



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

Case References : **LON/00AZ/HMF/2021/0282 and /0297**
CVP/VIDEO

Property : **316, Devonshire Rd Lewisham London**
SE 23 3TH

Applicants : **Hayley Whitehorn (1)**
Malina Albustin and
Jeremiah Johnson Taylor(2)

Representative : **In person**

Respondent : **Paul Fashade (landlord)**

Representative : **Mr C Goodsell , property manager**

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

Tribunal Members : **Judge F J Silverman MA LLM**
Mr C Piarroux JP
Ms F McLeod MCIEH

Date of CVP remote hearing : **4 April 2022**

Date of Decision : **04 May 2022**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of Hayley Whitehorn in the sum of £2,880.55.**
- 2. The Tribunal makes a rent repayment order against the Respondent and in favour of Malina Albustin and Jeremiah Johnson Taylor jointly and severally in the sum of £8,350.39.**
- 3. These sums include the repayment to each of the Applicants their respective shares of the sums paid by them to the Tribunal in respect of their application and hearing fees.**

Reasons

- 1 The first and second Applicants made separate applications to the Tribunal 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 316 Devonshire Rd Lewisham London SE 23 3TH (the property) for the periods of their respective occupation of the property (as detailed below) during which time the property was unlicensed.
- 2 Directions issued by the Tribunal on 13 January 2022 ordered that the two cases should be conjoined and heard together at a hearing to be conducted by remote video.
- 3 The Tribunal understands that the subject property comprises a six bedroomed house where separate households share common facilities and is thus required to be licensed as an HMO. This point was not in issue between the parties and the Respondent did not dispute the fact that during the entire period of the Applicants’ occupation the property had been subject to the statutory licensing regime and did not have a licence during that time (page R12).
- 4 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 5 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable to carry out a physical inspection of the property but had the benefit of a number of photographs included in both parties’ hearing bundles which are referred to below.
- 6 The hearing took place by way of CVP Video conference on 04 April 2022 at which the Applicants appeared in person and the Respondent was represented by Mr C Goodsell his property manager.
- 7 The Applicants wished to base their case on the absence of a licence for the property and also on breach of covenant (violent re-entry, harassment and breach of quiet enjoyment) and failure to comply with an improvement notice. The Tribunal explained that

the case based on lack of a licence could proceed but that it would not be able to deal with the other matters raised by the Applicants. The Applicants had no provable evidence of breach of covenant such as a court declaration under s168 Commonhold and Leasehold Reform Act 2002, and there was no evidence that a formal Improvement Notice had been served by the local authority in this case.

- 8 The Tribunal received and read bundles of documents from both parties (page numbers referred to below). Shortly before the hearing the Respondent sent further evidence to the Tribunal as an answer to the Applicants' reply. This further pleading was not permitted by the Directions and arrived too late for its contents to be properly considered by the Applicants before the hearing. For these reasons the Tribunal declined to accept this document in evidence.
- 9 The documentation before the Tribunal included statements from a number of persons who were not present at the hearing. The Tribunal had read these statements but was unable to place great reliance on them because their contents had not been subjected to cross examination.
- 10 It is not disputed that the Applicants were in lawful occupation of the property during the entire period covered by this application. They occupied rooms in the property under tenancy agreements granted by the Respondent (see pages 42 et seq). Ms Whitehorn was in occupation between 28 December 2020 and 28 May 2021 and is claiming the return of 5 months' rent totalling £2,875. Ms Albustin and Mr Johnson Taylor shared a room from 15 December 2020 until 16 December 2021 and are claiming the return of their rent for the entire twelve month period of their occupation totalling £9,300. The Applicants are also requesting the Tribunal to order the Respondent to repay their application and hearing fees.
- 11 The property is an older semi-detached house in a residential street in south London. It is understood that it had six bedrooms and the Applicants say that up to eight people were in residence at any one time. A report prepared by the Respondent following an inspection of the property by the local authority in September 2021 (see page 63) demonstrates that the house was not in pristine condition and that the Respondent had been required to undertake a number of repairs and improvements to the property as a condition of the grant of a new licence.
- 12 The rent for all Applicants was paid regularly and proof of payment was produced to the Tribunal (pages A70-81 and 84). The Respondent agreed that no rent was outstanding from the Second Applicants but maintained that the First Applicant still owed one month's rent. The First Applicant said that she had paid all rent due up to her leaving the property in May 2021, the last month's rent being covered by her initial deposit. She maintained that confusion had arisen because the Respondent had mistakenly thought that she had not left the property until June. This was incorrect and she had actually left by 28 May 2021 at the latest.

Having heard evidence from both parties on this point the Tribunal prefers and accepts Ms Whitehorn's account of events and accordingly finds that her rent had been paid in full up to the date of her leaving the property.

- 13 The Tribunal heard evidence from the Applicants that the property was inadequately maintained and that they frequently had to ask Mr Goodsell to arrange to repair items (eg lavatory cistern, door handles, removal of rubbish, broken oven). The local authority had inspected the property following a complaint made by the tenants (page R52) and had issued a report (see page R63) requiring 37 items of remedial work to be done. The tenants also said that they had not been given copies of the gas certificate or EPC with their tenancy agreements and the Second Applicants said that their deposit had not been protected until half way through the period of their occupation.
- 14 The Respondent said that the repairs were due to damage caused by the tenants and should be paid for by them (see page A95), however the nature and extent of the works requested by the local authority suggests that the cause of the disrepair was more likely due to wear and tear than to tenant abuse. The tenants averred that the property was not in good repair when they moved in (see page A34). A number of photographs showing various items of disrepair were included in the parties' bundles (eg pages A135, 138, 139, 149, 151, 200).
- 15 The Respondent, who owns other property in addition to the subject property (page R12), knew that the property was required to be licensed and did not have a licence at the relevant time (page R 13 and R65) and said that it had previously had a licence for six people which had expired in July 2020 before any of the Applicants took up residence at the property. He said that he and Mr Goodsell, his property manager, had attempted to renew the licence but that they had been unable to do so because of the pandemic. He said that they had emailed the local authority and had attempted to renew the licence on line but had not been able to complete the procedure. He was unable to demonstrate any evidence of his emails or phone calls to the council and although an application was eventually successful, the commencement date of the new licence (February 2022) post-dated the dates when all the Applicants had left the property (page R9).
- 16 He was also unable to produce to the Tribunal any evidence to show on what date his actual application for a new licence was made, the Tribunal therefore has no option but to treat the property as having been without a licence for the entire period of the Applicants' occupation.
- 17 The Tribunal was, therefore, satisfied beyond reasonable doubt that the Respondent had 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.
- 18 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in respect of the First Applicant for the period 28

December 2020 to 27 May 2021 and in respect of the Second Applicants jointly and severally for the 12-month period commencing on 15 December 2020. In each case any award made by the Tribunal could not exceed the total rent received by the Respondent for this period of time.

- 19 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 20 The Respondent owns other tenanted property and was aware of the need to obtain a licence for this property because he had previously had a licence for it.
- 21 The Respondent was unable to produce any evidence of his attempts to apply for a licence during the period under discussion. A new licence was granted in respect of this property but only took effect on 10 February 2022 ie after the Applicants had left the property (page R9) and after a number of repairs had been carried out at the property.
- 22 The Applicants had moved into the property having assumed that it was properly licenced. They discovered its unlicensed status by making a search of the local authority register (page A152).
- 23 There is no evidence that the Respondent had previous convictions of this kind or that the Council had considered the Respondent's offence to be sufficiently serious to prosecute him. However, in assessing the award to be made to the Applicants, the Tribunal does have regard to the Respondent's conduct and that of his manager for whom he is responsible, including making unfounded allegations about the Applicants' conduct, failing promptly to repair faults at the property and disrespectful behaviour towards the Applicants (see eg pages A 86, 98, 124,135, 138, 139, 149,151,169, 200).
- 24 The Tribunal did not have details of the Respondent's financial circumstances but no plea of financial hardship was made on his behalf.
- 25 The Respondent provided a list of his outgoings and expenditure during the relevant period but save for Council tax and the water charge did not substantiate any of them with invoices receipts or evidence of payment. Neither was it possible to establish whether the various expenses claimed were attributable to this property or to another property in the Respondent's ownership. The purported mortgage payment shown on page R36 does not show to which property it relates and is inconsistent with the charge shown on the Land Registry Office Copy Entries (page A57). Similarly, an electricity bill does not show to which property it relates. For that reason the Tribunal is only able to deduct from the maximum award a proportion of the council tax and water charge appropriate to each Applicant's period of residence.
- 26 It is not clear how many tenants were in occupation of the property at any given time but the Applicants' evidence suggests that the six bedrooms in the house were all occupied. The Tribunal has therefore calculated the proportion of the deduction allocated to the first Applicant as being one sixth of the total monthly charge

per month of occupation as outlined below and as one sixth jointly between the two Second Applicants (because they shared a room) as outlined below.

- 27 The Respondent's council tax bill (page R52) in the sum of £2,131.09 covers the year from April 2021. The monthly charge would be £178.00 per month. Of that monthly sum the First Applicant should be responsible for one sixth per month (29.66) and representing the 5 months of her occupation (5 x £29.66= £148.30) and the Second Applicants one sixth jointly (£29.66 per month) for their 12 months occupation (12 x £29.66= £355.92).
- 28 A similar argument and apportionment has been made in respect of the water bill (page R38, £991.27 bill for 18m) resulting in a deduction of £45.85 for the First Applicant and of £110.04 for the Second Applicants.
- 29 Deducting the above sums from the maximum award results in an award of £2,680.85 being made to the First Applicant (£2,875 - £194.15 = £2,680.85), and of £8,834.04 jointly and severally to the Second Applicants (£9,300 - £465.96= £8,834.04). The Tribunal therefore orders the Respondent to pay to the First Applicant the sum of £2,880.85 which includes the sum of £200 representing the return of her share of the application and hearing fees.
- 30 In respect of the Second Applicants their award of £8,834.04 has to be reduced further by the sum of £683.65 (£8,150.39) which had been received by Mr Johnson Taylor as universal credit during this period (page A82). This gives a reduced total of £8,350.39 which includes the sum of £200 representing the return of their share of the application and hearing fee. The Tribunal orders the Respondent to pay this sum jointly and severally to the Second Applicants.

31 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: tenants

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)
an offence mentioned in row 3, 4, 5, 6 or 7 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

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.”

Name: Judge Frances Silverman
as Chairman **Date:** 2 May 2022

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.