FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY

Case reference	**:**	**LON/00BB/HMF/2022/0116**
Property	**:**	**Flat 169 Effra Gardens, 25 Silvertown Way, London E16 1RB**
Applicant	**:**	**Ms Josceline Valeria Djossou**
Representative	**:**	**Not Represented**
Respondent	**:**	**(1) New Door Ltd.** **(2) Opal (Silvertown) Llp**
Representative	**:**	**Trowers and Hamlins, solicitors for Opal (Silvertown) Llp**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Judge F Dickie** **Mr A Parkinson MRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**2 June 2023**

DECISION

i. New Door is substituted as respondent in place of Ashford Reeves and Apnav Miglani.

ii. The tribunal makes a rent repayment order against New Door Ltd. in the sum of £6,171.181 in favour of the applicant. Payment is due within 28 days of the date of this decision.

iii. The tribunal orders New Door Ltd. to refund to the applicant her tribunal fees of £300 in bringing the application.

iv. The application against Opal (Silvertown) Llp is struck out.

BACKGROUND

(1) The tribunal has received an application under section 41 of the Housing and Planning Act 2016 (the 2016 Act) from the applicant tenant for a rent repayment order (RRO). The application was originally made against Ashford Reeves as respondent and was in respect of the rent paid by the applicant under an assured shorthold tenancy of a double room at the subject premises commencing 22 July 2021. The burden of proof is on the applicant and the standard of proof is beyond reasonable doubt.

(2) Directions on the application were issued on 7 September 2022 (and amended on 7 October 2022). The matter was listed for an oral hearing on 27 January 2023.

(3) Pursuant to the relevant provision in section 40(2) of the 2016 Act, a RRO is an order requiring the landlord under a tenancy of housing to repay an amount of rent paid by a tenant. The tribunal must therefore be satisfied who is the landlord. At the first hearing it appeared from the evidence that Ashford Reeves was acting as the managing agent. The applicant produced an up to date Official Copy of the HM Land Register showing Opal (Silvertown) Llp ("Opal") as the leaseholder of the property. The applicant for a selective licence in respect of the property granted on 4 November 2021 was Apnav Miglani.

(4) The tribunal adjourned the hearing and ordered that Opal and Apnav Miglani be added as Second and Third Respondents respectively. Further Directions were issued by the tribunal.

(5) The adjourned oral hearing took place on 20 April 2023. The applicant appeared in person. Opal was represented by Mr Marriot of counsel. There was no appearance for the other respondents, who had not responded to the application.

Application to strike out application against Second Respondent

(6) As a preliminary issue, the tribunal was asked to strike out the application against Opal, on the basis that there is no reasonable prospect of the applicant's case succeeding.

(7) Up to date Official Copies of the HM Land Register produced at the second hearing demonstrated that Opal granted a lease of the premises to New Door Ltd. on 4 June 2021. The grant had not been registered with the Land Registry as of the date of the first hearing. The tribunal is therefore satisfied that at no time was Opal the immediate landlord of the applicant, and on the evidence that it never received or demanded rent from the applicant.

(8) By the date of the second hearing, the Supreme Court in *Rakusen v Jepsen [2023] UKSC 9* had confirmed in a judgment issued on 1 March 2023 that an RRO cannot be made against a superior landlord. Upon an application under Rule 9.3(e) of the First-tier Tribunal (Property Chamber) Rules 2013, the tribunal ought to strike out a party's case if the tribunal considers there is "no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding". Opal was a superior landlord of the property in question and had no direct relationship with the applicant. The tribunal granted the application and struck out the application against Opal. There was no application for costs made on behalf of Opal.

The Hearing

The landlord

(9) For the adjourned hearing the applicant produced an email from the managing agent dated 30 January 2023 stating that Apnav Miglani and Priyanka Miglani are the applicant's landlords. The correspondence address provided for them was New Door Ltd. at 27 Palm Court Alpine Road, London, United Kingdom, NW9 9BQ. There was no other evidence in support of a conclusion that Apnav and Priyanka Miglani are the immediate landlords of the applicant or had any interest in the property. This sits in contrast to the Land Registry entry showing that New Door Ltd. is the leaseholder of the property. Apnav Miglani and Sehgal Priyanka are directors of New Door Ltd. It is consistent with his capacity as director that Mr Miglani was the applicant for the selective licence.

(10) Given the failure of Ashford Reeves to respond to any correspondence from the tribunal, the nature of their correspondence to the applicant, including (as referenced below) misstatements as to the law in respect of RROs, and the consistent absence of the name of the landlord on any

relevant documentation created by Ashford Reeves, including the tenancy, the tribunal did not find this new evidence at all persuasive that these individuals are the landlord, as opposed to the company named in their contact details. Given the Land Registry entry, and the absence of any evidence of an interest in the property having been granted by New Door Ltd. in favour of Apnav and Priyanka Miglani, the tribunal finds on the evidence that the applicant's landlord under the tenancy is New Door Ltd.

(11) New Door Ltd. was not a respondent to the application. The tribunal considered it appropriate on the evidence now before it to make an order under Rule 10 of the procedural rules substituting New Door Ltd. as respondent in place of Apnav Miglani and Ashford Reeves. The tribunal so ordered and considered whether it ought to adjourn the hearing in order that the proceedings be served on that company. However, the tribunal considered it was not necessary in the interests of justice and decided not to do so. It took into account that the proceedings had already been served on a director of the company and the managing agent, who had not responded. The tribunal therefore proceeded to consider the making of a RRO against New Door Ltd. as landlord and respondent to the proceedings.

HMO Licensing

(12) The property is a three bedroom flat with a shared bathroom. One of the rooms has a private toilet. The tribunal did not carry out an inspection. The applicant's evidence was uncontested. The tribunal is satisfied on the evidence that from the commencement of the tenancy on 22 July 2021 until 27 March 2022 the property was occupied by three unrelated persons including the applicant. The tribunal was shown evidence that the property was at the relevant time within an area of additional licensing designated by the London Borough of Newham and that no such licence had been issued until after the relevant period. During some the period of the offence the landlord was in possession of a selective licence only for the property, but this is not applicable to a HMO. The selective licence was revoked when it was discovered the property was being let as a HMO.

(13) The tribunal is therefore satisfied that the landlord has committed an offence under s.72(1) of the 2004 Act. On the evidence, on 28 March 2022 an application for an additional licence was made. That licence was granted on 1 September 2022. Pursuant to section 72(4)(b) of the 2004 Act it is a defence to proceedings under s.72 if an application for a licence had been duly made in respect of the house under section 63, and that application was still effective. The tribunal is satisfied that the period of the offence ended on 27 March 2022.

Applicant's occupation

(14) The rent paid for the applicant's room was £1050 per month exclusive of a contribution to utilities, which were charged separately at £250 pa. The applicant produced a statement of account showing all her rent payments, including a holding deposit of £200 and a further deposit of £850. The £200 was held against utilities. The property is new-build. The applicant said that there was however no fire door to the kitchen, no fire blanket or extinguisher and the fire alarm did not work.

(15) The applicant gave evidence of her experiences while living at the property during the period of commission of the offence by the landlord. In November 2021 the managing agent issued a notice seeking possession (under section 21 of the Housing Act 1988) as the agent said that the landlord wished to rent the property to a single family rather than room by room. Shortly after the service of the notice, the applicant had to go abroad owing to the loss of her grandmother. Her absence was extended, owing to which she lost her job and claimed Universal Credit when she returned. While she was away her TV and other belongings went missing from her room. She withheld £700 in rent owing to this.

(16) The agent refused to put locks on the door as the applicant then requested. While she was away the applicant sent a family member to check her mail and belongings. The other tenants refused the family member entry and called the police

(17) While the applicant had been abroad the managing agent had corresponded with her to try to negotiate her departure once the other tenants had left. The applicant felt pressurised by these communications, which included:

"to resolve this amicably, if you remove your belongings tomorrow and return the keys, we are happy to release your deposit and full, and Julius will drop the money claims outstanding instead of issuing a further claim for the whole property."

and

"Also to mention if you choose not to move out on 21 January I would start a claim against you for the outstanding rent (£700) with the county court plus for full apartment rent cost which is £3000 per month…

…to finalise this matter you can either to agree to Michael's terms of vacating the property based on his proposal and hereafter start the rent repayment order or I will proceed with all of the above and previously

mentioned legal procedures which will become really inconvenient for yourselves…

Please note that the checkout is no later than 2pm. I will visit the property tomorrow after 2pm to check if you have vacated unless advised otherwise."

(18) The applicant did not have a tenancy for the whole property making her liable under her agreement for the entire rent for it. The timing and content of these communications were inappropriate and the tribunal finds they did put pressure on the applicant. The managing agent also sent an email dated 25 January 2022 to the applicant misrepresenting the law on RROs to the landlord's advantage.

(19) On her return from abroad in March 2022, the applicant found a new male tenant occupying one room. Locks on all the doors were installed, allegedly because of the applicant's anti-social behaviour, which she disputed. The applicant could not access the mailbox for several weeks as the new tenant had the only key and she could not obtain one from the agent. She was unable to access correspondence relating to court proceedings for rent arrears from January 2023, in which she said bailiffs were then sent to the property.

The Rent Repayment Order

(20) The property was let to the tenant and an offence was committed by the landlord within the period of 12 months ending with the date the application was made. The Upper Tribunal has considered how the tribunal should approach the making of a RRO. The tribunal has discretion to make one, and in the present case, in the absence of any representations on behalf of the landlord, considers it appropriate to do so.

(21) The Upper Tribunal in *Acheampong v Roman and Ors [2022] UKUT 239* (LC) approved of the decision of the Upper Tribunal in *Williams v Parmar 2021 UKUT 244*, finding that the maximum amount of rent should be ordered only when the offence is the most serious of its kind. Judge Elizabeth Cooke, therefore, suggested a four-step approach in Acheampong. The tribunal should:

- Ascertain the whole of the rent payable for the relevant period;
- Subtract payments for utilities that benefited the tenant;
- Consider the seriousness of the offence and determine what proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence; and
- Consider if any deduction or addition should be made to the figure based on the facts in section 44 of the 2016 Act.

(22) Section 44(4) of the 2016 Act provides:

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.

(23) The tribunal must first determine the maximum amount of rent that can be ordered under section 44(3) of the Act. The tribunal is satisfied that the landlord committed an offence under s.72(1) of the 2004 Act over the period of eight months and 5 days (from 22 July 2021 to 27 March 2022). She withheld £700 in rent for January 2022. The total rent paid is therefore £7700 plus £169.35 for 5 days' rent in March, totalling £7869.35. Having deducted universal credit payments of £491.49 for March 2022, The rent for the relevant period paid by the applicant is £7377.86.

(24) The tribunal did not deduct anything from the rent in respect of utilities paid by the landlord, as these were quantified and paid separately as specified in the tenancy agreement.

(25) Next, the tribunal must consider the seriousness of the offence. The tribunal takes account of the fact that the landlord, the landlord's director and the managing agent have not participated in the proceedings to put forward any evidence that might mitigate that assessment. The flat is in a new-build property and there was no evidence it was not in commensurate condition. There was no fire extinguisher or fire blanket, and the fire alarm was not working. The landlord was represented by a professional managing agent who can be assumed to have made clear to the landlord its obligations in respect of HMO licensing. The possession of a selective licence is not a matter which the tribunal finds mitigates the landlord's conduct. Such a licence is for a single-occupation property, and not a HMO. Indeed, the selective licence made clear that it was not valid where more than one household was in occupation.

(26) This is not the most serious of offences, but it is not the least serious. It is mid-range in the view of the tribunal, which determines that the appropriate starting point is 65% of the rent to reflect that.

(27) There was throughout the relevant period a lack of transparency as to the identity of the landlord. Furthermore, the tribunal considers the conduct of the landlord through its managing agent in trying to pressurise the tenant to leave the flat, hindering her access to her mail, and its wider communications to her to be relevant to the amount of the RRO it should make. The landlord's agent and director have produced no evidence that could mitigate their conduct, and the tribunal is entitled to conclude that

the agent acted on the landlord's instructions. The tribunal considers these factors merit an increase of 20% to 85% of the rent to £6271.18.

(28) The tribunal declines to make any deduction for the tenant's conduct in withholding rent which is not evidenced, other than an amount of £100 for the withholding of rent. The tribunal therefore makes a rent repayment order in favour of the applicant in the sum of £6,171.18.

(29) The tribunal also orders the landlord to refund to the applicant her tribunal fees of £300 in bringing the application.

Name: Judge F. Dickie **Date:** 2 June 2023

ANNEX

Under Rule 51, where an in-time request is made in writing by a party pursuant to rule 51 of the Tribunal Rules, the tribunal in any event may set aside a decision which disposes of proceedings and re-make the decision if it considers it in the interests of justice to do so and a party was not present or represented at a hearing.

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. Any appeal in respect of the Housing Act 1988 should be on a point of law.

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