



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

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Case reference : **LON/00BK/HMF/2023/0024**

HMCTS code : **V: Video**

Property : **Flat 27 Stourhead House 79 Tachbrook
Street Lindon SW1V 2QE**

Applicants : **Mr E Stewart, Ms L Bramall, Ms R Moon**

Representative : **Justice for Tenants, Mr Neilson**

Respondent : **Ms M Thomas**

Representative : **In person**

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 S Coughlin MCIEH

Date of Hearing : **8 August 2023**

Date of decision : **14 August 2023**

DECISION

Description of hearing

A remote video hearing was held on 8 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 applicants' bundle (211 pages), the respondent's bundle (38 pages), an applicants' short reply (7 page), and an e mail of 4 August 2023 with various certificates attached.

The hearing was attended by Mr Neilson, representing the applicants, Mr E Stewart and Ms R Moon, who were in attendance, and Ms Bramhall,. Ms Thomas attended and represented herself. Mr Thomas, Ms Wilson and Ms Boyd attended as observers.

The applicants' bundle contained witness statements from each of the applicants. The Tribunal heard evidence from Mr Stewart, from Scotland. It did not hear evidence from Ms Moon as she was in Costa Rica and permission had not been obtained for her to give evidence from there. Ms Bramall did not attend the hearing.

The respondent's bundle contained a witness statement by Ms Thomas.

The tribunal heard oral evidence from Mr Stewart and Ms Thomas and submissions from Mr Neilson and Ms Thomas.

Decisions of the tribunal

1. **The Tribunal finds that the Respondent committed an offence under section 72(1) of the Housing Act 2004 as she 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 for part of the time it was committed.**
2. **The Tribunal makes a Rent Repayment Order against the Respondent in the sum of £3,900.**
3. **The Tribunal orders the reimbursement by the Respondent 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 13 December 2022 for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") in respect of Flat 27 Stourhead House 79 Tachbrook Street Lindon SW1V 2QE ("**the Property**").

6. The application stated that the Property should have had, but did not have, an additional HMO licence. The additional licensing scheme came into force on 30 August 2021.
7. The applicants entered into an AST with Ms Marina Thomas for a term of twelve months from 26 September 2021 at a rent of £2,600 per calendar month. The AST had a tenants' break clause which the applicants exercised vacating the Property on 26 July 2022
8. Each applicant is seeking a RRO for £8,666.70 for the period from 26 September 2021 to 26 July 2022, £26,000.10 in total.
9. On 31 March 2023 the Tribunal issued Directions providing for the matter to be heard at a video hearing.

The Property

10. The Property is described in the application as a three-bedroom flat in a purpose-built building above shops. The Tribunal heard evidence from Ms Thomas that the flat also had a large living room and kitchen and that there are two toilets at the flat.

Agreed matters

11. The Respondent did not challenge
 - That the Property was one which since 30 August 2021 had required an additional HMO licence;
 - That the relevant period was 26 September 2021 to 26 July 2022;
 - That the Applicants had each paid rent during the relevant period of £8,666.70, in total £26,000.10.

Issues

12. 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

13. The tribunal has had regard to the witness statements in the bundles, the oral evidence that it heard from Mr Stewart and Ms Thomas, and the submissions made by Mr Neilson and Ms Thomas in reaching its decision. It has placed less weight on the evidence contained in the witness statements of Ms Bramall and Mr Moon as neither was available to be cross-examined on their evidence. As appropriate, and where relevant to the tribunal's decision, the evidence and submissions are referred to in the reasons for the tribunal's decision.
14. The relevant legal provisions are set out in the Appendix to this decision

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

15. Ms Thomas submitted that she was reliant on her managing agent and that she had been unaware of the need to obtain an additional HMO licence.
16. Ms Thomas gave evidence the Property had been let through managing Agents Bunn and Co, through whom she had been letting the Property, previously her family home, since 2009. Ms Thomas was unable to provide a copy of the agreement with Bunn and Co, but stated that they were employed to provide a full management service. Bunn and Co had told her about the need for other certificates for the Property but had not advised her of the introduction of the requirement for an additional HMO. Ms Thomas had originally chosen Bunn and Co, having interviewed a number of agents, because of the proximity of their offices to the Property and that they appeared to let various properties on the Liddington Estate on which the Property is located. Ms Thomas stated that if at any time during the tenants' occupation of the flat her attention had been drawn to the need for an additional HMO she would have obtained one. Ms Thomas also referred the tribunal to the breach having occurred during the COVID pandemic. Ms Thomas confirmed that she had not contacted the Council to see if any certificate was required from them.
17. Ms Thomas referred to the various cases cited by the applicants in their statement of case. Ms Thomas submitted that these refer to 'professional' landlords, and that she is not such a landlord. The Property used to be her family home, and apart from her own home the only other property she owns is a flat in Glasgow inherited from her mother and occupied by her children.
18. Mr Neilson submitted that it was not a reasonable excuse that Ms Thomas had relied on her managing agents. In response to Ms Thomas' submission that she is not a professional landlord Mr Neilson referred to the fact that Ms

Thomas had been letting the Property since 2009. Mr Neilson submitted that, in respect of Ms Thoams' reliance on her agent, Ms Thomas had not satisfied the three limbs set out in *Aytan v Moore* [2002] UKUT 027, the existence of a contractual obligation on the agent to keep the landlord informed of licensing requirements, evidence that the landlord had good reason to rely on the competence and experience of the agent and the need to show that there was a reason why the landlord could not inform itself of the licensing requirements.

19. Mr Neilson submitted that Ms Thomas could not rely on ignorance of the need for an additional HMO licence, referring the Tribunal to the decisions in

- *Marigold v Ors* [2023] UKUT 33 LC
- *Mohammed v L B of Waltham Forest* [2020] EWHC 1083
- *I R Management Services Ltd v Salford City Council* [2020] UKUT 81(LC)
- *AA v Rodriguez & Ors* [2021] UKUT 0274 (LC)
- *Chan v Bilkhu & Anor* [2020] UKUT 0289 (LC)

20. Mr Neilson submitted that ignorance of the requirement to have an additional HMO licence should not be a reasonable excuse throughout the term. He submitted however that it might be considered reasonable to be unaware of the need for an additional HMO licence for six months after the requirement to have one was introduced.

21. The tribunal note in particular the extract from *AA v Rodriguez & ors* cited by Mr Neilson,

'47. The view has generally been taken that it is the responsibility of someone who wishes to let their property to find out whether any relevant regulatory restrictions exist and that ignorance of the need for a licence will not normally provide a reasonable excuse (although it may be relevant to culpability and therefore to the amount of a financial penalty to be imposed under section 249A). But there is no hard and fast rule and, just as much as any other defence, a reasonable excuse defence based on ignorance of the need for licensing will always require a careful evaluation of all the relevant facts.'

22. On the evidence before it the tribunal find that Ms Thomas was not a 'professional' landlord. The tribunal is also mindful of the date upon which the need to obtain an HMO was introduced (one month before the letting to the applicants) and the impact of the COVID pandemic. These are all relevant facts which require careful evaluation. On the basis of Mr Neilson's submission as to the period for which it might have been considered reasonable to be ignorant of the need for an additional HMO licence the Tribunal finds that the Respondent had a reasonable excuse to controlling/managing the Property without an HMO licence for the period of six months from the date upon which the requirement to have an HMO licence was introduced.

23. The tribunal find that the respondent had a reasonable excuse for committing the offence for the first five months of the tenancy (being six months from the introduction of the requirement for an additional HMO licence).

Quantum of the RRO

24. The tribunal heard evidence from Mr Stewart as to the conduct of the landlord, particularly how complaints about persistent mice infestation and blocked toilets had been dealt with. On being cross examination Mr Stewart accepted that these issues had been dealt with reasonably quickly. Ms Thomas gave evidence that mice had never been a problem before, and that it appeared to have been a building wide problem, not specific to the Property, possibly as a result of building works on the estate.
25. Ms Thomas referred to an e mail from Mr Stewart to Bunn & Co of 25 May 2022 in the bundle in which he thanked them for promptly dealing with issues that they had had in relation to the flat. Ms Thomas also referred to Ms Moon's witness statement as evidence that the applicants had enjoyed living in the Property.
26. Mr Stewart confirmed that the applicants had determined the tenancy because two of them were no longer going to be living in London, not for any other reason.
27. The applicants allege that the respondent breached various statutory and regulatory obligations in failing to provide Deposit Protection Information within 30 days of receiving the applicants' deposit, through not having and failing to provide a gas safety certificate, an electrical safety certificate and an EPC certificate. They also allege breaches of regulations in *The Management of Houses in Multiple Occupation (England) Regulations 2006*.
28. The e mail of 4 August provided evidence that the property had a Domestic Electrical Installation Certificate, a Gas Safety certificate and an EPC since before the property was let to the applicants and that the deposit had been protected, and that that had been confirmed to the applicants (albeit on an unspecified date which was more than 30 days after receipt of the deposit). The tribunal heard evidence from Ms Thomas that there was a copy of the gas safety certificate at the Property. Ms Thomas accepted that the Deposit Protection Information had been provided late; she had been let down by Bunn & Co her managing agents.
29. Mr Neilson submitted that the tribunal's starting point is the rent paid during the relevant period, referring the tribunal to the decision in *Williams v Parmar & ors* [2021] UKUT 244 (LC).
30. The present law, to which the tribunal must have regard, is set out in the decision in *Dowd v Martins & ors* [2022] UKUT 249 and *Acheampong v Roman & ors* [2022] UKUT 239 (to which cases the Tribunal was not

referred) and which set out how the tribunal is to approach the quantification of awards. The tribunal is required to

- Ascertain the whole of the rent for the relevant period
- Subtract any element of that sum which represents payments for utilities that only benefitted the tenant
- Consider the seriousness of the offence compared to other types of offence in respect of which a RRO may be made and the proportion of the rent which is a fair reflection of the seriousness of the crime.
- Consider whether there should be any further addition or deduction from the figure in light of the factors set out in section 44(4)

31. As the Tribunal has found that the Respondent had a reasonable excuse for the commission for five months of the term it is required to consider the possible quantum of any RRO for the remaining five months of the term. During the five month period in question the tenants each paid £4,333.35, in total £13,000.05.
32. It was accepted by both parties that the tenants were responsible for paying for the utilities at the Property.
33. Mr Neilson submitted that of the possible offences for which an RRO might be sought failure to obtain an HMO licence was less serious than, for example, harassment. He submitted that it would be appropriate for the tribunal to start from the position that an award of 85% of the rent should be made.
34. The tribunal do not accept Mr Neilson's suggested starting point of 85% of the rent. This is disproportionate to the seriousness of the offence.
35. As stated at paragraph 33 of *Hallett v Parker* [2022] UKUT 165 (LC)

'The object of HMO licensing is to contribute to the achievement of satisfactory housing standards. If a landlord has provided accommodation of a decent standard, despite failing to obtain a necessary licence, the punishment appropriate to the offence ought to be moderated.'

36. On the basis of the evidence before it the tribunal finds that this offence is low in the overall scale of section 72(1) offences, and these are less serious than other offences for which an RRO can be made. The Tribunal therefore, in exercise of its discretion, takes 30% of the rent of £13,000.05 as its starting point.
37. Turning to the factors set out in s44(4) of the 2016 Act the tribunal finds that the conduct of the landlord does not merit any move away from that starting point. It finds no adverse conduct on the part of the respondent. Conversely the landlord's conduct as a reasonable landlord should not merit a move downwards from that starting point.

38. The Tribunal has no evidence before it as to the landlord's financial circumstances. Ms Thomas confirmed that she had never been convicted of an offence to which the relevant Chapter of the 2016 Act applies.
39. Accordingly the amount to be repaid to each of the applicants is £1,300.

Fees

40. The respondent had committed an offence under s72(1) so that it was justifiable for the applicants to make an application.
41. The Tribunal therefore orders the reimbursement of the applicants' fees.

Name: Judge Pittaway

Date: 14 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 and 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>
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	<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 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 on the ground that the landlord has committed

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

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

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

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

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.