



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

**Case reference** : **LON/00BG/HMF/2023/0067**

**HMCTS code** : **V: Video**

**Property** : **Flat 7, Penang House, Prusom Street,  
London E1W 3RF**

**Applicant** : **Mr A Helal**

**Representative** : **Mr M Williams  
Environmental Health and Trading  
Standards L.B Tower Hamlets (ref  
342499)**

**Respondents** : **East End Rooms Limited**

**Representative** : **Mr K Pullinger of counsel**

**Type of application** : **Application for a Rent Repayment Order  
by tenants**  
Sections 40, 41, 42, 43 and 45 Housing and  
Planning Act 2016.

**Tribunal members** : **Judge Pittaway  
Mr A Fonka FCIEH**

**Date of Hearing** : **1 August 2023**

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

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**DECISION**

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## **Description of hearing**

A remote video hearing was held on 1 August 2023 which was not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because all issues could be determined in a remote hearing. Before the hearing the tribunal had been provided with an applicant's bundle (104 pages), the respondent's bundle (66 pages) and an applicant's short reply (1 page).

The hearing was attended by Mr Williams of L B Tower Hamlets as representative of the applicant, Mr Pullinger as counsel for the respondent and Mr Zico, a director of East End Rooms Limited.

Mr Williams advised the Tribunal that he had believed that Mr Helal intended to attend the hearing. Mr Williams believed that Mr Helal was not present because he had had his telephone hacked. Mr Williams confirmed that Mr Helal had also been supplied with details of the hearing by e mail. The Applicant's bundle contained a witness statement by Mr Helal. Mr Pullinger confirmed to the Tribunal that he had not intended to cross examine Mr Helal. In the circumstances the tribunal determined that the hearing proceed without Mr Helal.

The applicant's bundle contained an 'Expanded Statement of Reasons' and 'Full Details of the alleged offence' which set out the chronology of events leading to the application for the RRO.

The respondent's bundle contained a witness statement by Mr Zico.

The tribunal heard oral evidence from Mr Zico, and submissions from Mr Pullinger and Mr Williams.

## **Decisions of the tribunal**

1. **The Tribunal finds that the Respondent committed an offence under section 72(1) of the Housing Act 2004 as it was a person having control or managing an HMO which was required to be licensed but which was not, but finds that the Respondent had a reasonable excuse to the commission of the offence.**
2. **Accordingly the Tribunal does not make a Rent Repayment Order against the Respondent.**
3. **The Tribunal does not order the reimbursement of the application fee of £100 and the hearing fee of £200.**
4. **The reasons for the Tribunal decisions are given below.**

## **The background**

5. The tribunal received an application dated 28 February 2023 for a rent repayment order under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) in respect of Flat 7 Penang House, Prusom Street London E1W 3RF (“the **Property**”).
6. The application named Mr Thiselton as a joint applicant but the Applicants’ representative requested that he be removed as an applicant as during the period in respect of which he claimed a RRO he was receiving Universal Credit. Mr Thiselton’s landlord for part of the period during which he was claiming the RRO was Smart Rooms Limited, named as the second respondent un the application.
7. Mr Helal entered into an AST with East End Rooms Limited for the period 1 October 2021 to 15 May 2022 at a rent of £620 per month.. Mr Helal claims a RRO of £4,760 for that period.
8. The application stated that the Property should have had, but did not have, an additional HMO licence until the landlord applied for one on 16 May 2022.
9. The application states that the freehold of the property is owned by Mr Mohammed Gulem Mostofa and Mrs Khalida Mostofa. Official copies in the Applicant’s bundle confirm this.
10. On 17 April 2023 the Tribunal issued Directions (amended on 26 April 2023), which refer to both applicants and both respondents.

## **The Parties**

11. It was clear from the information contained in the bundles before the Tribunal that it was not appropriate that Mr Thiselton should be named as an Applicant nor that Smart Rooms Limited should be named as a Respondent.
12. The Tribunal therefore **directs**, in accordance with Rule 10 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Mr Thistelton be removed as an Applicant and Smart Rooms Limited be removed as a Respondent.

## **The Property**

13. The Property is described in the application as a first floor four bedroom flat with one kitchen and one bathroom.

## **Agreed matters**

14. The Respondent did not challenge

- That the relevant period was 1 October 2021 to 15 May 2022;
- That the Property was one which since 1 April 2019 had required an additional HMO licence;
- That the Applicant had paid rent during the relevant period of £4760.

### **Issues**

15. The issues before the tribunal to determine were

- Whether the Respondent had a reasonable excuse to the commission of an offence under section 72(1) Housing Act 2004.
- If the Respondent did not have a reasonable excuse, the quantum of any Rent Repayment Order, having regard to
  - the maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act, and
  - any relevant conduct of either party, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

### **The tribunal's reasons**

16. The tribunal has had regard to the witness statements in the bundles, the oral evidence that it heard from Mr Zico and Mr Williams, and the submissions made by Mr Pullinger and Mr Williams in reaching its decision. As appropriate, and where relevant to the tribunal's decision, these are referred to in the reasons for the tribunal's decision.

17. The relevant legal provisions are set out in the Appendix to this decision

### **Did the Respondent have a reasonable excuse for committing the offence?**

18. Mr Zico gave evidence that East End Rooms Limited took over the management of the Property on 1 April 2021 after the previous managing agent Smart Rooms Limited ceased to respond to the freeholder. At that time he raised with the freeholder the need for the Property to be licensed as an HMO. He was advised by the freeholder that Smart Rooms Limited had applied for an HMO licence on behalf of the freeholder on 14 January 2021 and that the freeholder had paid the necessary fees and for the works required to the Property. The freeholder gave the Respondent a unique reference number for the HMO licence application, 135435.

19. Mr Zico stated that the Respondent was advised by L B Tower Hamlets that the property was to be visited on 19 April 2022. It was assumed that this was in connection with the HMO application. A former employee of the Respondent, MD Rabiul Awal, attended the Property on that date. On 22 April 2022 the Respondent received a letter from Tower Hamlets regarding Requisition of Information and an e mail that day asking them to provide certain documents within 7 days and to complete certain works within 28 days. The information was provided and work done within the specified time frame. On 16 June the Respondent received an e mail enquiring whether a new HMO application was being made as requested, and giving the Respondent until 23 June 2022 to do so. The new application was submitted on 16 June 2022.
20. Mr Zico stated that the Respondent was never informed by Tower Hamlets that the earlier HMO licence application made in January 2021 had been closed. Tower Hamlets knew of the Respondent's involvement with the Property from April 2022 as it had been paying the council tax for the Property from then.
21. Mr Williams did not cross examine Mr Zico on his evidence.
22. Mr Zico gave evidence that the Respondent only became involved in property management/letting in March 2021. He also explained that he believed that the delay in the issue of an HMO licence applied for in January 2021 was in part due to delays caused by the pandemic.
23. Mr Pullinger submitted that it was accepted that the Property required an HMO licence but that the Respondent had a reasonable excuse in that it had honestly believed that there was an HMO application pending at the time they took over the Property, and believed that this application remained pending until they were advised otherwise in or around April 2022. The Respondent remained unaware that Tower Hamlets had closed/refused the original application as all correspondence relating to this was sent to the freeholder and not seen by the Respondent. As soon as the Respondent had found out that there was no licence application still pending it sought to remedy the position. It had complied with all the requirements of Tower Hamlets within its designated timescales, it had undertaken all necessary works and had promptly paid the financial penalty levied against it. Even if the Respondent had not contacted the council specifically in relation to the licence the council had been aware of its involvement with the Property since April 2021 and it should have copied the Respondent in the correspondence dealing with the closure/refusal of the initial application.
24. Mr Williams made submissions in relation to whether the Respondent had a reasonable excuse. Mr Golam [sic], one of the freeholders, had made an application for an additional HMO licence in January 2021 but the application was revoked as he failed to provide essential information to support the application. Tower Hamlets had written to him on 5 May 2021 and 19 May 2021 to remind him of the need to provide documents but he had not

responded, resulting in his being informed by letter on 14 September 2021 that the application had been closed.

25. The Tribunal saw evidence in the bundles that a possible explanation for the failure of the freeholder to pass the correspondence from the Tower Hamlets to the Respondent was due to his ill-health.
26. The Tribunal do not find that because Tower Hamlets had been notified of the change in responsibility for council tax that a separate department should have known of the need to advise a new managing agent of the closure/refusal of the original application.
27. The Tribunal note that the Respondent applied for an HMO licence as soon as it became aware that the property did not have one.
28. On the evidence before it the Tribunal finds that the Respondent had a reasonable excuse to controlling/managing the Property without an HMO licence. The circumstances of the pandemic, and the inexperience of the Respondent, made it reasonable for the Respondent to believe that the application for the licence was still pending, even 16 months after the application had been made, when a more experienced agent might have pursued Tower Hamlets for an update on the issue of the HMO licence. The Tribunal had been provided with a credible explanation as to why the freeholder had not notified the Respondent of the closure/refusal of the original application.

### **Quantum of the RRO**

29. As the Tribunal has found that the Respondent had a reasonable excuse for the commission of the offence it is not necessary for it to consider the possible quantum of any RRO.

### **Fees**

30. The Applicant had not sought the reimbursement of his fees prior to the hearing. Mr Pullinger submitted that as the Applicant was effectively legally represented if he had wished to seek reimbursement of his fees he should have done so in anticipation of the hearing.
31. Given its decision, and noting Mr Pullinger's submission the Tribunal does not order the reimbursement of the Applicant's fees.

**Name:** Judge Pittaway

**Date:** 3 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).

## **Appendix of Relevant Legislation**

### **Housing Act 2004**

#### **72 Offences in relation to licensing of HMOs**

(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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

## **Housing and Planning Act 2016**

### **40 Introduction and key definitions**

- (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.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from	section 1(2), (3)	eviction or harassment of

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
	Eviction Act 1977	or (3A)	occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **41 Application for rent repayment order**

- (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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **43 Making of a rent repayment order**

- (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 had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.

#### 44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

***If the order is made on the ground that the landlord has committed***

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

***the amount must relate to rent paid by the tenant in respect of***

the period of 12 months ending with the date of the offence

a period, not exceeding 12 months, during which the landlord was committing the offence

(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.

(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.