



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

**Case Reference** : **LON/00BK/HMF/2023/0026**

**Property** : **96 Castellain Mansions, Castellain Road,  
London W9 1HB**

**Applicant** : **Hannah Brandler (1), Bethany Newman (2)  
and Meleesha Perera (3)**

**Representative** : **Mr T Samuels, Counsel**

**Respondent** : **Riverside HHT Limited (1), Mr. Jatinder  
Singh Sandhu (2) and Mrs. Manvir Kaur  
Sandhu (3)**

**Representative** : **Jatinder Singh Sandhu**

**Type of Application** : **Application for rent repayment order under  
sections 40-44 of the Housing and Planning  
Act 2016**

**Tribunal Members** : **Judge Dutton  
Mr S Wheeler MCIEH, CEnvH**

**Date of Hearing** : **12<sup>th</sup> July 2023**

**Date of Decision** : **31 July 2023**

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**DECISION**

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## DECISION OF THE TRIBUNAL

- 1. The Tribunal determines beyond reasonable doubt that the first Respondent, Riverside HHT Limited (RH) is the Landlord and was managing or controlling the property at 96 Castellain Mansions, Castellain Road, London W9 1HB (the Property) and against whom a rent repayment order should be made for the three Applicants as set out in the attached schedule.**
- 2. The Tribunal orders reimbursements of the Tribunal's application fees and hearing fee totalling £300.**

### **BACKGROUND**

1. This application for a Rent Repayment Order under the Housing and Planning Act 2016 was made by the Applicants on 29<sup>th</sup> January 2023 in respect of the Applicants' occupancy of the Property. The Property is a three-bedroom flat with a shared living room, kitchen and bathroom on the fourth floor of a purpose-built block.
2. The Respondents named in the application comprise both RH as well as Mr and Mrs Sandhu. Mr and Mrs Sandhu are the freehold owners of the Property.
3. The Applicants occupy the Property under the terms of a tenancy agreement made between RH and themselves dated 29<sup>th</sup> December 2020 for a term of one year from 9<sup>th</sup> January 2021 and thereafter continuing on a calendar monthly basis subject to the termination provisions in the agreement. The rent was £484.62 per week payable monthly at the rate of £2,100, the first payment to be made on 8<sup>th</sup> January 2021 and thereafter on the 8<sup>th</sup> day of each month. The term of the tenancy was subsequently extended by agreement and the monthly rent increased to £2,350 each month payable from 8<sup>th</sup> January 2022 with each Applicant paying rent in equal proportions.
4. The tenancy agreement provides for the rent to be paid to RH who is described as the landlord. A deposit of £2,423.08 was also required to be paid by the Applicants. The application itself is made under section 41 of the Housing and Planning Act 2016 (the 2016 Act) alleging that an offence has been committed under section 72 of the Housing Act 2004, it not being said which specific Respondent may have been in breach, the thrust of the application was that Mr and Mrs Sandhu were the guilty parties.
5. The application confirms that the Westminster City Council (the Council) designated the whole of the district of Westminster as an area for additional licencing for houses in multiple occupation. The Property is situated within the Borough of Westminster and subject to the additional licensing scheme which came into force on 30<sup>th</sup> August 2021 and will cease to apply on 30<sup>th</sup> August 2026. The additional licensing designation applied to HMOs that are occupied by three or more persons comprising two or more households.
6. In the application the sum of £25,221.36 is sought, with each Applicant claiming the sum of £8,407.12. It is confirmed that no Applicant received Housing benefit

or Universal Credit. Details of the calculation of the rent sought to be recovered are included. It is not recorded that there is any conviction by any of the Respondents for the alleged offence.

7. Directions were issued on 14<sup>th</sup> March 2023 and included a comment that the *legal basis for stating that the second and third Respondents have always been landlords is not clear and the Applicants may wish to take independent legal advice*. The directions have largely been complied with subject to matters we will return to in a moment and the case came before us for hearing on 12<sup>th</sup> July 2023. The Applicants attended represented by Mr Tim Samuels of Counsel and the Respondents were represented by Mr Sandhu.
8. At the commencement of the hearing, we were provided with what purported to be a copy of a lease said to have been entered into by Mr and Mrs Sandhu with RH on 19<sup>th</sup> October 2019. This document, the original of which was not produced, was not provided to the Applicants until the morning of the hearing. An application was made by Mr Sandhu for the document to be admitted. He was asked why he did not think it was necessary to disclose the existence of the lease. His response was that he did not consider that it had really been put in issue. It was responded to by Mr Samuels who took us to paragraph 14 of the original statement of case when it is alleged by the Applicants that the naming of RH as the landlord was a sham. Further at paragraph 3 of the Applicants' reply which is dated 23<sup>rd</sup> June 2023, it says that under the heading Lack of documentation, the Respondents rely on a five-year lease between R1 and R2-3, no documentary evidence has been produced. The Respondents' assertion concerning the need to provide a copy of the lease was further attacked where reference is made in the Applicants' skeleton argument where reference is made to a reliance on the undisclosed five-year agreement and that in the absence of the lease agreement there are seven reasons why it is established that it is the second and third Respondents who are liable. We will return to the skeleton argument in due course as necessary.
9. Following the submissions made by Mr Samuels as to the admissibility of the lease, we concluded that we were not prepared to consider the document because of the late delivery. Mr Sandhu's suggestion that he did not realise the lease was required to be produced is disingenuous. He is a solicitor. It was made clear to him on three occasions that the existence of the lease was not accepted. He had ample opportunity to produce the document. He indicated that he would seek to appeal the point, which is of course a matter for him.
10. For the Applicants it is said both in their Applicants' statement of case and supporting witness statements from the three Applicants, that the Property is within the additional licensing area and that the Council had confirmed that no licence was in existence and thus the offence of controlling and or managing an unlicensed HMO had occurred. It is accepted that RH appear as the landlord on the tenancy agreement and that rent was paid to that company. The Applicants, however, allege that RH was not the true landlord as all management duties and control were carried out by Mr Sandhu whilst Mrs Sandhu signed the tenancy agreement as a director of RH.

11. There are further documents that are relied upon by the Applicants, in particular one from Hamptons dated 12<sup>th</sup> January 2021 where they say they are not managing the Property and that they should contact the landlords directly who are named as Mr and Mrs Sandhu. It is said that all contact the Applicants had was directly with Mr Sandhu including negotiating the increased rent and dealing with the deposit refund.
12. In a bundle of some 126 pages together with three witness statements that arrived separately, although did not expand upon the original witness statement save to contain a statement of truth, the Applicants' evidence was set out. In addition to the bundle, we were provided with, as we have mentioned above, a skeleton argument by Mr Samuels for which we thank him, and the Applicants' reply which we have referred to above. It is said in the reply that there is no witness statement beyond the assertions contained in the statement of case. That the apparent defence put forward by the Respondents that the three Applicants were a single family unit or had warranted that they were, is unsustainable. They were three young friends contracting jointly, the suggestion that there was some form of family relationship was risible and the suggestion that the tenancy agreement referring to occupation as a single private residence is something that the Respondents can rely upon is not accepted.
13. We then heard from the three Applicants separately. All had produced signed witness statements which to an extent mirrored each other's views. Miss Brandler is a journalist with a degree. She accepted that she was contracting with RH but relied on the letter for Hamptons referring to Mr and Mrs Sandhu as the landlords. It was put to her that a company could only carry out tasks through individuals which she accepted, although she considered that they would be employees.
14. Asked about the limitation of the tenancy agreement to a single private residence Miss Brandler said that there had been no mention made of families and assumed it meant that it would be your single private residence. At no stage did she or the other Applicants represent that they were a family. They do not have the same surnames nor without being contentious, did they appear to have the same ethnic background. She was pressed on what she considered a "single private residence" to mean and responded that she considered it to be her own home but that it did not mean it had to be a single occupancy. There is no mention in the tenancy agreement of it being a family unit only.
15. Miss Brandler confirmed that they enjoyed living at the Property, but she did not become aware of the need for licensing until after she had vacated. She repeated that the agents were aware that the Applicants were not a family unit.
16. We then heard from Miss Newman who had also provided a witness statement which she corrected in a minor way. There was some comment concerning a visit by an agent when the Property was being re-marketed when it was suggested by the estate agent that the tenants were related to the landlords. She pointed out to the agent showing the prospective tenants' round that that was not the case. She confirmed that she enjoyed living in the flat and that initially Mr and Mrs Sandhu had been good landlords. The only time that there was some friction was

concerning the return of the deposit which had been resolved but after something of a dispute.

17. Asked about the meaning of paragraph 6.2 in the tenancy agreement, she confirmed that in her view single residency meant that she would be living there as her own property/home and not as a second house or as a business. On further questioning about the terms of the tenancy agreement, she confirmed that the contract did not say it was not a family unit and the agents did not say that they had to occupy as one unit. Asked whether there had been a group decision to proceed with the application, she thought that there had been a group conversation concerning this and that the application was merely exercising their legal rights.
18. Finally, we heard from Miss Perera who had also provided a witness statement, which we have noted. She confirmed that the Respondents had been good landlords and was referred to the tenancy agreement which showed RH as the landlord and the rent being paid to them. She was asked why she considered that Mr and Mrs Sandhu might have been the landlords and she relied on a copy of a gas certificate which showed Mr Sandhu as the landlord and the welcome letter from Hamptons in which Mr and Mrs Sandhu are referred to as the landlords. She did accept, however, that the rent was paid to RH limited. The same questions concerning the single private residency were raised and the same answers given.
19. Under some re-examination by Mr Samuels, she confirmed that she had never made representations to Hamptons that they were related in any way and there was some discussion about joint and several liability and whether or not guarantors had been required which apparently, they had for Miss Newman and Miss Perera and their respective fathers had provided that role.
20. For the Respondents we had before us a statement of case which Mr Sandhu confirmed was correct. This suggested that the application had been incorrectly and inappropriately brought in the first instance and that secondly, they had included Mr and Mrs Sandhu in the application when it was well known they were not the landlords. Reference is made to the apparent lease having been entered into by RH Limited with Mr and Mrs Sandhu which was of course the document we refused to admit because of the attempt to produce this at the very last second. He relied on the tenancy agreement which has RH as the landlord and that the rent was paid directly to that company. He said also that there was a strict requirement of RH that the flat be only let to a single-family unit as a single private residence. He alleged that the Applicants had told Hamptons they were a single-family unit and did so apparently it is said when the lease was extended for six months in January 2022. He told us that Westminster Council had confirmed in August 2021 that the regulations would not apply to a flat since the Applicants had he said warranted they were a single-family unit. Copies of the tenancy agreement were included in the Respondents' bundle as was a letter from Hamptons dated 8<sup>th</sup> January 2021 addressed to Mr and Mrs Sandhu and RH, which talks about the need to take up references for the Applicants. The tenancy confirmation form which has been exhibited was signed on behalf of RH as the landlord.

21. It is appropriate to set out in full the terms of 6.2 of the tenancy agreement which were relied upon by Mr Sandhu. It says as follows: *“To occupy and use the premises for residential purposes only as the tenant’s only or principal home as a single private residence and not to operate a business at the premises or use the premises for any other purpose and to use three rooms as bedrooms and the front large room used as a lounge.”* The definition of tenants includes the three Applicants.
22. The extension to the tenancy agreement dated 5<sup>th</sup> January 2022 is also produced and this shows the landlord as RH.
23. In his oral responses to us he told us that RH now only had the single property that he was letting but that prior to Covid it had had two properties. He told us that he could easily have obtained a licence to the Property as it was a nice apartment and intended only to be let to family units and accordingly as such a licence would not have been required.
24. In cross examination by Mr Samuels, he confirmed that each of the Applicants paid their share of the rent, but it came on one lump sum. He accepted that the rent had been paid in accordance with the tenancy agreement and that by implication the amounts the tenants were seeking to recover was correct. He confirmed he was aware of the licensing arrangements. He also confirmed that he was now the sole director of RH, his wife having been the previous director.
25. Asked whether or not he had attempted to apply for a licence he indicated that he had filled in an application but that that had not assisted to any degree. Asked whether he had made specific checks about the Applicants’ relationship, he said he relied on the tenancy agreement and that they had confirmed to the agent that they were one unit.
26. Asked about what category of section 258 of the 2004 Act the relationship of the Applicants came under, he was somewhat prevaricating and appeared to be unable to answer the question for fear of causing any form of insult to the Applicants suggesting that there may have been some form of LGBTQ issues. He did seem to suggest that it may have fallen within section 258 (3)(a) but did not pursue that nor indeed was he in a position so to do. He was asked why he had not put into the tenancy agreement that it was to be for a family only and they did not accept sharers, and seemed to put the blame for that on Hamptons the agents. His view, however, was that the definition of a single-family residence referred to a single-family home and in that belief, he did not consider that a licence was necessary. It did not appear that he had checked the position fully with the local authority.
27. Asked about his relationship with RH he confirmed that previously it had other properties and that although he was not an officer of the company he did respond on behalf of RH and indeed on occasions charged for that service which arose from his partnership in a firm of solicitors.
28. He was asked if he accepted that RH had not legal title but pointed out that as far as he was concerned the lease was for a term of less than 7 years and accordingly did not require to be registered at HM Land Registry. He was then taken to some

accounts for RH which did not appear to show the rental income. However, he was of the view that these were included within the balance sheet although no profit or loss accounts were produced. It was put to him that the arrangements with RH were a sham, that the lease that he had produced was not the original and had been fabricated for these proceedings which he described as “utter nonsense.”

29. Explaining in more detail his position with regard to RH Mr Sandhu told us that the income of the company was derived purely from letting the Property. No dividends were paid and there were no real profits as service charges had to be incurred. There was also some borrowing although he was not able to give us any further details.
30. We then adjourned until later in the afternoon when final submissions could be made. Mr Sandhu went first and said that as far as he was concerned the Applicants were a single-family unit and that they were now being untruthful and attempting to get their money back. RH only lets to a single-family unit and all documents pointed to that being the case. The licence was not mentioned when the Applicants sought to extend the tenancy and in his view the Applicants had reaffirmed what had been said in the agreement and that they were one household.
31. He was asked by us whether he was seeking to run a reasonable excuse defence on the basis that no licence was said to be needed because the letting was to a single family. His response was that he did not consider a licence was needed because of what representations were made concerning the occupancy but did accept that three sharers would have necessitated a licence.
32. Mr Samuels for the Applicants said that we needed to assess the evidence and the manner in which it was given. The three young women who denied any form of relationship and confirmed that was the case in their evidence. There was no merit in the suggestion that there was some single-family unit. He also sought reimbursement of the fees and had referred to the case of *Cabo v Dezotti* [2022]UKUT240 which is known to us.

## **DECISION**

33. There appears to be no dispute that the Property, if let to three individuals, would have required a licence from the Council. Mr Sandhu’s first contention is that the three Applicants were somehow related in some form, either as family or as partners and that accordingly it was let as a single-family unit which he said meant to one group of people who were related or deemed to be a unit under the provisions of section 258 of the 2004 Act.
34. We will deal with this point first. In our view this is a fallacious argument. We do not consider that the reference to a single private residence has the import argued for by Mr Sandhu. It is quite clear from seeing the Applicants that there is no physical similarity which would lead us to consider that they were a family. All three deny that there was any other form of relationship other than friendship. Mr Sandhu produced no evidence to support the contention that the Applicants had given some form of warranty, nor that there was any such

relationship. We preferred the evidence of the Applicants in this regard and in those circumstances, we reject Mr Sandhu's suggestion that a licence was not required because this was a letting to a family unit within the definition contained at section 258 of the 2004 Act.

35. In further support of our view on this, the tenancy agreement was prepared by and on behalf RH, of which Mr and Mrs Sandhu had involvement, and it would have been easy enough for them to have included within the tenancy agreement a requirement that it could only be let to a single-family unit and that would have avoided this concern. Mr Sandhu a solicitor but he did not do so, and we do not accept his arguments in that regard.
36. We are therefore satisfied beyond reasonable doubt that the offence of controlling and or managing an unlicensed HMO contrary to s 72(1) of the Housing Act 2004 has been committed.
37. The next defence put forward by Mr Sandhu is that the letting agreement was with RH and not with himself and his wife. This is a more problematic position. There is no doubt that the tenancy agreement is in the name of RH. The rent was paid to RH throughout the period of occupancy including the extension to the tenancy agreement. The fact that Hamptons may have referred to Mr and Mrs Sandhu as the landlords is not in our mind conclusive evidence that that was the case. A limited company would inevitably have individuals who dealt with other individuals on a day-to-day basis, and it was clearly Mr and Mrs Sandhu, more particularly Mr Sandhu, who fulfilled this role. It is clear that Mrs Sandhu was a director of RH at the relevant time and has signed the documents in that role.
38. We are aware of the findings in *Rakusen* from the Supreme Court which is in effect that it is the immediate landlord who is liable for a rent repayment order.
39. We have to be certain that beyond reasonable doubt an offence has been committed by one of the Respondents. It seems to us no doubt that such an offence has been committed by RH. They are shown as the landlord on the tenancy agreement, they receive the rent, and the Property is clearly one that should have been licensed, us having rejected the argument that the Applicants had some form of familial relationship.
40. The question then is whether or not Mr and Mrs Sandhu have any responsibility in terms of any RRO. We have considered this carefully and have come to the conclusion that they are at best the directors/director's husband of the Respondent Company. The immediate landlord is RH. We therefore find that there has been no offence by Mr and Mrs Sandhu within the meaning of the 2016 Act and that the "guilty" party is RH against whom the rent repayment order should be made.
41. We then need to consider what that rent repayment order should be. The maximum sum payable is the totality of the rent for 12 months, which is collectively £25,221.36 divided into three.
42. There have been various authorities in the Upper Tribunal as to how we should access the rent repayment order and we bear in mind those findings. The offence



of failing to licence is not the most serious offence in the 2016 Act. To decide what the rent repayment order should be we should first ascertain the whole of the rent for the relevant period, which we know is £25,221.36. It is not said that there are any payments in respect of utilities that we need to take into account. There is no suggestion that the Property was in anything other than good order throughout the terms of the tenancy agreement. The conduct of both parties during the currency of the tenancy is not something that we consider we need to reflect in the final decision. Neither has acted unreasonably towards the other save with regard to the deposit. Mr Sandhu provided evidence that there was a good landlord relationship, although the references were to him individually in one email from the three of them made in November 2021.

43. We do not have any details of the financial circumstances of the landlord other than the accounts, which do not help us to any great degree, but we are not aware that there have been any convictions. Taking these matters into account, it seems to us that it would be appropriate to award 75% of the rent claimed to reflect the matters we have set out above, which sums should be paid within 28 days. We also award the Applicants a refund of the application and hearing fees in the total sum of £300, to be paid to Hannah Brandler for her to credit as necessary.

### **Rent Repayment Order Schedule**

	Amount claimed	Amount allowed
Hannah Brandler	£8,407.12	£6,305.34
Bethany Newman	£8,407.12	£6,305.34
Meleesha Perera	£8,407.12	£6,305.34
Total award		<u>£18,916.02</u>

Judge *Andrew Dutton*  


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Andrew Dutton

Date:| 31 July 2023

### **ANNEX – 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 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 to 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 (ie 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.