



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

Case Reference : **LON/00B/HMF/2021/0250**

HMCTS : **V: CVPREMOTE**

Property : **Studio 6, 375 Katherine Road,
London, E7 8LT**

Applicant : **Dean Robertson**

Representative : **Clara Sherratt**

Respondents : **1. Guven Investments Limited
2. Avenues Estates Limited**

Representative : **No appearance**

Type of Application : **Application for a Rent Repayment
Order by Tenant**

Tribunal Member : **Judge Robert Latham
Fiona Macleod MCIEH**

**Date and Venue of
Hearing** : **15 June 2022 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicants have filed two bundles of documents.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Second Respondent, Avenues Estate Limited, in the sum of £5,330.
2. The Tribunal determines that the Second Respondent shall also pay the Applicant £300 in respect of the reimbursement of the tribunal fees which he has paid.
3. The Second Respondent is to pay the said sums by 15 July 2022.
4. The Applicant did not seek any rent repayment order against the First Respondent.

The Application

1. By an application received on 13 October 2021, the Applicant seeks a Rent Repayment Order (“RRO”) against the Respondents pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The application relates to the Studio 6, 375 Katherine Road, London, E7 8LT (“the Flat”). The First Respondent, Guven Investments Limited, is the freehold owner of the property. The Second Respondent is the landlord named on the Applicant’s tenancy agreement.
2. On 1 February 2022, the Tribunal gave Directions. The Tribunal set the matter down to be heard today.
3. Pursuant to the Directions, the Applicant has filed a Bundle of the Documents (123 pages).
4. The Respondents have played no part in these proceedings. On 14 October 2021, the Tribunal sent them a copy of the application; on 1 February 2022 a copy of the Directions and on 25 May notification of the hearing. The Tribunal is satisfied that they have made an informed decision not to engage with the application.

The Hearing

5. The Applicant was represented by Ms Clara Sherratt of Justice for Tenants. She adduced evidence from Mr Robertson.

6. Ms Sherratt confirmed that the Applicant is seeking a RRO in the sum of £5,330, namely the rent which he paid between 4 May 2020 and 8 January 2021.
7. Ms Sherratt confirmed that the correct name of the Second Respondent is “Avenues Estate Limited”. The application form names the Second Respondent as “Avenue Estate” which is the name which appears on the tenancy agreement (at p.30). The Tribunal amends the title of the Second Respondent accordingly. Companies House describe the business of the Second Respondent company as being “real estate agencies”.
8. The Applicant has also issued the claim against the First Respondent which is the freehold owner of 375 Katherine Road (see p.76). In the absence of any evidence that the Second Respondent was acting as agent for the First Respondent, Ms Sherratt elected to proceed with her application against the Second Respondent as the relevant “landlord”.
9. The Respondents did not attend the hearing. They have not submitted any evidence. Ms Sherratt confirmed that she had been in contact with Mr Abdul Mumin who is the director of the Second Respondent.

The Housing and Planning Act 2016 (“the 2016 Act”)

10. Section 40 provides:

“(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.”
11. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include the offence under section 95(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed house.
12. Section 41 deals with applications for RROs. The material parts provide:

“(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.

13. Section 43 provides for the making of RROs:

“(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).”

14. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

15. Section 44(4) provides:

“(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.”

The Housing Act 2004 (“the 2004 Act”)

16. Part 3 of the 2004 Act relates to the selective licensing of residential accommodation. By section 80, a local housing authority (“LHA”) may designate a selective licencing area.

17. Section 95 specifies a number of offences in relation to the licencing of houses. The material parts provide:

“(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85 (1)) but is not so licensed.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time -

(b) an application for a licence had been duly made in respect of the house under section 87,

and that ... application was still effective (see subsection 7).

18. Section 263 provides:

“(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.”

The Background

19. The property at 375 Katherine Road is a three storey terraced property, with a shop on the ground floor. The Flat is a studio flat in the roof space. There was a toilet and shower and a cooker. There was a portable heater. However, this was replaced after the original one “exploded”.
20. The agreement pursuant to which the Applicant occupied the Flat is at p.30. It is described as a “lodger’s agreement”. The Tribunal is satisfied that the substance and reality of the agreement was the grant of a tenancy, which was an Assured Shorthold Tenancy. It was granted for a term of 12 months. The rent was £700 per month. The Applicant also paid a deposit of £700 which was repaid at the end of the tenancy. Mr Robertson had seen the Flat advertised on SpareRoom.
21. On 15 June 2017, the London Borough of Newham (“Newham”) introduced a Selective Licencing Scheme (at p.111). This extends to all privately rented properties in the ward in which this Flat is situated. The scheme came into force on 1 March 2018 and shall cease to have effect on 28 February 2023. On 24 May 2021 (at p.80), Newham confirmed that no licence has been obtained for the Flat.
22. Mr Robertson stated that the landlord had not provided him with the “How to Rent” booklet, an EPC certificate or an electrical certificate. He described a number of difficulties which he had with the electrical supply. It cut off on a number of occasions. He had no lighting. He was unable to cook or have a shower. For one period, he had no electricity for four days and was forced to stay with his mother. It seems that the wiring for the supply was in a dangerous condition. Mr Robertson suggested that the landlord may have been trying to bypass the meter. There were also problems with the water supply. Towards the end of the tenancy, Mr Mumin required Mr Robertson to pay for electricity on top of his rent.
23. In December 2020, Mr Robertson made contact with Paul Mishkin, from Newham’s Health and Housing Team. Newham confirmed that the Flat required a licence and that no licence was in place. Mr Robertson concluded that the Flat was unsafe and terminated the tenancy in January 2021. The Second Respondent returned his deposit.

Our Determination

24. The Tribunal is satisfied beyond reasonable doubt that the Second Respondent has committed an offence under section 95(1) of the 2004 Act, having both “control of” and “managing” an unlicensed house. The offence has been committed throughout the tenancy, namely between 4 May 2020 and 8 January 2021.
25. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the

landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. The Applicant was working and was not in receipt of any benefits.

26. The Applicant seeks a RRO in the sum of in the sum of £5,330 in respect of the rent which paid between 4 May 2020 and 8 January 2021.
27. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
 - (i) The conduct of the landlord: The Applicant has made a number of complaints about the condition of the Flat.
 - (ii) The conduct of the tenant: There is no criticism of the conduct of the tenant.
 - (iii) The financial circumstances of the landlord: There is no evidence of this.
 - (iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no evidence of any relevant conviction.
28. We have had regard to the recent decisions of the Upper Tribunal including Judge Cooke in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); the Deputy Chamber President, Martin Rodger QC, in *Ficcara v James* [2021] UKUT 38 (LC); and the Chamber President, Mr Justice Fancourt in *Williams v Parmar* [2021] UKUT 244 (LC). We note that the relevant factors which we should take into account are not limited to those mentioned in section 44(4).
29. Having regard to findings above, we are satisfied that it is appropriate to make a RRO in the sum sought. We see no reason for making any reduction. The Second Respondent is a professional landlord. It has not submitted any mitigating circumstances. There have been some aggravating features to which we have referred.
30. We are also satisfied that the Second Respondent should refund to the Applicant the tribunal fees of £300 which he has paid in connection with this application.

Judge Robert Latham
17 June 2022

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.