



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

Case reference : **LON/00AY/HMF/2022/0291**

HMCTS code : **Video hearing**

Property : **Flat 1, 53 Streatham Hill, London SW2
4TS**

Applicants : **(1) Charlotte Marlor
(2) Isabelle Burroughes
(3) Jessica Henderson
(4) Esme Sharry**

Representative : **Mr George Penny, Flat Justice**

Respondent : **Roger Fitzgerald Copeland**

Representative : **Mr Max Gordan, counsel**

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

**Tribunal
member(s)** : **Judge Tagliavini
Mr S Wheeler MCIEH CEnvH**

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

Date of hearing : **6 July 2023**

Date of decision : **20 July 2023**

DECISION

The tribunal's summary decision

- (1) The tribunal finds the applicants have proved beyond reasonable doubt the offence of controlling or managing a house in multiple occupation without the required licence. The tribunal makes a rent repayment order in the sum of **£11,450.54**.
 - (2) Further, the tribunal directs the respondent to reimburse the applicants with the application and hearing fees totalling **£300**. Both sums (£11,450.54 and £300) are payable by the respondent to the applicants within 14 days of the decision being sent to the parties.
-

The application

1. The applicants seek a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 ('the 2016 Act'). It is asserted that the landlord committed an offence of managing or having control of an HMO that was required to be licensed but was not so licensed contrary to s.72(1) of the Housing Act 2004. The applicants seek a RRO for the period 09/12/2021 to 13/08/2022 in the sum of £20,819.16.

The background

2. The applicants became assured shorthold tenants of the subject property at **53 Streatham Hill, London SW2 4TS** ('the property') under a written agreement for a 12 month term from 14 August 2021 at a rent of £2,550.00 per calendar month. On 13 August 2022, the applicants voluntarily gave up occupation of the property at the end of their fixed term.

Litigation history

3. Although directions were made by the tribunal the applicants failed to follow these as neither a copy of the application or the directions were included in the hearing bundle despite having received legal assistance. A video hearing of the application was held on 6 July 2023.

The Law

4. The applicants assert the respondent was in breach of section 72(1) of the Housing Act 2004 due to the respondent having control or management of a house that was required by the London Borough of Lambeth (LBL) under its additional licensing scheme, having four occupiers forming more than two households and sharing the kitchen and bathroom/w.c. The additional licensing scheme came into effect on

9 December 2021 and remained in effect throughout the period for which the RRO is claimed.

5. 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

6. The applicants relied upon a hearing bundle of 127 electronic pages and a Reply of 7 electronic pages. In addition the applicants sought to rely upon a recording of a telephone conversation, held with an agent from Dexters (the respondent's managing agent), in an attempt to gain an admission that the service of the s.21 notice of eviction was served in retaliation to the applicants contact with the local authority. The applicants accepted the agent from Dexters was not informed the conversation was being recorded or the reason for the conversation.
7. All four applicants also gave oral evidence to the tribunal. The applicants confirmed the subject property had been their main/only home and that although good friends, comprised four separate households. The applicants also told the tribunal they knew the s.21 notice served by the respondent's managing agent was not valid and that they could remain in the subject property if they had wished to so until the proper notice was served and procedure followed as they had sought legal advice.
8. The applicants also confirmed to the tribunal they had notified the respondent that they loved living in the flat and had tried to negotiate a smaller rent increase in order to be able to remain in the property on a new fixed term. The applicants also confirmed the property was big and in good condition and had no significant issues with the condition of the flat after the initial gas leak had been resolved within days of the applicants having moved into the property.
9. The applicants also accepted they had been unaware of any substantive problem with the boiler until a defect was discovered a few days before they prepared to leave the property. However, the applicants complained the boiler would periodically switch off and they would have to reset it in order to have hot water, although they did not regard this a major inconvenience.
10. The applicants also sought to rely upon the documentary email evidence of Mr Richard Umelo, Interim Private Sector Enforcements Regulations Manager for the London Borough of Lambeth. Mr Umelo did not attend the hearing to give oral evidence to support his assertions of having observed some inadequate fire safety measures on

his inspection of the property on 28/06/2022. These observations were disputed by the respondent. Similarly, Mr Umelo's assertion that an account by which to obtain an HMO licence had been opened on 17 December 2021 in respect of another address owned by the respondent at Pinfold Road was also disputed by the respondent

11. In their Statement of Case the applicants also asserted any RRO made by the tribunal should represent the maximum amount payable. However, Mr Penny submitted the tribunal should consider making an award of between 80%-90% of the maximum amount claimed.
12. The respondent relied upon a bundle of 101 electronic pages. Mr Copeland told the tribunal he had been unaware of LBL's additional licence sing scheme as this had only come in effect after the tenancy had started and had only learnt about it after his managing agent at Dexters had served a s.21 notice of termination of tenancy.
13. Mr Copeland told the tribunal he owned 4 other residential properties which he let and also owned a construction company. Further, the respondent asserted he retained or otherwise relied upon a team of people to maintain his properties and provide the necessary safety certificates and relied on Dexters only for advertising the property, obtaining tenants, and serving the right notices.
14. Mr Copeland told the tribunal the applicants had moved out of the property on 22 July 2022 and included in the documents copies of rent received from the applicants via Dexters which he asserted showed they had only paid rent up to July 2022.

The tribunal's decision

15. The tribunal finds the applicants have proved beyond reasonable doubt that the respondent had control and management of an unlicensed HMO during the period 09/12/21 to 13/08/2022 and that it was required to be licensed.

Reasons for the tribunal's decision

16. The tribunal finds the respondent has failed to show he had a 'reasonable excuse' defence to the offence. Therefore the tribunal takes into account the respondent's evidence as mitigations in respect of the amount of the RRO to be made.

Amount of the RRO

17. In determining the amount of the RRO which can only be for the period 09/12/2021 to 13/08/2022. The tribunal calculates the maximum amount as £20,819.16.

18. Having regard to section 44 of the Housing and Planning Act 2016 and *Acheampong v Roman* [UKUT] 239 (LC), the tribunal finds no deductions are required for payments of universal credit as none were received by the applicants and utilities were paid in addition to the rent.
19. In considering the conduct of the landlord, the tribunal finds there is no previous relevant criminal conviction. Neither has the respondent received a financial penalty in respect of the offence.
20. The tribunal finds the gas leak that occurred at the start of the tenancy was resolved quickly and could not have been predicted and finds the necessary valid gas safety certificate was in place at the start of the applicants' tenancy. However, the tribunal finds that on the balance of probabilities, there was no valid gas safety certificate in place for the period April to August 2022.
21. The tribunal finds that as Mr Umelo did not attend the hearing to give evidence or be cross-examined, it does not accept his evidence in respect of the fire safety issues he alleges to have found on his inspection of the subject property, or that the respondent had or was aware of a 'licensing' account having been opened in respect of his property at Pinfold Road.
22. The tribunal finds the applicants enjoyed their occupation of the property and experienced no real difficulties either with the condition of the property or with the respondent's conduct during their tenancy and despite the absence of an HMO licence or the presence of the alleged defects found by Mr Umelo.
23. The tribunal finds the applicants made themselves fully aware of their rights of occupation after having been served with an invalid section 21 Notice of Termination of Tenancy but voluntarily decided, in any event, to leave the property on 13 August 2022 as they were unable to negotiate a new tenancy with the respondent. The tribunal finds the applicants left the property on 13 August 2022 and not 22 July 2022 as asserted by the respondent. However, the tribunal considers the applicants' conduct in recording a telephone conversation with the respondent's agent from Dexters in or around June/July 2022, without having given the agent an opportunity to object to this and for the sole purpose of gaining an admission to their advantage, to have been inappropriate.
24. Although, the tribunal was provided with some statements of Account and Payment Advice from Dexters, the respondent's letting agent, no accounts from the respondent's accountant in respect of his construction business or other properties were produced. Therefore, the tribunal makes only a small adjustment to the amount of the RRO to reflect the respondent's financial circumstances. Further, the tribunal finds the respondent is an experienced landlord who owns a number of residential properties which he lets on a regular basis.

25. The tribunal does not consider the offence committed by the respondent, in all the circumstances, of the most serious kind. Further, the tribunal finds the applicants experienced few difficulties with the subject property during their occupation and wished to renew the tenancy as they 'loved' the flat and had wanted to remain in occupation, had they been able to afford to do so, despite the absence of a licence or the alleged fire safety defects identified by Mr Umelo. Therefore, the tribunal considers that in all the circumstances the appropriate award is 55% of the maximum amount i.e. **£11,450.54**.
26. Further, the tribunal directs the respondent to reimburse the applicants with the application and hearing fees totalling £300. These sums are payable by the respondent to the applicants within 14 days of the decision being sent to the parties.

Name: Judge Tagliavini

Date: 20 July 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).