



Case Reference : **LON/00AG/HMF/2023/0062**

Property : **4 Hermit Place, London NW6 4BZ**

Applicants : **Mr K Pryce**

Representative : **Mr C Nelson**

Respondent : **~~JK HM Ltd~~**
Hamdi Mustapha Youseff Hawehar

Representative : **Debarred from participating**

Type of Application : **Application by Tenant for a Rent Repayment Order**

Tribunal Members : **Judge S Brilliant**
Mr S Wheeler MCIEH CEnvH

Date and Venue of Hearing : **23 August 2023**
10 Alfred Place, London WC1E 7LR

Date of Written Reasons : **23 August 2023**

DECISION

Determination

1. The Tribunal is satisfied beyond all reasonable doubt that, during the periods (1) commencing on 20 September 2021 and ending on 25 January 2022, and (2)

commencing 14 February 2022 and ending on 6 April 2022, 4 Hermit Place, London NW6 4BZ (“the House”) fell within an additional licensing scheme and required a licence.

2. The amount we order to be paid back to the Applicant by the Respondent is £3,399.45. The Respondent must also refund the application and hearing fees, which total £300.00.

The licensing schemes

3. In Camden an additional licensing scheme came into operation from 08 December 2020.

4. The additional licensing scheme operates where there are three occupants living in more than one household who share facilities such as a bathroom or kitchen. An HMO licence is required: s.61(1) Housing Act 2004. Failure to obtain a licence is an offence: 72(1) Housing Act 2004. Such a failure can be penalised by a rent repayment order: s.43(3) Housing and Planning Act 2016.

The proceedings

5. These proceedings concern an application for a rent repayment order pursuant to ss.40, 41, 43 and 44 Housing and Planning Act 2016 (“the 2016 Act”).

6. Directions for the hearing were given on the 24 March 2023 and were amended on 02 May 2020. The amendment was to substitute Mr H Hawchar for Studio V Properties Ltd as a Respondent.

7. This should not have been done. Mr Hawchar is not the landlord. The Applicant’s landlord is the only remaining Respondent.¹ Mr Hawchar was once a director of the Respondent company for a very short time. The application to join him was also out of time.

8. At the hearing the Applicant was represented by Mr C Nelson of Justice for Tenants. The Applicant gave oral evidence. The Respondent had been debarred from taking part in the proceedings by virtue of a failure to comply with the procedural directions. We are grateful to Mr Nelson for his realistic concessions during the argument and to the Applicant for the honesty of his evidence.

The House and its licensing

9. The House is a 3 storey house. On the ground floor there is an open-plan communal living room and kitchen with stairs up to the first floor. There is also a WC compartment on the ground floor. On the first floor there is a bedroom and a

¹ The full picture is that Studio V Properties Ltd is the head long lessee, Mr Hawchar is the tenant of Studio V Properties Ltd, and the Respondent is the tenant of Mr Hawchar.

separate communal bathroom with WC. On the third floor there are two further bedrooms.

10. On 15 December 2022, Camden Council confirmed that the House had never had an HMO licence and no application had ever been made for one

The Lease

11. The Applicant rented a second floor bedroom (“the Bedroom”) under what is described as a licence agreement dated 07 August 2021. We have seen a copy of the document and it is plainly a tenancy agreement.

12. The Applicant occupied the Bedroom between 07 August 2021 until 10 April 2022. However, the claim is only made up to 06 April 2022, making a total period of 07 months.

13. Moreover, because of the number of occupants changing from time to time, the House was not an HMO continuously whilst the Applicant lived there.

14. The periods when the House was an HMO are as follows:

(a) 20 September 2021 until 25 January 2022; and

(b) 14 February 2022 until 06 April 2022.

15. Accordingly, there is a 07 month period deducting 13 days at the beginning and 19 days in the middle. This comes to 07 months less 32 days.

The rent repayment claimed

16. The rent is £650.00 per month. So for the period of 07 months less 32 days, the claim is for a repayment of £3,866.17.

Deduction for utilities

17. There needs to be deducted from these figures the amount paid for utilities forming part of the rent. This is because the tenancy agreement provided for the Respondent to pay for them. No figures were provided, but the Tribunal drew the Applicant’s attention to the Energy Performance Certificate which based on 2020 figures estimated a cost for heating, hot water and lighting to be £451.00 pa.

18. It was suggested by the Tribunal that £15 per month would reflect the likely utility costs for the Bedroom during the claimed period, allowing for inflation and other electrical uses (such as TV and internet). The Applicant accepted this.

19. So, the amount to be deducted for utilities over the claimed period is:
- (a) 07 months at £15 per month which comes to £105.00; less
 - (b) 32 days at 50p per day which comes to £16.00.
20. This totals £89.00. This sum when deducted from £3,866.17 gives the maximum amount the Applicant can be repaid as £3,777.17.

The statutory framework

21. s.40 of the 2016 Act states:
- (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 ... under the tenancy.*
22. Among the relevant offences is having control of or managing an HMO which is required to be licensed and which is not licenced.
23. s. 43 of the 2016 Act provides that the Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that the offence has been committed, and that where the application is made by a tenant the amount is to be determined in accordance with s.44.
24. s.44 provides:
- (1) *Where the First-tier Tribunal decides to make a rent repayment order under s.43 in favour of a tenant, the amount is to be determined in accordance with this section.*
 - (2) *The amount must relate to [our emphasis] rent paid during the period mentioned in the table: [The table provides for the offence in these proceedings to be 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*
 - (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.*

The case law

25. There is no requirement that a payment in favour of the tenant should be reasonable: Vadamalayan v Stewart [2020] UKUT 183 (LC) [11].

26. It is not possible to find in the 2016 Act any support for limiting the rent repayment order to the landlord's profits. That principle should no longer be applied. That means that it is not appropriate to calculate a rent repayment order by deducting from the rent everything spent on the property during the relevant period. There is no reason why the landlord's costs in meeting his obligations under the lease (such as repairs) or by way of mortgage repayments should be set off against the cost of meeting his obligations to comply with the rent repayment order: Vadamalayan [14-15].

27. The context of a "starting point" is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it may leave little room for the matters which s.44(4) obliges the Tribunal to take into account, and which Parliament clearly intended should play an important role (Ficcara v James [2021] UKUT 38 (LC) [50]).

28. An important decision is that of Fancourt J in Williams v Parmar [2021] UKUT 0244 (LC). This deserves to be quoted at length:

23. The offence of having control of or managing an unlicensed HMO is not an offence described in s. 46(3)(a) and accordingly there was no requirement in this case for the FTT to make a maximum repayment order. That section did not apply. The amount of the order to be made was governed solely by s.44 of the 2016 Act. Nevertheless, the terms of s.46 show that, in cases to which that section does not apply, there can be no presumption that the amount of the order is to be the maximum amount that the tribunal could order under s.44 or s.45. The terms of s.44(3) and (4) similarly suggest that, in some cases, the amount of the order will be less than the rent paid in respect of the period mentioned in the table in s.44(2), though the amount must "relate to" the total rent paid in respect of that period.

24. It therefore cannot be the case that the words "relate to rent paid during the period ..." in s. 44(2) mean "equate to rent paid during the period ...". It is clear from s. 44 itself and from s. 46 that in some cases the amount of the RRO will be less than the total amount of rent paid during the relevant period. S. 44(3) specifies that the total amount of rent paid is the maximum

amount of an RRO and s. 44(4) requires the FTT, in determining the amount, to have regard in particular to the three factors there specified. The words of that subsection leave open the possibility of there being other factors that, in a particular case, may be taken into account and affect the amount of the order.

25. *However, the amount of the RRO must always “relate to” the amount of the rent paid during the period in question. It cannot be based on extraneous considerations or tariffs, or on what seems reasonable in any given case. The amount of the rent paid during the relevant period is therefore, in one sense, a necessary “starting point” for determining the amount of the RRO, because the calculation of the amount of the order must relate to that maximum amount in some way. Thus, the amount of the RRO may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid during the period is not a starting point in the sense that there is a presumption that that amount is the amount of the order in any given case, or even the amount of the order subject only to the factors specified in s.44(4).*

26. *In this regard, I agree with the observations of the Deputy President of the Lands Tribunal, Judge Martin Rodger QC, in Ficcara v James. [2021] UKUT 0038 (LC), in which he explained the effect of the Tribunal’s earlier decision in Vadamalayan v Stewart [2020] UKUT 0183 (LC). Vadamalayan is authority for the proposition that an RRO is not to be limited to the amount of the landlord’s profit obtained by the unlawful activity during the period in question. It is not authority for the proposition that the maximum amount of rent is to be ordered under an RRO subject only to limited adjustment for the factors specified in s. 44(4).*

29. At [40] the learned judge repeated that there was no presumption in favour of the maximum amount of rent paid during the period, and the factors that may be taken into account are not limited to those mentioned in s.44(4), although the factors in that subsection are the main factors that may be expected to be relevant in the majority of cases.

30. At [41] the learned judge said that the circumstances and seriousness of the offending conduct of the landlord are comprised in the “conduct of the landlord” [in s.44(4)(a)], so the Tribunal may, in an appropriate case, order a lower than maximum amount of rent repayment, if what a landlord did or failed to do in committing the offence is relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise. As we shall see, mitigating circumstances are relevant in these proceedings

31. The learned judge continued:

50. *I reject the argument of Mr Colbey that the right approach is for a tribunal simply to consider what amount is reasonable in any given case. A tribunal should address specifically what proportion of the maximum amount of rent paid in the relevant period, or reduction from that amount,*

or a combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. A tribunal must have particular regard to the conduct of both parties (which includes the seriousness of the offence committed), the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence. The tribunal should also take into account any other factors that appear to be relevant.

51. It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of each case. On the other hand, the factors identified in para 3.2 of the guidance for local housing authorities are the reasons why the broader regime of RROs was introduced in the 2016 Act and will generally justify an order for repayment of at least a substantial part of the rent. This is what Judge Cooke meant when she said in Vadamalayan that the provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act, which included expressly a criterion of reasonableness. If Parliament had intended reasonableness to be the criterion under Chapter 4 of Part 2 of the 2016 Act it would have said so.

32. More recently, in Acheampong v Roman [2022] UKUT 239 (LC) it was said that the following approach will ensure consistency with the authorities:

- (a) Ascertain the whole of the rent for the relevant period.
- (b) Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.
- (c) Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step;
- (d) Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

33. The judge added that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence?

Complaints against the Respondent: summary

34. The Applicant complains about the following matters:
- (a) fire risks in the House, particularly no safe route from the first and second floors to any exit because of the whole of the ground floor being open plan;
 - (b) the deposits were not protected under any of the approved schemes;
 - (c) significant infestation of bed bugs, which was only superficially and inadequately treated ;
 - (d) giving notice to leave without a valid notice;
 - (e) no gas safety certificate provided;
 - (f) no “How to Rent” guide provided;
 - (g) no electrical installation condition report provided;
 - (h) no energy performance certificate provided;
 - (i) unwillingness to address issues of an anti-social tenant.

Complaints against the Respondent: findings of fact

35. The Tribunal found the Applicant a wholly honest witness and we find each of these complaints to have been made out.

Applying the law to the facts

36. Adopting the exercise in Acheampong:
- (a) The rent for the relevant 12 month period is £3,866.17.
 - (b) We attribute £89.00 as the cost of utilities. This reduces the maximum rent repayment order to £3,777.17.
 - (c) Comparing other types of offence we think that a fair proportion of the

rent fairly reflecting the seriousness of this offence is 80%.

(d) Turning to s.44(4):

(i) The conduct of the Respondent is open to very serious criticism. The conduct of the Applicants is not open to any criticism.

(ii) The Respondent gave no evidence of its financial circumstances. Having seen the Companies House information, we are satisfied that it is a professional property manager and landlord.

(iii) The Respondent has not at any time been convicted of a relevant offence.

37. In our judgment, the rent repayment order should require 90% of the rent to be repaid. This sum is £3,399.45.

Conclusion

38. The Respondents must accordingly refund to the Applicant £3,399.45. In addition, it must refund the application and hearing fees, totalling £300.00.

Name: Simon Brilliant

Date: 23 August 2023

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

