



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

Case reference : **LON/00AJ/HMF/2021/0277**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Flat B, 23 Shirley Gardens, London W7
3PT**

Applicant : **Ms Dragana Gjorgjevik**

Representative : **In person**

Respondent : **London Borough of Camden**

Representative :

Type of application : **Application for a rent repayment order
by tenant – ss. 40,41,43 & 44 of the Housing
and Planning Act 2016**

**Tribunal
member(s)** : **Judge Tagliavini**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **8 April 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers on a preliminary issue of jurisdiction. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because all issues could be determined on paper by way of written submissions from both parties, all of which were taken into consideration by the tribunal in reaching its determination.

The tribunal's summary decision

- (1) The application for a rent repayment order is struck out under rule 9(2)(a) and (e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
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The application

1. The applicant made an application dated 23 November 2021 for a rent repayment order alleging an offence having been committed under section 72 Housing Act 2004 (having management or control of an HMO). The applicant also asserted a rent repayment order was sought due to '*violence for securing entry, eviction threats and harassment of occupiers.*' This was particularised as concerning childcare issues involving Social Services and unlawful entry to the flat and theft of items from the flat. The applicant also asserted there was an ongoing failure to treat problems with mould particularised as a failure to comply with an unspecified Improvement Notice.
2. The applicant sought a rent repayment order covering the period November 2020 to November 2021.

Background

3. The subject premises comprise a first floor two-bedroom flat occupied exclusively by the applicant under an offer of a tenancy by the landlord local authority dated 27 April 2020. The premises were subsequently let to the applicant as interim housing under section 188 Housing Act 1996.
4. The premises were let at a rent of £283.50 that was paid in full by way of Housing Benefit with effect from 1 April 2020 to 8 June 2020 (continuing).
5. A case management conference was held on 17 February 2022 at which both parties attended and Directions were drawn up. These included a direction that the tribunal was minded to strike out the application under rule 9(3)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

The applicant's case and submissions

6. In written submissions dated 2 March 2022 the applicant asserted that as the tribunal had already accepted the application it should proceed to a full hearing. The applicant denied that the subject flat was not an

HMO and asserted that a different procedure applied if a Local Authority applied for a rent repayment order. The applicant also asserted that the tribunal is required to hear her application and cannot dismiss it and then inform the parties of the decision.

The respondent's submissions

7. In written submissions dated 10 March 2022 the respondent submitted that the applicant had misunderstood the criteria that has to be met for a rent repayment order. In this instance, the applicant was and remains the tenant of the respondent local authority and occupies accommodation that was provided under section 193 of the Housing Act 1996 and occupies this with exclusive use. Therefore, the subject flat was not a house in multiple occupation (HMO). The respondent also submitted that as the whole of the rent was paid by way of Housing Benefit no rent repayment order could be made for the benefit of the applicant.
8. The respondent concluded by submitting that the application could not progress as the applicant had not identified a landlord who regulates a HMO.

The tribunal's decision and reasons

9. The tribunal dismisses/strikes out the application for want of jurisdiction under rule 9(3)(a) and (e) of The Tribunal Procedure (First- tier Tribunal) (Property Chamber) Rules 2013.
10. The tribunal finds that the subject flat is not occupied as a HMO as it was exclusively let to the applicant by the respondent. Further the tribunal finds that the respondent local authority is excluded from being a person from having the management or control of an HMO under Schedule 14 of the Housing Act 2004. Therefore, no offence could have been committed under section 72 of the Housing Act 2004.
11. The tribunal finds that no Improvement Notice (unspecified) has been served by the respondent local authority on itself and that in any event a failure to carry out repairs does not constitute an identified offence under section 40 of the Housing and Planning Act 2016.
12. In any event, no rent repayment order could made for the benefit of the applicant, as the whole of the housing benefit paid during the identified 12 months period has to be deducted before any amount can be awarded to the tenant applicant, under section 44 of the 2016 Act. In this instance the amount of rent repayment order would be nil.

13. In conclusion, the application is struck out as the applicant under rule 9(2)(a) and (e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 20013.

Name: Judge Tagliavini

Date: 8 April 2022

Rights of appeal

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).