



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

**Case reference** : **LON/00AM/HMF/2022/0239**

**HMCTS code** : **Face to Face**

**Property** : **91 Victorian Grove, London N16 8EJ**

**Applicants** : **Amy Berg  
Clementina Calderini Jackson  
Kirsty Ferguson-Lewis  
Sophie Henry**

**Representative** : **Ms Berg**

**Respondent** : **Ms Jaya Sanah**

**Representative** : **N/A**

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

**Tribunal members** : **Judge Tagliavini  
Mrs L Crane MCIEH**

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

**Date of hearing** : **19 June 2023**

**Date of decision** : **20 June 2023**

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**DECISION**

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### **The tribunal's summary decision**

- (1) The tribunal finds beyond reasonable doubt the respondent has committed the offence of controlling or managing property at 19 Victorian Grove, London N16 8EJ without obtaining the requisite Additional Licence. The tribunal therefore make an award of **£16,191.86** by of a rent repayment order payable by the respondent to the applicants within 28 days of this decision being sent to the parties.
  - (2) The tribunal also make an order requiring the respondent to reimburse the applicants the sum of **£300** in respect of the application and hearing fee. Such sum to be paid by the respondent within 28 days of this decision being sent to the parties.
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### **Background**

1. The applicants are the joint lessees of the subject property at 19 Victorian Grove, London N16 8EJ ('the property') under a written tenancy agreement dated 12 August 2021 for a term of 12 months plus 3 days from 15 August 2021 at a rent of £2842.00 per month excluding utilities. The respondent is the landlord and registered owner of the subject property.
2. The subject property comprises a 4-bedroom house with shared use of kitchen, living room, bathroom/w.c. and w.c. Although the applicants are long-term friends, they comprised 4 separate households and therefore the property was let as an house in multiple occupation (HMO) and required an Additional Licence pursuant to the London Borough of Hackney's Additional Licensing Scheme effective from 1 October 2018 to 30 September 2023.

### **The application**

3. In an application dated 14 October 2022, the applicants alleged an offence pursuant to section 72(1) of the Housing Act 2004 has been committed and seek a Rent Repayment Order (RRO) in the sum of £34,104.00 for the 12 months period 18/8/2021 to 18/8/2022 during which period they occupied the property as their main or only home.

### **Litigation history**

4. In directions dated 24 February 2023 the respondent was required to provide a statement and supporting evidence to the tribunal by **14 April 2023**. The respondent failed to comply with this direction and failed to provide any statement or evidence to support her objections (if any) to this application to the tribunal.
5. The respondent did not attend the hearing and was not represented. However, before the start of the hearing the respondent sent a request by email renewing her previously unsuccessful application for the hearing to be adjourned to a later date. This was accompanied by a letter from her G.P. dated 16 June 2023.
6. The tribunal refused the respondent's application to adjourn the hearing. The tribunal finds the medical evidence did not indicate Ms Sanah was unable to attend or to follow or understand the hearing but stated only that she was suffering from stress related issues.
7. In refusing the application to adjourn, the tribunal considered the respondent's failure to comply without explanation with the tribunal's directions, the prejudice caused to the applicants by a delay to the conclusion to the application and the absence of compelling evidence indicating the respondent was medically unfit to attend the hearing.

### **The Law**

8. Section 72(1) of the Housing Act 2004 states:

*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.*

### **Parties' contentions**

9. The applicants relied upon a hearing bundle of 163 (electronic) pages which included the tenancy agreement, proof of rent paid in full, evidence of universal credit payments to Ms Ferguson-Lewis during the 12 months period and evidence of the additional licensing requirement by the London Borough of Hackney and the absence of a licence for the subject property. The applicants also told the tribunal that they had enjoyed living at the property and had renewed their contractual tenancy albeit at an increased rent and had spent two years in occupation. The applicants stated there had from time to time been issues of water leaks through the roof and with the plumbing, which the respondent had been slow to have repaired. The applicants told the tribunal that they had voluntarily left the property on 18 August 2022

at the end of the contractual period and believed that it has since been re-let.

10. The applicants told the tribunal that at the start of their two contractual tenancies and at no time during either of them, had the respondent or her agent had not provided them with a Right to Rent Guide; electrical safety certificates; gas safety certificates or an EPC.
11. The applicants told the tribunal they believed the respondent was a professional landlord as she had 'boasted' to them about have a number of properties which she looked after.
12. No statement or evidence was provided by the respondent in respect of her financial affairs. However, the tribunal were made aware of the apparent financial difficulties the respondent currently finds herself, as indicated in the documentation provided in support of the first and unsuccessful adjournment application. However, the respondent had asserted this information was confidential and had not provided copies to the applicants and neither they nor the tribunal were provided with any opportunity to question the respondent.

### **The tribunal's decision and reasons**

13. The tribunal is satisfied, so it is sure the applicants have proved the respondent had control of or was managing the subject HMO, which was required to be licensed, but which was not licensed pursuant to section 72(1) of the Housing Act 1985. As the respondent offered no evidence the tribunal finds no defence' of reasonable excuse has been established by the respondent. In the absence of any exceptional circumstances, the tribunal considers it appropriate to make a RRO.

### **Amount of the RRO**

14. In considering the amount of the RRO the tribunal had regard to section 44(3) of the Housing and Planning Act 2016 which states:

*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.*

15. The tribunal established the maximum amount of any RRO is £34,104.00. From this sum must be deducted the universal credit payments received by Ms Ferguson-Lewis in the sum of £7,117.56 leaving £26,986.44 as the adjusted maximum sum payable. No sums are deducted for utilities as these were paid by the applicants in addition to the rent.
16. In the absence of any complaint from the respondent about the tenant's conduct the tribunal makes no deductions in respect of this. However, the tribunal finds the respondent is or holds herself out to be a professional landlord. As such, the tribunal finds she should be or should have made herself aware of the local authority's licensing requirements as well as the legislative requirements for landlords in the private sector.
17. However, the tribunal did not consider the offence to be of the most serious kind and it was not accompanied by allegations of harassment or attempts at retaliatory eviction for complaints of disrepair. From the evidence provided by the respondent in support of her request for an adjournment the tribunal accepts the respondent is currently experiencing some financial difficulties and also finds, in the absence of any contradictory evidence, Ms Sanah has not previously been convicted of a relevant offence.
18. Therefore, in all the circumstances the tribunal finds it reasonable and appropriate to make an award representing 60% of the adjusted maximum rent prepayable which amounts to **£16,191.86**.
19. The tribunal also directs the respondent to reimburse the applicants the application and hearing fee of **£300**.
20. The tribunal directs the respondent to pay the sums at paragraphs 17 and 18 above with 28 days of this decision being received by the parties.

Name: Judge Tagliavini

Date: 20 June 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).