



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

Case reference : **LON/00BG/HMF/2022/0155**

Property : **14b Austin Street London E2 7NB**

Applicant : **Natalie Livesey (Tenant)
Nicholas Tebb (Tenant)**

Representative : **Justice for Tenants**

Respondents : **Chris Proctor (Landlord)
Neil Proctor (Landlord)
(Barred from further involvement)**

Representative : **None**

Type of application : **Application by tenant for a rent
repayment order. S. 40, 41, 43, 44,
Housing & Planning Act 2016 (“the
Act”)**

Tribunal members : **Mr N. Martindale FRICS
Ms L. Crane
Mr N. Miller**

**Venue & date of
hearing** : **First tier Tribunal (Property)
Chamber 10 Alfred place
London WC1A 7LR
6 April 2023**

Date of decision : **12 April 2023**

DECISION

Decision of the Tribunal

1. The Tribunal orders the Respondent Chris Proctor only, to repay to the Applicants the sum of £9,360 (nine thousand three hundred and sixty pounds) by way of rent repayment.
2. The Tribunal orders the Respondent Chris Proctor only, to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00, paid by them to the Tribunal.
3. Both sums above must be paid by the Respondents to the Applicant within a period of 21 days after the date of this decision.
4. The Tribunal finds that Neil Proctor is wholly innocent of all allegations made against him by the Applicants in this application.

Application and Background

1. The 'window' for making an application for consideration of an RRO, is open for a period of 12 months after the offence. Once validly made the applicant can then seek repayment of up to 12 months of their rent payments, made by themselves excluding any housing benefits they received, made to the landlord directly or indirectly, during the period of the offence.
2. From the filed application form, the Applicants were Natalie Livesey and Nicholas Tebb. They were the only tenants at the Property during the period. The application identified Chris Proctor and Neil Proctor as the landlords, through the property management and letting agency of Howsy Ltd. No.08845607. The application was signed by both tenants and dated 6 July 2022 and made under S.41 of the Act for an RRO based on the allegation that a criminal offence by both landlords had been committed and an RRO should be issued subject to assessment of the actual penalty sum.
3. The Applicants claimed that there were two consecutive valid schemes of selective licensing of landlords under S.80c Housing Act 2004 in place in parts of the London Borough of Tower Hamlets. The first ran from 1 October 2016 to 30 September 2021. The second ran from 1 October to 30 September 2026. The Wards selected were Weaver, Whitechapel, Spitalfields and Banglatown. The Property was located in Weaver Ward, as shown on the map provided in the bundle. None of the possible statutory exemptions applied to the need for these landlords to obtain a licence to let the Property.

4. The application names the two individuals as Respondents. However during the hearing, the Applicants withdrew all of their claims against Neil Proctor. This was based on the emergent fact during the hearing, that he was not linked to the ownership of the Property, nor was he a signatory to the lease, nor was he shown to be involved in the management of the Property. For reasons the Tribunal noted and accepted the unilateral withdrawal by the Applicants claim in its entirety against Neil Proctor, was made at approximately the mid-point of the hearing.
5. Within the application form, the Applicants provided: 1. The complete signed tenancy with Chris Proctor only, as landlord. 2. Spreadsheets for the entire period showing the rent paid over for the Property 3. Documentation showing that the rent payments had been sent to the landlord for the rent period. 4. A copy of the HMLR freehold title in the ownership of Chris Proctor only. 5. Correspondence from the licensing authority (LB Tower Hamlets) to the Applicants confirming the scheme and its coverage. 6. A copy of the selective license designation in place. 7. Evidence of the geographical location of the Property within a designated place in this Borough.
6. The Property is a modern purpose built flat on the upper level of a two level small block. It has 3 rooms, kitchen, bathroom/ wc. It has its own street entrance. The Property appeared from the street map to be located at the far west end of the most western Ward of LB Tower Hamlets. Rent was fixed at £1300 pcm, for the period of the letting, 12 payments in all, £15,600 in total paid.

Directions

7. The Directions issued on 22 September 2022 by Valuer Chair Mrs E Flint FRICS, appeared to have been based solely on her reading of a completed application form from the two tenants. The form was signed by both Applicants and dated 6 July 2022. The documents referred to in box 9 of the Form were attached.
8. Valuer Chair Mrs E Flint provided for mediation to be agreed (if at all) and set up by 22 October 2022 by the Tribunal, to run concurrently with preparation for the hearing. In the meantime the parties were issued with clear Directions as to what to prepare before, to exchange and respond with to the Respondent in way of materials.
9. On page 2 para 5 of the Directions they clearly state ***“IMPORTANT NOTE: TRIBUNAL CASES AND CRIMINAL PROCEEDINGS. If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason he or she may wish to seek legal advice before making an comment within these proceedings.”*** In this respect this type of

application involves potentially criminal acts and criminal standards of proof for the application to be met by the applicant to be successful in reaching the step, of assessing the quantum.

10. The Tribunal takes the view that particular care should therefore be taken by both parties to fully comply with Directions issued; and to be able to offer, when questioned, an explanation for failures (to fully comply with Directions), to the satisfaction of the Tribunal. The completed form alone was clearly insufficient to deal with the application. Mrs Flint therefore issued detailed Directions for the assistance of both parties and the Tribunal hearing. They set out the information to be provided and the timetable for compliance. There appeared to have been no hearing prior to the issue of Directions.
11. The Directions end with various short statements in bold type under the heading ***“IMPORTANT NOTES ... (b) If the Applicant fails to comply with these directions the Tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”). And ... (c) If the Respondent fails to comply with these directions the Tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.***
12. By 4 November 2022, the Applicant was instructed to send a bundle of all relevant documents to the Respondent and the Tribunal, indexed and numbered page by page. The bundle was to include: a) the application and accompanying documents. b) these and any subsequent directions. c) an expanded statement of reasons for the application. d) full details of the alleged offence, with supporting documents from the local housing authority, concerning the requirements for the property to be licensed including details of the selective license scheme in operation, and confirmation that the property was not licensed for the period set out above. (The Tribunal had to be satisfied beyond reasonable doubt that an offence had been committed). e) copy of the tenancy agreement. f) official Land Registry copies of the freehold title and any leasehold title to the property. g) evidence of rent payments made for the applicable period. h) a calculation, on a weekly/ monthly basis of the amount to rent paid in the applicable period. i) any witness statements of fact relied upon with a statement of truth. j) full details of any conduct, including details of any allegations concerning failure to carry out gas safety and other checks by the landlord said to be relevant to the amount of the Rent Repayment Order sought, and k) any other documents relied upon, including any essential correspondence with the Tribunal.
13. The Respondent was instructed to seek independent legal advice particularly in the light of the criminal test to be applied to the alleged

circumstances and to complete their bundle copied to the applicant and to the Tribunal. By 16 December 2022 the Respondent was to send to the Tribunal and to the Applicant, their bundle, to include: a) a full statement of reasons for opposing the application, including any defence to the alleged offence and response to the grounds advanced by the applicant and dealing with the issues identified above. b) a copy of all correspondence relating to the any application for a licence and any licence that has now been granted. c) any witness statements of fact relied on with a signed statement of truth. d) unless included in the applicant's bundle a copy of the tenancy agreement. e) evidence of the amount of rent received in the period. f) a statement of as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order including full details of any conduct by the tenant said to be relevant to the amount of the RRO sought. If reliance is placed on the landlord's financial circumstances, appropriate documentary evidence should be provided. g) evidence of any outgoings, such as utility bills paid by the landlord for the Property during the period; and h) any other documents relied upon, including any essential correspondence with the Tribunal.

14. By 20 January 2023 the Applicant was to send a brief reply to the issues raised in the Respondent's statement and supporting documentation to the Tribunal and Respondent. The Annexe to the Directions carefully set out the issues for the Tribunal to consider. The Tribunal would have to be "...satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences." In this case it appeared to concern the prospect of an offence at No.5 as listed, being under S.72(1) of the Housing Act 2004 "*control or management of unlicensed HMO.*"
15. The Tribunal was required to decide 1. using the criminal test of "beyond reasonable doubt", that an offence had been committed; and if so 2. what amount should be repaid ? This test is higher than the civil balance of probabilities normally adopted at the First-tier Tribunal.
16. By 17 March 2023 the applicant was to send a brief reply to the issues raised in the Respondent's statement and supporting documentation to the Tribunal and Respondent. The Annexe to the Directions carefully set out the issues for the Tribunal to consider. The Tribunal would have to be "...satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences." In this case it appeared to concern the prospect of an offence at No.5 as listed, being under S.72(1) of the Housing Act 2004 "*control or management of unlicensed HMO.*"
17. The hearing at the Tribunal offices in London was later set down in the Directions for 3 hours, for 10am, 6 April 2023.

Hearing

18. Directions were issued from this Tribunal, on 22 September 2022. Unfortunately for reasons that remained unclear to the Tribunal, the Respondent(s) did not respond to the Directions, at all.
19. Subsequently by Order dated 13 January 2023, Judge Martynski directed that unless by 27 January 2023 the Respondents complied with paragraph 10 of the Directions of 21 September 2022, they would be debarred from further participation in the proceedings. The Respondents did not comply. By Notice by Judge Carr, dated 2 February 2023 the Respondents were duly barred.
20. The Applicants were represented by Cameron Neilson through Justice for Tenants. The Tribunal was led through the bundle by references drawn together in a Skeleton Argument. The bundle included all items listed for inclusion in the Directions of Mrs Flint supplemented with additional items.
21. The Property was situated within a selective licensing area as designated by LB Tower Hamlets and the Tribunal was directed to the map attached to the order which included the Property address. There were two licensing schemes: From 1 October 2016 to 30 September 2021 followed by the current 5 year scheme from 1 October 2021 onwards. The geographical wards were 4, situated towards the western edge of the Borough including Weaver ward where the Property is located, and were the same for both periods.
22. The designation required all dwellings let out, (other than those exempt) to be licensed by the Council. Let on a year's assured shorthold tenancy to the two Applicants, this Property was not exempt. The appropriate licence was not held nor applied for during the period of 1 April 2021 to 31 March 2022. A Temporary Exemption licence was then applied for on 21 April 2022 and the offence ceased at that date.
23. The Applicants asserted that Chris Proctor and Neil Proctor were their landlords and were both involved in the control of the Property under S.263 (3) Housing Act 2004. They were said to receive the rack rent. Chris Proctor was also the registered owner (long leasehold) registered owner of the head lease. Although both their names appeared typed on the tenancy, Neil Proctor did not sign and was not party to the lease.
24. As noted earlier, above, the Tribunal questioned the involvement of Neil Proctor as he was not a signatory to the lease nor did he own the long lease of the flat. At this point the Applicants withdrew their allegations regarding Neil Proctor. The Tribunal noted and accepted the withdrawal of all claims made against Neil Proctor by the Applicants.

25. The representative for the Applicants then referred the Tribunal to the recent case of *Acheampong v Roman* [2022] UKUT 239 9LC) at [20] where Judge Cooke set out the 4 stage approach to be adopted by the Tribunal when assessing the amount of any Rent Repayment Order.
26.
 1. Confirm the whole rent for the period of claim.
 2. From this deduct the actual costs of utilities provided by the immediate landlord to the tenants.
 3. Consider the seriousness of the offence compared with other types of offence for which the RRO might be used and deduct for the lighter nature of offences by comparison.
 4. Consider any further deduction or addition to reflect any other factors in S.44(4), being careful not to double count.
27. The answers to these questions here, were: A.1. £15,600 A.2. Nil. The lease showed that the tenants were liable for the cost of all utilities and no evidence contrary to had been presented by the Respondent.
28. At A.3. the table referred to in the case showed a possible 7 offences listed in decreasing seriousness. This offence under S.95(1) HA 2004 was ranked fifth. The Tribunal's attention was drawn by the Applicants to the absence of clear processes to keep abreast of relevant legislation.
29. The lack of processes was evidenced by the lack of any landlord licence, even after over 4 years of such a requirement being in place in this Ward. The fact that the scheme was re-introduced in April 2021 but, the landlords still correct their earlier omission.
30. The Applicant had referenced the absence of a gas safety certificate but, admitted during the hearing, that there was no gas supply to the Property and they withdrew that evidence of their claim. The Tribunal accepted and noted this withdrawal.
31. The Applicants referred to the requirements of Schedule 4(3) of HA 2004 where it was stated to be a mandatory requirement of any licence granted under Part 2 or 3 of the Act that the electrical Appliances and furniture made available to the occupiers were in a safe condition. The Applicants referred to the disrepair and malfunction of a washing machine provided by the Respondent and the slow repairs.
32. The Applicants final response to question 3 above, referred to the 'policy objectives' underlying the scheme and the case of *Williams v Parmar* [2021] UKUT(LC). Here the decision was said to be intended to: punish offending landlords in general; deter the particular landlord from a repeat of other offences; dissuade other landlords of offending and remove any financial benefit that landlords might be tempted to gain by doing so. These objectives were held to justify a substantial part of the rent being awarded. The absence of any reference in the

2016 Act , meant a harder approach should be adopted when assessing overall penalty.

33. In light of their assessment of all of these factors set out above in reply to Q.3. the Applicant sought an 85% refund of the total rent of £15,600, or £13,260, to be paid by RRO, together with the Applicants Tribunal costs of £100 application and £200 hearing fees.
34. The Applicant considered the overall conduct of the landlords and tenants. The Respondent was said to have shown a systematic neglect of their legal obligations even to the extent latterly of ignoring the Tribunal and failing to co-operate to the extent of being excluded by the Tribunal. Similarly although it had been open to the landlord to allege poor conduct by the tenants if it had occurred, the Respondent had failed to do so. Similarly the landlord might have supplied evidence of their financial circumstances but, they did not.
35. The Applicants suggested that good behaviour by the tenants might even be a plus point for a higher percentage of rental refund as had been implied in the Acheampong case decision.
36. They noted that there was no evidence of prior convictions of the landlords however, but again there was no suggestion there should be credit to the landlords for this. The applicant's finalised their position that 85% of the rents should be refunded and that this percentage should not be adjusted upwards or downwards. As a further guide the Applicants offered the decision in *Global Guardians Management v LB Hounslow* [2022] UKUT 249LC where it was said overall 45% of the total rent paid, was ordered for repayment by reason of evidence of a reasonable excuse for some of the landlord's failings in that case. A copy of the decision report was not provided by the Applicant.

Decision

37. The Tribunal discussed and considered the application and the case made for the Applicants at the hearing by Justice for Tenants:
38. It noted the late withdrawal, during the hearing, by the Applicant of all its claims against one of the named landlords for reasons set out above. The Tribunal finds that there was no evidence that Neil Proctor had a connection with the Property and was wholly innocent of the accusations made against him. Applicants should beware of making allegations which they later cannot substantiate. If wrongly made should withdraw them and notify the Tribunal and the Respondents at an early stage of their case. Here, there was little or no evidence of Neil Proctor's involvement or even possible involvement in the allegations right from the start, especially when the test was one of 'beyond reasonable doubt'.

39. It noted the late withdrawal, during the hearing, by the Applicant of its claim regarding the absence of a gas safety certificate when it admitted part way through its case, that there had been no gas supply to the Property at any time during the claim period. In this case there was no evidence of Respondents failure to obtain certification of a safe gas supply and installation when the Applicants knew or should have known that there was no gas supply to the Property right from the start.
40. Although the Tribunal noted the overall requirement to ensure the contents of all the Property had to be in a safe condition at the start of the tenancy, the applicant was unable to show that any certification had been required to that effect from the start of the lease, nor that the equipment repairs that arose during the term had been defective. The slowness of the response from the landlord was evidence of disorganised management but, nothing more.
41. The Tribunal found that Chris Proctor, alone was responsible for compliance with the landlord licensing requirement but, had failed to do so for the entire period for which an RRO was sought. Although the Tribunal noted the non-compliance by the landlord with any of its Directions, their exclusion from before the hearing, was considered a fitting and complete penalty for this failure. Consequently no addition should be made to the percentage figure of the total rent paid over, to be repaid, on account of this behaviour by the landlord.
42. In light of the above the Tribunal considers that a figure at 60%, should be applied to the total rent paid of £15,600. The Rent Repayment Order against the Respondent Chris Proctor alone would be for £9,360 therefore.
43. The Tribunal also orders that the payment of the rent be accompanied by the repayment of the application fee and hearing fee to the Applicants by Chris Proctor alone, of £100 and £200 respectively on production of proof of prior payment of these, in full. All payments would fall due within 21 days of publication date of this Decision.
44. The Tribunal explained that a written decision with reasons and details of appeal rights against this decision would be issued within 6 weeks of the hearing date by the Tribunal.

Name: Neil Martindale **Date:** 11 April 2023

Rights of appeal

By Rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).