



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

Case reference : LON/00BG/HMF/2023/0059

Property : Flat 47 Bernard Baron House, 71
Henriques Street, London E1 1LZ

Applicant : Simon Goeggel (A1)
Lisa Fabienne Loy (A2)

Representative : Muhammed Williams, Environmental
Officer, L.B. Tower Hamlets

Respondent : Xhevdet Zariqi

Representative : -

Type of application : Application for a rent repayment order
by a tenant
Sections 40,41,43 & 44 of the Housing
and Planning Act 2016

**Tribunal
member(s)** : Judge D Brandler
Mr S Mason FRICS

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 18th August 2023

Date of decision : 18th August 2023

DECISION

Decision of the tribunal

(1)The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £8,300. This sum to be paid within 28 days of this order in the following proportions:

(i) To Simon Goeggel the sum of £4,160.

(ii) To Lisa Fabienne Loy the sum of £4,160

(2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. By an application dated 22/02/2023 Simon Goeggel (“A1”) and Lisa Fabienne Loy (“A2”), (“the applicants”), sought a Rent Repayment Order (“RRO”) in respect of rent paid to Xhevdet Zariq (“the Respondent”). The period of claim is 28/06/2021 to 31/05/2022. The amount of rent paid by the applicants for that period is £14,428.22.
2. The application was brought on the following grounds.
 - (a) the property required a selective licence. No application for such licence was made by the respondent until 15/08/2022 [107]. It is alleged that the respondent has committed an offence under s.95(1) of the Housing Act 2004 (“the 2004 Act”)

*“s.95 Offences in relation to licensing of houses under this Part
(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.”*
 - (b) the control or management of an unlicensed house which is required to be licensed is grounds for a RRO under section 40 Housing and Planning Act 2016 (“the 2016 Act”)
3. The Tribunal issued directions on 24/03/2023. The Respondent was directed to file and serve a bundle of all documentation upon which he seeks to rely by 09/06/2023. In breach of that order, nothing was received from the Respondent.
4. The applicants signed a tenancy agreement in relation to Flat 47 Bernhard Baron House, 71 Henriques Street, London E1 1LZ (“the property”) on 24/08/2020 commencing on 31/08/2020 for a period of 12 months. The agreement was arranged by Purple Bricks, the agents at the time [28] and a deposit of £1,500 was protected by DPS [47]
5. On 16/08/2021 the applicants signed a new tenancy agreement directly with the Respondent for the property for a period of 12 months from 31/08/2021. The monthly rent for the property was £1300 throughout both tenancies. [51]

6. The Applicants' were made aware that the property had not been correctly licensed, when an officer from the London Borough of Tower Hamlets called at the property to notify them, and also advised them that they could apply for a RRO.

7. The London Borough of Tower Hamlets ("the Council") designated certain areas of the Borough for an Area for Selective Licensing. The Designation was made on 28/04/2021 and came into force on 01/10/2021 [109].

8. The Tribunal issued Directions on 24/03/2023.

THE HEARING

9. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles provided enabled the tribunal to proceed with this determination.

10. This was a face to face hearing at 10 Alfred Place, London WC1E. The applicants' provided a bundle of [113] pages. Any reference to that bundle of documents will refer to electronic page number in []. No bundle was produced by the respondent.

11. The Applicants attended the hearing accompanied by their representative, Mr Williams, from the Environmental Health and Trading Standards Team at LB Tower Hamlets.

12. The Respondent attended the hearing in person and at the start of the hearing he told the Tribunal that he had a bundle of evidence to submit.

13. The Respondent was asked whether he had received the directions order, and whether he had read and understood them. He confirmed he had. He was referred to the section headed "How the Respondent should prepare for the hearing" [13]. At paragraph 8 of the Order it directed "*by 9 June 2023 the Respondent must email to the Tribunal... and email to the Applicant a bundle of all relevant documents for use in the determination of the application...*" and was asked why he had not complied. In response, he stated that he had not understood that he would have to provide evidence in advance, and that he had tried to get a solicitor to assist him, but the potential cost had been too high.

14. Having heard that the Respondent had received the directions, he had read and understood them, and had failed to comply, the Tribunal, could find no good reason to allow late evidence to be accepted today.

15. Having refused to accept the late evidence, the Respondent asked that the hearing be adjourned to another date so that he could prepare his case. This too was refused on the basis that the hearing was notified some time ago, that the respondent had failed to contact the Tribunal prior to the

hearing today to ask that the date be changed, and that it was not consistent with the overriding objective to allow the Tribunal to deal with cases justly and fairly.

16. It was explained to the Respondent that he would not be permitted to introduce evidence at the hearing today, having failed to comply with direction (8), but that he would be permitted to challenge the Applicants' evidence by asking them questions.

The evidence

17. The Tribunal heard first from Ms Loy ("A2"). She confirmed that the period being claimed is 28/06/2021 to 31/05/2022. She demonstrated in documentary evidence that she paid £1,300 pcm for each of those months. She explained that she had paid the full rent to the Respondent, and that Simon Goeggel ("A1") paid his half of the rent to her in the sum of £650 pcm, also evidenced in the bank statements provided.

18. She confirmed that she and A1 had found out about RROs from the Tower Hamlets officer who had called at the property, and informed them that the property was not properly licenced, and offered the services of the Council to assist with the application.

19. A2 told the Tribunal that they had found the property through Rightmove, who then referred them to Purple Bricks. They found the property online and did not view it because it was during the Covid 19 Pandemic. However, they had seen a video of the property. When they moved in, they found mould around the sealant on the bath, and they spent some 3 days cleaning it. She said it was of concern because A1 has asthma. In cross examination she was challenged on this allegation, and she agreed that other than the mould round the bath the property had been in excellent condition.

20. However, there had been a problem with the dishwasher. She told the Tribunal that the dishwasher had stopped working. They commissioned an engineer to make sure they had not caused the fault, and the engineer had confirmed it was not their fault, that it was wear and tear. Further to that engineer assessment, A2 contacted the landlord providing him with the engineer report, but she says, he did not respond and the dishwasher remained out of order for the remainder of their occupation. In cross examination she was challenged on this point and it was put to her that a brand new dishwasher was installed by him. Her response to this was concern that the respondent alleges he has engaged someone to enter the property without them knowing and install a dishwasher. In any event she denies that this happened. The Tribunal did not have sight of her engineer's report, as this was not included in the Applicants' documentation, nor did the Tribunal have the evidence that the respondent sought to rely on in this regard, as he was debarred from doing so.

21. A2 told the Tribunal that they had paid a deposit of £1,500 that was protected by DPS via Purple Bricks but that a few months later the landlord contacted them to ask that they agree with DPS repay the deposit to him on the basis that he wanted to protect it elsewhere. She told the Tribunal that they had agreed because they believed he would do so, but they had never been provided with evidence that the deposit had been re-protected. At the end of the tenancy they found out that there was no trace of the deposit being protected.

22. The Tribunal then heard from Simon Goeggel (“A1”). He confirmed the dates of occupation and claim, and that he had paid his half of the rent every month to A2, as demonstrated in A2’s bank statements.

23. He was asked about utilities and how these were paid. He explained that when they first moved in, he had put the gas, electricity and water accounts in his name and they were paid by him. However, some months into the tenancy, the respondent contacted them and told them he wanted to put the utility bills in his own name, and that the Applicants would have to repay him for any liability incurred by him in this regard. A1 told the Tribunal that they were not provided with bills, they would just get a text message with a screen shot of what they had to pay. This is reflected in a bank payment made to the Landlord in November 2021 which shows a payment of £1,414 [74].

24. A1 told the Tribunal that at the end of the tenancy the respondent had come to inspect the property and had told A1 that there were no problems. However, he did not repay the deposit. There were some bills to be paid. After at least a month and several attempts to contact the respondent asking for the deposit back, the Applicants received only £977.56. A1 says he expected to receive another £200 on top of that as there were only utilities bills to settle. He had searched for information about whether the deposit was protected, but could find none to support a claim that the deposit had been re-protected. In cross examination, he was asked why he hadn’t wanted to pay the last bills. A1 stated clearly he had paid the bills, but that he had not been provided with a breakdown of what bills were outstanding, or a breakdown of the deductions taking from the deposit. He said that he had written to the respondent on several occasions but the respondent ignored his requests.

25. When the respondent was challenged as to why he had changed the terms of the tenancy agreement, so as to demand utility charges, he did not have an answer.

26. In submissions, in response to the Tribunal’s questioning about the commencement of the Designation for Selective Licencing, in particular in relation to the evidence that the Designation was made on 28/04/2021 and “shall come into force on 1st October 2022” . In particular whether there had been a period during which the Designation had not been in force since the last Designation in 2016, Mr Williams conceded that the information was not produced in the Applicant’s bundle and that he

asserts that there was not a gap in such Designation, he had not produced the evidence to support that assertion.

27. Mr Williams asks that the Tribunal award 100% of the rent paid for the period claimed. He also asks that the costs of the application are ordered to be repaid.

28. In submissions from the respondent, he asked the tribunal to take into account all his expenses for the property including mortgage, service charges, insurances, application for licence, gas and electrical safety checks, as well as having to support his 23 year old twins who had graduated but could not find a job.

29. He confirmed that the NW3 property in which he was living at the time of the application is his wife's property not his. He confirmed that last year he had bought a new Property in London E1. He presented no evidence of financial hardship.

30. He confirmed that once he found out about the requirement for a licence, he had applied (15/08/2022)[107]. He complained that the Council had not emailed him about the requirement to licence and that previously he has always been of good character, working hard, and only ever had a parking ticket and a speeding fine.

FINDINGS

31. The Tribunal finds beyond a reasonable doubt that the respondent landlord is in breach of the selective licensing requirement for the property for the period 01/10/2021-31/05/2022. This is on the basis of the evidence of the Notice of Designation of Areas for Selective Licensing coming into force on 01/10/2022 [109].

32. The tribunal finds that the Applicants have not satisfied them beyond a reasonable doubt that there was continuous requirement for licencing prior to that date.

33. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

34. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

35. There is no evidence to demonstrate that the landlord has been prosecuted.

36. The Tribunal find poor conduct by the respondent landlord in relation to

- (i) his failure to re-protect the deposit, and failing to account for the amount deducted from the deposit at the end of the tenancy; and
- (ii) demanding the utilities be put in his name during the course of the term of the tenancy, and failing to provide accounting as to the utility charges demanded.

37. The Tribunal do not find that the complaint of mould around the bath was a serious issue. While the Tribunal prefer the evidence of Ms Loy in relation to the issues surrounding the dishwasher, the Tribunal do not find that this is a serious issue.

38. The Tribunal do not find that the applicants demonstrated poor conduct.

39. The Tribunal heard from the Respondent about the expenses he has in relation to the property. None of these are deductible from the RRO. In the absence of financial hardship, the only possible deductions would be utilities, which the Applicants paid.

40. No evidence was available in relation to the financial circumstances of the respondent, other than the land registry document demonstrating that he purchased the property on 28/09/2004. He told the Tribunal he had rented this out for some 7-8 years, previously living in it himself. He also told the Tribunal that last year he had purchased a new property in E1. This does not suggest financial hardship.

41. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21.

- a. The rent paid by the applicants for the period from 01/10/2021 to 31/05/2022 was £10,400.
- b. Utilities were not included in the rent. These were paid by the applicants and no deductions are made in that regard.
- c. The respondent was a professional landlord having let this property for some years. There is evidence that he made an application for a selective licence on 15/08/2022.
- d. However, the respondent has not been prosecuted and there is no evidence before the Tribunal of any previous convictions. Considering the cases cited in paragraph 16 of the *Acheampong* case cited above, the starting point in this case is 80% and on a par with *Williams v Palmer* [2021] UKUT 244 (LC)
- e. The respondent has provided no information about his financial circumstances.
- f. The Tribunal consider that the failure of the landlord to re-protect the deposit, and to demand that the way utilities were paid during the course of the term of the tenancy are aggravating

factors and therefore consider an award of 80% of the net rent for the period is repayable. Accordingly we find that an RRO be made against the respondent in the sum of **£8,320.00** to be paid within 28 days of this order.

42. The Respondent is also ordered to repay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Judge D. Brandler **Date:** 18th August 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 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.

Appendix of relevant legislation

Housing Act 2004

Section 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.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

95 Offences in relation to licensing of houses under this Part

(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 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 by that landlord.

Act	section	general description of offence
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).

Section 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.

(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.

(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.

Section 43 Making of 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 has been convicted).

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

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 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.