



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

Case reference : **LON/00AM/HMF/2022/0162**

Property : **107 Rushmore Road, London E5 0EY**

Applicant : **Halim Kourde**

Representative : **Ms Frances Hall, Trainee Solicitor, BPP
Legal Advice Clinic**

Respondent : **Ekinadese Okesade**

Representative : **Mr Fandani**

Type of application : **Rent repayment order**

Tribunal member(s) : **Judge Tagliavini
Mr A Lewicki FRICS**

Date and venue of hearing : **6 March 2023 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **4 May 2023**

DECISION

Summary decisions of the tribunal

- (1) The tribunal makes a rent repayment order in the sum of £4,216.84. This is to be paid by the respondent to the applicant within 14 days of this decision being sent to the parties.
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The application

1. In an application made on 17/07/2021, the applicant seeks a rent repayment order pursuant to s. 41(1) and (3) of the Housing Planning Act 2016 ('the 2016 Act'). The applicant alleges the respondent has committed the offence of having the management or control of an unlicensed house in multiple occupation (HMO) contrary to s 72(1) of the Housing Act 2014 ('the 2014 Act'). Consequently, the applicant seeks a rent repayment order in the sum of £4,716.84 for the period 17 July 2020 to 17 July 2021 (having deducted amounts of Universal Credit received by the applicant in May, June, and July 2021).

Background

2. The applicant was the tenant of one room with shared use of the kitchen and bathroom w.c. pursuant to a tenancy agreement with effect from 10 January 2018 at a rent of £440 per months. The respondent is the named landlord and rent was paid directly to her.
3. The subject property at 107 Rushmore Road, London E5 0EY ('the Property') comprises five bedrooms, one bathroom, a w.c. and a kitchen. In addition, the Property included a self-contained studio flat at the top of house as well as a separate self-contained studio flat in the basement. During the relevant period, the Property was occupied by six adults and two children in more than two households and therefore was required to have a mandatory HMO licence. The requirement for a licence was confirmed by the London Borough of Hackney in an email to the applicant dated 27 July 2022.
4. During his occupation, the applicant and other occupiers were required by the respondent to 'top up' the electricity and gas pre-payment meters. The applicant also asserted the respondent harassed him to make payments of additional rent and periodically turned off the hot water supply to the shower, thereby preventing him from showering.
5. The applicant asserted in the alternative, the Property was required to be licensed under the London Borough of Hackney's (LBH) Additional Licensing scheme, which had been in effect since 1 October 2018 to 30

September 2023. On 19 October 2023, the respondent applied for a licence from LBH.

The applicant's case

6. In support of his application the tribunal was provided with a bundle of 65 pages. This included a copy of the tenancy agreement; dated 10/01/2018; a statement listing the respondent's alleged offences and conduct dated 22/09/2023; confirmation from the local authority of the absence of a HMO licence for the property; evidence of the rent paid and a supporting witness statement of Marta Postol dated 22/09/2022. The applicant provided oral evidence to the tribunal including details of the occupants of rooms 1 to 5 as well as details about the two self-contained studio flats.
7. In submissions it was said the tribunal should consider awarding the maximum amount of the rent repayment order claimed. Although deductions had to be made for a three-month period to reflect the Universal Credit received by the applicant, he had, along with the other occupiers paid the gas and electricity charges themselves and in any event no bills or other proof of financial obligations had been provided by the respondent.
8. It was submitted the respondent's conduct had throughout the relevant period for which the RRO was claimed, was particularly unpleasant with repeated threats of eviction being made and the turning off the hot water supply.

The respondent's case

9. The respondent accepted the subject property required an HMO licence but did not accept she had harassed the applicant or interfered with his enjoyment of the property. Ms Okesade stated the 2018 had been signed by another person and not herself. She also asserted the applicant failed to pay the rent increases she had asked him to pay, or the increased contribution to the energy bills. The respondent also asserted it was the applicant who has been aggressive and had asked him to move out because he refused to pay a 'fair' amount to the gas and electricity bills.
10. In closing submissions it was accepted the subject property was rented out as a HMO and did not have a licence. However, in assessing the amount of a rent repayment order, the tribunal should have regard to the fact the respondent had been very accommodating; she had prevented him from becoming homeless by offering him accommodation; no deposit had been demanded and her conduct towards the applicant was 'Not that serious.'

11. The tribunal should also consider the respondent was not a professional landlord; had no convictions and had a mortgage and bills to pay. Further, the tribunal should take into account the low rent which had not been increased since 2018. The respondent had obtained all the necessary EPC and gas and fire safety certificates, although were not provided to the tribunal.

The tribunal's decision and reasons

12. The tribunal finds beyond all reasonable doubt, both from the evidence provided by the applicant and from the concession made by the respondent, the subject property was let as a HMO which required a mandatory licence and remained unlicensed during the period for which the RRO is claimed.
13. The respondent did not seek to raise a defence of 'reasonable excuse' and focused on mitigating the amount of the RRO. In any event, the tribunal finds from the evidence provided by the respondent, that no defence of reasonable excuse had been made out.
14. In deciding the amount of the RRO the tribunal applies the formula set out in *Acheampong v Roman & Ors* [2022] UKUT 239 (LC). Where there was a dispute between the parties, the tribunal preferred the evidence of the applicant to that of the respondent on all issues of disputed fact. The tribunal found the respondent did not fully understand her obligations as a landlord or the consequences of breaching them and had made little effort to acquire that knowledge.
15. The tribunal find the maximum amount of the RRO, less deductions for Universal Credit is £4,716.84.
16. The tribunal finds that in addition to the rent, the applicant paid further sums in 'topping up' the gas and electricity meters and therefore makes no deductions in respect of the utilities.
17. The tribunal finds the conduct of the respondent has been continuous and sustained with the aim of harassing and evicting the applicant or causing him to move out of the property and is of the most serious kind. The tribunal finds there has been no conduct during the period of his tenancy that would merit a deduction from the amount claimed.
18. In the absence of any evidence as to the respondent's financial commitments, the tribunal makes no deductions to reflect these. However, the tribunal accepts the respondent has no convictions in respect of a relevant offence under the 2016 Act and therefore makes a deduction of £500.

19. In conclusion, the tribunal makes a rent repayment order in the sum of £4,216.84. This is payable by the respondent to the applicant within 14 days of this Decision having been sent to the parties.

Name: Judge Tagliavini

Date: 4 May 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).