



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

**Case References** : **LON/00BH/HMG/2022/0001**  
**CVP/VIDEO**

**Property** : **83 Coopers Lane London E10 5DG**

**Applicants** : **Ms R Radice**

**Representative** : **Mr P Orme**  
**Lay representative**

**Respondent** : **Mr Kwasi Date-Bah (1) (landlords)**  
**Ms Lisa Date-Bah (2)**

**Representative** : **Mr Mukulu, Counsel**

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

**Tribunal Members** : **Judge F J Silverman MA LL.M**  
**Mr T Sennett MCIEH**

**Date of CVP remote hearing** : **13 June 2022**

**Date of Decision** : **23 June 2022**

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**DECISION**

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## **Decision of the Tribunal**

**The Tribunal makes a rent repayment order against the Respondents jointly and severally and in favour of the Applicant in the sum of £9,750. Additionally, the Tribunal orders the Respondents jointly and severally to pay to the Applicant the sum of £300 by way of reimbursement of her application and hearing fees. The total sum payable by the Respondents is therefore £10,050.**

## **Reasons**

- 1 This application dated 08 December 2021 is made by the Applicant under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondents in respect of the property known as 88 Coopers Lane London E10 5DG (the property) for the period 19 June 2020 to 18 June 2021 during which time the property was unlicensed.
- 2 Directions were issued by the Tribunal on 03 March 2022.
- 3 On Thursday 9 June (one clear working day before the hearing) the second Respondent made an application to the Tribunal by email requesting an adjournment of the hearing scheduled for 13 Monday June 2022. The Judge was informed of the application and that the grounds were firstly, that the Respondents had not received previous documentation from the Tribunal because it had been sent to an email address which the Respondents had not checked since the Applicant left the property. Further, that she had not had time to obtain legal advice and so would be prejudiced, thirdly, that she was unwell and had a doctor’s appointment on Monday and finally, that she lacked childcare for Monday.
- 4 The Tribunal declined to permit the adjournment on the following grounds. The Tribunal papers had been sent to the Respondents’ correct email address which was set out on the Applicant’s tenancy agreement for use in connection with the tenancy. None of the correspondence or documents sent by the Tribunal had bounced back, they had therefore reached a valid, working email address. It is the Respondents’ responsibility to check email addresses which they own and it had been their choice not to do so. Their failure to receive the papers timeously cannot be blamed on the Tribunal or on the electronic server. Further, the Respondent had not produced any evidence to support her claim to have a medical appointment on 13 June and the Judge directed that the Tribunal would have no objection to the Respondents’ child being present at the hearing.
- 5 At the commencement of the video hearing on Monday 13 June 2022, the Respondents, who were represented by Mr Mukulu of Counsel, renewed their application for an adjournment on essentially the same grounds as before (save that they now had

legal representation and presumably childcare) and having retired to consider the matter the application was refused on essentially the same grounds as before.

- 6 The video hearing therefore proceeded as scheduled and the Tribunal heard evidence from Ms Radice supported by her bundle of documents as referred to below. Mr Mukulu was invited to cross examine Ms Radice but Mr Mukulu was unable to present evidence on behalf of his own clients because they had failed to comply with any of the Tribunal's Directions and no documents had been filed on their behalf. Ms Radice was not feeling well and had to retire during the latter stages of the proceedings. Mrs Date-Bah was present at the hearing, Mr Date-Bah was not visibly present.
- 7 The subject property, situated within Waltham Forest Borough Council, falls within their selective licensing scheme requiring all rental property to be licensed (page 73).
- 8 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 9 Following an inspection the licensing enforcement officer, Ms Whittle, confirmed to the Applicant that the property's previous license had expired on 30 March 2020 but an application for a new licence had been made on 18 June 2021 (page 45). The property had therefore been unlicensed during the interim period. The lack of a valid licence during this period was admitted by the Respondents (page 70).
- 10 The Applicant is therefore seeking a rent repayment order for the period during which the property was unlicensed from 19 June 2020 up to and including 18 June 2021.
- 11 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property.
- 12 The Applicant, together with her co-tenant Mr Butler were in lawful occupation of the property during the entire period covered by this application with the exception of the final month when the Applicant's co-tenant had left the property. Together they occupied the whole property and shared the rent payment 50/50 (11 months at £750 each), again with the exception of the final month after Mr Butler had departed when the Applicant paid 100% of the rent (one month at £1,500).
- 13 Proof of payment was demonstrated on pages 22-36 and was not challenged by the Respondent.
- 14 The rent was exclusive of outgoings on the property which were paid by the tenants themselves in addition to the rent.
- 15 Apart from the fact that the Applicant and her co-tenant had not been shown gas or electricity safety reports when their tenancy commenced and experienced a number of faults with the electricity during the tenancy, their occupation was plagued by a faulty boiler which meant that they were deprived of heat and hot water for long periods including over the winter.
- 16 The Applicant stated that the boiler was condemned by a gas engineer and did not obtain a certificate enabling it to function

until February 2021. On behalf of the Respondent, Mr Mukulu said that his clients had on many occasions sent an engineer to remedy the faults and his clients denied that the boiler was condemned.

- 17 On balance the Tribunal prefers the evidence of the Applicant who was living at the property during this period. The fact that engineers were sent out on many occasions demonstrates that the problem had not been cured.
- 18 The Respondent complained about the Applicant tenants' conduct but the examples cited appeared to relate to complaints by the Applicant about the malfunctioning boiler and electricity at the property, which, in the circumstances described above appear to have been fully justified.
- 19 It is the landlord's duty to ensure compliance with the law, not the tenant's duty to check that the property has a licence. As professional landlords the Respondents should have known that the property needed a licence and did not have one.
- 20 Having considered the evidence presented to the Tribunal it was satisfied beyond reasonable doubt that the Respondents had committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that they had been in control or management of an unlicensed house.
- 21 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 favour of the Applicant for the 12-month period commencing on 19 June 2020. Any award could not exceed the total rent of £9,750 received by the Respondents from the Applicant for this period of time and takes into account the amounts actually paid by each co-tenant during this period. There was no evidence that the Applicant had been in receipt of deductible benefits during this period.
- 22 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 23 The Respondents are professional landlords who should have been aware of the need to obtain a licence. Ignorance of the law is not a defence under the Act.
- 24 The property was inadequately maintained particularly as far as the supply of gas, electricity and hot water were concerned.
- 25 That, once the Respondents became aware of the need to obtain a licence they applied for one reasonably promptly.
- 26 That the Council did not consider the Respondent's offence to be sufficiently serious to prosecute them.
- 27 The Tribunal did not have details of the Respondents' financial circumstances but no plea of financial hardship was made.
- 28 In these circumstances where a professional landlord has not produced any evidence to justify their defence or to validate expenditure on the property the Tribunal is reluctant to deduct any sums from the amounts claimed by the Applicant.
- 29 On balance therefore, and taking into account the Respondents' conduct and the fact that the Applicant suffered considerable inconvenience during her occupation, the Tribunal considers that

it would be reasonable to make an award of the full amount claimed of £9,750. This is the sum awarded under this Order which is to be paid by the Respondents to the Applicant.

30 The Tribunal also considers it reasonable to order the Respondents to repay to the Applicant the sum of £300 representing the reimbursement of her application and hearing fees.

31 This brings the total award payable by the Respondent to £10,050

32 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:** 23 June 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](mailto: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.