



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

**Case Reference** : **LON/00BH/HMF/2023/0034**

**HMCTS Code** : **Video Link**

**Property** **Rooms 1, 2, and 5, 23 Tavistock Avenue, E17. 6HP**

**Applicants** : **Ms. Rishana Ravi  
Ms. Shakeela Ali  
Mr. Tobias Rimmington**

**Represented by** **Mr Cameron Neilson- Justice for Tenants**

**Respondents** : **Mr, Konan Shah- the First Respondent  
Asamoah Property Group Second Respondent**

**Represented by** **Mr Asamoah**

**Type of Application** : **Application for Rent Repayment Orders by tenants under Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**

**Tribunal Members** : **Judge Daley  
Mr Appollo Fonka- Professional member**

**Date of Hearing** : **7 August 2023- heard remotely by Video link**

**Date of Decision** : **20 September 2023**

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**DECISION**

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## **Decision**

- I. The Tribunal is satisfied on the evidence before it that the Premises were unlicensed in accordance with the Mandatory licensing scheme, during the period 18 September 2021 and 8 May 2022. Accordingly an offence of being in control and/or managing an unlicensed House in Multiple Occupation (HMO) has been committed.
- II. Further the Tribunal finds that the rented property was situated within an additional licensing area as designated by London Borough of Waltham Forest. The additional licensing scheme came into force on 1 April 2020 and was still in force during the tenants' occupation.
- III. The Tribunal finds that an offence was committed to the required standard of beyond reasonable doubt.
- IV. The Tribunal is satisfied that grounds exist to make a rent repayment order against the Second Respondent Asamoah Property.
- V. The Tribunal makes an order dismissing the application for a Rent repayment order against the first respondent Mr Konan Shah.
- VI. The Tribunal makes an order in the sum of £9319.00 for the rent paid by the applicants for the period between 18 September 2021 and 8 May 2022.
- VII. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £200.00.

## **Introduction**

1. This is an application by the Applicants listed above for a Rent Repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed premises, that was subject to The Housing Act 2004 which introduced the licensing of Housing in Multiple Occupation ("HMOs").
2. Further the Applicants allege that the rented property was situated within an additional licensing area as designated by London Borough of Waltham Forest. The additional licensing scheme came into force on 1 April 2020 and will cease to have effect on 31 March 2025. The premises was in the William Morris Ward of the London Borough of Waltham Forest ("the borough").
3. The Property was occupied by the following tenant's during the periods in the application of 18 September 2021 to 8 May 2022.
  - Room 1: Tobias Rimmington lived at the Property from 20 September 2021 to 20 October .2022. Two new tenants moved into Room 1 from November 2022 to present.
  - Room 2: Sherice Akins lived in Room 2 from September 2021 to October 2022. Wyclef moved in from November 2022 onwards•

- Room 3: Emma Summers lived in Room 3 from 5 September 2021 to September 2022. Tobias Rimmington then moved into Room 3 from 20 October 2022 onwards.
  - Room 4: Rishana Ravi lived in Room 4 from October 2021 to October 2022.
  - Room 5: Jamie Gordon lived in Room 5 from October 2021 to October 2022.
  - Room 6: Shakeela Ali lived in Room 6 from 2 October 2021 until the date of the application
4. The Tribunal issued Directions on 14 March 2023. These directions were amended on 18 May 2023 to provide that Shakeela Ali and Tobias Rimington be added as additional Applicants pursuant to rule 10 of the First tier (Property Chamber) Procedure Rules 2013. The amended directions set the matter down for an in-person hearing on 7 August 2023.
  5. On 3 July 2023, the Applicant's representative wrote to the Tribunal requesting an adjournment on the grounds that one of the Applicant's was in St Lucia. There was no prior permission for Ms Ravi to give evidence from abroad.
  6. It was noted by the Tribunal that there is no objection from the government of St Lucia for evidence being given from St Lucia to courts and tribunals in the UK. Accordingly, permission was granted by the Tribunal for Ms Ravi to give her evidence from abroad and that all parties could appear by video link and this matter was listed for a CVP video hearing.

### **Property Details**

7. In the application, the Tribunal was provided with the following information, that the Premises is a 5-bedroom semi-detached house arranged across three floors, the ground, first and second floors with a shared kitchen and bathrooms.
8. The Tribunal did not inspect the property and makes no assumptions about its current condition or regarding the accommodation. The Tribunal was provided with information concerning the layout of the property in the witness statement of Shakeela Ali and in the video, clips provided by the Applicants in their bundle.

### **The Hearing**

9. The hearing of this matter was held remotely by CVP Video link, Mr Cameron Neilson of Justice for Tenant's was in attendance on behalf, of the Applicants. Also in attendance were Ms Rishana Ravi and Tobias Rimmington. Ms Ali was not in attendance. Mr Asamoah-Duah –Director of the Respondent company was in attendance on behalf of the second respondent. The first respondent did not attend and was not represented. All the parties who attended the hearing were present by video.
  - At the hearing the Tribunal identified the following issues-:

- Whether the property known as 23 Tavistock was an HMO?
- Whether the property required a licence and if so whether it was licensed.
- Whether an order for a rent repayment should be made?
- If so whether it should be made against either the first, or second respondent or both and at what level

## **Preliminary Matters**

10. The Tribunal decided to deal with the issue of whether in all the circumstances including the decision of the supreme court in *Rakusen –v- Jepson* [2021] EWCA Civ 1150, the Tribunal could make an order against the first respondent Mr Shah who was the freeholder but not a party to the tenancy agreement.
11. The Tribunal was grateful to the assistance given by Mr Asamoah representative of the second respondent who told us that the freehold owner of the property was Mr Shah who was the second respondent’s landlord pursuant to a company let. This agreement had been in place throughout the relevant period, and the freeholder was not a party to the tenancy agreements between the second respondent and the occupiers of the premises during that period. Accordingly, the Tribunal decided that the first respondent was not a party to the tenancy agreement and that no order could be made against the first respondent.
12. The Tribunal therefore determined that the application should be dismissed against the first respondent.

## **Relevant Law**

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

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.

Section 40(5) of the 2016 Act lists 7 categories of offence and offence no 5 refers to Control or management of an unlicensed HMO. Category 2 refers to eviction or harassment of occupiers.

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

Section 44 of the 2016 Act sets out the amount of order:

- (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. Under Section 44(4) the Tribunal in determining the amount the tribunal must, in particular take account of (a) the conduct of the landlord and 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.

Section 254 of the 2004 Act defines an HMO (so far as material to the current case) as follows:

“(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).”

### **The Applicants' Submissions**

13. The Tribunal was provided with a copy of the tenancy agreements of both Ms Ravi and Ms Ali dated 18 September 2021.

14. The agreement was signed by the applicants and on behalf of the first respondent. The rent payable by each was £550.00 PCM
15. The Tribunal heard from both Ms Ravi and Mr Rimmington, who had tenancies which were in identical terms.
16. the Tribunal was also provided with the witness statement of Ms Ali, which set out how she came to be a tenant of the premises, and issues which arose at the property.
17. The Tribunal was informed that the property was unlicensed during the relevant period and that a licence was not applied for until 9 May 2022. Mr Neilson submitted that the second respondent was in receipt of the rack rent at the premises pursuant to section 263(1) of the Housing Act 2004, which meant that an order could be made against the first respondent.
18. The Tribunal heard from Ms Ravi that when she moved into the premises on 18 September 2021, there had been two other girls at the property Sharise and Emma. She told the Tribunal that she had not known them before and although all those who occupied the property got on well together, they were all separate households.
19. She set out that there were issues of repair at the property. On one occasion she recalled liquid leaking from a device connected to the electrical system and as a result the power had been suspended for safety reasons. This was to do with the fuse box, she was told that this was an issue involving Network Power however it had taken a long time to resolve. When asked how long she said it had taken a week. She stated that although there was a handyman who did work at the property the respondent did not always respond promptly to requests. For example, the garden was considered unsafe as there was used furniture, fridges and a run-down shed within the garden which was considered hazardous. She agreed in answer to questions from the Mr Asamoah that this had been resolved in the spring and that both Tobias and Emma had used the garden for the storage of their bikes.
20. However, it was her evidence that the Respondent had not undertaken all the required gas and electricity checks and that repairs had not been carried out promptly. She stated that this had prompted the Applicants to get in touch with the council, which had led to them finding out that the property was unlicensed.
21. The Tribunal then heard from Mr Tobias Rimmington. He had provided the Tribunal with a witness statement which was within the bundle. In his witness statement he described the layout of the building and how he became a tenant. The period of his tenancy was from 20/09/21 to 20/10/22, he moved into the second-floor room. He explained that during the time that he lived in the property there were 7 people living in the property during the relevant period. He explained that as well as the tenants stated on the tenancy agreements, Shakeela's boyfriend was also staying at the property.
22. He set out his areas of concern with the property which included the fact that the front door did not lock properly. The property did not have smoke detectors or fire alarms within the house. Mr Rimmington told the tribunal that it was only after a visit from the council that the landlord decided to install fire detectors and change every room door to make them fire compliant, put up fire signs, place an extinguisher, and blanket in the kitchen.
23. Mr Rimmington in paragraph C of his witness statement set out as follows-: "The gas and electric worked via top up. I was told that this property was bills included, however since I have been living here it is like it is not included. We have always had to top up the electricity ourselves at the shop and then ask the agent to send

us the money back or he'd tell us to take it out of our rent. The gas was topped up online which the agent used to do but there were so many times where we were out of gas, and we could not get hold of him. We then asked him to show us how to do it ourselves as he was never reachable in time. “

24. Mr Rimmington provided the Tribunal with proof of his payment of rent. He set out that where his rent was lower, this was because he had deducted the costs of gas /electricity, from his rent.
25. The Tribunal asked for details of how much was payable on average for gas and electric, Mr Rimmington stated that it depended on the weather and, given this, £50.00 could last approximately 3 days to one week.
26. The Applicants also submitted that the tenancy deposits were not protected in accordance with Section 213 of the Housing Act, and that no gas or electric safety certificate was provided to the tenants at the start or during their tenancy.
27. The Applicant in their evidence set out proof of payment of the rent, and set out that they were seeking repayment of the following amounts on behalf of each of the applicants
  - a. Rishana Ravi -£4,230.31
  - b. Tobias Rimmington-£4,600.00
  - c. Shakeela Ali- £4,482.68 in the total sum of £13,312.99

## **The Respondent's Submissions**

28. Mr Asamoah attended the hearing, prior to the hearing, he provided a 23-page response to the application. He also sent an email dated 18 July 2023, in which he stated that he was involved in travelling and wanted to know what he needed to do to respond to the application.
29. In his statement he set out that none of the aggravating features applied to increase the rent repayment order, such as unlawful eviction or harassment, or the landlord failing to comply with an improvement notice. He accepted that he was responsible for the failure to licence the property, and asked the Tribunal to take note of the fact that once he was aware of the licensing requirements a license had been applied for and had been approved by the Local Authority, which would not have been the case if the property was considered to be in a poor condition.
30. He also asked the Tribunal to take account of the fact that although the tenants were now complaining of the condition of the property, the tenants had asked to stay on after the fixed term of their tenancies had ended. He referred to the fact that Shakeela Ali requested a further six months and only applied for a rent repayment order at the end of the tenancy. He set out that he had tried to deal with repairs as they arose. However, some of the repairs were the responsibility of the freeholder.
31. The Respondent told the Tribunal that he had started the business during lockdown at the age of 23, he stated that it was the second property that he had managed. In his statement he said “...I currently do not manage the property, and business activity has been quite hard with the current climate of the housing market at present. Although I continue to persevere to try and achieve my targets, the reality is ... With the amount they are requesting, I cannot begin to tell you where I could find such funds, and by no means do I think anyone else faced with such repercussions would be able to do so. I take accountability for the issues

raised by these tenants; however, I have countless messages between myself and them, trying to rectify these issues as quickly as possible. I began this business at the age of 23 during COVID, simply to try and create a new avenue for myself. Mistakes were made, lessons have been learned. By no means am I saying these are reasons as to why I deserve to be fully acquitted from the matter, however it is something I do feel should be considered. There were no conniving or malicious vendettas against of these tenants, but rather trying to face issues head on as a landlord and trying to build something of myself.”

32. The respondent also provided information concerning electricity which showed payments in the sum of £1040.00. He also told the Tribunal that some of the work was beyond his authority, for example he stated that he was unable to replace the fire alarm with a centralised system as he said that he had had a difference of opinion with the freeholder which had resulted in him no longer managing the property.
33. In reply the Applicant placed reliance upon case law and set out that the respondent was not proactive and that his ignorance as to the licensing requirement cannot be taken as a reasonable excuse. The Applicant referred to the cases of *Thurrock Council v Khalid Daoudi* [2020] UKUT 209 (LC) *Chan v Bilkhu & Anor* (2020) UKUT 289 (LC) [25]). *AA v Rodriguez & Ors* [2021] UKUT 0274 (LC) and *Aytan v Moore* [2022] UKUT 027 (LC).
34. The applicant also stated that the Respondent provided evidence of an unlawful eviction which was ultimately successful. However, no evidence was provided of this by the Applicants in their witness statements. The Tribunal accepts that no formal notice was given, however the tenants left of their own accord.

### **The Closing Submissions**

35. The Tribunal heard submissions from Mr Cameron Neilson, he provided a full submission within the bundle, he referred the Tribunal in passing to *Vadamalayan and Stewart* (2020) UKUT 183, as authority that the full rent paid was the starting point for the repayment order, and that the point of an order was to serve as a deterrent and to have a punitive effect on the landlord.
36. The Tribunal also heard from Mr Asamoah he reiterated what he had said, in his evidence.

### **Tribunal Decision**

37. The Tribunal then applied a four-stage test set out below, following which it decided that to make an order, it would have to satisfy itself of 4 matters –
  - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004
  - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
  - (iii) Whether the Tribunal should exercise its discretion to make a rent



repayment order.

(iv) And if so the amount of any order.

38. The Tribunal considered the evidence before it. The Tribunal is satisfied beyond a reasonable doubt that the Respondent committed an offence under section 72(1) of the Housing Act 2004, and that the Applicant is entitled to a rent repayment order.
39. The Tribunal accepted that the sum of £13,312.99 was the relevant rent which had been paid by the tenants seeking the order rent during the period in issue.
40. The Tribunal also reminded itself of the law which had been referred to above and the case law referred to by the parties. The Tribunal noted that the starting point was the maximum rent that had been paid, however the Tribunal noted that it had an obligation to exercise its discretion in the making of an order.
41. The Tribunal also had regard to the cases referred to, the fact that the landlord, was a manager who had no capital interest in the property. The Tribunal also accepted that although the tenant's complained about the condition at the property, save for the issue concerning the National Grid, and the fire safety work, the repairs were dealt with by the Respondent, or where the work was outside of his obligation, the matter had been referred to the freeholder. The Tribunal noted that the tenants had spoken with the freeholder who had carried out repairs as well as those undertaken by the Respondent
42. that the ignorance of the respondent's managing director Mr Asamoah does not amount to a reasonable excuse for failure to license the property. There was a lack of detailed evidence concerning the sums that were spent by the first respondent on the property and the rent that was payable by the company to the freeholder. Given this the Tribunal could not take the specific sums which did not amount to profit into account. However, the Tribunal heard his evidence, it noted that he accepted responsibility and did not try to suggest that his ignorance amounted to an excuse. He did however set out that he was aged 23 and new to the business and was trying to establish a business during lockdown.
43. It was the Tribunal's view that he was somewhat naïve in what he was attempting to do as he did not have the knowledge and experience to manage the property. However, it was his responsibility to make sure that although he did not have the experience, he fully understood what was required prior to entering into property management.
44. The Tribunal also noted that the occupancy at the property had been increased by Shakeela Ali, because of her boyfriend staying in the premises.
45. The Tribunal has taken account of the fact that Mr Asamoah has provided details of the electricity, which was paid for by the first respondent, although it accepts that the electricity was on occasion paid for by the tenants. The Tribunal accepted that there were repairs which were needed during the cycle of the Applicants' tenancies, however from the video evidence the condition of the property was fair, and the local authority list of work to be undertaken was not extensive.
46. The Tribunal also had regard to *Acheampong –v- Roman* [2022] UKUT 239 in which it was stated that the Tribunal should consider how serious this offence was both compared to other types of offence and what proportion of the rent is a fair reflection of the seriousness.
47. However, when considering all the factors, and the nature and seriousness of the offence that, although it was appropriate to make an order, the appropriate and proportionate order required a deduction,
48. The Tribunal is satisfied that a rent repayment order should be made in the sum of 70% of the rent paid for the period £9319.00 ( Nine thousand three hundred and nineteen pounds which the Tribunal finds is the appropriate order to make which

marks the offence which has been committed by the landlord in failing to apply for an additional licence for the period in issue.

49. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £300.00.

Signed: Judge Daley

Dated: 20 September 2023

### **Right to Appeal**

50. 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.
51. 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.
52. 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.
53. 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.