FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AU/HMF/2021/0204**
HMCTS code (paper, video, audio)		**V: CVPREMOTE VIDEO HEARING**
Property	**:**	**25 Remington Street, London, N1 8DH**
Applicants	**:**	**(1) GINO JEAN-CLAUDE JERRY ARMANDINE** **(2) JOSEPH JOHN GRANT** **(3) SABA JAMSHID SAFA**
Representative	**:**	**Represent Law Limited (Ms A Hoxha)**
Respondents	**:**	**(1) EQUINOX RE LIMITED** **(2) LIONSBROTHERS LIMITED**
Representative	**:**	**Keystone Law Solicitors** **Ms Ceri Edmonds of Counsel**
Type of application	**:**	**An application for a Rent Repayment Order pursuant to s 41(1) Housing and Planning Act 2016**
Tribunal member(s)	**:**	**JUDGE SHAW** **MR S MASON FRICS**
Venue	**:**	**Remote Video Hearing on 17 February 2022**
Date of decision	**:**	**22nd March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was via CVP. A face-to-face hearing was not held because the Covid 19 Pandemic rendered it not practicable and no-one requested the same, or it was not practicable and all issues could be determined in a remote hearing. All parties consented to such hearing. The

documents to which the Tribunal was referred, were in a consolidated bundle comprising 413 pages, prepared by the parties, and the contents of the bundle have been noted.

Introduction

1. This case involves an application by the Applicants, as identified above (”the Applicants”) for a Rent Repayment Order in respect of their occupation of separate rooms at 25 Remington Street, London N1 8DH (“the Property”). Such occupation was by agreement with Equinox RE Limited (“the First Respondent”) which is a wholly owned subsidiary of Lionbrothers Limited (“the Second Respondent”).The First Respondent is itself a tenant of Mr Carlos Acosta, who is not a party to the proceedings, and did not attend the hearing.

Hearing

2. The hearing took place on 17th February 2022 by remote video hearing. The First and Second Applicants attended, represented by Ms Arjona Hoxha of Represent Law Limited. Ms Hoxha also represented the Third Applicant, although that Applicant did not attend. The Respondents were represented by Keystone Law solicitors, whose representative Mr A Darwin attended the hearing. The Respondents’ case was presented by Ms Ceri Edmonds of Counsel.

3. The parties respectively prepared full Statements of Case. There were witness statements from each Applicant and from Mr Goran Krgo, the First Respondent’s General Manager (who also supplemented his evidence orally, as did the First and Second Applicants).

4. The Tribunal was also greatly assisted by skeleton arguments and lists of authorities prepared by both Ms Hoxha and Ms Edmonds. A range of different issues was raised in the statements of case, but many of these were abandoned on the morning of the hearing. The substantive relief sought was a Rent Repayment Order (“RRO”) for the first Applicant in the sum of £13,524 (being 12 months at £1,127 for 12 months; £1430 for Second Applicant (2 months a £715) and £2,535 for the 3rd Applicant (3 months at £845 per month) – see generally Ms Hoxha’s Skeleton paragraph 28 and Ms Edmond’s skeleton at paragraph 3). The Applicants also sought costs orders against the Respondents.

5. Ms Hoxha’s skeleton was prepared to meet the various points taken by the Respondents in their Statement of Case, several of which were abandoned at the hearing. It is convenient therefore to deal with outstanding issues as identified by Ms Edmonds for the Respondents in her Skeleton, and in the same order. It is proposed to summarise each side’s case in respect of the contentious issues and then to give, in each case, the Tribunal’s finding.

Is the Second Respondent a Proper Party to the Proceedings?

6. By virtue of section 40 of the Housing and Planning Act 2016. An RRO may be made against *"the landlord"*. The Applicants' argument is that the Second Respondent is the parent company of the First Respondent. They have the same registered address and share the same director; the First Respondent is wholly owned by the Second Respondent. Although not named as the "landlord" or licensor in the agreements with the Applicants, the Applicants argue that the Second Respondent has complete control of the First Respondent, and " *must share in the liability for the rent repayment order."*

7. The Respondents do not challenge the above corporate relationship between the Respondents, but contend that the 2 companies have complete legal integrity, that the Second Respondent has no interest in the property in question, and no contractual relationship with the Applicants. Even if this were otherwise, and the Second Respondent were to be regarded as some form of superior landlord for the purposes of the Act, the Court of Appeal has now authoritatively determined that an RRO may only be made against the immediate landlord – see *Rakusen v Jepson and Others [2021] EWCA Civ 1150*.

8. The Tribunal agrees with the Respondents that this issue has now been disposed of by the Court of Appeal decision, which is of course binding on the Tribunal. At paragraph 43, Arnold LJ expressly holds that *" section 40(2)(a) only enables an RRO to be made against an immediate landlord, and not a superior landlord."* He also holds that in that case (as in the instant case) there was no evidence to suggest that the "superior landlord" had ever received any rent in respect of which an RRO could be made. In the circumstances, this first issue is determined in favour of the Respondents, and the case against the Second Respondent is dismissed**.**

Does the First Respondent have a Defence of Reasonable Excuse?

9. By virtue of section 72(5) of the Housing Act 2004, it is a defence that a person having control of a House in Multiple Occupation without the required licence, has a reasonable excuse for not having such licence. The thrust of the excuse put forward by the Respondent, was that there was an administrative error within its organisation, which led to the Sales Acquisitions Team recording the property as being a 4 bedroom property. However, Another department within the administration, the Property Department, (which advertises, lets out and manages the properties) clearly understood (as was the reality) that this was a 5 bedroom property. It marketed it as such on the internet, and from the time it was acquired as part of the Respondent's portfolio (albeit pursuant to a 3 year tenancy from 1st December 2018) it was being let or licenced as 5 rooms separately, with shared use of either all or some of the toilet/bathroom and/or kitchen facilities. Mr Krgo frankly

admitted to the Tribunal that he could not understand how this error could have occurred, and pointed out that it preceded his appointment as General Property Manager.

10. Mr Krgo then sought to elaborate on this "excuse" by arguing that the disparity came to light only when the Respondent, in preparation for the Selective Licencing System introduced by the local authority, was prompted to appoint an HMO Consultant to help with the selective licencing application, in February 2020. That consultant (from whom the Tribunal received neither written nor oral evidence) was hampered, said Mr Krgo, by delays caused by the outbreak of the Covid 19 pandemic, a long backlog of work at the local authority, and the fact that the Respondent's own landlord was uncooperative in signing certain necessary forms to finalise the licensing. He also added that the Respondent was, during this time, battling to keep financially afloat, because many of its licensees had left their accommodation during Covid, causing a dramatic drop in the Respondent's revenue. The interplay between the Selective Licensing application and the need for an HMO license was not at all times clear to the Tribunal, but in any event the Tribunal was unpersuaded by Mr Krgo's account for a number of reasons.

11. First, the breakdown in communication between the 2 teams constitutes an explanation but not a reasonable excuse, so far as the Tribunal is concerned. The reason for a manifestly 5 bedroom property being recorded as a 4 bedroom property was never satisfactorily explained, nor was the fact that from December 2018 the Respondent carried on letting out 5 separate units at the property, together with shared facilities, right up until June 2021, when it knew or ought to have known that it constituted an HMO. Secondly, the floor plans clearly illustrated a 5 bedroom property and a simple inspection of the property would have demonstrated this point – indeed the Respondent did not deny that the property was throughout being advertised on its website as a 5 unit property. Clearly also the Respondent would have known that it was receiving 5 separate licence fees or rental flow from the property. It issued 5 separate agreements. It seems to the Tribunal that this cannot all be washed satisfactorily away on the basis that one part of the administration had no idea what the other was doing.

12. Moreover, if there were delays being caused by the matters raised, the simple answer would have been to stop using the property as an unlicenced HMO until the position could be regularised. The Respondent, through Mr Krgo, endeavoured to rely on the fact that its business was crumbling because of the impact of the pandemic, and it was important to it to maximise its income (see also paragraph 15 of the Respondents Grounds for Opposing the Application) and focus on electrical and gas safety, and that HMO licensing was not uppermost in its priorities at this time. This may be correct, but does nothing to assist it in establishing a "reasonable excuse" defence.

13. For the reasons indicated, the Tribunal was not satisfied on the evidence that the Respondent had established a "reasonable excuse" defence, and rejects this contention by the Respondent.

Matters of Quantum

The First Applicant.

14. It is rightly said on behalf of the Respondent that the Applicants cannot recover more rent than they have paid, and that the Tribunal must establish the total rent paid during the relevant period ("the denominator"). That period is governed by section 41(2)(b) of the 2016 Act, which provides that a tenant may apply for an RRO only if the relevant offence was committed in the period of 12 months ending with the day on which the application was made. Ms Edmonds also directed the Tribunal to the decision of the Upper Tribunal in *Kowwalek v Hasseinen [2021] UKUT* 143 at paragraph 29, where it was said by Martin Rodger QC, the Deputy Chamber President, that:

".....section 44(2) limits the amount of rent which may be the subject of a rent repayment order in two quite different respects. The first limitation focuses on when the payment was made: "the amount must relate to rent paid ***during*** *the period mentioned in the table." The second limitation is provided by the requirement in the table heading that the amount must relate to rent paid* ***in respect of*** *the appropriate period. This focuses on the period in respect of which the payment was made – what the payment was for, not when it was made. Both conditions must be satisfied before sum paid as rent can be the subject of a rent repayment order."*

*15.*The First Applicant gave evidence to the Tribunal both in the form of a witness statement and orally. The Tribunal found him to be an impressive witness both in terms of detail and reliability. As understood by the Tribunal, his evidence was, and the Tribunal accepts, that when he left the property in mid-March 2021, there were no rent arrears and he was *"fully paid up."* However this calculation is made by him on the basis that a payment by way of deposit paid in 2017, in the total sum of £1127 (the equivalent of one month's rent), is set off as rent for the final period of his occupation.

16. Ms Edmonds for the Respondent, contends that this set off is inconsistent with section 42(1)(b) and the *Rakusen* decision above, because, on any view, it was paid outside the period of 12 months before the date of e application (which was 15th August 2021) and also outside the period of 12 months prior to the First Respondent vacating the property, (as seemed to be argued for on behalf of the Applicants at the hearing). It was not paid *qua* rent, and thus cannot be the subject of an RRO, was not paid during the statutory period, and was not rent paid in respect of the appropriate period.

17. With some unease, the Tribunal agrees with these contentions and finds that the denominator is 11 months' rent at £1127 per month totalling £12,397, and subject to any further deduction to be made on exercise of the Tribunal's discretion, to be dealt with below. It is further subject to deduction of the Housing element of the Universal Credit received by the First Applicant, as to which the evidence was that this amounted to £4482.50. This brings the figure down to **£7,914.50**. There was a further relatively small deduction sought by the Respondent in the sum of £125 which was said to be in respect of legal fees but these were contested by the First Applicant, and not proven to the satisfaction of the Tribunal.

18. The unease expressed by the Tribunal stems from the fact that it is not disputed that this deposit was paid, and has not been returned, and given that it was not paid into one of the recognised deposit schemes, may not be fully now recovered, since the Respondent has entered into a Company Voluntary Arrangement. However, as indicated, the Tribunal is satisfied that the Applicant's mode of recovery cannot be through an RRO.

The Second Applicant

19. The Second Applicant paid 2 month's licence fee at £715 per month, and there was no real dispute that if an RRO is to be made, and subject to the Tribunal's discretion as to quantum, the denominator is **£1,430**. The Second Applicant received no Universal Credit.

The Third Applicant

20. The Respondent accepted that it received 2 payments in the sum of £845 each for 2 of the Third Applicant's 3 months of occupation. It contended that the third month's licence fee was not paid and the documentary evidence was consistent with this assertion. The Respondent also contended that Third Applicant unlawfully changed locks at the premises and did some damage in the process to the total cost of £280. The Third Applicant did not attend the hearing, and gave no evidence to rebut the Respondent's evidence that she had caused such loss, nor to counter the evidence of one month's arrears, nor did she give any evidence about whether she had received any Universal Credit. Her maximal RRO would thus have been **£1,410** (£845 x 2 - £280), but the Tribunal will deal with the order to be made below.

The Exercise of the Tribunal's Discretion

21. By virtue of section 44 of the 2016 Act, in determining the amount of any order the Tribunal is required to 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".*

22. The Respondent also contends that in the exercise of its discretion the Tribunal should consider the seriousness of the offence, the statutory purpose of the scheme and any other relevant actors.

23. In the first instance, the Respondent argues that no orders should be made at all against the Respondent because it has a *"strong record of compliance with its statutory obligations and a good reason for not having for the lack of a licence in this case."* The Tribunal rejects this submission. For the reasons already stated above, the reasons for the absence of a licence were not *"good"* and the Tribunal does not have extensive evidence of the Respondent's historical compliance with its statutory obligations.

24. The Tribunal takes into account the failure to pay some of the licence fees in this case, but really these were minimal. As for the financial position of the Respondent, it has elected to take the route of a Company Voluntary Arrangement, but the Tribunal does not have full evidence of its liquidity nor asset position of a kind sufficient to make a substantial discount in the RRO's to be made.

25. Against this, is the evidence of all Applicants that there was a build-up of problems at the property from about October 2020 (as tabulated at page 53 of the bundle, paragraph 10 of the statement of the First Applicant) and in particular failure the Respondent to pay utility bills on 2 occasions in October 2019 and February 2021. This resulted in utility being cut off and there being no hot water or heating at the coldest times of the year. The Respondent contended that it made reasonable and timeous efforts to deal with these problems but the Tribunal preferred the evidence of the Applicants that there was a significant element of neglect towards the end of 2020 and early 2021 – coinciding with Respondent's mounting financial problems.

26. Th Applicants asked the Tribunal also to conclude, against the Respondent, and in consideration of conduct, the fact that the Respondent had used "sham" licence agreements with the Respondents in an effort to restrict their statutory rights and give them minimal protection. If this was the intention, (about which the Tribunal is not satisfied) it was largely ineffective, given that licensees are similarly protected by the legislation, and in the same way as tenants. The Tribunal rejects the Applicants' contention in this regard.

27. Having taken the above matters into account, the Tribunal is satisfied that this failure to obtain proper licensing over a protracted period, and the continued letting of the properties with knowledge of the missing and necessary HMO licence, renders the offence serious. The Tribunal takes into account that there are no other relevant convictions, and doing its best in the exercise of its discretion ,applies a discount of 15% in respect of the RRO's made in favour of the First and Second Applicants. In respect of the Third Applicant, the Respondent accepts that she paid 2 month's licence fees, from which the Tribunal deducts the cost of the lock and door repairs. Because of the failure of

the Third Respondent to attend the hearing and give evidence about her Universal Credit position, the Tribunal applies a 50% discount to the RRO to be made in her case.

Costs

28. The Applicants invite the Tribunal to make an award of costs against the Respondents for having acted unreasonably in defending these proceedings. The Tribunal declines to make such order. Both sides took misconceived points prior to the hearing, and the Applicants' own case against the Second Respondent was not well founded. The Tribunal makes no order as to costs save that the Applicant was obliged to bring this application to make some recovery, and is entitled to the reimbursement (by the First Respondent) of its Application Fee of £100 and the Hearing Fee payment in the sum of £200.

Conclusion and Orders

29. For the reasons set out above the following orders are made:

First Applicant: a Rent Repayment Order in the sum of £7914.50 discounted by 15% making **£6727.32**

Second Applicant: a Rent Repayment Order in the sum of £1430, discounted by 15%, making **£1215,50**

Third Applicant: a Rent Repayment Order in the sum of £1410, discounted by 50%, making **£705**

The First Respondent shall reimburse the Applicants' Application and Hearing Fees in the total sum of **£300**

No further Order for Costs is made.

JUDGE SHAW **22nd MARCH 2022**

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).