



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

Case reference : **LON/00BG/HMF/2023/0044**

Property : **Flat 108, Discovery Dock
Apartments West, 2 South Quay
Square, London E14 9LT**

Applicants : **Monica Kumta (1)
Filippo Benetti (2)
Giuseppe Conenna (3)**

Representative : **Represent Law Ltd (Ref NRA13971-
RRO) (Ms Arjona Hoxha, Solicitors'
agent)**

Respondent : **Johnathan Biran Milner**

Representative : **Mr Richard Miller counsel
instructed by Carter Lemon
Cameron solicitors London**

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

Tribunal : **Mr Charles Norman FRICS Valuer
Chairman
Mr Andrew Lewicki MRICS**

Venue and Date : **10 Alfred Place, London WC1E 7LR,
27 July 2023, by remote video
hearing**

Date of decision : **20 September 2023**

DECISION

DECISION

- (1) The allegation that the respondent has committed an offence contrary to section 72(1) of the Housing Act 2004 is **NOT PROVED**
- (2) The application for a rent repayment order is **REFUSED**

REASONS

Background

1. By an application dated 15 February 2023, the applicants applied for a rent repayment order in respect of an alleged licencing offence contrary to section 72(1) of the Housing Act 2004 of the landlord having control or management of an unlicensed House in Multiple Occupation (HMO). The application was made under section 43 of the Housing and Planning Act 2016.
2. The applicants were said to be tenants of the property between 18 June and 26 August 2022. The amount of the rent repayment order claimed was £11,521.95.

Procedural Matters

3. Directions were issued on 23 May 2023. By direction 6, the respondent was urged to seek legal advice. Direction 10 set out steps that the parties were required to follow if they wished to give evidence from abroad. The respondent is resident in South Africa. However, the respondent only instructed solicitors a few days before the hearing. Following this, on 26 July 2023, an application was made for him to give evidence from abroad. This application was refused by Deputy Regional Judge Carr on the same day. Judge Carr stated that the Tribunal would be able to give some limited weight to witness statements.
4. Secondly, the respondent failed to comply with direction 7 which required service of his bundle by 30 June 2023. In the event, this was received in the afternoon of 24 July 2023. The Applicants' opposed the admission of the respondent's bundle. Following a short adjournment at the hearing, the Tribunal admitted the bundle, reserving its reasons.
5. The reasons are (i) the bundle is only 44 pages long of which the respondent's witness statement is 7 pages excluding exhibits; the exhibits are mainly WhatsApp messages involving the applicants (ii) the applicants are represented professionally (iii) the interests of justice required that the respondent should be able to mount a defence, which

would otherwise be severely limited (iv) the respondent had instructed solicitors and counsel, albeit late.

6. At the remote hearing it emerged that Ms Kumta was attending from India and Mr Connella from Greece. Mr Benelli was in The Netherlands but unable to attend. The Tribunal stated that as the applicants had failed to comply with Paragraph 10 of the directions, neither Ms Kumta nor Mr Connella would be permitted to give evidence. Ms Hoxha accepted this.

The Hearing

7. At the remote video hearing Ms Arjona Hoxha, a solicitor's agent, represented the applicants. Ms Hoxha referenced a skeleton argument prepared by Mr David Gyulai of Represent Law. As stated above, Ms Kumta and Mr Connella both attended, but not Mr Benelli. The Respondent Mr Milner was in attendance and was represented by Mr Richard Miller of counsel instructed by Carter Cameron Lemon, Solicitors who were represented by Ms Kiran Bansal. Mr Miller submitted a skeleton argument.

The Applicants' Case

8. The applicant's case may be summarised as follows. The subject property is a three-bedroom flat with two bathrooms, one en-suite, kitchen and living room. It was occupied by three unrelated tenants and was demised to 3 people in three households. The respondent was the applicants' landlord at all material times. The property is located in Canary Wharf in the London Borough of Tower Hamlets ("LBTH"). This council operates an additional HMO licensing scheme which commenced on 1 April 2019. LBTH has confirmed that the property was unlicensed and had also sent warning letters to the landlord.
9. The applicants relied upon section 40 of the Housing and Planning Act 2016, and in particular the offence of being in control or management of an unlicensed house in multiple occupation ("HMO") contrary to sections 40(3) and section 72 (1) of the Housing act 2004. The applicant asserted that the flat met all the requirements for an HMO under section 254(2) of the Housing act 2004 (see legal annex).
10. Sections 41 and 43 of the Housing and Planning Act confer jurisdiction on the Tribunal to make a RRO, if satisfied beyond reasonable doubt that the landlord had committed a relevant offence. There was no reasonable excuse defence open to the respondent.
11. As to quantum, the Tribunal was invited to take into account that the respondent obtained considerable financial benefit from letting the property, was acting through his agent, did not take care of the property

and had failed to engage in settlement discussions. His bundle had also been served very late.

12. Each of the applicants provided witness statements. Mr Guiseppe Conenna's statement may be summarised as follows. His occupation is that of a consultant. His address was in Italy. He was a tenant of the subject property under an assured shorthold tenancy dated 18 June 2022, for a term beginning on that date and ending on 3 September 2022. This was a lodger's agreement which he believed to be a sham. The landlord stated that his residency address was at the subject property but that was untrue. Mr Conenna found the property through DIJ real estate. The landlord was Johnathan Milner. The property comprises three bedrooms and two bathrooms. He lived there with two other people, and they together shared the kitchen and living room. The rent was £11,521.95 payable upfront for the two months and 17-day term. The property was poorly maintained. None of the electrical devices worked properly and many of the lightbulbs around the house were not working. Mr Conenna moved out on 26 August 2022. At the end of the tenancy, he left the apartment and gave the keys to the custody [staff] at the main entrance of the building as directed by the agents. He left the property in an overall good condition with the rent fully paid. He did not receive any universal credit. There is a dispute issue in relation to the deposit. A copy of the tenancy agreement was appended.
13. A witness statement was provided by Filippo Benelli who was described as "currently employed". His address on the statement was in Italy. This statement was substantially the same as that given by Mr Connena.
14. A witness statement was also provided from Ms Kumta who described herself as "currently in employment." Her stated address in the statement was in India. In other respects, her witness statement was substantially the same as that from the other two claimants.

The Respondents' Case

15. The respondent's case may be summarised as follows. Firstly, the landlord sought relief from sanctions in relation to the very late service of the hearing bundle and breaches of the directions.
16. In terms of the primary facts, namely the length of the tenancy and the amount of rent paid by the tenants these did not appear to be substantially in dispute. The Respondent's position was that the amount of rent paid was £10,521.95 because the respondent had allowed the applicants to retain £1000 owing to a contractor's attendance. Counsel in his skeleton argument submitted that, from *Williams v Palmer* [2022] HLR 8, there is no presumption that the entire rent payable is the starting point of the quantum. From *Acheampong v Roman* [2022] H.L.R. 44, the Tribunal must consider what proportion of the rent is a fair reflection of the offence. In *Hancher v David* [2022] UKUT 277 (LC)

the Upper Tribunal held that the offence under section 72(1) of the Housing Act 2004 is not one of the more serious offences for which a rent repayment order can be made.

17. The default is technical in nature. The Respondent's residence abroad is a mitigating factor. The alleged disrepairs relate to trivial matters. These were quickly fixed within a week of notice, except for the dishwasher and lightbulbs.

Findings

18. In relation to the respondent's bundle, no sanction had actually been imposed by Mr Waterhouse in his directions of 23 May 2023. Those directions warn parties of the potential sanctions for non-compliance, but no barring or unless order had been made against the respondent. Certainly, it remained open for the Tribunal to refuse to admit the bundle into evidence as it was served late in breach of directions, but for the reasons given above the Tribunal declined to take that course and to waive the breach.
19. The Tribunal has no jurisdiction to address matters relating to the return of the deposit.
20. The Tribunal found that the conditions under section 254(2)(a)(b)(d) and (e) were proved beyond reasonable doubt. However, the Tribunal raised the matter of evidence required to prove that each of the applicants was living in the property as their only or main residence under section 254(2)(c). The tenancies were short, fixed term tenancies in Canary Wharf in a high-value property. The term length was very specific and unusual. The whole rent was payable in advance. There is evidence from the witness statements that the applicants are ordinarily based overseas. The witness statements were very short and appeared to be based on a pro-forma. The pro-forma witness statements did not explain the nature of the applicants' activities or work in Canary Wharf, their circumstances or how they came to be living there. The deficiencies in the witness statements could not be made good by oral evidence as this was inadmissible. The Tribunal therefore found that there is no evidence that each of the applicants occupied the property as their only or main residence.
21. Further, there is no evidence that any of the applicants fall within section 259 of the Housing Act 2004. This contains a deeming provision whereby certain persons are treated for the purposes of section 254 as occupying a building or part of the building as their only or main residence. The main deeming provision is where the tenant is undertaking a full-time course of further or higher education. From the descriptions in the witness statement none of the applicants fall within this category.

22. It is not for the Tribunal to speculate about the precise circumstances concerning the applicants. It is sufficient for the Tribunal to find from the admissible evidence, that it is not satisfied beyond reasonable doubt that the subject property was the only or main residence of each of the applicants, or that each are to be treated as so occupying it.
23. Accordingly, the Tribunal finds that the condition at section 254(2)(c) of the Housing Act 2004 has not been proved beyond reasonable doubt. Therefore, the Tribunal finds that the subject property was not an HMO within the meaning of section 254(2) of the Housing Act 2004. Accordingly, the applicants have not proved beyond reasonable doubt that the respondent has committed an offence contrary to section 72(1) of the Housing Act 2004.
24. Therefore, the application for a RRO is refused, and it is unnecessary for the Tribunal to address quantum.

Name: Charles Norman FRICS **Date:** 20 September 2023

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Legal Annex

Housing Act 2004 c. 34

s. 254 Meaning of “house in multiple occupation

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254 Meaning of “*house in multiple occupation*”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if–

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if–

- (a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(4) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);

(c) the living accommodation is occupied by persons who do not form a single household (see section 258);

(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(e) their occupation of the living accommodation constitutes the only use of that accommodation; and

(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(5) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(6) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;

(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;

(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(7) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(8) In this section–

“basic amenities” means–

- (a) a toilet,
- (b) personal washing facilities, or
- (c) cooking facilities;

“converted building” means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“self-contained flat” means a separate set of premises (whether or not on the same floor)–

- (a) which forms part of a building;
 - (b) either the whole or a material part of which lies above or below some other part of the building; and
 - (c) in which all three basic amenities are available for the exclusive use of its occupants.
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Housing Act 2004 c. 34

s. 259 HMOs: persons treated as occupying premises as only or main residence



Version 2 of 2

2 December 2019 - Present

Subjects

Housing

Keywords

Houses in multiple occupation; Interpretation; Principal residence

259 HMOs: persons treated as occupying premises as only or main residence

(1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.

(2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person—

(a) as the person's residence for the purpose of undertaking a full-time course of further or higher education;

(b) as a refuge, or

(c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

(3) In subsection (2)(b) "*refuge*" means a building or part of a building managed