment order against the Respondent and in favour of Harold Vakatalai in the sum of £7,500.**
- 4. The Tribunal makes a rent repayment order against the Respondent and in favour of Thomas Serre in the sum of £7,375.**
- 5. The Tribunal makes a rent repayment order against the Respondent and in favour of Ben Gilbey in the sum of £7,500.**
- 6. The Tribunal makes a rent repayment order against the Respondent and in favour of Laura Paulino in the sum of £4,083.28.**
- 7. The Tribunal makes a rent repayment order against the Respondent and in favour of Mia Holt in the sum of £7,850.**
- 8. Additionally, the Tribunal orders the Respondent to pay to the Applicants jointly and severally the sum of £300 representing the repayment to them of the fees paid by them to the Tribunal in respect of their application and hearing fees.**
- 9. The total award including £300 (Tribunal fees) is £50,808.28.**

Reasons

- 1 This application made on 09 April 2021 is made by the Applicants jointly and severally under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as 44 York Rise London NW5 1SB (the property) for the periods and amounts listed against their respective names in the attached Schedule. In each case the property was unlicensed during the entire period for which a claim is made.
- 2 The subject property, a Victorian terraced house in a residential street was required to be licenced by the London Borough of Camden as it is situated in an area which had been a designated as an additional licensing area on 08 December 2015 as renewed on 08 December 2020.
- 3 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.

- 4 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered however that the matter was capable of determination without a physical inspection of the property.
- 5 The hearing took place by way of a VHS video hearing (to which neither party had objected) on 08 October 2021 at which the Applicant tenants were represented by Ms Sherratt of Justice for Tenants. The Respondent represented himself at the hearing.
- 6 All the Applicants were present the hearing and spoke to their witness statements. An electronic bundle of documents submitted on behalf of the Applicants is referred to below. A further bundle submitted by the Respondent was also before the Tribunal. The Tribunal had read both sets of papers prior to the hearing.
- 7 The Respondent acknowledged that the property had been unlicensed during the periods of occupation by the Applicants. He accepted their periods of occupation as being correct and that each had paid the rent as specified.
- 8 The Respondent said that he had been aware that the property potentially needed a licence from 2015. He owned seven other rental properties both in London and Somerset and had assumed that the details of the HMO licensing provisions were of general application. It had come as a surprise to him to find that the requirements differed from borough to borough and that he needed to install additional kitchen equipment for the subject property situated in the London Borough of Camden. He said that the additional equipment could only be installed if the kitchen was enlarged and that he had not been able to do this until a neighbour had completed his own extension to the adjacent property which shared a party wall with the subject property. A further delay was experienced while planning permission was granted.
- 9 Consequently, the work on the kitchen extension was carried out during the winter months and during a period of lock down when the majority of the Applicants were confined to the house, and working from home. For part of this period the resident Applicants were left without any cooking facilities and without adequate heating because the main rear wall of the house had been removed and the gap covered with plastic sheeting. Additionally at this time, the builders were storing materials in the communal living room of the property depriving the tenants of its use.
- 10 The Applicants accepted that they had been given a discount from the rent during the worst of the building works. They said that this had been taken into account when calculating their respective claims to the Tribunal.
- 11 A licence was eventually applied for by the Respondent on 25 February 2021. The entire claim which is the subject of this application falls before that date.
- 12 The Respondent said that he had been a professional landlord for about 35 years and considered himself a good landlord. He accepted that the property should have had a licence and that he had failed correctly to apply for one but asked the Tribunal to take into account

- his good conduct and his own financial impecunity when making any award against him.
- 13 In relation to conduct, while noting the discount on rent (above) the Tribunal was particularly concerned by the Respondent's admission that he had left asbestos waste from another property in the front garden of the property and had effectively called upon one of the tenants to dispose of it for him. It also noted that he had a previous conviction for similar HMO offence. It was not satisfied that the Respondent had shown sufficient evidence of his financial situation to establish hardship on his part. The only evidence produced was unsigned copies of partial accounts which appeared only to show expenditure on properties but disclosed no income. No tax returns or bank statements were offered in support of this plea.
 - 14 It is clear from the Respondent's own admissions that he had been aware since 2015 that this property needed a licence and it was entirely his own choice to let the property to multiple tenants in a condition which he knew could not satisfy the criteria for grant of a licence. The Tribunal does not consider that this conduct satisfies the 'reasonable excuse' exception to provide any relief from liability in the present application.
 - 15 The Respondent argued that the appropriate period of claim for the purposes of section 44 of the Housing and Planning Act 2016 was from 10 April 2020 to 24 February 2021. However, the 12-month time limit in section 41(2)(b) is the relevant limit within which a tenant must apply to the Tribunal for a Rent Repayment Order and is distinct from section 44(2) which provides that provides that the amount awarded must relate to rent paid during a period (emphasis added), not exceeding 12 months, during which the landlord was committing the offence. The offence is a continuing offence and the Tribunal is not required to calculate the maximum award by looking at the twelve-month period preceding the lodging of the Rent Repayment Order Application. Instead, the Applicants may select any twelve-month period during which the Respondent was committing the offence. The Applicants have therefore selected an appropriate period of breach.
 - 16 The Respondent also submitted that the maximum amount which the Tribunal could award could not exceed one year's rent. This is true in respect of any one tenant but each tenant may claim the maximum amount where appropriate which may take the total award over the amount of rent received by the landlord in any given year. The purpose of the Act is to provide a deterrent to landlords who fail to comply with it.
 - 17 Proof that the Applicants each paid the rent to the Respondent is contained in Schedule E at page 39 et seq and is not disputed by the Respondent.
 - 18 The Tribunal is, therefore, satisfied beyond reasonable doubt that both the Respondent has committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that he had been in control or management of an unlicensed house.

- 19 It follows that the Tribunal was also satisfied that it is appropriate to make a rent repayment order under section 43 of the Act in favour of each of the Applicants.
- 20 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44 of the Act.
- 21 None of the Applicants have been in receipt of any benefits or universal credit during the periods which are the subject of these proceedings.
- 22 It is clear that the Applicant tenants were required to endure unacceptable living conditions when building works to the property were conducted during the winter and a lock down period.
- 23 That, despite being aware of the need for a licence the Respondent failed to make an application for licensing until February 2021.
- 24 As discussed above, the Tribunal did not accept the Respondent's plea of financial hardship.
- 25 Each Applicant is asking the Tribunal to make an order in the sum and for the period set out in the attached schedule such sum representing the amount of rent paid by them to the Respondent during the period set out against their respective names in the schedule. Additionally the Applicants ask for the return of their application fee (£100) and hearing fee (£200).
- 26 The Tribunal follows the recent Upper Tribunal case of *Vadamalayan v Stewart* (2020) UKUT 183 (LC) which indicates that the starting point of the award is the full amount claimed, subject to possible deductions as discussed above. It does not find any circumstances in the present case which would cause it to depart from a recent precedent set by a superior court.
- 27 For the reasons cited above the Tribunal makes no deductions to the amount claimed by the Applicants and accordingly awards to each of them the sums set against their respective names in the Decision and Order above. Additionally, the Respondent is ordered to repay the sum of £300 to the Applicants jointly and severally in reimbursement of their share of the application and hearing fees.

28 Relevant Law
Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(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).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

Amount of order: local housing authorities

16. Section 44 of the Act provides:

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed the amount of rent paid under the tenancy for that period less any relevant award of universal credit paid to any person in respect of rent under the tenancy during that period.

(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.”

Name: Judge F J Silverman
as Chairman

Date: 18 October 2021

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rplondon@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Tenant Name	Date of Paym	Rental Period	Rental Period	Amount	Total Recla ble	Notes	Initials of Tenants Involved Rent Reclaimable total								
Harold Vakatalai	01/07/2019	01/07/2019	31/07/2019	£ 3,900.0	£2,088.29	Mia Holt proportion of rent for July has been prorate 26 days (from 6 July -31 July) which equates to £514. Connor's, Harold's, Ben's and Beatrix's proportion of rent has been prorated to 18 days (from 13 July to 31 July) which equates to £1,574.25.	MH	HV	CK	BG	BA				
Harold Vakatalai	01/08/2019	01/08/2019	31/08/2019	£ 3,900.0	£ 3,225.00		MH	HV	CK	BG	BA				
Harold Vakatalai	01/09/2019	01/09/2019	30/09/2019	£ 3,900.0	£ 3,225.00		MH	HV	CK	BG	BA				
Harold Vakatalai	01/10/2019	01/10/2019	31/10/2019	£ 3,900.0	£ 3,225.00		MH	HV	CK	BG	BA				
Harold Vakatalai	01/11/2019	01/11/2019	30/11/2019	£ 3,900.0	£ 3,225.00		MH	HV	CK	BG	BA				
Harold Vakatalai	02/12/2019	01/12/2019	31/12/2019	£ 3,900.0	£ 3,756.16	Thomas Serre proportion of rent for Dec 2019 has been prorated to 24 days (8 Dec to 31 Dec). The share of rent that he is claiming is £481.16	MH	HV	CK	BG	BA	TS			
Harold Vakatalai	01/01/2020	01/01/2020	31/01/2020	£ 3,900.0	£ 3,900.00		MH	HV	CK	BG	BA	TS			
Harold Vakatalai	01/02/2020	01/02/2020	29/02/2020	£ 3,900.0	£ 3,900.00		MH	HV	CK	BG	BA	TS			
Harold Vakatalai	02/03/2020	01/03/2020	31/03/2020	£ 3,732.0	£ 3,900.00		MH	HV	CK	BG	BA	TS			
Harold Vakatalai	01/04/2020	01/04/2020	30/04/2020	£ 3,900.0	£ 3,900.00		MH	HV	CK	BG	BA	TS			
Harold Vakatalai	01/05/2020	01/05/2020	31/05/2020	£ 3,900.0	£ 3,900.00		MH	HV	CK	BG	BA	TS			
Harold Vakatalai	01/06/2020	01/06/2020	30/06/2020	£ 3,900.0	£ 3,900.00		MH	HV	CK	BG	BA	TS			
Harold Vakatalai	01/07/2020	01/07/2020	31/07/2020	£ 3,900.0	£ 2,072.39	Mia Holt proportion of rent for July has been prorated to 5 days (from 1 July -5 July) which equates to £110.96. Connor's, Harold's, Ben's and Beatrix's proportion of the rent has been prorated to 12 days (from 1 July to 12 July) which equates to £1,025.75. Laura Paolino proportion of rent for July 20 has been prorated to 14 days (18 July to 31 July). The share of rent that she is claiming is £315.69	MH	HV	CK	BG	BA	TS	LP		
Harold Vakatalai	01/08/2020	01/08/2020	31/08/2020	£ 3,639.0	£ 1,300.00		TS	LP							
Harold Vakatalai	01/09/2020	01/09/2020	30/09/2020	£ 3,900.0	£ 1,300.00		TS	LP							
Harold Vakatalai	01/10/2020	01/10/2020	31/10/2020	£ 3,900.0	£ 1,300.00		TS	LP							
Harold Vakatalai	31/10/2020	01/11/2020	30/11/2020	£ 3,120.0	£ 1,040.00	20% Rent Reduction	TS	LP							
Harold Vakatalai	02/12/2020	01/12/2020	31/12/2020	£ 3,900.0	£ 818.84	Thomas Serre proportion of rent for Dec 2020 has been prorated to 7 days (1 Dec to 7 Dec). The share of rent that he is claiming is £143.84	TS	LP							
Harold Vakatalai	01/02/2021	01/02/2021	31/01/2021	£ 3,660.0	£ 532.60	Laura Paolino proportion of rent for February 21 has been prorated to 24 days (1 Feb to 24 Feb). The share of rent that she is claiming is £532.60	LP								

Schedule

Total Reclaimable Rent: £ 50,508.28

The Applicants are claiming rent for the following period 06 July 2019 to 24 February 2021 as shown by the schedule above

The total rent Mia Holt is claiming is £7,850

The total rent Harold Vakatalai is claiming is £7,500 The total rent Connor Kendrick is claiming is £8,100 The total rent Ben Gibley is claiming is £7,500 The total rent Beatrix Allen is claiming is £8,100 The total rent Thomas Serre is claiming is £7,375

The total rent Laura Paolino is claiming is £4,083.28

Proportion of Rent Paid

Mia Holt paid £675 a month towards the share of rent for the months Dec 19 - July 20. Mia paid £625 a month for the months between July and Nov 19 Harold Vakatalai paid £625 a month towards the share of rent. Connor Kendrick paid £675 a month towards the share of rent. Ben Gibley paid £625 a month towards the share of rent.

Beatrix Allen paid £675 a month towards the share of rent. Thomas Serre paid £625 a month towards the share of rent. Laura Paolino paid £675 a month towards the share of rent.