FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BC/HMF/2022/0222** **V:CVPREMOTE**
Property	:	**Flat 115, Memorial Heights, Monarch Way, Ilford, Essex, IG2 7HS**
Applicant	:	**Logeshwaran Prabhu (1)** **Manju Priya Manoharan (2)**
Representative	:	**Justice for Tenants**
Respondent	:	**Leonard Alagaratnam**
Representative	:	**-**
Type of application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	:	**Mrs E Flint FRICS** **Mrs S Coughlin MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of hearing	:	**22 March and 16 May 2023**
Date of decision	:	**26 May 2023**

DECISION

DECISION

The tribunal determines that the applicants Logeshwaran Prabhu and Manju Priya Manoharan are entitled to a Rent Repayment Order against the respondent, Leonard Alagaratnam in the sum of £9,240 (nine thousand two hundred and forty pounds), payable within 28 days of the date of this decision. The reasons for our findings is set out below.

In addition, we order that the respondent do repay to the applicant the sum of £300 (three hundred pounds) in respect of the fees paid to the tribunal. Such sum to also be paid within 28 days of the date of this decision.

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was V:CVPREMOTE. A face to face hearing was not held because no one requested one and all the issues could be determined in a remote hearing. The documents we have been referred to are in bundles of documents totalling 563 pages the contents of which we have recorded.

Background

1. This was an application made by Logeshwaran Prabhu and his wife Manju Priya Manoharan for a Rent Repayment Order (RRO) under the Housing and Planning Act 2016 (the HPA) The respondent is Mr Leonard Alagaratnam, the long lessee of Flat 115 Memorial Heights, Monarch Way, Newbury Park, Ilford IG2 7HS.

2. The accommodation is a one bedroom flat on the first floor of a modern three storey purpose built block which was occupied by the Applicant and his family under an Assured Shorthold Tenancy (AST) for 12 months from 5 July 2021 at a rent of £1100 per calendar month which was paid directly to the landlord.

3. On 9th July 2022 the Application for a RRO was sent to the tribunal. The grounds of the application were as follows: the flat was unlicensed in a selective licensing area which is an offence under s40(3) Housing and Planning Act 2026. The amount of rent claimed was £13200 being twelve payments of £1100.

4. The tribunal issued the application and sent a copy to the Respondent on 28 September 2022. Directions were issued on 27 October 2022, the Applicant responded according to the timetable set out in the Directions however, the Respondent did not respond to the Directions. The applicants sought a debarring order on 19 January 2023 which was refused on the grounds that making such a barring order would be disproportionate when taking into account the tribunal's overriding objective to deal with cases fairly and justly.

5. A face to face hearing was held on 22 March 2023. The applicants represented by Mr Chris Daniels of Justice for Tenants, attended the hearing. The Respondent appeared in person.

6. Prior to the commencement of the initial hearing we were provided with a four hundred and eighty eight page bundle by the Applicant.

7. At the commencement of the hearing the Tribunal asked the Respondent for his reasons for not responding to the Directions. He explained that he had not been dealing with many matters in his life since July 2020. He had recently tried to speak to Justice for Tenants but they had not returned his calls. He said that he wished to produce medical evidence as to his mental state which he understood would be available within the next few days and asked for a postponement.

8. Mr Daniels objected to an adjournment on mental health grounds stating that it had no bearing on the Respondent's liability and that additional costs would be incurred by the Applicants.

9. The Tribunal considered this matter and decided that the Respondent's mental health was relevant and that it was in the interests of justice to adjourn. A revised timetable was agreed with the parties with a video hearing listed for 16 May, as being the most appropriate in all the circumstances. Directions to this effect were issued on 22 March 2023.

Hearing on 16 May 2023

10. The Applicants were represented by Cameron Neilson of Justice for Tenants and the Respondent appeared in person.

11. This application is being made under s.41 of the Housing and Planning Act 2016 for the following offence: Having control of, or managing, an unlicensed house, under Part 3 s.95(1) Housing Act 2004 which is a relevant offence under s40(3) of the Housing and Planning Act 2016.

12. The Housing Act 2004 Part 3 s.95(1) states: (1)A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part … but is not so licensed.

13. The Housing Act 2004 Part 3, Section 80(1) permits local authorities to designate the area of their district or an area within their district as subject to selective licensing provided that certain criteria (detailed in Part 3, Section 80(2)-81, Housing Act 2004) are met. The flat was situated within a selective licensing area as designated by Redbridge Council. The selective licensing Scheme came into force on 1 October 2018 and will cease to have effect on 30th September 2023.

14. Mr Neilson said that the Respondent is the legal proprietor and landlord of the property and did not hold a selective licence as required under Part 3 of the Housing Act 2004 during the term of the AST. He applied for a licence on 6 August 2022.

15. The Respondents are eligible to have a Rent Repayment Order made against them according to Section 263 of the Housing Act 2004, which states:
    (1) "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.

16. Mr Alagaratnam was the beneficial owner of the flat and the rent was paid to him. He was therefore in control of the premises and also managed the flat.

17. The applicants had paid their rent throughout the 12 months of the tenancy and followed the correct channels in dealing with the landlord.

18. Mr Neilson referred to a number of precedents including Williams v Parmar & Ors (2021) UKUT 244 (LC) which provides guidance on the quantum of any RRO:
    " *The amount of the rent paid during the relevant period is therefore, in one sense, a necessary "starting point" for determining the amount of the RRO, because the calculation of the amount of the order must relate to that maximum amount in some way*."

19. He asserted that the Respondent has failed to comply with their legal obligations prescribed by the Housing Act 2004 Sch. 4: S.3 required all appliances and furniture made available by the landlord to be in a safe condition:
    - The double bed had loose legs making it unsafe to use, particularly for the Applicant's wife who was pregnant at the time..
    - A torn and dirty sofa in the flat was never disposed of or replaced as previously agreed with the Respondent.
    - At check-in the flat had not been professionally cleaned as previously agreed.
    - The floor, carpet and curtain were emitting a foul smell. A carpet cleaner was only sent 5 weeks after the check-in to remediate the condition.
    - The living room balcony door was permanently in tilt mode and could not be fully closed since 21 January 2022, leading to an excess cold hazard at the flat in the winter. It was asserted that the door was also at risk of falling due to strong wind.
    - Electric wires were exposed on the kitchen floor creating an electrical hazard, particularly to the Applicant's children.
    - The hot water tap in the bathroom began to leak which slowly drained all the hot water from the boiler. It further caused a foul smell in the bedroom which made the room unfit for occupation. The Respondent never carried out the required repair as promised.

20. Furthermore, The Applicants exhausted all communication mediums to reach the Respondent including email, phone call, mail and Whatsapp messages. The Respondent did not respond to any reports.

21. He called Mr Prabhu to give evidence who described the layout of the flat and the circumstances relating to prior to moving in. He explained that they had only viewed the flat over the internet as they had been in quarantine. His wife was pregnant when they arrived at the flat accompanied by their 5 year old son.

22. The landlord had promised to have the flat professionally cleaned. He said that the flat had not been professionally cleaned prior to check-in. A cleaner arrived on the second day but only spent 2 hours at the flat. Despite reminders it was a further 5 weeks before a carpet cleaner arrived. This resolved the foul smell from the carpets. Under cross examination he agreed that he had discussed with the landlord changing the carpets with wooden flooring and that the carpet was cleaned after it was agreed that installing wooden flooring would not be convenient.

23. The bed was unsteady: the headboard was loose consequently the bed was never used. They had purchased a mattress which was laid on the floor. The sofa was dirty and the cover torn; a replacement was not provided. During cross examination he agreed that the landlord had provided a new mattress which they decided not to use.

24. In January 2022 the balcony door handle stopped working resulting in the door being open throughout the winter. The flat was cold. This was particularly difficult as the baby was only a few months old. The door was never repaired during the tenancy.

25. Although the landlord had agreed to have the hot water tap in the bathroom repaired, he did not do so. Consequently, there was often no hot water when it was required. The hot water cylinder worked but the hot water ran away faster than the tank could heat the water.

26. Mr Prabhu accepted that the landlord had dealt with some issues promptly., for example problems with the washing machine, the drains in the kitchen and bathroom.

27. The boiler cupboard caused a smell in the bedroom. The landlord thought the problem was the external wall. The landlord thought it had been fixed but the problem arose again.

28. Mr Alagaratnam said that the relationship had been courteous for the first half of the tenancy. He had dealt with everything promptly. Subsequently he was

not able to do what the tenant wanted due to his personal circumstances. He had always wanted to keep his tenants happy.

29. He accepted that the tenancy agreement stated that the flat was for the occupation of a maximum of 2 persons and that he had agreed to let the flat knowing that the tenants had a child. He thought it might be alright for a couple and small child. He said that until they met at the check-in he did not know that Mrs Manoharan was pregnant. At that point he did not feel that he could refuse to let them stay as they had nowhere to go.

30. He had employed a cleaning company to clean the flat at the end of the previous tenancy. When it was not done to a satisfactory standard, he had asked them to return the following day.

31. He did not accept that the bed was dangerous. The frame was in good working order, the screws to the headboard could have been turned without any special tools.

32. He explained that the wires below the kitchen units were disconnected: there had originally been a skirting heater which had been removed.

33. There had been a historic leak in the boiler cupboard which had been fixed. He asked the tenant to mark the stain with a pencil so that any change could be monitored.

34. As regards the hot water tap he accepted he should have had it repaired/replaced. He had been advised of the issue on 28 November 2022.

35. When asked about the inspection by the Environmental Health officer in May 2022 he said he could not recall in detail anything about that period of time.

36. He said that with his wife they owned a total of three properties, including the family home. He had lived in the flat for about two years and in his mind always thought that one day he might return. Although thinking it through logically this seemed unlikely as he has a family.

37. The flat had been let since 2009. Prior to 2018 he had a managing agent. He used forums and websites to keep up to date on landlord's obligations to ensure that he provided all the necessary documentation for the tenants. The EPC had been provided at the marketing stage.

38. He accepted that he had not made any enquiries regarding the need to obtain a licence. Until recently had had not been a member of the National Landlords Association.

39. Under cross examination he confirmed that the water supply was not metered and that the water rates were part of the service charge.

40. Mr Alagaratnam referred the Tribunal to a number of photographs of his family home which was and continued to be undergoing structural works. The problems arising from these works were he said the cause of his depression and inability to focus on what he needed to do at the flat. He referred the Tribunal to a letter from his doctor regarding his mental health.

41. In closing submissions Mr Neilson said that the Tribunal had to consider if a relevant offence had been committed. The Respondent landlord has conceded that the flat was not licensed and that he has received the rents from the Applicants. He did not dispute that the flat was in a selective licensing area.

42. Turning to the defence of reasonable excuse. The case of Marigold v Ors [2023] UKUT 33 LC. sets out the framework which the Tribunal should follow. The offence is a continuous offence, Therefore the reasonable excuse must be considered in respect of each individual day. It requires a three stage process: the facts asserted by the landlord; are those facts proven and do those facts viewed objectively provide a reasonable excuse and how long did those facts last? These factors should be considered in the round including the landlord's experience.

43. Here three excuses have been raised:
    - Lack of knowledge. This alone is insufficient: Thurrock Council v Khalid Daoudi 2020 UKUT 0274 (LC). The Selective Licensing scheme had been in force since October 2018, some 2 years and 9 months prior to this tenancy. Mr Neilson said this meant the landlord had plenty of opportunity to make himself aware of the rules. The breach had occurred during the previous tenancy also. The flat had been let out since 2009, the landlord should have had in place a process to keep abreast of legislation. By April 2022 the landlord should have been alerted to the need for a licence following correspondence from the local authority.

    - Disruption due to work on family home and a medical issue. These are inter-related. It is accepted that stress and other conditions can form a defence in part. However, it must result in a severe disorder which is a different calibre to this case. He referred to AA v Rodriguez UTLC 5 Nov 2021 where a defence of insanity was accepted as a reasonable excuse. If Mr Alagaratnam had been feeling overwhelmed he should have appointed a managing agent.

44. In accordance with Acheampong v Roman [2022] UKUT 239 the quantum of the award should reflect the amount of rent paid less any utilities paid by the landlord, the seriousness of the offence and finally the factors set out in section 44(4) which must be taken into account. These are the conduct of both the landlord and tenant; the financial circumstances of the landlord and

whether the landlord has at any time been convicted of an offence identified in the table at s45 HPA 2016.

45. It is not appropriate to make a deduction for the water rates as the amount included in the service charge is not based on the actual amount used by the tenant but is a fixed percentage of the amount charged to the block, see Vadamalayan v Stewart and Others [2020]UKUT 0183.

46. He asserted that the length of the breach should be taken into account when considering the seriousness of the offence. It is a long offence because it commenced before the start of this tenancy, the previous tenant had been in occupation for about two years.

47. Mr Neilson contended that Mr Alagaratnam was a professional landlord with a small portfolio which he has been renting out for many years. He therefore has less excuse for the breach.

48. Dealing with disrepair is the role of the landlord, he should not be given credit for acting in a timely manner for the first half of the tenancy. Thereafter there were maintenance issues.

49. The Tribunal has been given insufficient information regarding the landlord's financial situation to make deductions on this basis. There is no evidence that the landlord has been convicted of any offence in the relevant table.

50. He proposed a starting point of 95% of the rent. He confirmed that an application fee of £100 and hearing fee of £200 had been paid to the tribunal. He sought costs of £300 under Rule 13(2) Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

51. Mr Alagaratnam said that he understood the point regarding lack of knowledge: he had found out about everything except licensing. He had not comprehended the requirements referred to in the April 2022 email from the local authority, which he would have done in normal circumstances. He said that he did not try to let the flat out again until 6 weeks after the end of the tenancy i.e. after he had applied for a licence.

52. When the dripping hot water tap was first reported he said he was unable to do anything; he couldn't help himself. The balcony door could have been closed; he had closed it when the tenants left. The photograph of the sofa in the bundle had been taken about two and a half months after the tenants moved into the flat. The sofa was not included on the inventory. He had always wanted to provide a good environment. He had supplied a new AEG washer dryer and some wooden flooring not long before the end of the previous tenancy.

53. He asked the Tribunal to take into account that his home was uninhabitable which was very stressful as he and his wife have three children. He said he accepted that he had let down the tenants and had never been like that before. The Applicants had spoken to the previous tenants before moving in. He had liked new tenants to speak to outgoing tenants so that they could find out what he was like as a landlord.

54. He acknowledged that with hindsight not taking on a managing agent was a poor decision. He could see that now as he was feeling better than at the time. He did not have any convictions, he was not a professional landlord. He confirmed that the council had not served an improvement notice.

55. He had tried to reach out to Justice for Tenants without success. He would have preferred to settle and agree a payment plan. Currently approximately 60% of the rent pays the mortgage, the service charge takes approximately 15%, once management fees are paid there is little benefit from letting the flat.

The Tribunal's decision and reasons for that decision

56. We have considered all the evidence and submissions and find that the criteria necessary to support a RRO has been met. The flat was unlicensed throughout the period of the tenancy and an application for a licence was not made until after the tenancy had expired. There were a number of issues with the flat during the second half of the tenancy.

57. The Tribunal accepts that owing to Mr Alagaratnam's home circumstances he became depressed and did not fully appreciate that he was not dealing adequately with the various issues which had arisen at the flat. His depression, as supported by a doctor's letter and his own description of his mental health however are not sufficient to form a reasonable excuse and absolve him entirely from the consequences of his inaction. He cannot rely on his deteriorating mental health in relation to the lack of a licence which ought to have been in place since October 2018. The Tribunal noted that for the first half of the tenancy he had dealt with problems promptly, in a proper landlord like manner and accept that his depressive state of mind, resulted in the delays in dealing with queries thereafter.

58. Section 43 provides that this tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the offence has been committed. In this case we consider that it is appropriate to make such an order.

59. Having made that finding we need to consider what level of RRO is appropriate in this case.

60. This has been qualified by the Upper Tribunal in guidance given by Judge Cooke at para. 20 of Acheampong v Roman [2022] UKUT 23920. In summary:

(i) ascertain the whole of the rent for the relevant period;

(ii) subtract any element of that sum that represents payment for utilities that only benefited the tenant, e.g. gas, electricity and internet access;

(iii) consider how serious the 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?

(iv) finally, 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), namely. These are matters the tribunal must 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 identified in the table at s.45

61. In this case the whole rent for the period is £13,200. Most of the utilities were paid by the tenant. The landlord however paid water rates as part of his service charge for the flat. He did not however provide evidence of how this water rate was calculated and whether or not the consumption was metered. We do not therefore propose to make any deduction in this respect.

62. Although the case is not as serious as violence for securing entry to a property or eviction or harassment of tenants which carry potentially higher sentences in the criminal courts it is of its type more serious than others since there had been failure to licence over a long period and there were outstanding disrepair issues in a small flat occupied by two young children, one of which was new borne. The landlord was an experienced landlord although honly let out two properties. We consider that 80% of the rent is a fair reflection of the seriousness of this offence, a figure of £10560.

63. Finally we look at the other factors set out in s.44(4).

64. Here there is no relevant behaviour of the Applicant in relation to the offence to reduce the award: rent was paid throughout and the Applicant had two vulnerable children.As noted above the landlord initially responded to all issues raised. It was only once he became overwhelmed by his own domestic problems that he ceased to communicate with his tenants. He has accepted that with hindsight he ought to have appointed a managing agent: he had prided himself on being a good landlord who wanted his tenants to be happy

but did not appreciate that his inaction was causing the tenants problems. We accept that his mental health problems during the second half of the tenancy contributed to the inadequacies experienced by the tenants during that period and we therefore consider that a further reduction to 70% is appropriate.

65. The Respondent has not provided sufficient information for the Tribunal to determine any deduction for his financial circumstances.

66. The Tribunal determines that taking into account all the evidence including the long term non licensing of the flat a RRO in the sum of £9240 * * should be made.

67. The Applicant sought repayment of the application and hearing fees totalling £300. In view of the decision set out above the order is made for the repayment of the fees.

Mrs E Flint 26 June 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 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 to 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 (ie 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.

Housing and Planning Act 2016

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.

	Act	*section*	*general description of offence*
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).

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.

43Making 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).

44Amount 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

47Enforcement of rent repayment orders

(1)An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2)An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3)The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.

56 General interpretation of Part

In this Part—

- “body corporate” includes a body incorporated outside England and Wales;
- ““housing” means a building, or part of a building, occupied or intended to be occupied as a dwelling or as more than one dwelling;

  letting”— (a)includes the grant of a licence, but
  b) except in Chapter 4, does not include the grant of a tenancy or licence for a term of more than 21 years,

  and “let” is to be read accordingly;

  “tenancy”— (a)includes a licence, but
  b) except in Chapter 4, does not include a tenancy or licence for a term of more than 21 years.