



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

Case Reference : **LON/00AN/HMF/2021/0084**

HMCTS code : **Video**

Property : **78 Harwood Road Fulham SW6
4QH**

Applicants : **Shahid Lakha
Romana Kauser**

Representative : **In person**

Respondent : **M Vassiliou**

Representative : **No appearance.**

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

Tribunal Members : **Tribunal Judge Prof R Percival
Mr Gowman MCIEH**

**Date and venue of
Hearing** : **5 May 2022
Remote**

Date of Decision : **5 May 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video using CVP. A face-to-face hearing was not practicable and all issues could be determined in a remote hearing.

Decisions

- (1) The applications to add/substitute respondents are refused.
- (2) The application for an RRO is refused.

The application

1. On 30 March 2022, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for Rent Repayment Orders (“RROs”) under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 24 November 2021, and amended on 14 January 2022.
2. In accordance with the directions, we were provided with an Applicant’s bundle of 193 pages. The Respondent did not provide any material, and has not engaged with the Tribunal.

The hearing

Preliminary issue

3. The Applicants represented themselves. The Respondent did not appear.
4. The Tribunal raised as a preliminary issue the identity of the Respondent.
5. The application gave the name of the Respondent as Maria Vassiliou. The bundle included a land registry extract identifying Ms Vassiliou as the freehold owner of 78 Harwood Road.
6. Amended directions dated 14 January 2022 identified the Respondents as Sam O’Dell and FangZi Property Ltd (“FangZi”). A note on the amended directions states that the substitution followed a request by the Applicants made on 6 October 2021.

7. Further investigation of the Tribunal office file showed that, in fact, the Applicants had asked for FangZi to be added in an undated letter emailed to the Tribunal on 30 August 2021.
8. On 26 October 2021, the Upper Tribunal gave judgment in *Gurusinghe and others v Drumlin Limited* [2021] UKUT 268 (LC). The Upper Tribunal, upholding a First-tier Tribunal decision, found that a respondent could not be added to an application for a rent repayment order later than the statutory deadline for an application to be made. That deadline is 12 months after the committing of the offence in respect of the tenancy to which the rent repayment order relates (section 41(2) of the 2016 Act). This was a fundamental matter of the jurisdiction of the Tribunal, not a procedural deadline which the Tribunal could vary in exercise of its case management powers.
9. The sequence of relevant events is thus as follows:
 - 28 July 2020: last date of tenancy (last date offence was relevantly committed, if proved).
 - 30 March 2021: Application for an RRO made.
 - 30 August 2021: Request that FangZi be added as respondent made.
 - 6 October 2021: Request that Mr O'Dell be added as respondent made.
10. We assume for the purposes of the preliminary issue that it is the request to add a respondent that is the relevant date for the rule in *Gurusinghe*.
11. Mr Shahid and Ms Romana confirmed that the sequence of events set out above was correct.
12. The Applicants explained that they had initially been advised by Flat Justice to identify Ms Vassilou as the respondent (we note that it would appear that this advice was given before the Court of Appeal decision in *Jepsen v Rakusen* [2021] EWCA Civ 1150, [2022] 1 WLR 324). They then sought to change the name of the respondent as soon as they became aware that it would be the correct course to take (and, again, we note that they acted before the decision in *Gurusinghe* was published).
13. The Tribunal then adjourned to confer, and concluded that the Applicants' requests to change/add respondents were both out of time, as a result of the decision in *Gurusinghe*. That case also makes clear that this time limit is a fundamental matter of jurisdiction, and it is therefore not possible for us to override it, however meritorious that course would be in the light of the substantive issues. Had we had such a discretion, it is likely that we would have exercised it. But we do not.

14. In the result, the only identified respondent was Ms Vassiliou. The Applicants' bundle states their belief that Ms Vassiliou had let the flat to FangZi, who in turn were their immediate landlords. Orally, the Applicants explained that the situation was complicated and murky, and it was not clear exactly how the relations between Ms Vassiliou, an agency called Marsh and Parsons (who appeared to stand between Ms Vassiliou – or another person of that surname – and FangZi) and FangZi itself. Nonetheless, they acknowledged that it was FangZi who were their immediate landlord.
15. The Tribunal concluded that Ms Vassiliou was not the Applicants' immediate landlord, and therefore we could not make an RRO against her.
16. As a result, we dismiss the application.
17. We add that we do so with regret. On the face of it, and in the absence of evidence from a correctly identified respondent, it appears from the evidence in the Applicants' bundle that theirs was exactly the sort of situation that the RRO system had been introduced to deal with, and their case on its merits for a high percentage RRO appears (again, albeit without evidence from a respondent) a strong one.

Rights of appeal

18. 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 London regional office.
19. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
20. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
21. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 5 May 2022

Appendix of Relevant Legislation

Housing Act 2004

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.

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

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 –
- (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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
 - (b) 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.

42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

43 Making of a 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 had 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 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).

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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.