



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

**Case Reference** : **LON/00AZ/HMF/2022/0192**

**Type of hearing** : **V: CVPREMOTE**

**Property** : **10 Woodlands Street, London SE13  
6TU**

**Applicants** : **Otilia 'Lia' Ebongo and Dylan  
Makuchete**

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

**Respondent** : **Ahmed Tafticht**

**Representative** : **In person**

**Type of Application** : **Application for Rent Repayment  
Order under the Housing and  
Planning Act 2016**

**Tribunal Members** : **Judge P Korn  
Mr C Gowman MCIEH MCMJ**

**Date of Hearing** : **20 February 2023**

**Date of Decision** : **9 March 2023**

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**DECISION**

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## **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: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have been referred are in electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading “Decisions of the tribunal”.

## **Decisions of the tribunal**

- (1) The tribunal makes no rent repayment order.
- (2) The tribunal makes no order in respect of the application fee or the hearing fee.

## **Introduction**

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that the Respondent was controlling and/or managing a house in multiple occupation (an “**HMO**”) which was required under the Housing Act 2004 (“**the 2004 Act**”) to be licensed at a time when it was let to the Applicants but was not so licensed and that the Respondent was committing an offence under section 72(1) of the 2004 Act.
3. The Applicants’ joint claim is for repayment of rent paid between 1 May 2020 and 30 April 2021 in the amount of £7,850.00.
4. The application was received by the tribunal on 23 August 2023. A preliminary issue therefore arose as to whether the application was out of time.

## **Applicants’ case on issue of whether application out of time**

5. The Applicants state that the Property was a 3-storey 6-bedroom terraced house with a shared kitchen and bathrooms. It was occupied by at least 5 people at all points during the period of 1 May 2020 to 30 April 2021. They go on to state that the Property was also situated within an additional licensing area as designated by Lewisham Council, and that the additional licensing scheme came into force on 11 February 2017 and ceased to have effect on 11 February 2022. A copy of the notice of designation is in the Applicants’ hearing bundle.

6. In response to a procedural question from the tribunal prior to the hearing, the Applicants' representative stated that it was the Applicants' case that the Property continued to be occupied by three or more persons as their main residence until the Applicants moved out on the Property on 25 August 2021, the date on which they state that the offence ceased to be committed. The Applicants therefore had until 24 August 2022 to file their rent repayment order application, which was received by the Tribunal on 23 August 2022, and consequently the application was in time.
7. The Applicants' alternative position is that the Property was still occupied by 5 people, including the Applicants themselves, until 25 August 2021. Their last rental payment was in June 2021, as shown in the relevant copy bank statement in the Applicants' hearing bundle, but they continued to live in the Property rent-free until 25 August 2021.

**Respondent's comments relevant to issue of whether application out of time**

8. At the hearing the Respondent did not accept that the Applicants remained in occupation after they ceased paying rent in June 2021.

**Relevant statutory provisions**

9. Housing and Planning Act 2016

Section 40

- (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 ...
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	<b><i>Act</i></b>	<b><i>section</i></b>	<b><i>general description of offence</i></b>
1	Criminal Law Act 1977	section 6(1)	violence for

			securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

#### Section 41

- (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.

#### Housing Act 2004

#### Section 72

- (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 ... but is not so licensed.

## **Tribunal's analysis**

10. The application is for repayment of rent in respect of the period 1 May 2020 to 30 April 2021, but the application was received by the tribunal on 23 August 2022. Under section 41(2) of the 2016 Act, "*A tenant may apply for a rent repayment order only if ... the offence was committed in the period of 12 months ending with the day on which the application is made*". At first sight it would therefore appear that the application is out of time, because the claim relates to a period ending on 30 April 2021 and that date is more than 12 months before the date on which the application was made.
11. The Applicants' primary position is that the Property continued to be occupied by three or more persons as their main residence until 25 August 2021 and that the Property was subject to the additional licensing scheme for the whole of that period.
12. The additional licensing scheme was discussed at the hearing. The tribunal noted, and put to the Applicants, that the scheme applied (i.e. only applied) to all HMOs "*that are privately rented above commercial premises and are occupied under a tenancy or licence unless it is an HMO that is subject to mandatory licensing under section 55(2) of the Act or is subject to any statutory exemption*". As the Property is not above commercial premises the Applicants conceded that the additional licensing scheme did not in fact apply to the Property.
13. The Applicants' secondary, alternative, argument is one that was not put to the tribunal in response to the original question that it posed when seeking to establish whether the application was out of time. This secondary argument or factual submission is that the Property was still occupied by 5 people, including the Applicants themselves, until 25 August 2021. However, the Applicants accept that they did not pay rent after June 2021 and they are therefore asking the tribunal to accept that they continued in occupation until 25 August 2021 without paying rent, and they have not supplied any real reason as to why this would have been the case. Furthermore, the Respondent himself denies that they were still in occupation on 25 August 2021, and the Applicants have provided no independent proof to substantiate their claim that they remained in occupation.
14. As noted above, when it was put to them that their application appeared to be out of time the Applicants' response was to rely on the additional licensing scheme. Their alternative argument has the feel of an afterthought, once it was clear that they could not rely on the additional licensing scheme, and we are not persuaded by it.
15. Accordingly, on the basis of the evidence before it the tribunal is satisfied that the application for a rent repayment order was made more than 12 months after the last date on which the offence was still

being committed, assuming of course that an offence was being committed at all and assuming that no defences would have been available to the Respondent. As under section 41(2) of the 2016 Act, “A tenant may apply for a rent repayment order only if ... the offence was committed in the period of 12 months ending with the day on which the application is made”, the Applicants are therefore not entitled to apply for a rent repayment order and accordingly the application for a rent repayment order is refused.

### **Cost applications**

16. The Applicants have applied under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for an order that the Respondent reimburse the application fee of £100.00 and the hearing fee of £200.00.
17. As the Applicants have been unsuccessful in their claim, it is not appropriate to order the Respondent to reimburse these fees.

**Name:** Judge P Korn

**Date:** 9 March 2023

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.