



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

Case Reference : **LON/00BH//HMG/2022/0027**

HMCTS Code : **HMCTS: In person**

Property **24 Lyndhurst Road, London E4 9JU**

Applicants : **Alexander Tweedie**

Represented by **Travers Barton**
Yi Xu- the First Respondent

Respondents : **Weimin Zhang- the Second Respondent**

Type of Application : **Applications for Rent Repayment
Orders by Tenants
Sections 40, 41, 43 & 44 of the Housing
and Planning Act 2016**

Tribunal Members : **Judge Daley**
Ms Rachael Kershaw B.Sc.

Date of Hearing : **6 March 2023, at 10 Alfred Place,
London**

Date of Decision : **[17 March 2023](#)**

DECISION

Decision

- I. The Tribunal is satisfied on the evidence before it that grounds exist that the Premises were unlicensed in accordance with the Selective licensing scheme, which was in place in May 2020, and that an offence of failing to license the premises has been committed under Section 80 of the Designation for an Area for Selective Licensing.
- II. The Tribunal finds that an offence was committed to the required standard of beyond reasonable doubt.
- III. The Tribunal is satisfied that grounds exist to make a rent repayment order against the First and Second Respondents, Ms Yi Xu and Mr Weimin Zhang. Under Section 40(5) category 6.
- IV. The Tribunal are not satisfied that grounds exist to make an order pursuant to Section 40(5) category 2, for offences under the Protection from Eviction Act 1977.
- V. The Tribunal makes a Rent repayment order in the sum of £11,800 for the rent paid by the applicant for the period between 30.08.2020 and 30.08.2021.
- VI. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £200.00.

Introduction

1. This is an application by the Applicant's listed above for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed premises, that was subject to a selective license requirement in breach of Section 40 of the Housing Act 2004. It is alleged that the landlord committed the offence by letting a four-bedroom mid terrace house without the necessary selective licence. The Applicants seek a rent repayment order for the periods 30.08.2020 to 30.08.2021 in the sum of £22,800 (12x£1900)
2. The Tribunal issued Directions on 22 September 2022, setting out how the parties should prepare for the hearing. This matter was set down for an in-person hearing on 6 March 2023.

Property Details

3. In the application, the Tribunal was provided with information that the Premise was a mid-terrace 4-bedroom house, the respondent had provided photographs of the premises prior to the premises being let. The Tribunal did not inspect the property and makes no assumptions about its current condition or regarding the accommodation.

The Hearing

4. The hearing of this matter was held at the First Tier Property Tribunal Alfred Place, London. The following parties were in attendance, Mr Alex Tweedie, who was represented by Mr Travers Barton of Safer Renting. Also in attendance were Mr Wemin Zhang and Ms Yi Xu who were the respondent landlords in this matter.

Preliminary Matters

5. There were no preliminary issues however the Tribunal accepted the following late evidence, Email correspondence sent by Mr Travers Barton to the Respondents, evidence of the licensing requirements produced as screen shots from Waltham Forest Council detailing the post May 2020 licensing scheme and a screen shot of a press release on the Waltham Forest Council website from 22 January 2020.
6. The Tribunal was also provided with copies of Gas Safety Certificates “Landlord’s Gas Safety Record dated 23 September 2019, Domestic Landlord/Homeowner Gas Safety Record dated 20 August 2021 “Gas Safety Record, and Gas Safety Record dated 18 August 2022. The Tribunal accepted these documents after providing the Applicant the opportunity to inspect, as it considered that it was proportionate and in the interest of justice to accept these documents in accordance with Rule 2 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber Rules 2013. During the course of the hearing both parties referred to separate recordings of conversations which had taken place, the Respondents with the Applicant’s son (aged 12) and the Applicant with the first Respondent. The Tribunal declined to hear the recordings as neither party had complied with the directions on disclosure and it was not proportionate to the issues before the Tribunal.

Relevant Law

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

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.

Section 40(5) of the 2016 Act lists 7 categories of offence and offence no 6 refers to Control or management of an unlicensed house. Category 2 refers to eviction or harassment of occupiers.

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

Section 44 of the 2016 Act sets out the amount of order:

- (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. Under Section 44(4) the Tribunal in determining the amount the tribunal must, in particular take account of (a) the conduct of the landlord and 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.

The Applicants' Submissions

8. The Tribunal was informed that the Applicant signed a fixed term shorthold assured tenancy agreement in September 2019.
9. The agreement was signed by the applicant Mr Alex Tweedie and Yi Xu. In his witness statement Mr Tweedie set out the circumstances in which he came to rent the premises. He stated that he moved in with his three sons. Mr Tweedie set out in his witness statement, that he found the property on "The open Rent" and as the property was suitable for his family, he decided to rent the property and completed a tenancy agreement, The Tribunal was provided with a copy of a tenancy agreement which was dated 10 September 2020 and named Yi Xu as the landlord. The agreement was signed by electronic signature on 13.09.2020 (Alex Tweedie) and Yi Xu 14.09. 2020. The rent was for a fixed term of 12 months and was in the sum for £1900 per calendar month.
10. The Tribunal was told that Mr Tweedie paid the years rent in advance, and that the parties had initially agreed to reduce the asking rent from £1950 PCM, if Mr Tweedie who was a builder would carry out maintenance work on the premises, which included some work to the bathrooms, in respect of filing cracking in the tiles and work to the sealant and silicone, and also some work to refit a shower door that had not been correctly placed. This formed a subsidiary contract between the parties.
11. In his witness statement Mr Tweedie set out that in October 2021 the boiler started to leak, there was a dispute in how to handle this, and Mr Tweedie stated that Ms Xu sent him messages threatening to take him to court as he had broken the boiler, however the situation was resolved by the Respondents sending a plumber in to carry out a repair to the boiler.
12. Mr Tweedie in his statement set out that shortly before the fixed term period came to an end in August 2021, Mr Zhang asked him whether he intended to sign a new rental agreement. He stated that he had become concerned as he had not seen a gas safety certificate, and he had made enquires which had led him to discover that the property required a selective licence and that the property was unlicensed in breach of that requirement.
13. In his evidence he stated that he believed it to be illegal to sign a contract if there was no license and that during a telephone conversation, he asked Mr Zhang to sort it out. He stated that Mr Zhang replied "you don't want to mess around with me "and Ms Xu whom he called Kelly screaming in the background felt

uncomfortable and unsafe, decided to change the locks of the door, and requested that all further contact was made by email.

14. In his statement he set out that once he became aware that a licence had been granted, although there were further discussions about signing the tenancy agreement the landlords were discussing rental increases. He told the Tribunal about the circumstances of the inspection from the managing agent and Ms Xu visit to the property. There was a dispute between the parties as to what occurred, however Mr Tweedie denied assaulting or pushing Ms Xu.
15. The Tribunal was also told that on the occasion when the plumber came around to fix the shower issues including the door. Mr Zhang had entered the property whilst Mr Tweedie was shopping, he had been let in by Mr Tweedie's son. Although, Mr Zhang's evidence stated that this was to inspect the plumbers work and make payment. Mr Tweedie considered it to be part of a campaign of harassment, which included the "threats" made in the telephone call.
16. In his statement he stated that he pointed out items of repair such as the broken lighting fitting, mould to the bathroom ceiling and the fact that the kitchen needed painting, however there had been no response.
17. The Applicants submission was that the respondents had failed to licence the property which fell within a selective licence area. He also alleges that the respondent's breached the Protection from Eviction Act and also refused to deal with repairs within the property.
18. Section 80 of the Housing Act 2004 gives the council the powers to design an area as a selective licensing area. The Tribunal was provided with evidence in the form of a map of the Designated area for the Selective licensing which referred to Waltham Forest having designated an area as a selective licensing area/, together with screen shots taken of a website referring to the scheme as having first been launched in April 2015, and as having been renewed in May 2020 for a period of 5 years.

The Respondent's Submissions

19. The Respondents in their written submissions and oral evidence accepted that there had been a breach of the licensing requirements, however they denied breaching the Protection from Eviction Act, or harassing the applicant.
20. They accepted Mr Tweedie's evidence of how he came to rent the property, and their agreement to reduce by £50.00 a month, if Mr Tweedie who was a builder carried out maintenance. The Tribunal was told that they had rented the property via "Open Rent", and that for the sum of £100.00 Open Rent had advertised the property, arranged for someone to carry out gas safety checks (although he was paid separately), and that this had been uploaded onto the Open Rent website. Open Rent had also provided a proforma tenancy agreement and had collected and passed on the first rental payment and had also received the deposit.
21. The Tribunal was provided with copies of the gas safety certificates for every year save 2020, when they accepted that no inspection had been carried out due to the Covid pandemic.
22. The Tribunal were told that the respondents lived in Guildford Surrey, and that this property was the only rental property that they had and prior to renting this property they had in fact lived in the premises. They provided the tribunal with photographs of the property prior to the property being rented. They set out that they believed everything to be in order and that they were genuinely unaware of

the requirement to license the property prior to it being rented out, although they now accepted that this should have occurred, and had applied for a licence in August 2021 when Mr Tweedie had pointed out the need for a licence. The Licence had been granted unconditionally. Mr Zhang set out that they would not have put themselves to the bother involved in not having a licence of the saving of £600.00 had they realised. They did not accept that they had harassed Mr Tweedie, Mr Zhang stated that they had wanted to know what Mr Tweedie's intentions were and had wanted to regularise his occupation, however he denied threatening Mr Tweedie. Mr Zhang stated that he had not been at the property when his wife attended. Mr Tweedie accepted that both parties had raised their voices, however the respondents did not accept that Ms Xu had harassed Mr Tweedie. She accepted that she had picked Pears off a tree in the garden however she did not accept that she had done this to harass Mr Tweedie. Ms Xu had stated that he pushed her out of the premises.

23. Mr Zhang set out that he had visited the property when the plumber was in attendance, and that this was to confirm that the work to the shower was properly carried out and to make payment. He accepted that he had been let into the property by Mr Tweedie's 12-year-old son, however he denied knowing that Mr Tweedie would not be present, or that it was inappropriate as the plumber had been in attendance at the time.
24. Mr Zhang considered that the attempts made on behalf of the Safer Renting to settle the claim had appeared to them to amount to harassment.
25. He considered the property to have been let in good condition and stated that the law was meant to punish rogue landlord's and not honest people who made genuine mistakes. He stated that there were no aggravating factors and urged the Tribunal to make an order for no more than 20% of the costs of the monthly rent.
26. On being asked questions by Mr Barton, he denied that his evidence about his lack of knowledge about the licensing requirement was untrue, and that he had approached Waltham Forest Council for a licence exemption in 2019. Ms Xu referred to an email that she had sent to Waltham Forest which had gone unanswered in which she sought details of who and when the application had been made,
27. The Respondent's had counterclaimed in respect of the alleged failure of Mr Tweedie to carry out repairs, the costs of the repairs to the shower and the replacement, the boiler repairs and the water bill and loss of income caused by mental distress.

The Closing Submissions

28. The Tribunal heard submissions from Mr Barton, he referred the Tribunal in passing to Vadamalayan and Stewart (2020) UKUT 183, as authority that the full rent paid was the starting point for the repayment order, and that the point of an order was to serve as a deterrent and to have a punitive effect on the landlord.
29. The Tribunal also heard from Mr Zhang on behalf of the Respondent who referred the Tribunal to the decisions of Hallet -v- Parker [2022] UKUT 165 (LC) and Hoo -v- Hammond and Morris -v- Bana.
30. Both parties reiterated the evidence which the Tribunal had heard.

Tribunal Decision

31. The Tribunal in reaching its decision noted that its jurisdiction was limited to the matters set out in paragraph 7, in relation to the law, accordingly it could not determine the respondents' counterclaim, save that if it considered that damage was caused by the tenant's misuse of the property this stood to be considered in accordance with Section 44 (4) (a). The Tribunal noted that there were factual issues to be resolved concerning the issue of Harassment, and that as an offence in breach of the Protection of Eviction Act 1977 had been alleged, this had to be resolved at the higher standard of proof, which was that the offence had occurred beyond reasonable doubt.
32. The panel considered the WhatsApp correspondence and noted that the relationship between the parties had "soured" due to the fact that Mr Tweedie was seeking a rent repayment as was his right, and the lack of a formal contractual relationship between them as Mr Tweedie had declined to sign further contracts, as the property had been unlicensed. As such there was animosity between the parties, however the Tribunal was not satisfied on the evidence in the bundle and the oral evidence that this amounted to Harassment, under the Protection From Eviction Act 1977, which met the required standard of proof. The Tribunal was also not satisfied that the tenant had misused the property, or that the property suffered from neglect.
33. The evidence before us was that the property had been let in good condition and was tired as a result of having been occupied continuously by a family without refurbishments having taken place. The Tribunal reminded itself that clause 6.6 of the agreement requires the tenant to keep the interior of the premises and the landlord's contents in a good state of repair and condition as at the commencement of the tenancy. The Tribunal was also satisfied that as a result of the agreement for a rent reduction, Mr Tweedie had agreed to undertake maintenance to the premises.
34. The Tribunal then applied a four-stage test, it decided that to make an order it would have to satisfy itself of 4 matters –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004
 - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
 - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
 - (iv) Determination of the amount of any order.
35. The Tribunal considered the evidence before it in relation to both of the Respondents. The Tribunal is satisfied beyond a reasonable doubt that the respondents committed an offence under section 80 of the Housing Act 2004, and that the Applicant is entitled to a rent repayment order.
36. The Tribunal accepted that the sum of £22,800 had been paid for rent during the period in issue.
37. The Tribunal also reminded itself of the law which had been referred to above and the case law referred to by the parties. The Tribunal noted that the starting point was the maximum rent that had been paid, however the Tribunal noted that it had an obligation to exercise its discretion in the making of an order.
38. The Tribunal also had regard to the cases referred to, the fact that the landlord was the landlord of a single property, which the Tribunal found was either in good or fair condition, and that any want of repairs/maintenance which were subject to Section 11 of the Landlord and Tenant Act 1985, were not alleged to be outstanding. Where

there were any minor repairs, these had been subcontracted to the tenant, who had received a £600 a year reduction in the rent.

39. The Tribunal also had regard to *Acheampong –v- Roman* [2022] UKUT 239 in which it was stated that the Tribunal should consider how serious this offence was both compared to other types of offence and what proportion of the rent is a fair reflection of the seriousness.
40. It noted that save for during the pandemic, Gas safety inspections had been carried out. It reminded itself of the purpose of the licensing regime and noted that although in its view it would not characterize the respondents as rogue landlords, they were responsible for ensuring that they had complied with any requirements to license the property prior to embarking on renting properties, given this it was not minded to reduce the Rent Repayment order to the percentages suggested by the Respondent as being reasonable,
41. However, it was mindful that Mr Tweedie had received the benefit of the rental of the property, and that for the majority of the 4 years that he had lived in the property this had been without serious fault or complaint. In assessing the seriousness, the Tribunal noted that the property was a single family home, and as such there was less risk to the health and safety of the occupants than in a housing in multiple occupation.
42. The Tribunal finds on the evidence before it, and on the admission of the respondent that the property was in an area covered by licensing provisions and that the premises required a Selective license. However, when considering all of the factors, and the seriousness of the offence the Tribunal are satisfied that a rent repayment order in the sum of 50% of the rent paid to the sum of £11,400. Is the appropriate order to make which marks the offence which has been committed by the landlord in failing to apply for a selective licence for the periods in issue. A.
43. **The Tribunal makes a rent repayment order in the following terms:-**
44. That the Respondent shall pay to the Applicant the sum of £11,400 as a rent repayment order for the period in issue.
45. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £300.00.

Signed: Judge Daley

Dated: [17 March 2022](#)

Right to Appeal

- I. 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.
- II. 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.
- III. 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.

IV. 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.