



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

Case Reference : **LON/OOAB/HMF/2023/0072**

HMCTS : **V: CVPREMOTE**

Property : **7 Butteridges Close,
Dagenham, Essex RM96YD**

Applicants : **Matthew Neujekwu and Ngozi
Neujkwu**

Respondent : **Kehinde Wilson Gbadegesin**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Shepherd
Fiona Macleod MCIEH**

Venue of Hearing : **On line**

Date of Decision : **4th August 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

Decision:

The Respondent shall pay a Rent Repayment Order of £14400.

The Respondent shall also pay the Applicants £300 representing their application fee and hearing fee.

The total sum of £14700 shall be paid within 28 days of receipt of this decision being issued.

Reasons:

1. In this case the Applicants, Matthew Neujekwu and Ngozi Neujkwu (“The Applicants”) are seeking a Rent Repayment Order against the Respondent, Kehinde Wilson Gbadegesin (“The Respondent”). The Respondent has chosen to take no part in these proceedings. The Tribunal is satisfied that he was properly served with the proceedings.
2. The Applicants were in occupation of premises at 7 Butteridges Close, Dagenham , Essex, RM96YD (“The premises”) as Assured Shorthold Tenants. The Respondent was their landlord. His agent was originally Phil Davies Estate Agents who let the premises on his behalf. Originally the rent was paid to the agents until the Respondent took back management. The premises consist of a two - bedroom self - contained flat in an ex - council block of flats. The Applicants are still in occupation.
3. The Applicants paid a rent of £1200 per month. They seek a rent repayment order for the period February 2022- January 2023. (“The relevant period”). The total rent paid in this period was £14400.
4. The London Borough of Barking and Dagenham who acted on behalf of the Applicants, via Paul Mahoney, operate a selective licensing scheme under which all private rented properties need a license. The Respondent failed to obtain a license and even following these proceedings and previous criminal

proceedings has failed to apply for a license.

5. The Respondent was convicted of offences relating to a failure to comply with an improvement notice served on him on 16th August 2022 and a failure to license the premises at Barkingside Magistrates Court on 21st February 2023. He did not defend the criminal proceedings.
6. The Applicants made their application for a Rent Repayment Order on 9th March 2023 and their application is therefore made in time.
7. It is the Applicants' case that the Respondent failed to license the premises which fell under the selective licensing scheme throughout the relevant period.
8. The Rent Repayment Order application was made pursuant to section 41 of the Housing and Planning Act 2016.
9. At the hearing Mr Mahoney confirmed that the convictions had been obtained and apologized for not providing a certificate of conviction. The Tribunal accepted his evidence. He said that the local authority had applied for an injunction to require the Respondent to carry out essential works at the premises. The Respondent had largely ignored the Improvement Notice and the premises had a number of hazards. There was no proper heating supply. There was damp and mould and there were bed bugs. Although the Applicants received Universal Credit there was no housing allowance element.

The law on Rent Repayment Orders

The Housing Act 2004 (“the 2004 Act”)

10. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 3 of the Act relates to the selective licensing of residential accommodation. The Act creates offences under section 95(1) of having control or management of an un-licensed house. On summary conviction, a person who commits an offence is liable to a fine. An additional

provision was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

The Housing and Planning Act 2016 (“the 2016 Act”)

11. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
12. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.
13. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that “the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The “main object of the provisions is deterrence rather than compensation.”

14. Section 40 provides (emphasis added):

“(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.”

15. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords. Section 41 deals with applications for RROs. The material parts provide:

“(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.

16. Section 43 provides for the making of RROs:

“(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).”

17. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

18. Section 44(4) provides:

“(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.”

19. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

20. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the “purposes intended to be served by the jurisdiction to make a RRO” (at [41] and [43]).

21. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional “rogue” landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

22. In *Acheampong v Roman* [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this 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? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. 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).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

Application to the present case

23. The Applicants provided evidence of the rent that they had paid and satisfied the Tribunal beyond reasonable doubt that for the relevant period the premises should have been licensed but were not. The Respondent was the landlord of the premises and was therefore the person responsible for obtaining the license but did not do so. The Tribunal is satisfied beyond reasonable doubt that the offence has been committed. The premises were covered by the selective licensing scheme and should have been licensed.

Conduct

24. The Applicants are to all intents and purposes good tenants. The Respondent in contrast appears to fit the description "rogue landlord" perfectly. He has failed to comply with the Improvement notice, the premises remain in a hazardous condition and he has abjectly failed to engage either with this Tribunal or the Magistrates Court.

Quantum

25. This was a serious offence of failure to license. Applying the criteria in Acheampong above:

- The total rent paid for the relevant period was : £14400.
- There was no evidence of any deductions that should be made.
- As already indicated, this was a serious breach with a risk to health and safety of the Applicant.

26. Applying the other criteria under the Act there was considerable evidence of poor conduct by the Respondent as detailed above.
27. The financial circumstances of the Respondent were unknown.
28. In light of all of these matters we consider that a 100% award is appropriate.
29. The Respondent is required to pay the Applicant £14400 in relation to the Rent Repayment Order. He is also required to pay the Applicants their application and hearing fee of £300 in total. The total sum of £ 14700 shall be paid within 28 days of receipt of this order.

Judge Shepherd

4th August 2023

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 Tribunal 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 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.

4. 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.