



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

Case Reference : **LON/00AB/HMF/2022/0055**

HMCTS : **In person hearing**

Property : **48 Hulse Avenue, Barking, Essex
IG11 9UW**

Applicants : **Peiyu Lyu, (1) Pranay Chand (2),
Peter May (3) and Vladimir Zaykov
(4)**

Representative : **Cameron Neilson of Justice for
Tenants**

Respondents : **Guangyu Chen (1), Xing Guo (2)**

Representative : **Phillip Taylor MBE of Counsel**

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

Tribunal Member : **Mr A Harris LLM FRICS FCIArb
Mr A Ring
Mr A Lewicki FRICS**

**Date and Venue of
Hearing** : **11 & 12 January 2023 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **14 February 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a face-to-face hearing.

Decision of the Tribunal

1. The Tribunal makes a Rent Repayment Order (RRO) against the Respondents in the in favour of each of the Applicants in the following sums. These sums to be paid within 28 days.

Tenant	RRO
Peiyu Lyu (1)	£ 6,127.79
Pranay Chand (2)	£ 5,470.01
Peter May (3)	£ 5,976.90
Vladimir Zaykov (4)	£ 4,759.01

2. The Tribunal determines that the Respondents shall also pay the Applicants a total of £300 divided equally within 28 days in respect of the reimbursement of the tribunal fees paid by the Applicants. This was agreed at the hearing by the Respondents.

The Application

3. By the applications, listed below, the Applicants seek Rent Repayment Orders (“RRO”) in the following sums against the Respondents pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondents are the owners of 48 Hulse Avenue, Barking Essex IG11 9UW (the House).

Tenant	Application date	RRO claimed
Peiyu Lyu (1)	06/01/2022	£ 6,760.00
Pranay Chand (2)	07/01/2022	£ 6,710.00
Peter May (3)	17/02/2022	£ 7,273.21
Vladimir Zaykov (4)	07/01/2022	£ 5,920.00
		£ 26,663.21

4. On 13 May 2022, the Tribunal gave Directions for a hearing on a date to be fixed. Pursuant to the Directions, each party has filed a Bundle of Documents.

The Hearing

5. All parties appeared in person. The Respondents are Mandarin speakers with limited knowledge of English and were assisted by an interpreter Ms Li Yao. The Tribunal is grateful to her for her assistance.

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

6. 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.”
7. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The Claims are made in respect of the following three offences
 - (1) the offence of eviction or harassment of occupiers contrary to section 1 (2), (3) or (3 A) of the Protection from Eviction Act 1977
 - (2) the offence of control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 (“the 2004 Act”)
 - (3) the offence of having control of, or managing an unlicensed HMO under part 3, section 95 (1) of the Housing Act 2004
8. 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.
9. 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).”

10. 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.”

11. Section 44(4) provides (emphasis added):

“(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.”

12. Section 56 is the definition section. This provides that “tenancy” includes a licence.

The Housing Act 2004 (“the 2004 Act”)

13. Part 2 of the 2004 Act relates to the designation of areas subject to additional licensing of houses in multiple occupation (HMO). By section 56, a local housing authority (“LHA”) may designate the area of their district or an area of the district is subject to Additional Licensing in relation to the designated HMOs specified.

14. Section 72 specifies a number of offences in relation to the licencing of houses. The material parts provide (emphasis added):

“(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.

(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”

15. Section 62 (2) allows the local authority to grant a temporary exemption of up to 3 months where a landlord intends to take particular steps with a view to securing that the house is no longer required to be licensed.

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 (emphasis added):

“(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.

(4) In proceedings against a person for an offence under subsection (1), or (2) 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)”

18. The Respondents concede that they were persons in control of or managing an unlicensed HMO contrary to section 72 (1) of the Housing Act 2004. The tribunal therefore has jurisdiction to make an RRO.

Protection from Eviction Act 1997

19. In addition to the Housing Act offences an RRO is also sought under the 1997 Act. The material parts provide

Section 1 Unlawful eviction and harassment of occupier.

“(1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed,

and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

- (a) to give up the occupation of the premises or any part thereof; or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.”

The Evidence

20. Taking the allegations under the Protection from Eviction Act in turn, it is alleged on behalf of Mr Zaykov, the 4th Applicant that on or around 19 October 2021 the Respondents instructed bailiffs to unlawfully enter his room and remove the lock from the door without prior consent. The evidence included an eviction report from Andrew Wilson & Co, photographs of the door, and a message from Mr Zaykov complaining that the lock was changed without his permission.
21. Evidence was given that the bailiffs only left the property after the tenants had contacted Shelter and the Council and they had spoken to the bailiff.

22. In response, the Respondents say they were not aware of the notice requirements prior to evicting tenants and relied on their former solicitors, Ennon & Co to issue a notice on their behalf. The bailiffs were instructed by Ennon & Co who removed the lock. The bailiffs report states they were admitted to the property by the landlord and instructed to proceed with the eviction of 4 rooms. They met 2 tenants, a male and female who stated they would not leave the premises. The report concludes by advising that possession proceedings are issued in the relevant court so that a possession order may be sought.
23. There is no evidence before the Tribunal from Ennon & Co and no evidence that any legal action had been taken or court order obtained pursuant to section 2 of the Protection from Eviction Act 1977.
24. The 1st Applicant gave evidence that, on or about 11 August 2021, the Respondents attempted to unlawfully evict her by entering her room without permission, removing her possessions and physically assaulting her. The evidence was not shaken despite cross examination. The evidence was supported by evidence from Mr May, the 3rd Applicant, by photographs and a short video.
25. The Respondents give a different version of events in which they state that the 2nd Respondent was dragged into the room by the 1st Applicant and assaulted by her. The video and photographs show the 1st Respondent carrying goods out of the room and in evidence he stated he was tidying the room and removing a danger to his wife.
26. The Tribunal did not find the Respondents to be credible witnesses and find that the events took place as described by the Applicants and that the Respondents had no lawful reason to be in the room or to interfere with the 1st Applicant's goods.
27. At the end of August 2021 the 1st Respondent wrote to the 1st 2nd and 4th Applicants purporting to give them notice as he had found out about the HMO licensing requirements. The notice was not a lawful notice and this was accepted by the Respondent at the hearing.
28. The 1st Respondent stated that the letters had been prepared by one of his children who spoke English on the basis of something he had found on the Internet.
29. Coming on top of the attempted unlawful eviction the Tribunal is satisfied that the conduct of the Respondents was to try and cause the Applicants to give up occupation of the property without following the proper process.

The period of the offence

30. Under section 41(2)(a) of the Housing and Planning Act 2016 a tenant may apply for a rent repayment order if 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 was made.
31. There are differing periods for each of the Applicants due to the dates on which their tenancies commenced. The periods for the offence are set out in the table below

Tenant	Period of the offence
Peiyu Lyu (1)	6/8/20 - 5/8/21
Pranay Chand (2)	4/10/20 - 3/10/21
Peter May (3)	13/4/20 - 12/4/21
Vladimir Zaykov (4)	15/12/20 - 30/11/21

32. The Tribunal is satisfied beyond reasonable doubt that the offence was being committed during these periods.

The relevant landlord

33. There is no dispute that the Respondents are the relevant landlord.

Rent paid

34. The amount claimed for a rent repayment order is set out in paragraph 3 above. This is said to be the whole of the amount of rent paid by each of the Applicants for the relevant period.
35. The Respondents dispute having received all of the sums. In respect of the 1st applicant, Ms Lyu, payments of £3900 and £2310 are disputed. Ms Lyu states that these were paid in cash at the request of the Respondents and produced various messages from Wechat supporting this. The Respondents did not produce any documentary evidence or accounts and under cross examination simply made a flat denial of receipt.
36. Having heard the evidence and seen the supporting documentation, the Tribunal prefers the evidence of the 1st Applicant and finds that rent of £6760 has been paid for the relevant period.
37. In respect of the 4th Applicant a single payment of £560 which Mr Zaykov states was paid in cash is disputed. Again there is a chain of text messages where rent payments in cash are requested and again there is no account or documentary evidence supporting the Respondents position.

38. The Tribunal finds that the disputed payment has been made and finds that the rent paid for the relevant period is £5920.
39. In respect of the 2nd and 3rd Applicants, Mr Chand and Mr May the payments set out in paragraph 3 above are not disputed.

Utility costs

40. In *Acheampong v Roman* [2022]UKUT239 (LC) the Upper Tribunal restated the amount of a rent repayment order should start with the amount of rent paid and then deduct any element of that sum that represents payments for utilities that benefit the tenant such as gas and electricity and Internet access.
41. The Respondent presented a schedule of utility costs which were not disputed with the exception of council tax in the sum of £1712.57. The total claimed are set out in the table below.

utilities claimed	
gas	£ 1,503.18
water	£ 600.45
electricity	£ 532.00
broadband	£ 525.41
council tax	£ 1,712.57
	£ 4,873.61

42. The Applicants dispute that council tax should be deducted from the rents paid as it is not a utility. In *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) the Upper Tribunal held it is not appropriate to deduct everything a landlord has spent on the property. Some of that expenditure will have repaired or enhanced the landlord's property and will enable him to charge a rent for it. Much of the expenditure would have been incurred in meeting the landlord's obligations under the lease.
43. The Applicants submit that council tax is not a utility that only benefited the tenants given it is a payment which enhances the property asset through ensuring investment in and the maintenance of the infrastructure in the local area which benefits the Respondents.
44. The Tribunal prefers the arguments on behalf of the Applicants and finds that council tax is not a utility in the sense of something consumed by the occupants of the property. The Tribunal finds that the total amount of utilities to be deducted is £3161.04
45. This amount needs to be apportioned between the tenants and as there were 5 tenants in the property, although only 4 are part of these proceedings, the Tribunal finds the appropriate way of apportioning these is to divide the cost by 5 and deduct this from the amount of rent paid. The Tribunal has insufficient evidence to undertake an apportionment on basis of use of any particular utility.

Repayment Order

46. The Tribunal is satisfied that the conditions for the making of a Rent Repayment Order have been made out. Under section 44 of the 2016 Act the amount the landlord may be required to repay must not exceed the rent paid in that period. The Tribunal must also take into account the conduct of the landlord and tenant and the financial circumstances of the landlord and whether the landlord has been convicted of an offence.
47. The Tribunal has no evidence of a conviction.

The Respondents financial circumstances.

48. The Respondents state they only have limited financial means. The property was purchased in 2020 with assistance from their family in China. They commenced refurbishment to the property but were unemployed at the time of doing so and were unable to secure employment due to Covid. As the money saved would not cover the works and refurbishment they advertised for a tenant to help cover the costs. The Respondents are now employed in a Chinese restaurant working approximately 16 hours a week as part-time chefs. The Respondents state they originally owned the business but stepped down to become employees because of the difficulties with English. The Respondents receive child benefit for 3 minor children and working tax credit.

Conduct of the parties

49. The Respondents were not originally aware of the requirements of the Housing Act or that the property was an HMO or the requirement for licensing. The Respondents do not speak English as their 1st language and this is the 1st property they have purchased in this country.
50. The Respondents accept this does not relieve them of liability but submit it is a factor which the Tribunal should take into account. The breaches were innocent rather than cynical or deliberate and should count in favour of reducing the amount repayable.
51. Once the Respondents became aware they were required to obtain an HMO licence in April 2019 they advised the tenants of that fact and then took steps to comply with their obligations and obtain a licence. This included applying for but not obtaining a temporary exemption from the HMO regime in August 2021.
52. The Respondents have had difficulty obtaining a licence more quickly due to delays at the council caused by Covid. The Respondents also claim that work was delayed by the Applicants refusing to allow 3rd parties to enter the property to carry out necessary work and by refusing to provide their

email addresses for the council to approve the application. An HMO licence has now been obtained.

53. The Respondents allege the damage has been caused to the property by the Applicants. The total amount of repairs required is alleged to be £5232.88. On the evidence presented the Tribunal did not find that the property had been damaged by the Applicants. The allegation of arrears has already been dealt with above.
54. The Tribunal finds that the Respondents should have known the licensing requirements. While accepting that the Respondents have a poor command of English, the information is readily available from local authorities many of whom produce information in multiple languages. A simple Google search would have revealed the true position of the licensing requirements and the Tribunal finds that the Respondents were careless as to the requirements at the very least.
55. The Tribunal finds no evidence of any conduct on behalf of the Applicants which is relevant to this assessment.
56. The Tribunal has considered the guidance given by the Upper Tribunal in *Acheampong v Roman*, *Williams v Parmar*) and *Aytan v Moore* [2022] *UKUT 027 (LC)* and finds that the appropriate starting point for assessment of an RRO is 100% of the rent paid.
57. The Tribunal has then considered the naivete of the Respondents, their inexperience in this jurisdiction and their lack of English. It has also taken into account that there is no allegation that the property was unsafe or in disrepair. If the Tribunal had been dealing with the licensing offences only, taking into account all the circumstances of the case it would have found that the appropriate level of a rent repayment order was 50% of the rent less deductions.
58. However, the attempted unlawful evictions, lack of proper notice and the assault on one of the Applicants raises the level of seriousness significantly. Taking all these factors into account the Tribunal determines that the amount of the rent repayment order for the 2nd 3rd and 4th Applicants should be 90% of the net rent paid and for the 1st applicant, bearing in mind she was the victim of the assault, should be 100%.

Our Determination

59. The Tribunal is satisfied beyond reasonable doubt that the Respondents have committed an offence under section 72(1) of the 2004 Act of control of an unlicensed HMO. We are also satisfied that the offence of unlawful eviction or harassment under the Protection From Eviction Act 1977 have been proved.

60. We are further satisfied that the Respondents were “persons having control” of the House as they received the rack-rent of the premises from the Applicants.
61. The Tribunal makes a rent repayment order in favour of each Applicant in the following sums

Tenant	Rent	Deduct Utility costs	Net rent	RRO %	RRO
Peiyu Lyu (1)	£ 6,760.00	£ 632.21	£6,127.79	100%	£6,127.79
Pranay Chand (2)	£ 6,710.00	£ 632.21	£6,077.79	90%	£5,470.01
Peter May (3)	£ 7,273.21	£ 632.21	£6,641.00	90%	£5,976.90
Vladimir Zaykov (4)	£ 5,920.00	£ 632.21	£5,287.79	90%	£4,759.01

62. We are also satisfied that the Respondents should refund to the Applicants the Tribunal fees of £300 which have been paid in connection with this application.

**A Harris LLM FRICS FCI Arb
Valuer Chair**

14 February 2023

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.