



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

**Case References** : **LON/00BF/HMF/2022/0106  
CVP/VIDEO**

**Property** : **56 Abbotts Road Cheam SM3 9TA**

**Applicant** : **Mark Blake**

**Representative** : **In person**

**Respondent** : **Mohammed R Hoozer (1)  
Ayo Gordon (2)  
Sharing and Living Ltd (3)**

**Representative** : **The Respondents did not appear and  
were not represented**

**Type of  
Application** : **Application for a rent repayment order**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Ms S Coughlin MCIEH**

**Date of hearing** : **22 August 2023**

**Date of Decision** : **05 September 2023**

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## DECISION

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### Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the third Respondent, Sharing and Living and in favour of the Applicant in the sum of £6,840.**
- 2. Additionally, the Tribunal makes an order against the third Respondent, Sharing and Living and in favour of the Applicant in the sum of £300 in repayment to him of his application and hearing fees.**
- 3. The total award to be paid forthwith by the Respondent is therefore £7,140.**
- 4. The applications against the first and second Respondents are dismissed.**

### Reasons

- 1 On 12 May 2022 the Applicant made an application to the Tribunal under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondents in respect of the property known as 56 Abbots Road Cheam SM3 9TA (the property) for the period of his occupation of the property (as detailed below) during which time the property was unlicensed. Directions were issued by the Tribunal on 13 July 2022, 02 November 2022 and 01 February 2023.
- 2 The hearing of this matter took place by CVP video on 22 August 2023 at which the Applicant appeared in person but none of the Respondents appeared or were represented. The Applicant explained to the Tribunal that he thought that Respondents 1 and 2 were the landlord’s agents who acted on his behalf but that Mr M Hoozer was the person who was the landlord. The Applicant said that on at least one occasion Mr Hoozer had visited the property and had introduced himself as the landlord.
- 3 However the Tribunal does not agree with this analysis. Among the documents put before the Tribunal for the hearing (‘the hearing bundle’ prepared by the Applicant) there is an email from the First Respondent to the Tribunal in which he explains that the third Respondent, Sharing and Living, held the property under a lease from the owner, they collected the rent from the property and were the appropriate landlord under these proceedings. He attached to his email a copy of the tenancy agreement showing the third Respondent as landlord. He also said that he assisted the freehold owner, his daughter, in looking after the property. Furthermore, the Applicant provided the Land Registry documents in his bundle which showed that Bibi Tasmin Zabina Hoozer was the freehold owner of the property.

- 4 In the light of this information the Tribunal dismisses the case against the first and second Respondents and finds that the third Respondent is the correct landlord in these proceedings.
- 5 The Applicant had filed an electronic bundle of documents for use at the hearing, relevant pages of which are referred to below. None of the Respondents had responded to the application at all. They had not filed statements of case or witness statements nor produced any documents for the hearing. Other than the brief emails from the First Respondent no explanation had been offered to the Tribunal for their failure to engage with the Tribunal proceedings.
- 6 In compliance with current Tribunal Practice Directions the Tribunal did not make a physical inspection of the property. The Tribunal considered that the issues in the case could be resolved without the need for an inspection.
- 7 The Tribunal understands that the property comprises a six bedroom house with a living room, one kitchen and two bathrooms which at the relevant time was shared by six or seven tenants from separate households.
- 8 As such, it fell within the requirements for Mandatory HMO licensing when the height requirement was removed on 1 October 2018. The property required an HMO licence from that time and did not have one.
- 9 Rent for the property was payable to the third Respondent as the landlord named on the tenancy agreement.
- 10 The Applicant had lived in the property since 2018 until he was forced to evacuate when the property was destroyed by fire in April 2022. Mr Hoozer had attended the property then and had suggested that the Applicant should seek accommodation at the nearby Holiday Inn and made a written promise to pay for the cost of that temporary relocation. The Applicant said that he had requested reimbursement of his hotel costs from Mr Hoozer but had not received the promised repayment.
- 11 Confirmation from the local authority that the property required but did not have a licence during the relevant time is shown at page 29 of the Applicant's bundle comprising an email dated 07 February 2023 from Louise Miller an officer of the London Borough of Sutton.
- 12 A landlord who fails to obtain a valid licence is committing a criminal offence under s72(1) Housing Act 2004 subject to the statutory defence of reasonable excuse. No defence was put forward to the Tribunal.
- 13 The Applicant has demonstrated to the Tribunal's satisfaction that the property required a licence during the whole period covered by this application and that it did not have one.
- 14 The Tribunal was therefore, satisfied beyond reasonable doubt that the third Respondent had committed an offence under section 72 (1) of the Housing Act 2004 (as amended), namely, that they had been in control or management of an unlicensed HMO.
- 15 The Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Housing & Planning

- Act 2016. The Applicant clarified to the Tribunal that he wished to make a claim for the period January 2021 to December 2021. Any award made by the Tribunal could not exceed the total rent received by the third Respondent for this period of time.
- 16 Evidence of the payment of rent by the Applicant for the appropriate period of the claim is found at pages 23-25 of the bundle. Evidence of 13 monthly payments was provided however the period is limited to 12 months, a total of £7,080.
  - 17 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
  - 18 The Applicant gave evidence relating to the state and condition of the house. He said that there was inadequate fire protection (smoke alarms not working or without batteries) and that there had been a number of minor faults (eg leaking bath tap) which had frequently been reported to the third Respondent but which were never rectified.
  - 19 There is no evidence that the third Respondent had previous convictions of this kind or that the Council had considered the offence to be sufficiently serious to prosecute them. However, in assessing the award to be made to the Applicant, the Tribunal does have regard to the third Respondent's conduct in their failure to engage with the Tribunal proceedings. The Tribunal also notes that the Applicant has not received the return of his deposit which was paid at the commencement of the tenancy. The seriousness of the failure to provide a working fire detection system is amply illustrated in this case, although fortunately it did not result in serious injuries.
  - 20 The Tribunal did not have details of the third Respondent's financial circumstances but no formal plea of financial hardship was made on their behalf.
  - 21 The Applicant had not claimed any benefits during the period of his occupation.
  - 22 There is no substantiated evidence of any misconduct on the part of the Applicant.
  - 23 During the period which is the subject of the claim the Applicant paid £590 per month as rent which sum was inclusive of all outgoings..
  - 24 The Applicant accepted that £7,080 represented the correct figure for the period of the claim.
  - 25 In assessing the award the Tribunal also had regard to the guidelines set out in *E Acheampong v Roman & Others* [2022] UKUT 239 (LC).
  - 26 The period for which rent must be repaid by the third Respondent is 01 January 2021 to 31 December 2021. This amounts to £7,080.
  - 27 The Applicant's monthly rent payment was inclusive of all utility bills. The Applicant should therefore expect the Tribunal's award to reflect some deduction from that sum to account for a contribution towards the cost of utilities. In the absence of any evidence as to their amount the Tribunal takes a broad brush approach and deducts £20 per month (£240) from the gross award to represent a contribution towards the cost of utilities giving a net

award of £6,840. The Tribunal considers that it is appropriate in this case to award 100% of this amount.

28 Additionally, the Applicant also requests the Tribunal to order the third Respondent to repay the application and hearing fees (£300). This application is granted bringing the total award to £7,140.

29 Relevant Law

Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(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).

Amount of order: tenants

16. Section 44 of the Act provides:

(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

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)

the amount must relate to the rent paid by the 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.”

**Name:** Judge Frances Silverman  
as Chairman

**Date:** 05 September 2023

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the Second-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.