



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

Case reference : **LON/00AM/HMF/2023/0014**

HMCTS code : **Face-to-face**

Property : **27 Chester Crescent, London E8 2PH**

Applicants : **(1) Laurence O'Brien
(2) Martha Haslam
(3) Mitchell Barton**

Representative : **In person**

Respondent : **(1) Daniyel Munir (AKA Shaz Munir)**

Representative : **In person**

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 : **16 June 2023**

Date of decision : **20 July 2023**

Date of corrections : **24 July 2023**

DECISION
**CORRECTED PURSUANT TO RULE 50 OF THE TRIBUNAL
PROCEDURE (FIRST-TIER TRIBUNAL) (PROPERTY CHAMBER)
RULES 2013**

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 ~~£6,493.15~~ **£4,808.21**.
 - (2) Further, the tribunal directs the respondent to reimburse the applicants with the application and hearing fees totalling £300. Both sums (~~£4,512.23~~ **£4,808.21** and £300) are payable by the respondent to the applicants within 14 days of the **corrected** decision being sent to the parties.
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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 pursuant to s.72(1) of the Housing Act 2004, of managing or having control of an HMO that was required to be licensed but was not so licensed. The applicants seek a RRO for the period 18 December 2021 to 17 April 2022 in the sum of £12,000.00.

The background

2. The applicants became assured shorthold tenants of the subject property, a house situate at **27 Chester Crescent, London E8 2PH** ('the property') under a written agreement for a 12 month term from 18 December 2021 at a monthly rent of £3,000. On 17 April 2022, the applicants voluntarily surrendered their tenancy and gave up occupation of the property.

Litigation history

3. Directions were made by the tribunal dated 24 February 2023. A face to face hearing of the application was held on 16 June 2023 and the respondent was permitted at the end of the hearing to provide further evidence of safety certificates by 23 June 2023, which he said in evidence he had previously obtained, but which he had not disclosed in his bundle of documents.

The Law

4. The applicants assert the respondent was in breach of section 72(1) of the Housing Act 2004 due to having control or management of an unlicensed HMO that was required by the London Borough of Hackney

additional licensing scheme to be licensed. The licensing scheme came into effect on 1 October 2018 and remained in place throughout the period for which the RRO is claimed. This scheme ‘...[A]ppplies to all privately rented properties in Hackney occupied by 3 or 4 people making up 2 or more households.’

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

(1)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 49 electronic pages and a Reply in the form of further witness statements. All three applicants also gave oral evidence to the tribunal. No allegations of harassment were raised by the applicants and all agreed they had moved out early voluntarily as they wished to find a cheaper property to rent as the fourth tenant they had expected to come and share the house/rent had not materialised. The applicants confirmed the subject property had been their main/only home and that although good friends, comprised three separate households.
7. Included in their additional witness statements were complaints by the applicants of a lack of or late supplied valid gas/electrical safety certificates and a rat problem, although it was accepted in questioning that no rats had been seen inside the property. The applicants also sought to raise issues of disrepair they had experienced including a broken shower rail and missing curtains as well as broken kitchen floor tiles and a broken washing machine. The applicants also asserted their deposit had only been registered outside of the 30 day limit permitted. Although it was accepted this had been returned in full.
8. The applicants accepted they had not been in occupation until 29 December 2021. Evidence relied upon from the London Borough of Hackney state a licence had been applied for by the respondent on 4 March 2022.
9. The respondent relied upon a bundle of 26 electronic pages and copies of safety certificates as well as a receipted invoice for works carried out at the property dated 31/01/2022.* On questioning by the tribunal the respondent Daniyel Munir admitted he is the same person as Shaz Munir and had legally changed his name, although the property remained registered in the name of Shaz Munir. The respondent accepted the property had not been licensed as was required during the period for which the RRO was being claimed. However, the respondent claimed

that he had tried to apply for a licence in February 2022 but had been unable to do so due to LBH's system were not fully operative due to a previous cyber-attack.

10. The respondent relied upon an email dated 27 February 2023 from LBH which confirmed '*...[Y]our application is on file and will be processed in due course...[Y]ou have fulfilled your legal duty by applying for the licences, making you compliant and exempt from enforcement action.*' An email dated 4 March 2022 showed the respondent applied for the relevant licence on that date.
11. The respondent asserted he had obtained all the necessary electrical and gas safety certificates. He told the tribunal he has a number of other properties which he lets to tenants but as a result of the applicants paying their rent late, he had been late in paying the mortgage on the property.

The tribunal's decision

12. The tribunal finds the applicants have proved beyond reasonable doubt that the respondent had control and management of an unlicensed HMO during the period 29 December 2021 to ~~27 February 2022~~ **3 March 2022** and that was required to be licensed.

Reasons for the tribunal's decision

13. The tribunal finds valid gas and electrical certificates were provided and that the disrepair complained of is more of an 'afterthought' rather than having caused any real or substantive problems to the applicants. The tribunal disregarded the respondent's second witness statement except in so far as it exhibited the safety certificates and works invoice exhibited as no permission had been given by the tribunal to rely upon this more extensive evidence.*
14. The tribunal finds the applicant breached the terms of the tenancy by surrendering their tenancy early but also finds this surrender was accepted by the respondent, who then immediately went on to re-advertise the property for reletting.

Amount of the RRO

15. In determining the amount of the RRO which can only be for the period 29/12/2021 to 03/03/2022, the tribunal calculates the maximum amount for 2 months and five days (**totalling 65 days**) at £98.63 per day = ~~£6,493.15.~~ **£6,410.95.**
16. 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 by them in addition to the rent.

17. In considering the conduct of the landlord, the tribunal finds there is no previous relevant criminal conviction or received a financial penalty and no allegations of harassment. The respondent confirmed that he was not relying on financial circumstances and the tribunal did not have evidence of the respondent's total income or commitments. Therefore the Tribunal makes no allowance in respect of the respondent's financial circumstances. Further, the tribunal finds the respondent is an experienced landlord who owns a number of properties which he lets on a regular basis
18. The tribunal does not consider the offence committed by the respondent in all the circumstances is of the most serious kind and also takes into account the applicants own breach of the lease terms in leaving the property early. Therefore, the tribunal considers that in all the circumstances the appropriate award is 75% of the maximum amount of **£6,410.95** i.e. ~~£6,493.15~~ **£4,808.21**.
19. 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.

**The respondent was permitted to provide these certificates only by 23 June 2022. No permission was given for any further witness statement to be relied upon.*

Name: Judge Tagliavini
Corrected by Judge Tagliavini

Date: 20 July 2023
24 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).