



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

Case Reference : LON/00BG/HMF/2021/0165

**HMCTS code
(paper, video,
audio)** : V - Video

Property : Flat 20, Galveston House, Harford Street,
London. E1 4RH

Applicants : (1) Ms Dimitra Katsava
(2) Ms Efthymia Katsava
(3) Mrs. Marija Sadeka

Representative : Mr. Anthony Harris

Respondents : (1) Ms. Sueda Begum
(2) City Hive (UK) Ltd.

Representative : Mr. Talha Ahmad of Leaside Law
Solicitors

Type of Application : Application for a rent repayment order by
tenant

Tribunal : Tribunal Judge S.J. Walker
Tribunal Member Mr A. Parkinson
MRICS.

**Date and Venue of
Hearing** : 10 February 2022 – video hearing

Date of Decision : 10 February 2022

DECISION

- (1) The Tribunal refuses the application to remove the Third Applicant (Mrs. Sadeka) from this application.**
- (2) The Tribunal strikes out the application pursuant to rule 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.**

- (3) The Tribunal directs that any application for costs by the Respondents shall be made in writing within 28 days of the date of this decision. Any response by the party against whom an order for costs is sought is to be made in writing to the Tribunal within 28 days thereafter with any reply by the Respondent to be made 7 days thereafter. The Tribunal will consider any such application on the papers alone. If any application is to be made against a person other than the Applicants a copy of this decision is to be included with that application when it is served on them.**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. 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 was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

The Application

1. The Applicants seek a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act").

The Law

2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 72(1) of the Housing Act 2004 ("the 2004 Act") if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
4. Section 55 of the 2004 Act explains which HMOs are subject to the terms of Part 2 of that Act. An HMO falls within the scope of Part 2 if it is of a prescribed description or if it is in an area for the time being designated by a local housing authority under section 56 of the 2004 Act as subject to additional licensing and it falls within any description of HMO specified in that designation. This case is concerned with an alleged failure to obtain an additional licence. The relevant designation in this case requires a minimum number of 3 people to be in occupation for the property to require a licence.
5. The Act makes provision about when applications may be made and in respect of what periods orders may be made. Those provisions are crucial in this case.

6. Section 44(2) of the Act provides that for offences of the kind alleged in this case an order may be made in respect of a period not exceeding 12 months during which the landlord was committing the offence.
7. Section 41(2) of the Act states as follows;
“A tenant may apply for a rent repayment order only if –
 - (a) *the offence relates to housing that, at the time of the offence, was let to the tenant, and*
 - (b) *the offence was committed in the period of 12 months ending with the day on which the application is made.*

The Hearing

8. The Applicants and the Respondents both attended the hearing. The Applicants were previously represented by Mr. Muhammed Williams of the London Borough of Tower Hamlets, who drafted and submitted the application on their behalf. He ceased to act for the Applicants in November 2021 following the striking out of the application because of a failure to pay the required fees and its subsequent re-instatement at the request of the Applicants. They were represented at the hearing by Mr. Anthony Harris, who is not legally qualified. The Respondents were represented by Mr. Talha Ahmed, a solicitor advocate from Leaside Law.
9. The Tribunal had before it a bundle of documents compiled by Mr. Williams on behalf of the Applicants comprising a total of 66 pages. It also had an application from the Respondents for the application to be struck out, an application from them for costs and a skeleton argument to support those applications. References to page numbers are to the numbers appearing at the bottom of the pages of the Appellants’ bundle unless otherwise stated.
10. The issues before the Tribunal were as follows.

The Parties

11. In the statement of case drafted on behalf of the Applicants Mr. Williams made an application under rule 10(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”) for the Third Applicant to be removed as a party from the application – see para 1 at page 23. This application had not yet been determined by the Tribunal. The reason for this application was that Mr. Williams appreciated that any application by the Third Applicant was bound to fail as it was out of time – about which more will be said later.
12. Given that the application to remove the Third Applicant had not yet been decided and given that Mr. Williams no longer acted for the Applicants the Tribunal sought Mrs. Sadeka’s representations. She stated that she had not consented to this application being made and she wished to remain a party.

13. The Tribunal accepted the Third Applicant's representations and refused to direct that she should be removed as a party.

The Strike Out Application

14. Rule 9(3)(e) of the Rules allows the Tribunal to strike out the whole or part of any proceedings where it;
“considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding”
15. The Respondents applied for the application to be struck out under this Rule as, they argued, the application was doomed to fail. Their argument was as follows.
16. The only basis for the application was an allegation that the Respondents were in control of or managing an unlicensed HMO and therefore they were committing an offence under section 72(1) of the 2004 Act. The need for a licence arose from a designation by the London Borough of Tower Hamlets which required all properties with 3 or more people living in 2 or more households to be licensed. It followed that this offence could only be committed at a time when at least 3 people were in occupation.
17. Whilst the evidence submitted on behalf of the Applicants showed that such an offence **may** have been committed in 2019 and early 2020, it also clearly stated that the Third Applicant left the property on 30 June 2020 – see page 58. It followed that from that date onwards there were only two people in occupation and so no offence could have been being committed under section 72(1) from that day onwards.
18. There was no doubt that the application was made no earlier than 14 July 2021, which was the date on the application form itself (see page 8 of the application). It followed, they argued, that the application did not comply with the requirements of section 41(2)(b) of the Act as it was made more than 12 months after any offence was being committed. It followed, therefore, that the Application was bound to fail.
19. The Applicants accepted that the Third Applicant had indeed left the property on 30 June 2020 and that the application was not submitted to the Tribunal until at least 14 July 2021. They accepted that on 14 July 2020 there were only two people in occupation. Although they suggested that some other people had moved into the property in September 2020, they accepted that there was no mention of this in the application and nor was there any evidence before the Tribunal to show this.
20. The Tribunal granted the application to strike the application out. It was satisfied that the alleged offence was no longer being committed after 30 June 2020 and that the application was made more than 12 months after that date and so the requirements of section 41(2) of the Act were not met and the application was doomed to fail.

21. It was obvious to the Tribunal that Mr. Williams was aware of this problem as it was for this reason that he asked for the Third Applicant to be removed as a party. It should have been obvious to him at the stage that he wrote his submissions, if not earlier, that the case of the First and Second Applicants was equally tenuous. The only options open to the remaining Applicants were to either discontinue the application or to amend it and provide evidence of occupation by others at a later date which may have kept the application alive. However, he did neither.
22. No other grounds were pleaded in the application and there was no application to amend the application. The Tribunal considered that, in any event, it would not be appropriate to do so in such a way as to include a new allegation in respect of a period of time more than 12 months before such an application was made – ie for a period any earlier than 10 February 2021 – as to do so would, in effect, side-step the requirements of section 41(2)(b) of the Act. The last of the Applicants left the property on 13 October 2020, which was more than 12 months prior to the date of the hearing.
23. The application was, therefore, granted and the substantive application was struck out.

Costs

24. Although there was a costs application before the Tribunal, it decided that it would be more appropriate for it to receive a detailed written application which gave full consideration to, among other things, the appropriate respondent to such an application given the history of the proceedings and the Tribunal’s conclusions above. It directed that such an application should be made within 28 days of the date of this decision, with any respondent to such an application being granted 28 days in which to respond, with a further reply being permitted within 7 days thereafter.
25. The Tribunal also directed that if an application for costs were to be made against a person other than any of the Applicants, a copy of this decision should be included when such an application is served.

Name: Tribunal Judge S.J.
Walker

Date: 10 February 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

- (1) 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.
- (2) A person commits an offence if–
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if–
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.

- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
- (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,
- and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,
- as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (1) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (2) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
- (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
- (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
- (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
- (a) repay an amount of rent paid by a tenant, or
- (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “*an offence to which this Chapter applies*” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice

4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7	This Act	section 21
		breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

- (1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.
- (2) A tenant may apply for a rent repayment order only if –
- the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if –
- the offence relates to housing in the authority's area, and
 - the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

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

Section 44 Amount of order: tenants

- (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 ***the amount must relate to rent paid by the tenant in respect of***

an offence mentioned in [row 1 or 2 of the table in section 40\(3\)](#) 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—
- (a) the rent paid in respect of that period, less
 - (b) 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.

Section 52 Interpretation of Chapter

- (1) In this Chapter—
- “offence to which this Chapter applies” has the meaning given by section 40;
 - “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;
 - “rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;
 - “rent repayment order” has the meaning given by section 40.
- (2) 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.