FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BB/HMF/2022/0268**
Property	**:**	**12 Creighton Avenue, London E6 3DS**
Applicants	**:**	**Andras Vajk Huszar** **Marcell Beniczky** **Andras Varju**
Representative		**Andras Vajk Huszar**
Respondent	**:**	**Antoni Marianski**
Representative		**PW Moody LLM**
Type of Application	**:**	**Application for a Rent Repayment Order**
Tribunal Members	**:**	**Judge F. Dickie** **Ms F. Macleod (MCIEH)**
Date and venue of Hearing	**:**	**25 May 2023, 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**23 June 2023**

DECISION

Decisions of the tribunal

A rent repayment order is made in the sum of £12,480, payable as follows within 28 days of the date of this decision:

£6240 to Mr Andras Valk Huszar

£3120 to Mr Marcell Beniczky

£3120 to Mr Andras Varju

The respondent shall refund to the applicants the tribunal fees of £300 within 28 days.

The application

1. By an application received by the tribunal on 14 November 2022 the applicants seek a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 (the 2016 Act).

2. The application is made on the ground that the respondent committed an offence under s.72(1) of the Housing Act 2004 ("the 2004 Act", namely having control of or managing a house, which was required to be licensed under Part 3 the 2004 Act but was not so licensed.

3. The applicants occupied the subject premises at 12 Creighton Avenue, London E6 3DS (the "Property") from 5 June 2017 until 4 June 2022 pursuant to assured shorthold tenancies. The rent payable was £1600 per month. The respondent was the freeholder and landlord of the Property. The applicants seek a RRO for the period between 5 June 2021 and 4 June 2022 in the sum of £19,200.00.

4. The Property is a three-bedroom terraced house with two bathrooms and one kitchen. The respondent's managing agent had been Portico Property. After they left the Property at the end of their tenancy on 4 June 2022, the respondent sold it. The tribunal did not carry out an inspection.

The Hearing

5. The tribunal issued directions on the application on 10 February 2023. The matter was listed for an oral hearing which took place on 25 May 2023. The applicants Mr Huszar, and Mr Varju (who attended halfway through the hearing), appeared in person. The respondent attended and was represented by his solicitor Mr Moody.

Applicants' case

6. The tribunal heard evidence from the applicants. Originally the three of them had moved into the Property together with the father of Mr Varjus, who then left in 2018 to return to Hungary to care for his sick wife. Mr Berniczky was named as a tenant, along with Mr Huszar and Mr Varju junior, on the renewed tenancy agreement that was granted in June 2019, and the two subsequent annual agreements in June 2020

and June 2021. It was agreed that the house had been in reasonable condition.

7. In September 2021 officers of Newham Council visited the property and enquired about the relationship of the applicants to each other. The council then issued an enforcement notice against the respondent for breach of planning controls dated 27 October 2021, on the ground that without planning permission there had been a material change of use to Class C4 (House in Multiple Occupation).

8. In November 2021 the managing agent served a notice seeking possession under s.21 of the Housing Act 1988 on the applicants. The applicants said that they contacted the managing agent, who advised them to leave the property as the council would want them out. The council reassured them however that their tenancy was secure despite the landlord not having an HMO licence. The applicants said they were in an ambiguous situation and scary situation because the managing agent put them under pressure to move out in January or February 2022. On 1 March 2022 the managing agent asked the applicants if they would wish to extend their tenancy. A financial offer was made to induce them to move out in March 2022 which they refused.

9. The applicants helped by conducting viewings of the property when on the market, in the absence of the managing agent. They remarked that the agent was not open with prospective purchasers about the presence of Japanese Knotweed at the property, but the tribunal did not consider this relevant.

10. Mr. Huszar had paid £800 rent per month and the other two applicants £400 per month each. They sought a RRO ordered to be paid in the same proportions. There were no rent arrears.

Respondent's case

11. The respondent did not dispute that the offence had been committed, in that an additional licence had been required for the property but not obtained. The respondent agreed that the relevant period was 12 months and that the applicants had paid £1600 rent per month.

12. The respondent said that he is a responsible landlord who dealt promptly with repair requests. He is 77 years old with chronic health problems. The respondent said that he had insisted to the managing agent that Mr Berniczky's name should not be included on the tenancy agreement, to emphasise to Portico staff that he did to want to create a HMO. He said that unaccountably in June 2020 Portico staff did

exactly what he had asked them not to do and granted a tenancy which included Mr Berniczky's name. He explained that at that time his partner, during the nationwide disruption and unhappiness caused by Covid, had been extremely ill with what was subsequently diagnosed as TB until discharged from outpatient care in May 2021, and had been in very poor mental health.

13. The hearing bundle included an account of the respondent's partner's TB diagnosis in August 2020 and his prolonged and very painful treatment until May 2021, and of the respondent's own depressive disorder diagnosed in August 2020. He produced this as evidence of his mental condition up to the first half of 2021 when he felt he took his "eye off the ball" when the tenancy including Mr Berniczky was granted. At the hearing the respondent produced a witness statement. It was filed out of time for the production of evidence, but the tribunal found it added nothing to the evidence already before it relating to the respondent's partner's health.

14. The respondent is a landlord of other properties – a similar house in Stratford managed by Portico and a small flat in East Dulwich which is not managed. He said he had been under the impression that Mr Huszar and the two Mr Varjus were a family unit, but he could not remember why he thought that.

15. The respondent produced emails dated 12 and 15 February 2018 he wrote to the managing agent in which he agreed to Marcel (Berniczky) being registered as a permitted occupant but without tenancy rights.

16. The respondent produced email correspondence from the managing agent from June 2021 informing him he required an additional licence. There were exchanges with the agent and the council about applying for one (which would have first required a grant of planning permission for the change of use), but no such application was made and ultimately by September 2021 the applicant had decided to sell the property to give the proceeds to his son.

17. A Portico Landlord Licensing Questionnaire had been completed with the respondent's replies in July 2021, stating that the property has fire doors in the kitchen, fire blankets in all kitchens and fire extinguishers in the stairways. The respondent acknowledged that these answers had not been correct at the time. The respondent said the Property had been refurbished prior to the applicants' occupation and two smoke alarms installed, which he believed were mains operated, and checked annually by the managing agent as part of the contract for full management. He received written reports at least annually from Portico on the condition.

18. The selective licence is dated 5 October 2017 (which was after the applicants took up occupation) and expired on 4 October 2022. It permitted the occupation of up to 8 people living as one household.

19. The respondent gave expenditure figures for the property for the year 2021/22 including Portico's fees of £2764.80, insurance of £400.68, electrical inspection £180, roofing repair £144, gas safety certificate £135 and garden fence repair £198. The respondent said he did not pay for water rates or wifi.

Decision with reasons

20. The burden of proof is on the applicants and the standard of proof is beyond reasonable doubt. The applicants were not a single household. The tribunal is satisfied that the property was let to the applicants over the relevant period, that an additional licence was required but not obtained, and accordingly that an offence was committed by the respondent 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 considers it is clearly appropriate to do so. There is no good mitigation for the offence having been committed.

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 12 months from 5 June 2021 to 4 June 2022 and that the maximum RRO is £19,200 (£1600 per month rent paid over 12 months). There were no utilities paid for by the respondent that benefited the tenant and the landlord's other expenditure is not appropriate for deduction.

24. In assessing the seriousness of the matter, the tribunal observes that the respondent rents out other properties and has been doing so for many years. The respondent's argument that he could have avoided committing an offence merely by leaving Mr Berniczky's name off the tenancy agreement is entirely misconceived. Mr Berniczky was clearly the tenant of the Property, jointly paying the rent for exclusive occupation. The liability to licence a HMO cannot be avoided in this way. The tribunal takes into account that the Property was generally in good condition. In all the circumstances the tribunal considers this case is not of the most serious nature, but nor is it at the least serious end of the scale. It considers that a RRO of 65% of the maximum (£12,480) is appropriate to reflect seriousness, being in the mid range.

25. In considering the parties' conduct, there were no issues with the respondent's own behaviour towards his tenants, and no poor conduct on the part of the applicants.

26. The tribunal acknowledges aggravating conduct on the part of the managing agent towards the applicants after serving the s.21 notice seeking possession and the shortcomings in the fire protection measures. However, it also acknowledges the health history of the respondent and his partner. The tribunal considers these factors are in balance and that no adjustment for conduct is appropriate. No adjustment in the RRO is appropriate for the respondent's financial circumstances. The tribunal therefore makes a RRO in the sum of

£12,480, apportioned to the three applicants in the same proportions in which they paid their rent.

Name: F. Dickie **Date:** 23 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).