



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

Case reference : **LON/00BB/HMB/2023/0006**

HMCTS code (paper, video, audio) : **Face to Face hearing**

Property : **35 Royal Crest Avenue, London E16 2SU**

Applicant : **Ms. Nisha Glasgow**

Representative : **N/A**

Respondent : **Ms. Angela Hesse Owusu**

Representative : **N/A**

Type of application : **Application for a Rent Repayment
Order by tenant. Sections 40,41, & 44 of
the Housing and Planning Act 2016**

Tribunal members : **Judge H Carr
Mr. A. Lewicki**

Venue and date of hearing : **10 Alfred Place London WC1E 7LR –
23rd August 2023**

Date of decision : **2nd October 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a face-to-face hearing. The documents that the tribunal was referred to are in a bundle from the Applicant comprising 65 pages, the contents of which have been noted. The respondent did not provide a bundle.

Decision of the Tribunal

1. The Tribunal determines to make a Rent Repayment Order
2. The RRO made is for £1950.
3. The Tribunal also orders the respondent to reimburse the applicant his application fee and hearing fee totaling £300.

The application and procedural history

4. The applicant made an application for a Rent Repayment Order on 25th February 2023.
5. The applicant alleges that:
 - The respondent committed an offence of controlling or managing an unlicensed house in multiple occupation contrary to section 72(1) of the Housing Act 2004.
 - the respondent has committed an offence of unlawful eviction or harassment of occupiers under sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977.
6. The applicant seeks a RRO for the period 1st October 2022 and 31st January 2023 in the sum of £6000.
7. The Tribunal issued directions on 4th April 2023.

The hearing

8. The hearing took place on 23rd August 2023. The applicant attended with two witnesses Sharif Elsoudy and Peter Fakhry who occupied the property at the same time as the applicant.
9. The respondent did not attend. There was an application from the respondent for an adjournment. The respondent first communicated by email on 16th August 2023 that she wished to reschedule the tribunal date as she had a bereavement and was unable to attend the tribunal.
10. Previously, on 21st July 2023, the respondent had emailed the clerk to the tribunal to say that she had sent several emails but was unable to reach him. He replied the same day saying that he was on leave until 21st July 2023 but pointed out that as specified in his automatic reply email, the respondent could have called the office. He also told the respondent that the hearing was to be held on 23rd August 2023. He told the respondent that he had sent a hearing notification on 5th April 2023 with that information.
11. On 21st August 2023 the respondent sent an email in which she said she had suffered a bereavement so was currently suffering mental health issues. She also asked for the tribunal email address. On the same date the clerk replied with the email address, although pointing out that it is on every letter sent to her. He also told the respondent that she needed to copy the other party into emails otherwise they cannot be considered.
12. The respondent replied the same day saying that she does not have the third party email address and saying that she had legal advice not to make direct contact with the applicant.
13. The emails were referred to Judge H Carr on 21st August 2023 who asked the clerk to reply as follows:

Can you please advise the applicant that the emails she has sent are insufficient for us to adjourn the hearing. She needs to make a full application for an adjournment which must be copied to the other party. The application must set out exactly why she cannot attend on Wednesday and say when she can attend. It must also explain why she did not make the application earlier. If she has medical evidence, then that should be provided. The application should be sent to the other side and if she cannot send it she must state exactly why she cannot do so. However, the expectation is that all communications will be shared with the other side. She can ask us to keep the medical information private but she needs to give us that information. The application will then be considered on the morning of the hearing. It is too late for it to be properly considered now. There is no guarantee that the application for an adjournment will be accepted.

14. The respondent replied on 21st August 2023 as follows:

Hello Vincent,

Thank you for your email.

I will have to share that I tried on numerous occasions to make contact with you and did not receive a response from you/ auto response. So, I could not have made application earlier and I did not know the process.

I have already stated I've suffered a bereavement. I'm unsure how to explain this any other way.

I'm happy to share medical evidence.

15. There was no further communication from the respondent.
16. The applicant did not agree with the application for an adjournment.

The decision of the tribunal

17. The tribunal determined to refuse the application for an adjournment.

The reasons for the decision of the tribunal

18. The respondent has failed to engage with proceedings throughout the process. She did not attend the directions hearing and she has not submitted a hearing bundle.
19. When she made her application for an adjournment on 16th August 2023 there was very limited information provided and the applicant was not copied in. The tribunal asked the respondent for further details, but the response made contained no additional information. The respondent provided no information about when the hearing could be reconvened, nor did she provide evidence about why she could not communicate with the applicant.
20. The tribunal does not accept that the respondent was unable to communicate with the tribunal clerk or with the tribunal earlier or explain her position more fully.
21. It is important that parties cooperate fully with the tribunal and that applications are dealt with as promptly as possible. Without compelling evidence, the tribunal will not agree to adjourn a hearing.

The Law

22. A House in Multiple Occupation is defined in section 254 of the Housing Act 2004 as follows:

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.

23. The requirement for prescribed HMOs to be licensed is set out in s.61 of the Housing Act 2004 as follows:

Requirements for HMOs to be licensed

- (1) Every HMO to which this Part applies must be licensed under this Part unless—
 - (a) a temporary exemption notice is in force in relation to it under section 62, or
 - (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
 - (2) A licence under this Part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.
24. Paragraph 4 of the The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 sets out which HMOs require licensing as follows:
4. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—
 - (a) is occupied by five or more persons;
 - (b) is occupied by persons living in two or more separate households; and
 - (c) meets—
 - (i) the standard test under section 254(2) of the Act;
 - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - (iii) the converted building test under section 254(4) of the Act.
25. The relevant sections of the Protection from Eviction Act 1977 provide as follows:

1(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

1(3) If any person with intent to cause the residential occupier of any premises—

- (a) to give up the occupation of the premises or any part thereof; or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts [likely] to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

1(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
- (b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

1(3B) A person shall not be guilty of an offence under subsection (3A) above if he proves that he had reasonable grounds for doing the acts or withdrawing or withholding the services in question.

The issues

26. The issues that require to be decided by the Tribunal are:

- (i) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the alleged offences?
- (ii) If the tribunal determines to make a Rent Repayment Order it must consider:-
 - What is the applicable period?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of the respective conduct of the applicant and the respondent and of the financial circumstances of the respondent?

The

background and chronology

27. The property is a recently built town house which is high specification and in good condition. On the ground floor there is a kitchen at the front of the property and a laundry and cloakroom with toilet. This leads to a patio area plus garden at the rear of the property. On the first floor there is a living room plus balcony. On the second floor there is a family bathroom and 2 bedrooms, one occupied by the respondent and her son and the other, a double ensuite room is the applicant's room. On the third floor there is a large bedroom, balcony and bathroom. This is occupied by Sharif Elsouly and Peter Fakhry . They are not in a relationship but shared the room to save rent. There are two double beds in the room.

28. The applicant moved into a room in the property on 1st October 2022.

29. There was an agreement between the applicant and the respondent made on 30th September 2022. The terms of the agreement were set out in an email between the applicant and respondent. There is no other written agreement. The email provides as follows:

This email is to confirm that you are renting a room from 30th September 2022 at 35 Royal Crest Avenue London E16 2SU for £1200 per calendar month all bills inclusive.

The evidence

30. The applicant says that she moved into the property on 1st October 2022. She had responded to an advert on Spareroom.com placed by Angela Hesse Owusu for a vacant double room with ensuite on 28th September 2022. The rent was £1200 with an additional £1200 deposit required.
31. The respondent showed the applicant the property virtually and the applicant agreed to take the room.
32. The applicant gave evidence that whilst she was living in the room the property was also occupied by Sharif Elsoudy who moved in on 1st September 2022 and left on 24th December 2022, and Peter Fakhry who moved in on 6th September and moved out on 1st January 2023. Denise moved in around 23rd January 2023.
33. At the commencement of the tenancy the applicant's relationship with the respondent was amicable. The respondent travelled to Ghana in December 2022 and whilst she was away, she messaged the applicant to ask if she could repay Sharif Elsoudy's rental deposit of £870 by 10.00 am the next day. The applicant and the respondent agreed via WhatsApp message that the applicant would deduct £870 from January's rent and send the remaining £330 via bank transfer to the respondent.
34. The applicant told the tribunal that the respondent's behaviour became unpredictable after she returned from Ghana and she was asked to move out. The applicant said that the respondent explained her evicting her on the basis that things were not going the way she wanted. The applicant agreed that she would terminate the tenancy from 31st January 2023. The applicant says that this was on condition that her deposit was returned on that date. She was concerned about the return of her deposit as the other occupiers of the property had difficulty getting their deposit back. However, the tribunal noted that in fact the other two occupiers had had their deposits returned.

The allegation of unlicensed HMO

35. The applicant says that she was contacted by Ms Shopna Begum from Newham Council on 16th February 2023 informing the applicant that the respondent was illegally subletting the property. The respondent is not the owner of the property, the owner lives in Hong Kong. The contact from Ms Begum was in response to an enquiry that the applicant made in connection with the repayment of the deposit.

36. Ms Begum provided this information in an email which is copied at page 51 and 52 of the applicant's bundle. The email said that the applicant could apply for a RRO as the respondent was using the premises as an HMO.
37. The applicant told the tribunal that Ms Begum had told her that she had spoken to Angela on the phone asking her to repay the applicant's deposit. The respondent refused to do this saying that the applicant was homeless when she let her live in the property. The applicant points out that she is a working medical doctor in the NHS.

The allegation of harassment

38. The applicant alleges two invasions of privacy whereby the respondent with her friend entered the applicant's room whilst she was at work, and a 2nd invasion of privacy when a woman known to the respondent entered the room and threw away the applicant's belongings. The first incident took place in December 2022. The second incident took place on 24th January 2023. On questioning by the tribunal the applicant explained that on the second occasion a woman employed as a cleaner by the respondent had gone into her ensuite bathroom purporting to clean it and had removed and disposed of some of her toiletries. The applicant provided a Whats App transcript which showed the discussion between the applicant and the respondent about these incidents.
39. The applicant said that she thought that the incident with the cleaning of the bathroom was a deliberate provocation to get her to leave the property early. The tribunal noted that the respondent had apologised. The applicant said that she did not believe it to be a sincere apology.
40. She also alleges that there was a final incident on 31st January 2023. This was the date that the applicant was moving out of the property. The applicant asked the respondent to inspect her room so that her deposit could be returned and she would leave. The applicant says that the respondent refused to do this and threatened her physically. The applicant then had an encounter with a friend of the respondent who told the applicant that she was there to remove the applicant's belongings at the respondent's request. It seems that the respondent was refusing to repay the deposit because she alleged that there was damage to the room which would cost £200 to repair. The respondent then locked the applicant out of the property. The applicant's belongings were still inside the property, at the bottom of the stairs. The applicant only managed to gain access to the property and retrieve her belongings because of the security officer at the site.

The decisions of the tribunal

Did the Respondent commit the offence of controlling or managing an unlicensed house in multiple occupation contrary to section 72(1) of the Housing Act 2004?

41. The tribunal determines that the respondent did commit the offence of controlling or managing an unlicensed house in multiple occupation contrary to section 72(1) of the Housing Act 2004 for the period during which the property required mandatory licensing.

The reasons for the determination of the tribunal

42. The applicant has produced no evidence of the licensing requirements in the London Borough of Newham. The tribunal only has the evidence from Ms Begum that there was no HMO licence in place. That evidence is not very clear.
43. The law requires that for certain HMOs, licences are required mandatorily and therefore the tribunal finds that for the period when a mandatory licence was required, an offence has been committed. However without further evidence from Newham Council the tribunal is not able to find beyond reasonable doubt that any other licensing offence has occurred.

Did the Respondent commit the offence of unlawful eviction or harassment?

44. The tribunal determines that the respondent did not commit the offence of unlawful eviction or harassment.

The reasons for the determination of the tribunal

45. The applicant is relying on three incidents. All three took place after the applicant had agreed to leave the property. The first two incidents appear to have been a breach of the covenant of quiet enjoyment but the tribunal is not satisfied beyond reasonable doubt that those incidents were offences under the Protection from Eviction Act 1977, which is a requirement for a RRO. In particular the tribunal does not believe that the conduct of the respondent was such that it can find beyond reasonable doubt that she knew or had reasonable cause to believe that it would cause the applicant to give up the occupation of the whole or part of the premises. The tribunal notes the explanation of the respondent, and in relation to the second incident, her apology.

46. The incident which took place as the applicant was leaving the property appears to have been more serious. Locking the applicant out of the property whilst her belongings remained inside is serious misconduct. However once again the tribunal does not consider beyond reasonable doubt that it constitutes an offence under the Protection from Eviction Act 1977. The applicant had already terminated her occupation of the property so it could not constitute an illegal eviction and the respondent's conduct could not be said to constitute harassment under the Act because it took place after the occupation agreement had ended. The conduct appears to have been caused by a dispute over the return of the deposit and not motivated by wanted the applicant to give up occupation of the premises.

Should the tribunal make a Rent Repayment Order?

47. The tribunal determined to exercise its discretion and make a rent repayment order.

The reasons for the determination of the tribunal

48. The tribunal thought carefully about the circumstances of this case and considered that the conduct of the respondent was such that it was appropriate to make a rent repayment order.

What is applicable period and the maximum amount of the Rent Repayment Order?

49. The applicable period in this case is the period the property was unlicensed and required a mandatory licence and during time which there was no application for a licence.
50. The local authority confirmed there was no application for a licence.
51. The property only required mandatory licencing for the period when there were 5 persons sharing in 3 separate households.
52. During the period when the applicant was sharing the property with the respondent and her son and Sherif Elsoudy and Peter Fakhry the tribunal considers that the property required mandatory licensing. The property was occupied by five people in three or four different households.
53. However, after the end of December 2022 there was no requirement for mandatory licensing. The property was only occupied by the respondent and her son and the applicant from the end of December 2022 until 23rd January 2023. From 23rd of January 2023 a fourth person Denise joined the property. However even at that stage there was no requirement for mandatory licensing as there were only four people occupying the property. Therefore the tribunal determines that the offence of failing to licence the

property occurred between October 1st 2022 and end of December 2022 – a period of three months.

54. The maximum amount of the RRO is therefore £3600 i.e. three times the monthly rent of £1200. The applicant appears to have claimed her deposit from the tribunal. The return of the deposit is not a matter for this tribunal. The applicant will have to issue proceedings in the county court for its return.
55. The applicant provided details of the rent paid during the applicable period and the tribunal is satisfied that she paid her rent.

What account must be taken of the respective conduct of the applicant and the respondent and of the financial circumstances of the respondent when determining the amount of the RRO ?

The decision of the tribunal

56. The tribunal determines to make a RRO of £1950.

The reasons for the determination of the tribunal

57. The conduct of the respondent in this matter has been poor. She does not appear to have the authority to sublet rooms in the property and she has not obtained an HMO licence which puts the occupiers of the property at risk. Although the tribunal has concluded that there was no offence of harassment or illegal eviction, the tribunal has concerns about the respondent's conduct particularly at the termination of the occupancy. Her behaviour as the applicant was moving out is not acceptable.
58. On the other hand conditions in the property appear to have been good and the applicant made no complaints about fire safety provision or disrepair.
59. The tribunal also notes that the applicant's rent included utilities. The tribunal, drawing on its own expertise, determines to deduct £200 per month for the applicant's contribution to electricity, wifi and other services during the applicable period. Therefore £600 is deducted from the maximum amount of the RRO.
60. No direct evidence was given of the financial circumstances of the respondent.

61. The tribunal therefore determines to award the applicant 65% of the rent payable during the period a mandatory licence was required having made a deduction for utilities. This totals £1950.
62. In addition the respondent is required to reimburse the applicant for his application and hearing fee. This totals £300.

Name: Judge H Carr

Date: 2nd
October 2023

RIGHTS OF APPEAL

1. 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.
2. 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.
3. 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.
4. 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.