FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOAU/HMF/2022/0198**
HMCTS	**:**	**V: CVPREMOTE**
Property	**:**	**Flat 1 , 125 Packington Street.**
Applicants	**:**	**Aishling Hopkins** **Emma Roche** **Megan Cowley**
Representative	**:**	**Frances Hall**
Respondent	**:**	**World Investment Capital Limited** **James Saunders** **Packington Investments (London) Limited**
Representative	**:**	**No appearance**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Shepherd** **Chris Gowman MCIEH**

Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**18th April 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

1. In this case the Applicants, Aishling Hopkins, Emma Roche and Megan Cowley (The Applicants) are seeking a Rent Repayment Order against the Respondents, World Investment Capital Limited, James Saunders and Packington Investments (London) Limited (The Respondents).

2. The Applicants were in occupation of premises at Flat 1, 125 Packington Street, London N17EA (The premises). In fact by the time of the hearing the Applicants had reached a compromise with the Third Respondent, Packington Investments Limited and therefore there was no further involvement by them. The Applicants were represented by Frances Hall from the BPP Legal Advice Clinic. The other Respondents did not attend or engage with the proceedings.

3. It was the Applicants' case that the Respondents, James Saunders and World Investment Capital Limited had failed to license the premises which fell under an Additional Licensing Scheme in Islington. The relevant period was 1st February 2021 – 10th December 2021 when it was claimed the Applicants paid rent to World Investment Capital Ltd amounting to £31334.43 (see clarification below).

4. The Rent Repayment Order application was made pursuant to section 41 of the Housing and Planning Act 2016. The premises consist of a 3 bedroom first floor flat with a separate bathroom and kitchen above a converted pub. The Applicants entered into an assured shorhold tenancy with James Saunders on 11th December 2020. This was for a 12 - month term. The rent was £3045 per month. The agreement named James Saunders as the landlord with notices to be sent to World Investment Capital Limited. Mr Saunders is the sole director

of World Investment Capital. The Applicants communicated with an employee of the First Respondent called Aziz.

5. During their tenancy the Applicants complained of damp and mould growth. They reported these matters to the Respondents who agreed to rebate the rent until the works were carried out to remedy the disrepair. In the event the works were never completed and the premises remained in a poor state. There was severe damp in one of the bedrooms, with the growth of foul smelling mould. The Applicants contacted the Local Authority in August 2021 who informed them that the premises were required to be licensed under the council's additional licensing scheme. Later the Applicants began making rent payments to Priestly Investments (formally Packington Investments) the head landlord. As already indicated the Applicants reached a compromise with the Third Respondents in relation to their tenure which began on 10th October 2021. On 6th December 2021 the Applicants received confirmation from Islington Council that no application had been made for a license. The Applicants left the premises on 30th December 2021.

The Additional Licensing scheme

6. This was introduced by Islington on 1st February 2021. The designation was made pursuant to Housing Act 2004, s.56. It applies to all HMOs which are occupied by three or more persons who are not member so the same household.

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

7. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an licenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional reedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

8. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of "tests". Section 254(2) provides that a building or a part of a building meets the "standard test" if:

   "(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

   (b) the living accommodation is occupied by persons who do not form a single household (see section 258);

   (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

   (d) their occupation of the living accommodation constitutes the only use of that accommodation;

   (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

   (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities."

9. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4

provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

10. In addition, as stated above Islington introduced an Additional Licencing Scheme.

11. Section 263 provides:

"(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."

The Housing and Planning Act 2016 ("the 2016 Act")

12. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

13. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

14. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He

noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

15. Section 40 provides (emphasis added):

"(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."

16. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected

to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

17. 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.

18. 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)."

19. 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.

20. Section 44(4) provides:

"(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."

21. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

22. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

23. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

24. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the

sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

Application to the present case

25. The Respondents failed to engage with the proceedings, save for the Third Respondent who reached settlement with the Applicants. The alleged conduct of the Third Respondent could not be relied upon by the Applicants in light of this compromise. Ms Hall accepted that the period of claim was 1st February 2021 until 10th October 2021.

26. The Applicants provided evidence of the rent that they had paid and satisfied the Tribunal that for the relevant period the premises should have been licensed but were not. The Tribunal were also satisfied with the evidence that we heard about the disrepair at the premises. The Respondents failed to rectify the issue and the premises became more inhospitable as time went on.

27. This was a serious offence of failure to license. The Respondents chose not to come forward and offer any excuse let alone a reasonable one. Applying the criteria in Acheampong above:

- The total rent paid for the relevant period was £23466.11

- There was no evidence of the cost of utilities paid for by the landlord.

- As already indicated, this was a serious licensing breach although compared to other types of offence such as unlawful eviction it was not as serious. Nonetheless, the fact that the premises were not licensed meant that the Applicants were necessarily put at risk because the premises did not comply with the regulations in relation to HMOs.

28. Applying the other criteria under the Act there was evidence of poor conduct by the Respondents in particular in relation to disrepair and their decision not to be involved in the case.

29. In light of all of these matters we consider that an 75% award is appropriate which equates to **£17599.58**.

Judge Shepherd

18th April 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.