



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

**Case Reference** : **LON/OOAG/HMF/2022/0241**

**HMCTS** : **V: CVPREMOTE**

**Property** : **104D Euston Road, London NW1  
2HA**

**Applicants** : **Hongrui Shi**

**Respondent** : **Gerry Gilchrist**

**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** : **On line**

**Date of Decision** : **14<sup>th</sup> June 2023**

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**DECISION**

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### **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

#### **Decision:**

**The Respondent shall pay a Rent Repayment Order of £3060.**

**The Respondent shall also pay the Applicant £300 representing her application fee and hearing fee.**

**The total sum of £3360 shall be paid within 28 days of receipt of this decision being issued.**

#### **Reasons:**

1. In this case the Applicant, Hongrui Shi (“The Applicant”) is seeking a Rent Repayment Order against the Respondent, Gerry Gilchrist (“The Respondent”).
2. The Applicant was in occupation of premises at 104 D Euston Street, London, NW12HA (“The premises”) as an Assured Shorthold Tenant. The Respondent was her landlord. The premises consist of a four - bedroom shared flat. The Applicant shared the premises with other occupiers that were not members of her household. The occupiers shared facilities but had exclusive possession of their rooms. Accordingly, they were assured shorthold tenants pursuant to s.3 Housing Act 1988. They did not sign a tenancy. The other occupiers at the premises were Mr Quin Chao Wang, Ms Yushi Peng and Jae Yijue Zeng.
3. The Applicant had occupied the premises on two separate occasions, June 2021- October 2021 and 2<sup>nd</sup> February 2022 – 31<sup>st</sup> October 2022. She provided documentary evidence that she had paid rent for the periods 30/11/21-30/10/22. The rent was paid to a company called Realrole Ltd. There is no dispute that this is the Respondent’s company.

4. The Applicant seeks a rent repayment order for the period March 2022 to October 2022 (“The relevant period”). The total rent paid in this period was £4800. There is no dispute that the premises constitute an HMO. The local authority visited on 6<sup>th</sup> October 2022 and wrote to the occupiers on 10<sup>th</sup> October 2022 confirming that the premises were occupied as an unlicensed HMO. The premises lie within an area of Camden where there is an additional licensing scheme which required the premises to be licensed. The Respondent applied for a license on 15<sup>th</sup> November 2022.
5. The Applicant made her application for a Rent Repayment Order on 10<sup>th</sup> October 2022 and her application is therefore made in time. The Respondent has not been convicted of an offence in relation to failure to license.
6. It is the Applicant’s case that the Respondent failed to license the premises which fell under the additional licensing scheme throughout the relevant period.
7. The Rent Repayment Order application was made pursuant to section 41 of the Housing and Planning Act 2016.
8. At the hearing the parties represented themselves. The Applicant had the assistance of an interpreter, Yang Sun.
9. The Applicant confirmed that at all times during the relevant period there were three other occupiers in the premises ( see above). Yushi Peng was replaced with Ehbiying Zhang in July 2022. She said she did not know the occupiers before she moved into the premises. They all paid rent separately. The premises were located in a three-storey building. She never signed a tenancy agreement although the landlord’s agent tried to get her to sign one which was inaccurate. Service costs were included in the rent. She did not have the benefit of universal credit during the relevant period.
10. The Applicants said that the boiler next to her room made a very loud noise when the shower was used. She had complained about this to the landlord and his agent also the roof was leaking. She showed the Tribunal a photograph of

the damage caused by the leak. She said that on 8<sup>th</sup> February 2022 the landlord had asked her to move out or pay rent of £1600. She also said the landlord used his key to access the premises- common areas without her knowledge. She said that the Respondent asked her to move out after the local authority became involved.

11. The Respondent told the Tribunal that he believed the premises did not need a license. He thought that occupiers were members of the same household because they put forward others to occupy. The rooms were not advertised. Someone from Camden revenue department had visited in 2018 and he had assumed everything was okay. He said that he had 5 other properties, 3 in Elstree and 2 in Deal. He accepted at the hearing that the premises should have been licensed.

12. The Respondent denies that he had tried to unlawfully evict the Applicant. He had lost his temper and then apologised. He said the leak had been caused by an overflowing bath upstairs. Another leak had been caused by a valley gutter above being blocked. He had arranged for this to be cleared. He accepted that decorations in the premises were tired. He was aware of the complaint about the shower pump noise but not of other complaints of disrepair. He had installed insulation to try and reduce the pump noise. He provided evidence of the cost of utilities in the premises.

### *The law on Rent Repayment Orders*

### **The Housing Act 2004 (“the 2004 Act”)**

13. 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 unlicensed HMO and

under section 95(1) of having control or management of an unlicensed house. On summary conviction, a person who commits an offence is liable to a fine. An additional provision was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

14. 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" including s.257.

*254 Meaning of "house in multiple occupation"*

*(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—*

- (a) it meets the conditions in subsection (2) ("the standard test");*
- (b) it meets the conditions in subsection (3) ("the self-contained flat test");*
- (c) it meets the conditions in subsection (4) ("the converted building test");*
- (d) an HMO declaration is in force in respect of it under section 255; or*
- (e) it is a converted block of flats to which section 257 applies.*

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

*An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act 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—*
  - (i) the standard test under section 254(2) of the Act;*

*(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or*

*(iii) the converted building test under section 254(4) of the Act.*

16. In addition under s.56 Housing Act 2004 the local authority can designate an area for additional licensing. This was the case here.

17. 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”)**

18. 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.

19. 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.

20. 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.”

21. 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.”

22. 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.

23. 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.

24. 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).”

25. 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.

26. 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.”

27. 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.

28. 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]).

29. 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%).

30. 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**

31. The Applicant provided evidence of the rent that they she had paid and satisfied the Tribunal beyond reasonable doubt that for the relevant period the premises should have been licensed but were not. The Respondent was the landlord of the premises and was therefore the person responsible for obtaining the license but did not do so. The Tribunal is satisfied beyond reasonable doubt that the offence has been committed. The premises were covered by the additional licensing scheme and should have been licensed.

### **Reasonable excuse**

32. The Respondent appeared to be arguing that he had a reasonable excuse for not licensing the premises in that he thought the local authority were aware of the premises from 2018 but had taken no action. In fact it was the revenue department of the local authority that had been involved previously. The Respondent was obliged to keep himself informed of licensing requirements. He clearly failed to do so. He has a number of properties and ought to have been aware of the licensing requirement. Accordingly, the Tribunal does not consider that there was a reasonable excuse in this case. It is the Tribunal's decision to make a Rent Repayment Order.

## **Conduct**

**33.** The Applicant was to all intents and purposes a good tenant. She made various allegations in relation to the Respondent's conduct. The allegation of harassment and a threat of unlawful eviction was unimpressive. The correspondence did not support the allegation. The Tribunal accepts that the Respondent lost his temper and apologised on the date in question. There was disrepair at the premises but the Tribunal accepts that the Respondent took some steps to address this.

## **Quantum**

34. This was a serious offence of failure to license. Applying the criteria in *Acheampong* above:

- The total rent paid for the relevant period was : £4800.
- There is a deduction to be made for utilities – we have calculated this at £90pcm in relation to the Applicant alone. Over the relevant period this reduced the potential award to £4080.
- As already indicated, this was a serious breach with a risk to health and safety of the Applicant associated with water penetration and dampness.

35. Applying the other criteria under the Act there was little evidence of poor conduct by the Respondent as detailed above.

36. The financial circumstances of the Respondent were unknown and he gave no further evidence on that.

37. In light of all of these matters we consider that an 75% award is appropriate.

38. The Respondent is required to pay the Applicant £3060 in relation to the Rent Repayment Order. He is also required to pay the Applicant her application

and hearing fee of £300 in total. The total sum of £ 3360 shall be paid within 28 days of receipt of this order.

Judge Shepherd

14<sup>th</sup> June 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.