



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

Case reference : **LON/00AU/HMF/2022/0288**

Property : **Flat 1 and 2, 161 Hornsey Road, London
N7 6DU**

Applicant : **Anna Theodoulides, Michal Lihan and
Sonja Novakova**

Representative : **Justice for Tenants – Cameron Nielson**

Respondent : **1. MHM Property Limited
2. Anil Kumar Madhok
3. Tessy Anna Sosu Hakkinen**

Representative : **Not applicable**

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

Tribunal members : **Judge H Carr
Mrs Louise Crane MCIEH**

**Date and venue of
hearing** : **14th July 2023 at 10 Alfred Place
London WC1E 7LR**

Date of decision : **3rd August 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a face to face hearing. The tribunal were provided with an electronic bundle prepared by the applicant comprising 317 pages. It also provided a skeleton argument. These documents were read and taken into account by the tribunal in reaching its determination. There were no documents provided by the Respondent.

Decisions of the tribunal

- (1) The tribunal determines that the appropriate respondents for this application are Anil Kumar Madhok and Tessy Anna Sosu Hakkinen, the 2nd and 3rd Respondent named in this decision.
- (2) The tribunal strikes out the application against the first respondent, MHM Property Limited
- (3) The tribunal makes a RRO of **£9933.80**
- (4) The tribunal determines that the respondent reimburse the applicant for their application and hearing fees, totalling £300.
- (5) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO). The applicants allege that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s. 72(1) of the Housing Act 2004 in respect of flats 1 and 2 161 Hornsey Road.
2. The period for which the RRO is sought for Flat 1 is from 11th September 2021 to 14th December 2021. In relation to that flat and for that period, Sonja Novakorva seeks an RRO for the sum of £549.96 and Anna Theodoulides seeks an RRO for the sum of £4549.54.
3. The period for which the RRO is sought for Flat 2 is from 14th December 2021 - 10th June 2022. For that period Sonja Novakorva seeks an RRO for the sum of £3300 and Anna Theodoulides seeks an RRO for the sum of £6476.77.

4. The application was made to the tribunal on 7th December 2022. Directions were issued on 27th January 2023.
5. All three Respondents failed to comply with Directions and a Barring Order was made on 26th April 2023.

The hearing

6. Sonja Novakova and Michal Lihan of the applicants attended the hearing. They were represented by Mr Cameron Nielson of Justice for Tenants.
7. There was no attendance from any of the respondents.
8. The Applicants made two applications at the commencement of the hearing.
9. The first application was to enable late documentation to be put before the tribunal. The documentation comprised Email correspondence between the Applicants, the Respondents and Anil Estates Ltd and correspondence received from Touchstone (Receivers appointed on behalf of the Second and Third Respondent)
10. The applicants informed the respondents that they were making the application and provided them with copies of the documents they wished to be considered by the tribunal. They received no response from the respondents.
11. The applicants argue that the documentation should be considered by the tribunal for the following reasons:
 - (i) Firstly, the Respondents have had the opportunity to provide evidence to the Tribunal as to the nature of their involvement in the subject property and have elected not to do so. Any minor prejudice caused by the admission of such documents is mitigated by the Respondents complete failure to engage in these proceedings.
 - (ii) Secondly, these documents are highly relevant to a central issue in this case (the identity of the Applicants' immediate landlord). As such, they will be of significant assistance to the Tribunal in determining whether it has jurisdiction to make a rent repayment order against the Respondents.

- (iii) Finally, the Tribunal is required to avoid unnecessary formality and seek flexibility while dealing with cases fairly and justly and for these reasons the applicants argue the evidence should be admitted.

The decision of the tribunal

- 12. The tribunal determines to allow the late documents to be submitted.

The reasons for the decision of the tribunal

- 13. The tribunal allows the late submission of the documents on the following basis
 - (i) The email correspondence is familiar to the respondents and therefore the respondents are not prejudiced by their late submission.
 - (ii) The correspondence from the receiver is likely to be familiar to the respondent and does not contain information which will be unfamiliar to the respondents.
 - (iii) The respondents have made no response to the application.
- 14. The second application was to amend the original application so that the period for which the RRO is claimed is from 11th September 2021 to 10th June 2022.
- 15. In relation to the second application the applicants said that the witness statements of the applicants referred to the extended period of time for which the RRO was being claimed and that therefore no prejudice was suffered by the respondents.

The decision of the tribunal

- 16. The tribunal determines to allow the time period for the claim of the rent repayment order to be extended.

The reasons for the decision of the tribunal

- 17. The tribunal had some concern about a late application for the extension of the period for which the RRO was sought because of the limitation

period for a claim. However, on consideration of the statutory provisions, the tribunal determines that as long as the application is made within the twelve month period there is no requirement for the applicants to specify the period of the claim. Therefore there is no reason why the period of claim for the RRO cannot be extended particularly as the respondents were aware of the extended period of claim from the service of the bundle.

The background

18. 161 Hornsey Road is a three-storey terraced house comprising 3 different flats. Both flats which are the concern of this application are situated in 161 Hornsey Road. Both are three-bedroom flats.

Flat 1

19. Flat 1 is a ground floor flat which has been converted from shop premises. It has 3 bedrooms, one of which faces the main street and the other two are at the rear of the flat facing a garden belonging to a neighbour. The entrance of the flat leads to the main kitchen/living area. The front bedroom and the kitchen/living area do not have proper window but picture windows/shop windows facing the street which cannot be opened and have a privacy film on them.
20. Sonja Novakova occupied the bedroom at the left hand side of the rear of Flat 1. It is a large bedroom furnished with a double bed, wardrobe and chest of drawers. She occupied Flat 1 from 25th September 2021 until 14th December 2021.
21. Anna Theodoulides occupied the right hand side garden facing bedroom which was a double room with an ensuite from 22nd September 2021 until 14th December 2021.
22. Michal Lihan occupied the front bedroom of flat 1 which faced the main road from 22nd September 2021 until 14th December 2021. The Applicants each signed a 12 month assured shorthold tenancy agreement relating to Flat 1. This provided a fixed term from 11th September 2021 to 10th September 2022 with a break clause Ms Theodoulides and Mr Lihan signed the agreement on 11th August 2021 and Ms Novakova signed the agreement on 12th August 2021.
23. The rent payable for Flat 1 was £1,650 per calendar month payable in advance on 11th day of the month. The agreement specified that the Applicants were responsible for the council tax due on the property as well as all charges relating to services including broadband.
24. A section 21 notice relating to Flat 1 was served on 9th August 2021 requiring possession of the Flat on 10th September 2022.

25. The Applicants gave evidence that after a few days in Flat 1 it became apparent that it was not safe and comfortable to occupy the street facing bedroom. There was no openable window and no access to fresh air. They were also concerned that had there been a fire in the kitchen/hall there would have been no way to escape the bedroom safely due to the lack of a fire exit in the room. They reached an agreement with Shari Bien, an agent from MHM Management that they would move into Flat 2 when the then tenants moved out in December at the same rent that they paid for Flat 1 and with £100 compensation. The Applicants moved to flat 2 on 14th December 2021.

Flat 2

26. Flat 2 is on the first floor of the house. It has 3 bedrooms, two separate bathrooms and a kitchen living space. All the bedrooms are double bedrooms. The kitchen/living area is a long room with a cooking area. The windows to the front to the flat have proper openable slider windows.
27. The Applicants signed a 12 month assured shorthold tenancy agreement relating to Flat 2 in December 2021. This provided a fixed term from 11th September 2021 to 10th September 2022. Mr Lihan signed the agreement on 14th December 2021, Ms Novakova signed it on 28th December 2021. There is no date for when Ms Theodolides signed the agreement.
28. The rent payable for Flat 2 was £1,650 per calendar month payable in advance on 11th day of the month. The terms concerning responsibility for charges for utilities and council tax remained as in the agreement for Flat 1. There was the same break clause.
29. A section 21 notice relating to Flat 2 dated 11th September 2021 requiring that the property be vacated after 10th September 2022 accompanied the tenancy agreement to Flat 2.
30. The applicants determined to exercise the break clause in their tenancy agreement and terminated the tenancy on 10th June 2022.

The issues

31. The issues that the tribunal must determine are;
- (i) Who is the respondent/landlord of the property?
 - (ii) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

- (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
- (iv) Should the tribunal refund the applicants' application and hearing fees?

The determination

Who is the respondent/landlord of the property?

- 32. Both the tenancy agreements signed by the Applicants showed the Landlord as MHM Property Limited. The tenancy agreements were both signed by Tess Hakkinen. The agreement indicates that the signature is either that of the landlord or the landlord's agent.
- 33. Both the section 21 notices were said to be from MHM Property Limited and signed by Tess Hakkinen again either as landlord or landlord's agent.
- 34. The tenant's checklist is also signed by Tess Hakkinen either as the landlord or the landlord's agent. The tenant checklist includes the following information
 - (i) MHM Property Ltd has elected to manage the property themselves. Should you have any queries in relation to the property after signing this agreement you should contact MHM Property Ltd directly using the following details.
- 35. The rent was payable by standing order to Anil Estates Ltd.
- 36. Tessy Anna Hakkinen is a company director of Anil Estates Ltd.

37. The Applicants provided the register of title for 161 Hornsey Road. This shows that the proprietor of Flat 1 and Flat 2 (and Flat 3) is Anil Kumar Madhok and Tessy Anna Sosu Hakkinen.
38. The Applicants provided details of the company registration of MHM Property Limited. This shows that the company has 1 director, Tessy Anna Hakkinen.
39. The tenants gave evidence that when they discussed with Shari Bien from MHM their concerns that Flat 1 was uninhabitable she said she would discuss this with the landlord.
40. In addition the late bundle of evidence contained the following:
 41. p.1 – email dated 25 April 2022 when Anil Estates Ltd request rent payments be made to Anil Madhok
 42. p.2 – email dated 28 January 2022 – email signed off by ‘Tess Landlady MHManagements & Investments Tess@mhmanagements.co.uk’
 43. pp.5-7 – letter dated 17 Jun 2022 from Touchstone stating ‘As you are aware we act for the Receivers appointed on behalf of your landlord, Anil Kumar Madhok & Tessy Anna Sosu Hakkinen’
 44. p.8-9 – email dated 3 May 2022 titled ‘EOT F2 161 Hornsey Road - Tenancy Termination, move out 11th June 2022’ in which signed of ‘Kind regards, Shari on Behalf of Anil Madhok, the Landlord’
45. The original evidence bundle contained the following:
 - (i) pp.14-15 – Email dated 14 June 2022 on whether the property required professional cleaning ‘We will be shortly sharing pictures with the Landlord to make his decision. If there is anything to add from your end, please email us as soon as possible in order for us to attach this to the bundle for the Landlord’
 - (ii) p.19 – email dated 16 June 2022 ‘I will await your response and then pass all information on to the Landlord to review and make a decision’
 - (iii) p.20 – email dated 17 June 2022 ‘All has now been forwarded to the Landlord to make his decision. We will get back to you as soon as we hear back from him.’
 - (iv) p.21 – email dated 20 June 2022 from Anil Madhok which is signed off ‘Dr Anil Madhok Landlord’

(v) p.22 – email dated 11 April 2022 from Stella Davis Joint Administrator of Anil Estates Ltd which states ‘Your email has been forwarded to Dr Madhok who is the owner and landlord of the property and copied on this email’.

46. Whilst the skeleton argument from the applicants did not identify who the applicants considered the landlord to be, at the hearing the applicants argued that the correct respondents are Tessy Anna Sosu Hakkinen and Anil Kumar Madhok.
47. They submitted that the second respondent Tessy Anna Sosu Hakkinen is an undisclosed/ unidentified principal relying on clause 29.1 of the Tenancy Agreements which describes the first respondent as the “Landlord’s servicing company”. The second respondent is the sole director of the First Respondent.
48. They further argue that clause 31.1 of the Tenancy Agreements defines ‘landlord; as including ‘anyone owning an interest in the Premises, whether freehold or leasehold, entitling them to possession of it upon the termination or expiry of the Tenancy and anyone who later owns the Premises’. The second respondent and the third respondent are the only parties with an apparent freehold or leasehold interest in the property.
49. Finally, the applicants argue that the second respondent is an undisclosed/ unidentified principal because the Tenancy Agreements do not comply with the formality requirements of section 44 of the Companies Act 2006 given there are not two authorised signatories on the agreements nor was the signature of the Second Respondent attested by a witness to such a signature.
50. The second respondent was a person managing the premises as defined by section 263(3) HA 2004 given she was a joint freehold owner of the subject property .
51. Furthermore, the applicants argue, the second respondent received rent through an agent (Anil Estates Ltd) from the tenants. The second respondent is the Director of Anil Estates Ltd.

52. The applicants say that their arguments also apply to the third respondent, Anil Kumar Madhok save that the third respondent is not a director of the first respondent

The decision of the tribunal

53. The tribunal determines that the correct respondents are Tessy Anna Sosu Hakkinen and Anil Kumar Madhok.

The reasons for the decision of the tribunal

54. Although the picture provided by the evidence is unclear, in particular the fact that the landlord named on the tenancy agreement is MHM Property Limited, the tribunal notes that there is a considerable overlap between the director of MHM Property Limited and the freehold owners of the property, ie Tessy Anna Hakkinen, is the director of MHM Property Limited as well as joint owner of the property. By one means or another the second and third respondents received the rent for the property and made the decisions about how it was to be run.
55. The tribunal also notes that MHM Property Limited makes several references to the landlord of the property, indicating that the landlord is distinct from itself. In effect MHM Property Limited held out the second and third respondents as landlord.
56. The tribunal is particularly persuaded by the correspondence from the Receivers and the administrators of Anil Estates and by correspondence signed by Anil Madhok as landlord.

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

57. The applicants argue that both flats were situated within an additional licensing area as designated by the London Borough of Islington.
58. The additional licensing scheme came into force on 1 February 2021 and will cease to have effect on 1 February 2026.
59. The additional licensing scheme has been implemented borough-wide. It applied to all HMOs (as defined by section 254 HA 2004) which are occupied by three or more persons who are not members of the same household (family) including flats located within purpose built blocks regardless of the number of storeys in the block.

60. Each of the flats met all the criteria to be licensed under the said designation being an HMO under section 254 HA 2004 and not being subject to any statutory exemption:
61. At all material times each of the flats were occupied by at least three persons living in two or more separate households and occupying the flats as their main residence. Their occupation of the flats constituted the only use of that accommodation (HA 2004, section 260)
62. Sonja Novakova said that she researched licensing when she was trying to get advice on the conditions in flat 1 and found out that flat 1 did not have a licence which she confirmed with Islington Council on the phone.
63. In July 2021 she checked Islington Council's HMO register which sets out all properties in the borough which have a licence. 161 Hornsey Road was not shown as having any licences in place. She provided a copy of the register to the tribunal which showed no licences in place. The metadata for the download indicated that the document had been created on 9th July 2021.
64. The applicants provided an email from the London Borough of Islington dated 1st September 2022 which said that Flat 2 161 Hornsey Road, N7 6DU was not licensed at that date and that Flat 1 had a Temporary Exemption Notice in place 26th July 2022 which was to end on 25th October 2022
65. The two applicants who were present confirmed to the tribunal that the property was their only home during the course of the tenancy of each flat. They also confirmed that they were three separate households. The written statement of Ms Theodoulides confirmed that the property was her only home.

The decision of the tribunal

66. The tribunal determines that the respondent has committed the alleged offences respondent landlord has committed the offence of control or management of an unlicensed HMO under s. 72(1) of the Housing Act 2004 in respect of flats 1 and 2 161 Hornsey Road,

The reasons for the decision of the tribunal

67. The tribunal relies on the evidence from the applicants and the information provided by the local authority.

Should the tribunal make an award of a RRO? If so, for what amount?

68. The applicants are international students studying in London. They all come from Slovakia.
69. Anna Theodolides occupied the property for the following periods 22nd September 2021 until 14th December 2021 (occupation of Flat 1) and 14th December 2021 until 11th June 2022.
70. Mr Lihan occupied the property from 22nd September 2021 until 14th December 2021 (Flat 1) and from 14th December 2021 until 10th June 2022 (Flat 2)
71. Sonja Novakova occupied the property for the period 25th September 2021 until 14th December 2021 (Flat 1) and from 14th December 2021 until 13th June 2022 (Flat 2)
72. The applicants provided evidence that they paid rent monthly on the following basis.
 - (i) Ms Theodolides provided bank statements from Santander Bank for the periods she took responsibility for paying the rent.
 - (ii) Mr Lihan provided bank statements from Revolut and Santandar to demonstrate that he reimbursed the other two applicants for the rent they paid.
 - (iii) Ms Novakova provided bank statements from Revolut and Monzo for the periods she took responsibility for paying the rent.
73. They also provided evidence of having paid utility bills.
74. The tenants argue that their conduct has been good.
75. The rent paid included all utilities. None of the applicants was in receipt of the housing element of universal credit or housing benefit.
76. The applicants argue that the conduct of the respondent has been poor.
 - (iv) The tenants say that Flat 1 fell below HMO standards in respect of fire safety, as there was no

safe exit from the front facing bedroom if there was a fire in the kitchen or hallway.

- (v) Mr Lihan says of the front facing bedroom in Flat 1 that the windows were single glazed and very poorly insulated and draughty. This meant the room got cold very quickly even with heating constantly on. It was also noisy and people would regularly bang on the window mistaking it for a shop front. He was constantly disturbed by the noise of the pedestrians.
- (vi) The kitchen was also problematic as the only window was a non-openable shop front window. Cooking produced a lot of damp so they had to buy a dehumidifier which increased electricity costs.
- (vii) None of the doors in the property were self-closing and some of the doors did not offer a good seal against potential smoke.
- (viii) Ms Theo said that the bedroom she occupied had issues with the sink drain in the ensuite bathroom. She tried resolving this with different products and chemicals but it did not help. She reported this to the agency, but she still was not able to use the sink for approximately one month from the end of October to the end of November.
- (ix) The tenants also say that there was some black mould in the shower of the main bathroom as well as on walls in the kitchen/living area.
- (x) As regards flat 2 the tenants say that the boiler leaked for three days. At one point it leaked down to the main hallway of the property and therefore the tenants needed to switch off the water supply. They say that MHM Management did not resolve the problem quickly. At first, they were reluctant to communicate about it. Once they agreed to resolve the issue it took a whole day to find a plumber as they were looking for the cheapest plumbing service. The applicants provided a copy of an email dated 16th February 2022 to substantiate their complaint.

77. The applicants make the following submissions in connection with the seriousness of the offence.

- (i) The Respondents' lack of processes to keep abreast of their legal obligations (Aytan v Moore [2022] UKUT 27 (LC) at [52]).
- (ii) The Respondents are professional landlords Aytan v Moore at [41]-[42].
- (iii) Fire safety breaches (App EB pp.11-12 para 52), (App EB p.241), (Acheampong v Roman at [31]), (Aytan v Moore at [64]).
- (iv) The Respondent's breach of The Management of Houses in Multiple Occupation (England) Regulations 2006 (App EB pp.11-12 paras 50-55), (App EB pp.284-288), (App EB pp.300-317)#
- (v) Disrepair and maintenance issues in the subject property (App EB pp.277-280).
- (vi) The purpose of an RRO is to punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending (Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities). These policy objectives justify a substantial portion of the rent being awarded (Williams v Parmar [2021] UKUT 244 (LC) at [51]).

78. The applicants note that there is no information about the financial circumstances of the respondents nor evidence about whether they have been convicted of a relevant housing offence.

The decision of the tribunal

79. The tribunal determines to make a rent repayment order of **£9933.80**.

The reasons for the decision of the tribunal

80. The tribunal had general concerns about the management of both flats. The respondents appeared to take little account of their legal and management responsibilities so for instance serving s.21 notices at the

commencement of the tenancy and not correctly terminating the tenancy of Flat 1 and creating a new tenancy of Flat 2 when the applicants moved.

81. The respondents have failed to engage with the proceedings and it seems to the tribunal they have deliberately created a great deal of uncertainty as to who the landlord of the property was. This does a great disservice to tenants and imposes burdens on those who regulate housing conditions.
82. Flat 1 was in a very poor condition and it does not appear that the former shop premises had been converted in such a way as to provide suitable accommodation. The third bedroom of the flat was not habitable, there was poor insulation and there were serious fire risks in the property. It is for this reason that the tribunal has determined to make a higher award for the period that the applicants occupied Flat 1.
83. Flat 2 was in a better condition although the applicants reported problems with the boiler and slowness in responding to problems with water leaks.
84. The tribunal has identified no factors which would point to the RRO being reduced. In particular there was no evidence of the financial circumstances of the respondent and there was no evidence of good conduct by the landlord.
85. There was no evidence that the tenant's conduct was anything but good.
86. The tribunal therefore determines to make a RRO of 85% for the period of the claim when the applicants were occupying Flat 1 and 65% of the claim for the period that the applicants were occupying Flat 2.
87. The tribunal has calculated the amounts as follows:
88. The maximum RRO which is payable for that period is £1650 x 9 months which totals £14850.
89. The tribunal does not award the maximum rent for the period but makes a different level of award for the periods of occupation of the different flats.
90. The percentage of the rent repayment order in relation to flat 1 is 85% for the period that the applicants were occupying it, (11 September to 14th December 2021). The total rent payable for this period is £4050, (£1650 x 3) plus 3 days at £54.40 per day i.e. £163.20 which totals £4213.20. 85% of this equals £3581.22.

91. The percentage of the maximum rent repayment order in relation to Flat 2 is 65% for the periods the applicants were occupying it which is 15th December 2021 to 10th June 2022. This total rent payable for this period is 5 months at £1650 pcm (£8250) plus 28 days at £54.40 per day (£1523.20) which equals £9773.20. 65% of this equals £ 6352.58.
92. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicant her application fee and hearing fee.

Name: Judge H Carr

Date: 3rd August 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).