FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**(1) BIR/00CQ/HMR/2022/0026** **(2) BIR/00CQ/HMF/2022/0027** **(3) BIR/00CQ/HMR/2022/0030**
Property	**:**	**47 Broomfield Place, Coventry, CV5 6GZ**
Applicants	**:**	**(1) Mr David Arundel** **(2) Mr Fiodor Sichovcev** **(3) Mr Tay Tzu Zing**
Respondents	**:**	**Mr Simeon Monga**
Type of Application	**:**	**Rent Repayment Order - Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge C Kelly (Chair)** **Robert Chumley-Roberts, MCIEH, J.P.**
Date of Decision	**:**	**31 January 2023**

DECISION

The parties, the Property and the Applications

1. This is an application for a rent repayment order by three tenants of the property known as 47 Broomfield Place, Coventry, CV5 6GZ ("the Property"). The application is made by three tenants, Mr David Arundel ("Mr Arundel"), Mr Fiodor Sichovcev ("Mr Sichovcev") and Mr Tay Tzu Zing ("Mr Zing"),

pursuant to section 41 Housing and Planning Act 2016 ("the 2016 Act"). The Respondent is Mr Simeon Monga ("Mr Monga"), the owner of the Property and the landlord.

2. The Property was let out to each of the three tenants in return for the payments of rent. Mr Sichovcev was not provided with a written tenancy agreement, although the other Applicants did receive one and these were made available to the Tribunal.

3. The Applicants represented themselves in person. There was no attendance on behalf of the Respondent. In fact, the Respondent had been debarred from taking part in these applications by Order of Deputy Regional Judge Gravells dated 4 November 2022 by reason of his failure to comply with earlier directions and following an opportunity to make written representations, albeit, none were received.

4. From the tenancy agreements available and the evidence provided by the Applicants, the position was as follows in respect of the tenancies of the Property:

   (a) Mr Arundel – an assured shorthold tenancy with effect from 16 February 2020 at a monthly rental of £385;

   (b) Mr Sichovcev – a tenancy (the nature of which was unclear, but which does not matter for present purposes) at a monthly rental of £350;

   (c) Mr Zing – an assured shorthold tenancy with effect from 18 February 2022 at a monthly rental of £370.

5. Mr Arundel and Mr Sichovcev apply for the repayment of rent for the 12 month period prior to the date of their applications being received by the Tribunal (i.e. 29 July and 26 August 2022 respectively). Mr Zing initially applied for a 12 month period of rent repayment in his application notice received by the Tribunal on 18 July 2022, however, during the course of the hearing, he confirmed that his understanding was that he was only entitled to pursue and therefore did only pursue, repayment of the rents paid in the period of 6 months prior to the application notice as lodged at the Tribunal in his bundle of 26 August 2022 – the Tribunal proceeds to consider matters on this basis.

6. The basis upon which the application for a rent repayment order is made is that the landlord, Mr Monga, has controlled or managed an unlicensed HMO contrary to s.72 of the Housing Act 2004 ("the 2004 Act").

Issues to consider

Has an offence been committed?

7. The first matter for the Applicants to satisfy the Tribunal of was that there had been an offence committed under s.72 of the 2004 Act.

8. Although there was no attendance on behalf of Mr Monga, the Tribunal was conscious of the need to ensure that the claim was still proven beyond reasonable doubt – i.e. to the criminal standard of proof.

9. The Applicants confirmed to the Tribunal the Property was a building which was adapted to be a HMO from a standard three bedroomed single family dwelling to a five bedroomed property. The relevant test as to whether the Property was a HMO at all relevant times (and indeed, in this case, remains) a HMO is that of the "standard" test set out in section 254(2) of the 2004 Act. The following matters therefore fell to be considered and determined:

    (a) *That the Property consists of one or more units of living accommodation not consisting of a self-contained flat or flats (section 254(2)(a)).*

        The Applicants confirmed that they each had their own room, as evidenced by the terms of the tenancy agreements available to the Tribunal, and that each was effectively a unit of living accommodation which were not self-contained flats. The Tribunal accepts their evidence in the absence of any indication to the contrary.

    (b) *That the living accommodation is occupied by persons who do not form a single household (section 254(2)(b)).*

        The Applicants confirmed that they were not related and were not part of a single household. Each of the Applicants considered themselves to be neighbours of the others. The Tribunal is therefore satisfied that this requirement is satisfied.

    (c) *That the living accommodation is occupied by those persons as their only or main residence or they had to be treated as so occupying it (section 254(2)(c)).*

        Each of the Applicants confirmed that the Property was their sole residence. The Tribunal accepts that.

    (d) *That the occupation of (the individuals in) the living accommodation constitutes the only use of that accommodation (section254(2)(d)).*

        The Tribunal is satisfied that this requirement is met, the Applicants having confirmed that this is the position and that there is no commercial use of the Property, it is solely for the use of residential accommodation.

    (e) *That rents were payable, or other consideration provided, in respect of at least one of the persons in occupation in the living accommodation (section 254(2)(e)).*

The Tribunal is satisfied on the basis of the written tenancy agreements and the evidence given by the Applicants that they had paid a monthly rent in the figures set out in paragraph 4 above.

(f) *That two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking one or more basic amenities. (section 254(2)(f)).*

The Tribunal is satisfied on the evidence given by the Applicants that at least two of them (and others residing in the house) share bathroom facilities (including a bath and wash hand basin) and all occupiers of the house share a communal kitchen.

10. In the circumstances, the Tribunal has no hesitation in concluding beyond a reasonable doubt that the Property is and was at all material times, a HMO as defined by section 254 of the 2004 Act.

Was the Property required to be licensed?

11. Section 55 of the 2004 Act requires HMOs to be licensed where they are a type of HMO to which Part 2 of the 2004 Act applies, namely (a) any HMO in a local authority's district which falls within any prescribed description of a HMO, or (b) where there is in force a designation as regards additional licensing (i.e. a specific designated area has been declared) under section 56, any HMO which falls within any description of a HMO within the designated area. It is only the requirement under (a) which the Tribunal is concerned in this case.

12. Section 61 of the 2004 Act requires HMOs to be licensed unless the property concerned is exempt by reason of a temporary exemption notice or an interim or final management order is in force. There was no evidence of either exemptions applying in this case.

13. The prescribed description may be found in the licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018/221. It prescribed a HMO for the purposes of the licensing requirement in section 55(2)(a) as being one that satisfies the following requirements:

(a) is occupied by five or more persons;

(b) is occupied by persons living in two or more separate households; and

(c) meets (i) the standard test, (ii) the self-contained test under s.254(3) but which is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(d) the converted building test under s.254(4).

14. Mr Arundel gave evidence that the number of occupants had not, in the period of 12 months prior to the applications being made, gone below five. Hence, the Property would have required a licence at all times.

15. Accordingly, the Tribunal is satisfied that the HMO was one which met the prescribed description and, as such, was required by s. 61 to be licensed.

Has an offence been committed?

16. The Property, being a HMO of the prescribed description at all material times, required a license pursuant to s.72(1) of the 2004 Act, which states:

> *"(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"*

17. The Applicants referred the Tribunal to an email from Coventry City Council dated 2 August 2022, in which the Council confirms that the Property is unlicensed. That email records the council's opinion that the Property is a HMO, a conclusion drawn from a site visit to the Property on 19 April 2022.

18. Accordingly, the Tribunal is satisfied that the person managing, or having control of, the Property would have committed the above offence contrary to s.72(1).

Was Mr Monga "a person having control of" or a "person managing" the Property, as an unlicensed HMO that required licensing?

19. The Applicants were each clear that their rent was paid, as per the two written tenancy agreements provided, to Mr Monga. They each produced copies of their bank accounts showing payments with a beneficiary including the name "Simeon" (i.e. Mr Monga's first name).

20. Section 263 of the 2004 Act states (insofar as relevant):

> *"(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.
…"

21. In this case, an Office Copy Entry from HM Land Registry was produced by the Applicants showing that "Simeon Manirakiza Monga of 47 Broomfield Place…" was the registered proprietor of the Property. Further, the bank statements produces shown that the rent was provided to "Simeon" in all cases, which is consistent with the tenancy agreements provided.

22. The Tribunal has no hesitation in concluding therefore that Mr Monga is guilty of an offence of both being a person managing, and being in control of, a Property that is a HMO which does not have a license and which is required to do so, contrary to s.72 of the 2004 Act.

Defences

23. The Tribunal has considered whether there are any defences which seem to be available to Mr Monga and it has not been able to identify any.

Should the Tribunal make a rent repayment order?

24. The Tribunals considers it appropriate to make a rent repayment order. There were no factors or circumstances brought to the Tribunal's attention that would militate against the conclusion that a rent repayment order should be made. It is self-evident that the policy objectives behind the legislation introducing rent repayment orders should be furthered and that there should be a deterrent effect for landlords not registering. There is no evidence in this case that the Property is indeed now registered with the local housing authority.

25. Section 44 of the Housing and Planning Act 2016 states:

"(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	*the amount must relate to rent paid by the tenant in respect of*
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."

26. The maximum award the Tribunal can make, the offence being listed in row 5 of section 40(3), is by reference to the period of commission of the offence, with a maximum period of 12 months' worth of rent being ordered (minus any Universal Credit paid in respect of rent).

27. In this case, the offence was being committed in August 2022, and so, had been committed prior to that time for 12 months. On that basis, the basis that there has never been a license for the Property, this means the entire rental period sought by each of the Applicants may be awarded up to a maximum of 12 months.

28. Mr Arundel informed us that he did receive two lots of Universal Credit payments in respect of the rent, so a total of £770. Accordingly, the maximum sum that may be awarded to him would need to take account of this deduction. The maximum claims therefore are as follows:

    (a) Mr Arundel - £385 x 12 – £770 £= £3,850;
    (b) Mr Sichovcev - £350 x 12 = £4,200; and
    (c) Mr Zing - £370 x 6 = £2,220.

29. The rental sums included utility bills in respect of each of the Applicants. They each accepted that the Tribunal may need to use its own judgment to determine a reasonable sum in respect of the utility bills as they were unable to provide any evidence as to the sums incurred by the landlord in respect of them. In this case, the tenancy agreement for Mr Zing (which we understand and proceed on the basis of it reflecting the position for each of the Applicants) provides for electricity, water/sewer, internet, telephone, natural gas and alarm/security system payments to be included within the rental sums.

30. Doing the best we could, and noting that there were at least five individuals in the Property during the relevant period, we concluded that an appropriate

sum for each of the various utilities used in the Property would be as follows, which we take account of, in the overall assessment of what sum we might award in any rent repayment order:

(a) Electricity and gas - £350 per month
(b) Water - £40 per month (this property does not have a water meter)
(c) Internet - £30 per month
(d) Phones – £0 (no evidence of a phone existed and we assume mobiles are relied upon)
(e) Alarm - £0 (it is far from clear what this cost might be).

Total £420 pcm (£5,040 per annum = £1,008 per tenant (based on five tenants)).

31. As was noted in the Upper Tribunal decision of *Parker v Waller [2012] UKUT 301 (LC)*, utility bills that are included within the rent do not necessarily need to be accounted for by way of deduction as these are within the rent and the only reference in the legislation is to rent being repayable. However, in that case, it was decided that as the landlord would not have availed himself of the benefit of that portion of the rent ascribed for the use of utility bills, it would only be in the most serious of cases that a tribunal would award those sums too as part of a rent repayment order. Effectively, therefore, in those less than serious cases, sums representing costs for the utility bills tend to be deducted from any sums that may be awarded and that is the approach we adopt in this case, which we do not consider the most serious of offences to have committed.

32. We then consider the factors in s.44(4)(c), namely, the (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 Chapter IV of the 2016 Act applies.

33. The key criticism from each of the Applicants was that Mr Monga had undertaken substantial renovations at the Property, without making suitable/alternative provision for the tenants. In particular, following a visit by the City Council in April 2022, renovation works were undertaken to the bathroom, kitchen and garden areas, which the Applicants say put the kitchen out of practical use for c. 3 or 4 days, and the bathroom similarly out of use. No alternative provision was made. To the extent that the bathroom could be used, the joists were exposed and it was said to represent a health and safety risk. Absent evidence to the contrary, and given the photographs produced by Mr Arundel which show the bathroom in the various alleged state, we accept this evidence of the inability to use the bathroom and kitchen for these periods of time, the former presenting an unnecessary health and safety risk and no alternative provision being made.

34. The Applicants stated that the garden was the same today as set out in Mr Arundel's photographs, which were taken of the works which commenced in December 2021 and finished in April 2022. Further, Mr Arundel pointed out that the tenants were often left without running water and electricity during the renovation works. Mr Arundel noted that any showering had to be done

at night, as renovation works were taking place during the day, and that the light in the bathroom did not work. This, coupled with the health and safety risk identified from the ripped-up floorboards and exposed joists, presented an unacceptable and unnecessary health and safety risk.

35. Mr Arundel complained of failures by the landlord to address behaviour of others in the Property. We do not consider this to be a significant failing on the part of the landlord, if indeed, a failing at all, given the absence of any clear contractual obligation on the part of Mr Monga to take enforcement action of any kind against any of the specific tenants. In any event, we do not consider that we are bound by contractual principles, but simply recognise that the nature of the failing is not at the most serious end of the scale of potential failings.

36. We listened to an audio recording of an altercation between Mr Arundel and Mr Monga which we were told took place on 13 August 2022. Mr Arundel relied upon this as evidence of Mr Monga's conduct towards him, as during the exchange, there was a suggestion of "slapping up" Mr Arundel by Mr Monga. However, in our judgment, this was a heated exchange in which both parties said things which might be considered inflammatory and unacceptable with the benefit of hindsight, and we take little from one conversation in such circumstances. There was a suggestion during that exchange by Mr Monga that Mr Arundel had irritated a number of tenants in the household and that Mr Monga wanted him to leave and Mr Arundel had insisted that for him to leave, a section 21 notice would have to be served. For whatever reason, despite the difficulties between Mr Monga and Mr Arundel, the former has not sought to formally seek possession against Mr Arundel, whether by the s.21 route or otherwise, and Mr Arundel has not sought to leave of his own accord.

37. Mr Arundel was clearly a confident individual, having little difficulty in expressing his views on various matters to the Tribunal and indeed, at the conclusion of the hearing, seeking clarification on how he might appeal if he felt "short changed" in the decision. Again, we take little from this, but it is perhaps not beyond the realms of reason that those with strong personalities might clash as appears to have happened with Mr Monga and Mr Arundel.

38. In any event, having considered all of the issues raised, and taking account of the maximum awards that can be made, we conclude that rent repayment orders shall be made in respect of each of the Applicants with a 20% deduction from the maximum sum that could be permitted, as the issues in this case whilst clearly important to the tenants and serious, were not at the worst end of the scale of issues deserving of the maximum possible awards. We do, of course, have regard to the need to ensure a deterrent effect in ensuring that Mr Monga, and landlords generally, find no benefit in failing to license.

39. The rent to be repaid therefore will be as follows:

(a) Mr Arundel: £2,273.60 (i.e. £3,850 - £1,008 – 20%)
(b) Mr Scichovcev: £2,553.60 (i.e. £4,200 - £1,008 – 20%)

(c) Mr Zing: £1,372.80 (i.e. £2,220 - £504 – 20%)

Costs and Fees Paid

40. During the course of the hearing, each Applicant sought an award for the following sums:

Mr Arundel

£100 issue fee
£67 hearing fee (one-third share of)
£46.50 printing fee for documents for the Tribunal
£4.10 registered post to send documents to the Tribunal

Mr Scichovcev

£100 issue fee
£67 hearing fee (one-third share)
£10 photocopying charges

Mr Zing

£100 issue fee
£67 hearing fee (one-third share)
£40 printing fee
£7 train fare to drop off documents to the Tribunal (due to postal strikes)

41. The relevant parts of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 are as follows:

"Orders for costs, reimbursement of fees and interest on costs
13.—(1) Subject to paragraph (1ZA), the Tribunal may make an order in respect of costs only—
...
(b) if a person has acted unreasonably in bringing, defending or conducting proceedings;
...
(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or
part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor."

42. The sums sought thus fall into two categories (a) costs and (b) fees paid to the Tribunal. There is a general discretion to award payment of fees under Rule 13(2). We have no hesitation, given that the Applicants have succeeded, in awarding them their issue fees together with the one third share of the hearing fee, paid by them.

43. However, we do not consider it appropriate to award any expenses, which fall within the definition of "costs". This is because there has been no unreasonable conduct by Mr Monga in "bringing, defending or conducting"

the proceedings. It is not unreasonable conduct by not turning up at the final hearing in this matter, nor for that matter for not engaging in the underlying proceedings. A defendant or respondent to a claim or action is entitled, should he or she so wish, to compel the claim or application be proven without him becoming engaged. This is what happened in this case. That is not unreasonable; it may be an inadvisable approach to adopt, but that does not mean it is unreasonable.

Conclusion – Orders made

44. As such, the final orders made (taking account of the rent repayment sums and the sum for fees paid to the Tribunal to advance the applications) made are:

(a) That Mr Monga shall, within 14 days of the date of this decision being sent to him by the Tribunal, pay to Mr Arundel the sum of £2,440.60;

(b) That Mr Monga shall, within 14 days of the date of this decision being sent to him by the Tribunal, pay to Mr Sichovcev that sum of £2,720.60; and

(c) That Mr Monga shall, within 14 days of the date of this decision being sent to him by the Tribunal, pay to Mr Zing the sum of £1,539.80.

Judge C Kelly

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpmidland@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.