



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

**Case references** : **LON/00BE/HMF/2022/0004**

**HMCTS code** : **V: VIDEO**

**Property** : **Flat 6, Whitworth House, Falmouth  
Road, London SE1 6RW**

**Applicants** : **Ms M Allen, Ms S Matthews, Ms Y Lee**

**Representative** : **Ms S Mathews**

**Respondent** : **Ms A Akthar**

**Representative** : **Residential Realtors**

**Type of application** : **Application for a Rent Repayment Order  
by tenants**  
Sections 40, 41, 42, 43 and 45 Housing and  
Planning Act 2016.

**Tribunal members** : **Judge Pittaway**  
**Ms F Macleod MCIEH**

**Date of Hearing** : **16 May 2022**

**Date of decision** : **7 June 2022**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. All the applicants attended the hearing. Ms Mathews joined the hearing by telephone. In addition Mr page and Mrs Allen joined the hearing as observers.

The documents before the tribunal at the hearing were in a bundle provided by the applicants of 58 pages. In addition the tribunal had before it the Directions which it issued on 27 January 2022. The respondent had not provided any bundle.

At the hearing Ms Mathews spoke for the applicants. No one appeared on behalf of the respondent.

## **Decisions of the Tribunal**

**The Tribunal makes a Rent Repayment Order in favour of the applicants in the sum of £11,500.**

### **The background**

- 1.** The Tribunal received an application dated 29 December 2021 from the applicants under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) each for a rent repayment order (“**RRO**”) in respect of Flat 6, Whitworth House, Falmouth Road, London SE1 6RW.(‘the **Property**’).
- 2.** The Property is described in the application as a three bedroom ex-council flat privately rented. The application referred to it having been converted from a two-bedroom to three bedroom flat. No party requested an inspection and the tribunal did not consider that one was necessary. The relevant local housing authority is Southwark Borough Council.
- 3.** The sums claimed by the applicants were £11,500, being the rent which they paid from 1 August 2020 to 31 December 2020, and £16,100 for the period from 1 January 2021 to 31 July 2021. The offence alleged for the period to 31 December 2020 was control by the landlord of an unlicensed HMO. The offence alleged in respect of the period from 1 January 2021 was failure by the landlord to deal with persistent damp and disrepair.
- 4.** On 27 January 2022 the Tribunal issued Directions. The Directions provided for the applicants to provide a bundle to the Tribunal by 7 March 2022, and for the respondent to provide a bundle to the tribunal and the applicants by 7 April. The applicants were directed to include in their bundle, ‘5(d) full details of the alleged offence, with supporting documents from the local housing authority, if available’ and emphasised that the tribunal would need to be satisfied beyond reasonable doubt that an offence had been committed.
- 5.** The applicants provided a bundle as directed, with the only supporting documents from the local housing authority being two e mails from an officer in the Housing Standards and Licensing department. The respondents provided no bundle.

6. As the only evidence in the applicants' bundle of the existence of the Additional Licensing Scheme upon which they were relying the tribunal directed, during the hearing, that the applicants provide the tribunal with further evidence of the Additional Licensing Scheme upon which they were relying by 30 May 2022 and gave the respondent the opportunity of replying to that evidence by no later than 6 June. On 17 May the applicants provided the tribunal with a copy of the Designation of an Area for Additional Licensing for Houses in Multiple Occupation under section 56 of the Housing Act 2002 dated 15 October 2015 under which the London Borough of Southwark designated the whole area of the district of London Borough of Southwark as subject to Additional Licensing with effect from 1 January 2016. The respondent made no reply.
7. During the hearing the applicants accepted that it was not an offence under section 40 of the 2016 Act entitling them to a RRO that the landlord had failed to deal with damp, disrepair and other matters complained of in their application, but submitted that this was evidence of landlord's conduct that should be taken into account.

### **The Issues**

8. The issues before the tribunal to determine were
  - Had the landlord committed an offence under section 72(1) of the Housing Act 2004 (the '**2004 Act**')?
  - The period during which an offence was committed.
  - If an offence was committed did the person committing the offence have a reasonable excuse for committing an offence under section 72(5) of the 2004 Act.
  - The amount of RRO that can be ordered under section 44(3) of the 2016 Act.
  - Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

### **Evidence and submissions**

9. The bundle before the contains a copy of the tenancy agreement dated 23 July 2020 made between the respondent and the applicants for a term of 12 months from 1 August 2020 at a rent of £2,300 per month. The bundle also contains evidence that the payments had been made.
10. The bundle contains e-mails dated 12 July 2021 (to the respondent) and 4 August 2021 (to the applicants) from Mr Bakare-Tinko, an Enforcement Officer of the Private Sector Housing Enforcement & Licensing department of Southwark Council, both of which state that the property was one which required to have been licensed as an Additional HMO, under the Additional Licensing Scheme which ended on 31 December 2020 and that no such licence existed for the property. The e mail of 4 August confirms that no application for a licence had been made. The e

mail of 12 July 2021 further refers to Mr Bakare-Tinko being unable to trace any planning application for conversion of the property from a self-contained two bedroom property to a three bedroom flat in multiple occupation.

11. The tribunal heard evidence from the applicants that they had been responsible for paying for all the utilities and water rates and broadband charges at the property. They did not pay council tax, from which they were exempt as students.
12. Ms Mathews submitted that the applicants were unaware of the landlord having a reasonable excuse for committing the offence, they had had no contact from the landlord at any time. As to the landlord's conduct she referred the tribunal to the wants of repair and other complaints made about the property to the landlord during their tenancy and how long it had taken the landlord to deal with these. Ms Mathews also referred to the failure by the landlord to obtain the necessary permission for conversion of the property from a two bedroom to three bedroom flat. While these were not in the bundle before the tribunal Ms Mathews stated that the applicants had obtained official copies of the landlord's title to the property, which confirmed that she owned it. Ms Mathews submitted that this pointed to there being no particular financial circumstances of the landlord to which the tribunal should have regard.
13. As to the tenants' conduct Ms Mathews stated that the bundle confirmed that the rent had always been paid on time and that when they left there were no outstanding bills.

### **The tribunal's decision and reasons**

14. The tribunal has had regard to the documents in the bundle, the submissions made at the hearing, the subsequent evidence received from the applicants [and the respondent's response]. It has also had regard to the decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) ('*Vadamalayan*'), to which it referred during the hearing, in reaching its decision.
15. The law relevant to the tribunal's decision is set out in the appendix to this decision.

### **Was an offence committed?**

16. On the basis of the evidence before the tribunal and in particular the Designation of an Area for Additional Licensing for Houses in Multiple Occupation under section 56 of the Housing Act 2002 dated 15 October 2015, provided to it after the hearing, the tribunal finds that between 1 August 2020 and 31 December 2020 the respondent committed an offence under section 72(1) of the 2004 Act in controlling an unlicensed HMO.
17. The tribunal find that the offence was committed in the period of twelve months ending on the date the application was made. The offence was committed until 31 December 2020 and the application was made on 29 December 2021.

### **Reasonable Excuse?**

18. Under section 72(5) of the 2004 Act it is a defence in proceedings against a person for an offence under subsection (1), that he/she had a reasonable excuse for having control of an unlicensed HMO.
19. There was no evidence before the tribunal that the landlord had a reasonable excuse for committing the offence. In the absence of any evidence the tribunal therefore find the landlord had no reasonable excuse for committing the offence.

### **Amount of the RRO**

20. The decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) (*'Vadamalayan'*) is authority for the proposition that when calculating any RRO the starting point is the total rent paid during the relevant period, in this case £11,500.
21. The decision in *Vadamalayan* limited possible deductions from the total rent to utilities paid for by the landlord. The tribunal heard evidence that the applicants paid for all utilities and finds there are no deductions for utilities to be made from the total rent of £11,500.
22. Section 44(4) of the 2016 Act requires the Tribunal, when determining the amount, in particular to 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 the Chapter of the 2016 Act applies and (d) any other factors.
23. There is no evidence before the tribunal as to poor conduct by the tenants, the financial circumstances of the landlord or whether the landlord has ever been convicted of an offence under the relevant Chapter of the 2016 Act.
24. The tribunal finds that there has been poor conduct by the landlord, in particular failing to comply with its obligations under the tenancy agreement as to repair, failing to obtain planning permission for the conversion of the property into a three bedroom flat and failing to engage with either the tenants or the tribunal in connection with this application. The tribunal is not however able to increase the amount of the RRO beyond the rent paid for the relevant period.
25. Accordingly no adjustment is made to the RRO by reason of the factors referred to in section 44(4) of the 2016 Act.
26. The sum of the RRO is £11,500.

**Name:** Judge Pittaway

**Date:** 7 June 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).

## **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.

(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.

#### **254 Meaning of “house in multiple occupation”**

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);

- (d)an HMO declaration is in force in respect of it under section 255; or
- (e)it is a converted block of flats to which section 257 applies.
- (2)A building or a part of a building meets the standard test if—
- (a)it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b)the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d)their occupation of the living accommodation constitutes the only use of that accommodation;
- (e)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f)two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.
- (3)A part of a building meets the self-contained flat test if—
- (a)it consists of a self-contained flat; and
- (b)paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).
- (4)A building or a part of a building meets the converted building test if—
- (a)it is a converted building;
- (b)it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
- (c)the living accommodation is occupied by persons who do not form a single household (see section 258);
- (d)the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (e)their occupation of the living accommodation constitutes the only use of that accommodation; and
- (f)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.
- (5)But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.
- (6)The appropriate national authority may by regulations—
- (a)make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
- (b)provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
- (c)make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.
- (7)Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.
- (8)In this section—
- “basic amenities” means—(a)
    - (a) a toilet,
    - (b)personal washing facilities, or
    - (c) cooking facilities;



- “converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;
- “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));
- “self-contained flat” means a separate set of premises (whether or not on the same floor)—
  - (a) which forms part of a building;
  - (b) either the whole or a material part of which lies above or below some other part of the building; and
  - (c) in which all three basic amenities are available for the exclusive use of its occupants.

### 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 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 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
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.

#### **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);

#### **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.

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>the amount must relate to rent paid by the tenant in respect of</i></b>
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.