



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

Case Reference : **LON/00AN/HMF/2021/0296**

HMCTS Code : **V:CVP REMOTE**

Property : **38 Charleville Mansions, Charleville Road,
London W14 0JA**

Applicant : **Ms Katherine Buck-Mendoza and Mr Ethan
Tonks**

Representative : **Ms C Sherratt from Justice For Tenants**

Respondent : **Monza F1 Limited trading as Find a Flat
Property Services**

Representative : **Mr Camran Sayf Shamim**

Type of Application : **Application of rent repayment order under
sections 40, 41, 43 and 44 of the Housing and
Planning Act 2016**

Tribunal Members : **Tribunal Judge Dutton
Ms S Coughlin MCIEH**

Date of Hearing : **Video hearing on 16th June 2022**

Date of Decision : **23 June 2022**

DECISION

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COVID-19 PANDEMIC: DESCRIPTION OF HEARING

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V:CVP Remote. A face-to-face hearing was not held because it was not practicable and no one requested same and further that issues could be determined on the papers before us.

The documents to which we were referred were in three bundles of some 385 papers, the contents of which have been noted.

DECISION

1. The Tribunal finds that the Respondent has breached section 72(1) of the Housing Act 2004 (the 2004 Act) and determined that the Respondent must pay to the Applicant by way of rent repayment order the sums of
 - a. to Ms Katherine Buck-Mendoza £7,153,
 - b. to Mr Ethan Tonks £5,477.
2. In addition, the Tribunal orders the Respondent to refund to the Applicants the application and hearing fees in the sum of £300 again within 28 days.

BACKGROUND

1. By an application dated 2nd December 2021 the Applicants, through their representative Justice For Tenants, commenced proceedings initially against three Respondents seeking to recover rent in the case of Ms Buck-Mendoza for the period 27th July 2020 to 26th July 2021 in the sum of £8,415 and initially in the application for Mr Ethan Tonks for the period 23rd September 2020 to 29th June 2021 in the sum of £7,236. This related to their occupancy of 38 Charleville Mansions, Charleville Road, London W14 0JA (the Property).
2. It should be noted, however, at this stage, the sum claimed for Mr Tonks was agreed to be too high and it was accepted by the Respondents that the amount of money that Mr Tonks could claim if the case were approved was £6,444. There was confirmation that the amount claimed by Ms Buck-Mendoza was not in dispute insofar as quantum was concerned.
3. Prior to the hearing we were provided with an Indexed Evidence bundle in response to the Tribunal's directions, which contained a statement concerning the alleged offence, a property background and calculations as to the rent and conduct. A number of exhibits were included, which were the directions, the application to the Tribunal, the tenancy agreements, the rent payment calculation and the proof of payment. In addition, we were provided with Land Registry documentation, correspondence with the Council about the licensing position for the Property and HMO fire safety certificates. There were also some photographs of the Property.
4. Also within the bundle were the 2006 Management of Houses in Multiple Occupation (England) Regulation, the licensing scheme designation and proof

that the Property was within that area, local authority guidance for rent repayment orders (RRO), correspondence with Find a Flat and group chat correspondence, some photographs of a wardrobe and Company House details for the Respondent company. Finally, we were provided with witness statements by both Applicants.

5. In response to this in a document headed Tribunal Bundle we had witness statements from Mr Shamim and Mr Zerquera as well as the copies of statements from the Applicants. In addition, we were provided with a copy of a rental agreement between the Respondent and Mrs Rizwana Aquelle Siddique who is the long leaseholder and a copy of an HMO licence application said to have been made in February of this year. Details of the rent accounts were included and a bank statement and unaudited financial statements for the Respondents. There were other documents to which we will refer to as necessary.
6. The Applicants replied to these documents in a bundle, which included the response running to some 6 pages together with various exhibits including confirmation as to the additional licencing arrangements within the London Borough of Hammersmith & Fulham. There were also details of the Council's requirements for HMOs and some correspondence passing between Justice For Tenants (JFT) and the Tribunal, the last letter of which is dated 1st June 2022 which confirms that they wished to remove Rizwana Siddique and Sayed Shamim as Respondents and to proceed solely against Monza F1 Limited trading as Find a Flat Property Services.
7. On this point it does not seem that the Tribunal had responded to this letter of 1st June and we asked Ms Sherratt at the commencement of the hearing whether this was an application she wished to make today. She confirmed that she did and that JFT was satisfied that Monza F1 Limited were the correct Respondents in this case. It should also be noted that Monza F1 Limited had not objected to those Respondents being removed. Ms Sherratt made a short opening address asking us to ignore what appeared to be a cut and paste error in the statement. She confirmed that the Applicants sought to recover in the case of Ms Buck-Mendoza the sum of £8,415 and for Mr Tonks the sum of £6,444, which as we have indicated above were not in dispute.
8. She told us that the Property was a self-contained flat of four rooms in a purpose-built block with shared kitchen and bathroom. At all times during the period of the dispute there have been at least three people in occupancy, that is to say from 27th July 2020 to 26th July 2021 and that those people were not related and did not form one household.
9. She told us that the Property was in the additional licencing scheme for the London Borough of Hammersmith & Fulham and we were taken to a public notice issued by the local authority confirming that the whole district of the London Borough of Hammersmith & Fulham was now designated an area for additional licencing of houses in multiple occupation. The designation was made on 13th December 2016 coming into force on 5th June 2017 and ceasing to have effect, if not revoked beforehand, on 4th June 2022.

10. We were then directed to email exchanges between JFT and the private housing licencing department at the Council (Palmer Williams), which confirmed that according to their records there was no licence in place for the Property and no application had been made. This was as at 6th December 2021.
11. It seemed that none of this was disputed by Mr Shamim on behalf of the Respondent.
12. We then heard from Ms Buck-Mendoza who had provided a witness statement at page 195 of the bundle submitted initially by JFT. She confirmed that it was true and that the signature was hers. We have noted all that is said. On a couple of points she told us that the address shown on the tenancy agreement which was exhibited at page 36 of the bundle was that of her sister in Hamburg in Germany. She told us that she had never actually lived in Germany and that an alternative address would have been her parents in Honduras but it appears that Mr Shamim required a family address for emergencies and it was considered that putting forward an address for her sister in Germany was more appropriate in the case of emergencies than that in Honduras.
13. She was asked why she had pursued a rent repayment order. She told us that she had rented before and was concerned that there appeared to be no deposit protection scheme. She had raised this with Mr Shamim who said one was not required as the tenancy agreement was not an assured short hold tenancy (AST). She undertook further research and found out during the course of that that there were requirements to licence properties of this type. She told us she had now relocated to Surbiton where she had a new job and any suggestion that she had somehow concocted the arrangements to rent and then to claim a year's rent repayment order were strenuously denied.
14. She was asked some questions about issues at the Property which appeared to include moth infestation and problems with regards to a new sink in the kitchen.
15. Mr Shamim had no questions to ask however, we did raise one or two points. Firstly, we asked whether she had got the deposit back and she said that she had. Asked whether Mrs Siddique visited the Property she said that she had not seen her and that she had always proceed through Mr Shamim who had visited a couple of times usually to show other tenants around.
16. On the question of repairs she said that a sink was to be replaced but this was done after she left, although the sink was left in the Property awaiting fitment for a while. She did however think that Mr Shamim was overall responsive.
17. We then heard from Mr Tonks who had also made a witness statement in similar terms to that of Ms Buck-Mendoza. He confirmed that everything that she had said he agreed with. Asked about his permanent address he said that this was his parents' address in Doncaster and that he had not lived there since he started living in London.
18. We should say at this stage that both Ms Buck-Mendoza and Mr Tonks were asked what was their occupation whilst in possession of the room. We were told that in both cases they were students. Ms Buck-Mendoza was undertaking a

PGCE course leading to teaching qualifications and Mr Tonks was in the process of completing a PhD which was still being undertaken.

19. In answers to us he confirmed that he had only seen Mr Shamim when he had shown people round, although he did concede Mr Shamim had arranged for workmen to deal with a problem in respect of the shower.
20. We then heard from Mr Shamim. He had made in effect two statements. The first was contained in the Tribunal bundle consisting of a witness statement running to six pages and then on the day before the hearing he filed a response to the Applicant's response of 1st June. There is no provision for this in the directions and it arrived extremely late in the day. However, Ms Sherratt took a pragmatic view and confirmed that she had no objection to the statement being relied upon as it did not raise any new issues. He told us that he had nothing to add to these written statements and was then asked about the text and Whatsapp exchanges, which he indicated he had not had the chance to read. We therefore had a short adjournment to give him the chance to do so. Upon his return he was asked questions by Ms Sherratt. He was asked what his profession was and he replied that he was an entrepreneur and linguist carrying out interpretation and translation work. He said he did not manage any other properties. He told us he no longer managed the subject Property and had stopped in April of 2022 when the landlord discovered the position in respect of this case, asked the tenants to leave and asked him to stop representing her as the manager.
21. It was put to him that by reference to his witness statement he suggested that he had many years experience of marketing central London properties. He confirmed that he had been undertaking lettings in the first decade of the millennium although these may have in part been holiday lets. Asked about the title Find a Flat Property he confirmed that this was the only property that they let and that they had set this business up to manage the subject property which had been in his sphere of operation since 2016 until this year.
22. He was then asked about the terms of the tenancy agreements. These were included for both Ms Buck-Mendoza and for Mr Tonks. It may be worth at this stage setting out some of the terms. In the case of Ms Buck-Mendoza it was for a period of 12 months from 27th July 2020 to 27th July 2021. There was a proviso for early termination five months after the commencement but that if there was non-payment of rent for over 13 days, this would result in termination by default. The rent is recorded at £165 per week with a penalty of 3.3% per day if it is late by one to 13 days or after the 14th day the tenancy would be terminated, possessions removed and locks changed. Under a heading Nature of Tenancy it says that the contract entitles the tenant to full peaceful enjoyment of the Property as their secondary private dwelling home (with their permanent family address remaining as their primary permanent home). The agreement itself is only two sides long and appears to contain no obligations on the part of the property provider. Although reference is made to a landlord we can see no reference to that person's identity in this document headed Room Rental Agreement. Mr Tonks' agreement was in the same format save that the period of occupancy was from 23rd September 2020 to 23rd September 2021 although he left earlier and shows a weekly rent of £179. In both cases the bank account for the rent is one held by Mr Sayed Z Shamim who is Mr Cam Shamim's brother.

23. He was asked by Ms Sherratt what steps he had taken to ensure he was fully aware of his obligations under the terms of the tenancy agreement and as the property provider. He said that he had set these out in his documents. He said he had contacted the Council in 2016 and was not aware that there was any requirement to licence and was not aware that matters had changed. He said he did check the website but did not think a licence was needed and had not contacted the Council. He said he had no way of knowing what had to be done although he appreciated the position now. He said he lived in Essex so would not have seen any publications in the London area. He confirmed also that he had taken no legal advice or any other external advice.
24. It was asked about his allegations that the Applicants had concocted some form of plan particularly Ms Buck-Mendoza, to recover rent for 12 months whilst still living at the Property. He said he believed that she had stayed for the 12 months so that she could recover the full rent. He said that he would have expected the tenant to notify him if there were requirements with regard to licensing. It was put to him that Ms Buck-Mendoza had stayed 12 months because that is what the period of her tenancy agreement was and he did accept that he had been told that she was moving to a new job in Surrey.
25. The question as to the permanent address was raised. We were referred to an exchange of what appeared to be telephone contacts in which it is suggested by Mr Shamim that a permanent home address was required usually a parental home in case of emergency during the tenancy. A response from Ms Buck-Mendoza was that her parents lived in Honduras but that she had her sister's address in Germany and the response from Mr Shamim was that either the parents or sister's address would be fine; 'the choice would be yours'.
26. The question of some form of concoction was raised again and reference was made to paragraphs 5 and 6 of Mr Shamim's witness statement included in their bundle. He says this *"Upon consideration of the witness statements and other documents provided by the Applicants Ms Buck-Mendoza and Mr Tonks, it is abundantly clear to us the Applicants never had the genuine intention to stay in the Property as honest paying customers, instead we would respectfully submit to the Tribunal that we believe they had a malicious, pre-concocted plan to live in a modern, spacious, prime location, central London, all-inclusive rental room completely free of charge at our expense. Achieved by claiming back their rent at the end of the rental agreement vis-a-vis this RRO application.*

At paragraph 6 of the statement this is said, *"Indeed evidence of this is corroborated by the fact that they never raised one single complaint about the alleged issues in the RRO application. Nor any other matter during the entire time of the tenancies or after, including the fact that Ms Buck-Mendoza stayed in the Property exactly one year (not one day less, not one day more) as she knew this was the maximum time period of rent she could claim in her RRO application. As such if either Applicant has any evidence to prove they made any complaint to us about any issue whatsoever during their tenancies, then we will put them to strict proof of same and they should present this to the Tribunal."*

27. The witness statement goes along in this vein and then starts to address the issues concerning the private/secondary dwelling. It finishes at paragraph 7 as follows *“Therefore we strongly dispute the fact the Applicants lived in the Property as their only home and we reject this allegation.”*
28. There were then discussions about the provisions of Wi-Fi at the Property and matters then moved on to the Respondent’s financial situation. We were provided with a schedule of the rent received and the outgoings paid as well as copies of the balance sheet and income statement from Monza F1 Limited for the year ending 31st December 2020. These had been prepared by Sayed Fiazal Mars & Co, Chartered Accountants from Karachi. They were prepared in accordance with the small companies regime and were exempt from audit. They appeared to show that the company was trading at a substantial loss. Mr Shamim told us that the turnover figure of £3,633 for the year ending 31st December 2020 included both the rental income and monies that he made carrying out translations.
29. Asked about the banking arrangements he said that the system was that the rent was paid to his brother in his personal account, which was then paid out to the landlord and the balance after outgoings were paid into the Monza F1 Limited account. The only other earnings were the translation earnings. As an interpreter those earnings were dealt with separately. It was put to him that the accounts were somewhat opaque. His response was that he is not an accountant but he employed accountants and if JFT thought there was anything wrong then they should get professionals to confirm the position.
30. Asked by us about the application for a licence he said that this had been made on 14th February 2022 but had not yet been formally accepted. On the question of the tenancy agreements, he said that these had been drawn up from a template passed to him by a colleague in the rental industry. He had not sought legal advice and as far as he was concerned the rental for a room did not constitute an AST. Asked why he had not protected the deposit he said he thought you only had to do this for an AST and not for room rental agreements.
31. Asked who he considered was the landlord he said that this was the owner of the Property. Asked how he had become involved in the letting he said this was through word of mouth from a friend to a friend and that Mrs Siddique had contacted him because she knew he was experienced in managing flats in the past.
32. Apparently Monza F1 Limited had been formed in 2004 and the trading name for Find a Flat had been created in 2016. He was asked about his understanding of section 254 and 259 of the Housing Act 2004. These were put to him but he had understood the matter differently.
33. We summed up with him and he confirmed that the rents being claimed were not disputed insofar as quantum was concerned and he accepted the Property did not have a licence when it should have. However, he was of the view that as the parties were occupying on a temporary residency basis such a licence would not have been required.

34. We then invited closing submissions. Ms Sherratt told us that the excuses put forward by Mr Shamim appeared to be firstly that the Applicants were not permanent residents and secondly that the licensing scheme was not known to him and accordingly he should have some leeway in respect of liability thereunder. Various cases were put to us but unfortunately none of the authorities cited were backed up by the case reports.
35. Ms Sherratt conceded there was no conviction but she was of the view that we retained the discretion to order the maximum amount. Financial circumstances of the Respondent were opaque. The statements provided were not for the full year and although some partially redacted bank statements had been provided for the brother none had been provided to us or JFT for Monza F1 Limited. He said he had not provided details of the company bank account as he had not been asked for it. She suggested it appeared to be a process to avoid tax. Accordingly, she was of the view there should be no deduction for the financial circumstances of the Respondent.
36. As to conduct, she was of the view that the tenants had no issues with regard to conduct on their part. As far as the Respondent was concerned, she reminded us that there had been a complete failure to license the Property from 2016 until an application was made in 2022. This was notwithstanding the fact that the Additional Licensing Scheme came into effect in 2017. Mr Shamim had made no attempt to set up a process to keep awareness of the obligations on housing law and that he was in fact a professional landlord. It was suggested the Property was not in great condition. There had been issues concerning a wardrobe when Mr Tonks first moved in and other issues. In her view whilst accepting that recent Upper Tribunal Authorities suggested we were not required to award 100% of the rent she thought in this case 85% award was right and that in addition the Respondents should be ordered to pay the Tribunal fees of £300.
37. It was also raised by us whether or not the rents were inclusive of other matters. On a spreadsheet it would appear that Council Tax and services were included within the rent as well as Wi-Fi and other expenses. However, Ms Sherratt's response was that the Respondents offered the Property inclusive of outgoings and therefore she could see no basis upon which deductions should be made.
38. Mr Shamim then sought to respond to paragraph 58 of the Applicant's statement of case where allegations as to the faults of the Respondents are listed. We noted all that was said by Mr Shamim in respect thereof although he pointed out that he was not aware of the Management of Houses of Multiple Occupation (Regulations) 2006.
39. He said that the amount claimed was excessive as the Respondents had only received a profit of £2,083 after all payments had been made. At the conclusion he also confirmed that there were two fire alarms in the Property, although these in fact turned out to be smoke detectors and that fire doors had been fitted. This was shown on a plan that he had himself prepared for the housing application. Certainly Mr Tonks' response was that whilst he was living there, there were no fire doors. They were standard internal doors.

FINDINGS

40. For an offence to be committed under the Housing and Planning Act 2016 (the 2016 Act) we need to be satisfied beyond reasonable doubt that in this case the Respondent has breached section 72(1) of the 2004 Act in having control or management of an unlicensed HMO. In this case it appears that the Respondents accept that the Property should have been licensed under the Additional Licensing Scheme introduced by the London Borough of Hammersmith & Fulham in 2017. This came into force as we have indicated above on 5th June 2017 and remained in force until 4th June 2022. The Respondent is a person having control of the premises being in receipt of the rack rent of the property and is also a person managing the property, being the person by whom rental payments are received for the property. Accordingly, we are satisfied that the Respondent has committed the offence on section 72(1) of the 2004 Act.
41. There appeared to be attempts at defences under section 72(5) which says as follows *“In proceeding against a person for offence under sub-section (1), (2) or (3) is a defence so he had reasonable excuse a. for having control or b. managing the house in the circumstances mentioned in sub-section (1) or c. permitting the person to occupy the house or for failing to comply with the condition or as the case may be.”* It appeared to be his suggestion that he was not aware that the licensing obligations existed and had no way of finding out and that accordingly he was not liable. We can dispose of this defence quite quickly on the basis that has been decided by previous authority not to be a defence and indeed the old adage ignorance of the law is no excuse would appear to apply in this case. It is quite clear from the documents produced to us that the Property was in an area designated for additional licensing and that no licence had been applied for during the period in question.
42. The next attempt to remove responsibility appears to be by reference to the tenancy agreements (if one can loosely call them those) in which there is a suggestion that this is not intended to be the Applicants main residence. This seems to us to be nothing short of a sham. It is quite clear that both Ms Buck-Mendoza and Mr Tonks lived at the Property as their main residence for some considerable time. The disclosure of addresses for family has no bearing whatsoever on this matter. Ms Buck-Mendoza had included her sister’s address for emergency purposes because her parents lived in Honduras. Mr Tonks has included his parents’ address in Doncaster because that is where he was living before he moved to London. These matters in any event seem to us to be an irrelevancy when one considers the provisions of section 254 and 259 of the Housing Act.
43. In respect of section 254(2)(c) the living accommodation must be occupied by persons as their only or main residence or they are to be treated as so occupying it and at section 259 we find the persons to be treating as occupying it as including those undertaking a full time course of further or higher education. Clearly both Applicants were in this category. Accordingly, any attempts by the Respondents to avoid responsibility under either the 2004 or the 2016 Act by what we consider to be sham tenancy agreements must fail.
44. In addition to the above, and this goes to conduct, it seems to us that there has been something of a wilful disregard by Mr Shamim and the Respondent

Company in respect of the licensing provisions, witness the fact that the Property was unlicensed from 2017 until an application was made this year, and the law.. The licence application form submitted by the Respondent in February 2022 states that the flat had no fire doors and no effective fire alarm system having only battery operated detectors in the kitchen. Mr Shamim stated in his further reply that there were fire doors fitted, however we prefer the evidence of Mr Tonks and the Licence application which was completed by Mr Shamim.

45. Insofar as the financial position of the Respondent is concerned, all we can do is echo Ms Sherratt's view that the accounting was at best 'opaque'. The system of paying the rent to Mr Shamim's brother into his own bank account who then paid the landlord and paid outgoings for the Property and then put money into the Respondent's account seems to us to be unusual to say the least, particularly as the brother ceased to be a director of the Respondent company in July 2020. The financial status of the Respondent is somewhat worrying.
46. In addition to the above, we have the evidence that the deposit was not held appropriately, although we accept it was repaid on time and also there did appear to be a reasonable response from Mr Shamim to enquiries raised certainly by Ms Buck-Mendoza, she accepting that as being the case.
47. There are now a number of cases which have addressed the level of rent repayment order that we should make.
48. We accept that the starting point is 12 months rent or such other period as is claimed by a party. Various cases have indicated what may and may not be deducted from this. In the *Williams v Palmer* case under reference [2021]UKUT0244(LC) Mr Justice Fancourt at paragraph 52 set out some factors, which might be relevant. One of these included the fact that there were no relevant convictions, which apply in this case. The question as to whether or not the Respondent is a professional landlord is in debate. Mr Shamim gave somewhat unconvincing answers as to whether this was the only Property the Respondent had ever managed and it is clear that he has some experience in the property market as he admitted. Moreover, he told us that he had set up Find a Flat to manage properties. On the balance, therefore, we would say that the Respondent was a property professional. The failure to obtain a licence and the other issues of conduct which we have referred to above need to be taken into account by us.
49. There are then some later authorities, for example *Aytan v Moore and Others* [2022]UKUT027(LC) is perhaps the latest example. In all of these a reduction from the full rent repayment order was made for reasons set out therein.
50. We listened to all that was said by both Ms Sherratt and Mr Shamim. Ms Sherratt submitted to us that she considered a reduction so that 85% of the rent claimed was allowed to be the right decision in this case. We are prepared to accept that as being a fair reduction to reflect the matters that we have set out above. However, we do not consider that there should be further reductions in respect of the services provided at the Property as the amounts are de minimis anyway but that we think an 85% payment would reflect any allowance that should be made for those matters.

51. In addition, we order that the Respondents should repay to the Applicants the application and hearing fees totalling £300.
52. The above payments should be made within 28 days of the date that this decision is sent to the parties.

Andrew Dutton

Judge: _____
A A Dutton

Date: 23 June 2022

ANNEX – 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 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 to 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 (ie 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.