



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

Case reference : **LON/00AN/HMF/2023/0048**

Property : **25 Gastein Road London W6 8LT**

Applicant : **Ms S E Hunter**

Representative : **Mr S Dight**

Respondents : **City Living WLDN Limited**

Representative : **none**

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**
Ms R Kershaw BSc

Date of Hearing : **2 August 2023**

Date of decision : **8 August 2023**

DECISION

Description of hearing

A hearing took place on 2 August 2023, attended by Ms Hunter and her representative Mr Dight. No one attended from City Living WLDN Limited or on its behalf.

The Tribunal had before it a bundle of 101 pages which included the application and the Tribunal's Directions of 9 March 2023.

Decisions of the tribunal

1. **The Tribunal finds that the Respondent did not commit an offence under section 72(1) of the Housing Act 2004.**
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 by the Respondent.**
4. **The reasons for the Tribunal decisions are given below.**

The background

5. The tribunal received an application dated 19 February 2023 for a rent repayment order ('**RRO**') under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") in respect of 25 Gastein Road London W6 8LT ('**the Property**'). The period for which the RRO was sought was 1 October 2022 to 31 January 2023 and the amount sought £4,000.
6. The application stated that the Property holds a HMO licence for a maximum of five people in five bedrooms (ref MAN-0002-00916-61320-x122) and that during the Applicant's occupation of the Property she shared it with six other tenants.
7. On 9 March 2023 the Tribunal issued Directions, which clarified that only the Applicant's immediate landlord can be a Respondent in the application and referred to the alleged offence as being in control/management of an unlicensed House in Multiple Occupation.
8. The Respondent did not comply with the Directions and by an order of 27 June 2023 was debarred from participating in these proceedings as from 10 July 2023.

The Property

9. The Property is described in the application as a 2 storey house with a loft conversion consisting of seven bedrooms and a kitchen without separate living room.

Issues

10. The issues before the tribunal to determine were
 - Had the Respondent committed an offence under section 72(1) Housing Act 2004 (the '2004 Act').
 - If the Respondent had committed an offence, 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

11. The tribunal has had regard to the application and the evidence that it heard from the Applicant.
12. The relevant legal provisions are set out in the Appendix to this decision

Did the Respondent commit an offence under s72(1) Housing Act 2004?

13. The Applicant did not challenge the existence of an HMO licence, the reference for which was given in her application. Rather Ms Hunter was alleging that the Respondent had committed an offence under either s72(2) or section 72(3) of the 2004 Act.
14. It is an offence under s72(2)(c) if a person having control/ management of an HMO knowingly permits a person to occupy the house resulting in the house being occupied by more households/ persons than is authorised by the licence. It is an offence under s72(3) if a HMO licence holder fails to comply with any condition of an HMO licence.
15. The offence under section 72(1) of the 2004 Act is controlling/ managing an HMO which is required to be licensed under the 2004 Act but which is not so licensed.

16. S40(3) of the 2016 Act makes it clear that for the Tribunal to have the power to make an RRO the offence must have been committed under s72(1). S40(3) does not give the Tribunal the ability to order an RRO where the offence is committed under s72(2) or 72(3).
17. The Tribunal find that there was no breach of s72(1) so it is not able to order a RRO under s43 of the 2016 Act.

Quantum of the RRO

18. As the Tribunal has found that the Respondent did not commit an offence under s72(1) it is not necessary for it to consider the possible quantum of any RRO.

Fees

19. At the hearing the Applicant raised the issue of recovery of her fees, £100 application fee and £200 hearing fee.
20. As no RRO was made it is not appropriate for the Tribunal to order the Respondent to reimburse the Applicant her fees.

Name: Judge Pittaway

Date: 8 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.

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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of 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 the amount must relate to rent paid by the

***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)

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.