



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

**Case reference** : LON/00BB/HMF/2022/0276

**Property** : 30 Young Road, London E16 3RR

**Applicant** : Abul Hasnath

**Representative** : -

**Respondent** : Ying Huang aka Lidia Huang

**Representative** : -

**Type of application** : Application for a rent repayment order  
by a tenant  
Sections 40,41,43 & 44 of the Housing  
and Planning Act 2016

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

**Venue** : 10 Alfred Place, London WC1E 7LR

**Date of hearing** : 24<sup>th</sup> April 2023

**Date of decision** : 4<sup>th</sup> May 2023

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**DECISION**

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**Decision of the tribunal**

**(1) The Respondent shall pay to the Applicant a Rent Repayment Order in the sum of £699.50. This sum to be paid within 28 days of this order**

**(2) The Respondent is further ordered to repay the Applicant the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.**

The relevant legislative provisions are set out in an Appendix to this decision.

**Reasons for the tribunal's decision**

**Background**

1. The tribunal received an application signed on 25/11/2022 seeking a Rent Repayment Order (“RRO”) under section 41 of the Housing and Planning Act 2016.
2. Directions were issued on 9<sup>th</sup> December 2022. These were amended on 9<sup>th</sup> March 2023 to accommodate a request by the applicant to file his bundle of documents late. The respondent did not oppose this request.
3. Abul Hasnath (“the applicant”) alleged that Ying Huang aka Lidia Huang “the respondent” landlord, failed to obtain an HMO licence for 30 Young Road, London E16 3RR (“the property”), in breach of the HMO licensing requirements operated by the London Borough of Newham (“the Council”).
4. The property is a 4-bedroom house. The living room on the ground floor has been let out as a 5<sup>th</sup> bedroom. The occupants of the rooms shared kitchen and bathroom facilities.
5. The history of the occupancy is not in dispute and is briefly as follows.
6. On 15/08/2022 the applicant was granted a tenancy of a room on the second floor for a three-month period to expire on 14/11/2022. The monthly rent was £750. This included charges for gas, electricity, water, internet and council tax. The applicant moved into the property on 15/08/2022 and moved out on 02/12/2022. This is not in dispute. Nor is there any dispute about the rent paid by him. The respondent repaid his deposit in full on 03/12/2022.
7. When the applicant moved into the property, other rooms were already occupied as follows: The ground floor room was occupied by a male tenant named Justas and he remains in the property to date; The first floor back room was occupied by Fabio who left some two weeks after the applicant moved in and was replaced within days by Kwan; the respondent occupied the 1<sup>st</sup> floor front room; the applicant occupied the 2<sup>nd</sup> floor front room and Nick occupied the 2<sup>nd</sup> floor back room. There were shared bathrooms on the 1<sup>st</sup> and 2<sup>nd</sup> floor. The shared kitchen, dining room, and conservatory were on the ground floor. These facts are not in dispute.
8. The applicant seeks a rent repayment order for the period 15/08/2022-14/11/2022.

9. The respondent claims a defence of reasonable excuse on the basis of having made every attempt to try to obtain a licence, and that the council told her she could continue to rent out rooms once she had made an application for a licence:

- (i) After purchasing the property on or around December 2021, she moved into the property around March 2022 when she started to rent rooms to tenants. She made an application for the first HMO licence in or around May 2022. This was rejected by the council because she did not require a licence at that stage, having only two tenants.
- (ii) She made her second application for a licence on 22/09/2022 but encountered some difficulties with the website and the failure to pay the fee. That application was cancelled by the council for the failure to pay the fee. That application prompted a visit from the Council on 27/09/2022 at which they decided that the property did require a licence
- (iii) In November the council issued a notice of intent to issue a financial penalty of £2,500 for the housing offence of failing to licence the property; the respondent made representations which resulted in the Council withdrawing that Notice
- (iv) On 14/11/2022 the respondent made a further application which appears to have been the successful application as she now is in receipt of a licence.

## **THE HEARING**

10. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.

11. This has been a face to face hearing at which both parties attended. The Respondent arrived late at 10.30 for a 10.00 a.m. listing.

### **Preliminary issues:**

12. On 20/04/2023 the respondent asked for a postponement by email. Initially her ground for this request was based on an unidentified representative being unavailable until 15/05/2023. When that request was refused, she confirmed she would attend the hearing, but would require an interpreter. In the Tribunal's response letter dated 21/04/2023 the respondent was referred to the Hearing Notification which had been sent

to the parties on 01/02/2023 and her failure throughout the interim period to make such request. She was advised that due to the late request, it may not be possible to secure this service at such short notice and was asked to provide details of what language she requires.

13. Further to two emails, a voicemail message left by the Tribunal clerk, and a further email asking for details of the language required, the respondent replied to this request by email on 21/04/23 at 17:43. That being after the close of business on the working day before the hearing the Tribunal clerk received that request on the morning of the hearing at which point there was no opportunity for the Tribunal to organise an interpreter.

14. Having heard from the respondent confirming that she understood English sufficiently to carry on the hearing, and her confirming that if she did not understand a particular word she would ask for clarification, and in the absence of an interpreter in any event, the Tribunal determined that the respondent was able to communicate in English, the Tribunal determined that it was in the interests of justice to proceed.

15. Both parties sought permission to adduce late evidence:

- (i) The applicant's sought to adduce a statement in support of the application; a notification of entry to the property dated 18/11/2022; a notice of intent to issue a financial penalty dated 11/11/2022;
- (ii) The respondent sought to adduce the HMO licence which she produced at the hearing; a chronology of events; copies of her bank statements; a brief outline of utility charges at the property; and various unsigned very short comments purporting to be from other occupiers in the property; and a photograph purporting to show damage to a bed

16. The Tribunal had the benefit of the applicant's bundle which consisted of 28 pages. The respondent provided a bundle of 18 pages.

### **The conduct of the applicant**

17. The respondent made some claims that the applicant had used of her kitchen utensils and that he had smoked in his room contrary to her rules. She also alleged that the respondent had opened her mail. Nevertheless, she returned the full deposit on 03/12/2022.

## **The conduct of the respondent**

18. The applicant claims that relations between him and the respondent were good to start with, but when he discovered that she was being investigated for the lack of an HMO licence, he made an application to the tribunal, and at that stage, the relationship started to fail. The applicant stated that the respondent was screaming and shouting at him and on one occasion she “broke” into his room whilst he was on a face time call to his girlfriend.

19. The respondent confirms that she did go into his room, and indeed apologised to the applicant in a ‘WhatsApp’ message that she had done so. In evidence, the applicant confirmed that it had been his action of making an application for a RRO that seemed to upset the respondent. In response she said that she had felt they were “friends” and he had taken advantage of the information she had shared with him in her private correspondence from the Council.

## **The respondent’s financial circumstances**

**20.** The respondent stated that she had previously worked as a sales assistant, but due to Covid, had not worked since. She reported that she had only £300 in her bank account, and no other income. She provided no evidence about mortgage payments or utility payments. The bank statements provided by her showed her income from tenants and her own living expenses and did not assist the Tribunal in relation to her financial circumstances. She confirmed that she was able to purchase the subject property in her sole name with the assistance of a mortgage.

## **FINDINGS**

21. The Tribunal finds that the respondent landlord had control of the property and failed to make a valid application for the requisite HMO licence until 15/11/2022.

22. The Tribunal found beyond reasonable doubt that the respondent was in breach of her requirement to licence the property under the HMO licensing schemes managed by the Council.

23. The respondent has a reasonable excuse for failing to have a valid licence from 22/09/2022 because of her genuine attempts to obtain a licence from that date.

24. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

25. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

26. There is no evidence to demonstrate that the landlord has been prosecuted.

27. The Tribunal rejects assertions about poor conduct by both the respondent and the applicant. The assertion that the applicant used the respondent's kitchen utensils and an allegation that he smoked in his room did not appear to the Tribunal to have been of concern to the respondent as she returned the applicant's full deposit on 03/12/2022. Further the respondent's allegation that the applicant had opened her mail, was without substance.

28. The allegations by the applicant that the respondent screamed and shouted at him, and that she had broken into his room, after he had ignored her knocking at the door, were found by the Tribunal to be as a result of the breakdown of their previously good relations.

29. There is no evidence to suggest that the respondent is in financial difficulty such as to restrict an award.

30. The period for which the respondent is liable to pay a Rent Repayment Order to the applicant is limited to 15/08/2022 to 21/09/2022 (38 days)

31. The applicant paid a gross total rent of £750 pcm during that period. The rent was inclusive of utilities which included gas, electricity, internet, water and council tax. The only evidence of utilities from the respondent is a simple statement in additional evidence of £1001.49 pcm without any supporting bills. The Tribunal found that claim to be excessive, and took the view that the utilities were likely to be in the region of £50 per month per room and therefore a deduction of that sum from the gross monthly rent should be made. The applicant's net monthly rent paid by the applicant was therefore £700.

32. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21, the Tribunal consider that a fair award should be made to the Applicant in the sum of 80% of the net rent paid for the period 15/08/22-21/09/2022. Accordingly, we find that an RRO should be made against the respondent in the sum of £699.50.

33. The respondent is also ordered to repay to the applicant the sum of £300 being the tribunal fees paid by them in relation to this application.

**Name:** Judge D. Brandler **Date:** 4<sup>th</sup> May 2023

## **ANNEX - 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.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **Section 72 Offences in relation to licensing of HMOs**

(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 (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or



(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

## **Housing and Planning Act 2016**

### **Chapter 4 RENT REPAYMENT ORDERS**

## **Section 40 Introduction and key definitions**

(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.

(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>Act</b>	<b>section</b>	<b>general description of offence</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

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

## **Section 41 Application for rent repayment order**

(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.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

### **Section 43 Making of rent repayment order**

- (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).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
  - (b) section 45 (where the application is made by a local housing authority);
  - (c) section 46 (in certain cases where the landlord has been convicted etc).

### **Section 44 Amount of order: tenants**

- (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.

*If the order is made on the ground that the landlord has committed*

*the amount must relate to rent paid by the tenant in respect of*

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period, not exceeding 12 months, during which the landlord was committing the offence

- (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.
- (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.