



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

**Case Reference** : **LON/00AK/HMF/2023/0082**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Property** : **5 Spencer Avenue, London N13 4TS**

**Applicant** : **Emma Byrne**

**Representative** : **In Person**

**Respondent** : **Mr Manjit Singh**

**Type of Application** : **Application for a Rent Repayment Order by Tenant Sections 40, 41, 43, 44 of the Housing Planning Act 2016**

**Tribunal Members** : **Valuer Chairman Mr Ian B Holdsworth  
FRICS MCI Arb  
Sue Coughlin MCIEH**

**Date and Venue of Hearing** : **10 October 2023  
Remote**

**Date of Decision** : **19 October 2023**

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**DECISION**

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**Determination**

1. The tribunal is satisfied beyond all reasonable doubt that, during the period 27 September 2021 to 28 September 2022, 5 Spencer Avenue, London N13 4TS (“**the property**”) was a House in Multiple Occupation (“**HMO**”) and the property was unlicensed. The Tribunal considers that it is appropriate to make a rent repayment order in this case. The amount of rent we order to be paid back to the Applicant by the Respondent is **£5,792**.
2. The tribunal determines that the Respondent shall pay the Applicant £200

within 28 days of this decision in respect of reimbursement of the tribunal fees paid by the Applicant.

### **Application**

3. This is an application seeking a Rent Repayment Order under sections 41(1) and (3) of Chapter 4 of part 2 of the Housing and Planning Act 2016.

### **Hearing**

4. A video hearing was held on the 9 October 2023.
5. Ms Byrne, the Applicant and Mr Manjit Singh, the Respondent, represented themselves at the hearing and gave evidence to the tribunal. Mr Marcus Allenby attended as a witness for the Applicant.
6. Mr Ellenby had not submitted a witness statement and Mr Singh objected to the inclusion of his evidence. The Tribunal ruled that he could not give evidence as no witness statement had been provided in accordance with the bundle.

### **Background**

7. The property is a three storey dwelling with six bedrooms with en suite bathrooms, kitchen and ground floor WC.
8. On 29 September 2021 the Respondent granted a tenancy of a room in the property to the Applicant. This tenancy was to run for a period of 6 months from 29 September 2021 until 28 February 2022. The tenancy was subsequently extended until 28 January 2023.
9. Chapter 4 of the Housing and Planning Act 2016 makes provision for rent repayment orders to be made against a landlord where that landlord has committed certain offences.
10. The Applicant has made an application to the tribunal dated 23 March 2023 for a rent repayment order ( "**RRO**"). The Applicant's case is that officers from the London Borough of Enfield inspected the property on 13 January 2023. They subsequently confirmed the property was an HMO and required licencing under the national mandatory HMO licencing scheme.
11. A failure to register the property as a HMO would constitute an offence entitling the Applicant to apply for a rent repayment order against the Respondent. The relevant legislation is set out in more detail below.

## **The legislation**

12. Where the occupation of a property is shared by a number of individuals, each of them is regarded as a separate household: s.258 Housing Act 2004.
13. ss.254-260 of the 2004 Act define a mandatory HMO. . It is not disputed by either party that if there are five occupiers forming two or more households the property fits into this category. By s.262(6)(a) of the 2004 Act an “occupier” means a person who occupies premises as a residence.
14. s.61 of the 2004 Act requires an HMO to be licensed. By s.72 of the 2004 Act a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed but is not so licensed. By s.263 of the 2004 Act a person has control of premises if he receives the rack-rent.
15. s.40(1) Housing and Planning Act 2016 confers powers on the tribunal to make a rent repayment order where a landlord has committed an offence, including a breach of s.72 of the 2004 Act. s.40(2)(a) of the 2016 Act provides that a rent repayment order is an order requiring the landlord to repay an amount of rent paid by the tenant.
16. By s.43 of the 2016 Act, the tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which Chapter 4 of the 2016 Act applies (this includes a breach of s.72 of the 2004 Act).
17. By s.44(2) of the 2016 Act, the amount of the rent repayment order must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. In this case the period is of 12 months from 27 September 2021 to the 28 September 2022.
18. By s.44(3) of the 2016 Act in determining the amount of a rent repayment order 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 Chapter 4 applies.

## **The applicants’ evidence and submissions**

19. The Applicant explained to tribunal that she occupied the property from 28 September 2021 until 28 January 2023. A monthly rent of £700 was paid to Mr Manjit Singh during this period. These payments were evidenced by bank statements included in the bundle.
20. The rent payment included the costs of any gas, electricity, water, Council Tax and wi-fi charges at the property.
21. The Applicant told tribunal she approached the Local Authority about the condition and licencing of the property in late 2022. A copy of the

confidential casework record prepared by Nick Long, Environmental Health Officer, LB Enfield is provided at page 26 (p26) of the bundle. This details a series of defects with the property. At p23 there is a witness statement dated 30 January 2023 prepared by Nick Long following his inspection of the property. This reports his findings after an inspection of the property on the 25 January 2023. He describes the condition of the property as falling below HMO standards and lists defects that require remediation. He also confirmed that the property had previously been licensed however the licence for the dwelling had expired on the 23 August 2021.

22. Ms Byrne told the tribunal how uncomfortable she had found the premises during her stay. The property has pre-payment electricity and gas meters installed which the landlord credits on an ad-hoc basis. During the winter months the credits are quickly used by the tenants, and she claimed there were often delays in new credit being added to the meters with consequential interruptions to supply. This caused significant inconvenience to residents and often led to errors to the gas boiler control system. She also alleged that repairs to the property took a long time to complete. She referred to the more than 6 month delay to repair her shower in the en suite bathroom.

### **The Respondent's evidence**

23. The Respondent replying to questioning from the tribunal acknowledged he was aware the property needed a HMO licence and that he had previously licenced the property. He acknowledged that when the previous HMO licence lapsed on the 28 August 2021 he failed to renew the licence. He did not dispute the dwelling had been used as an HMO consistently since the renewal licence date. He also confirmed that throughout the relevant period he had received the £700 rent from Ms Byrne.
24. He told the tribunal that he is the landlord of the property. His daughter Ms Kaur is the manager of the dwelling, with day to day repairs carried out by Mr Kelly Gold of Broadway Home Lets. Mr Singh confirmed that this was his company and Mr Gold worked part time for him. The letting of the dwelling was carried out by Zone Lettings & Management, but they were not responsible for managing the property. He also confirmed that he is a professional landlord who owned four properties, all a similar type to the subject dwelling.
25. Mr Singh asked Ms Byrne in cross examination whether she had been comfortable at the property during her stay and she confirmed that the dwelling was a reasonable property but exhibited problems which she had highlighted to the tribunal.
26. The tribunal asked the Respondent about the costs of providing the inclusive services to the property. He told the tribunal that the total annual cost of provision of services at the property range between £12-£15,000. He said that the energy costs were around £1,200 per month, Council Tax £370 per month, water costs £100 per month, and wi-fi costs £70 per month.

27. The tribunal asked why there were such significant differences between the costs shown on the energy bills submitted in the bundle and the alleged energy costs. The bundle submission suggests electricity and gas bills during the relevant period of around £3,500. He was unable to explain the significant cost difference between the alleged cost and the evidenced cost of the services.
28. The Respondent refuted the complaints made by the Applicant about the condition of the property. He told tribunal he was diligent in his response to any request from the residents to carry out repairs. It is his opinion that the property was in good repair and habitable throughout her tenancy. He said that the property was now licensed,

### **Discussion and conclusion**

29. The parties both agreed that the property required a HMO licence for the period 28 September 2021 to 27 September 2022.
30. The property was not licenced as a HMO despite the Respondent registering the HMO with the Local Authority in or around 2017. This is confirmed by the report prepared by Mr Nick Long of LB Enfield.
31. It was also common ground that the Applicant held a valid tenancy from 28 September 2021 to January 2023 at the property. She paid £700 per month rent and this was received by Mr Manjit Singh. The role of Mr Singh as the landlord of the property is not disputed.
32. The rent included the cost of supplying gas, electricity, water and wi-fi to the property. It also covered the community charge for all residents. This was agreed by both parties.
33. The tribunal was satisfied beyond reasonable doubt that the landlord, Mr Manjit Singh committed an offence by failing to secure a HMO licence for the property.
34. Although Mr Singh did not specifically mention having a reasonable excuse for committing the offence, he did put forward two matters of extenuation. Firstly, he felt that the Council should have informed him that the property licence was due for renewal. We do not consider that this can offer a reasonable excuse for the offence or mitigation of it. Mr Singh is a professional landlord with his own company employing someone to manage them in his behalf. He should ensure that licence renewals are properly diarised. The second issue raised was of the loss of his brother in June 2020. Again, whilst we can sympathise with his loss for the reasons given above we do not consider that this can provide a reasonable excuse or mitigation.
35. We consider it appropriate to order a repayment of the rent paid between 27 September 2021 to 28 September 2022. .

36. The tribunal do not accept the evidence of the Respondent that the costs of providing the inclusive services at the property during the period amounted to some £12,-£15,000.
37. The tribunal have reviewed the evidence provided and conclude that the total costs of providing all services throughout the period based on the submitted evidence is £6,960 equivalent to a charge per flat of £1,160. This sum is deducted from the rental paid during the period of £8400 leaving a sum of £6960 as a starting point for consideration of the rent repayable.
38. The tribunal has weighed the evidence and are minded, to reduce further the repayable sum. This reflects the behaviour of Mr Singh following the inspection by the representative from the London Borough of Enfield. He supplied the necessary statutory testing certification on request for the electricity, gas appliances and fire alarms which were all current documents. Whilst we consider that the failure to licence a mandatory HMO is a serious offence it is not in the worst category of this type of offence.
39. The tribunal is however very concerned about the use of prepayment meters in an HMO property and would emphasise that the duty to maintain a consistent supply of gas and electricity to any HMO dwelling is the responsibility of the landlord. This duty was not satisfied by the landlord or property manager at this property during the period of the applicants stay. The onus was clearly placed on the tenants to ensure that the landlord was notified in time to prevent a loss of supply. We also note delays in carrying out landlords repairing obligations and there some confusion about the chain of management to the dwelling. There was criticism by the applicant of the time taken to respond to advice of dilapidation and an initial failure to return a £700 deposit made by the applicant to the landlord for the property. These are all material matters which the tribunal have considered and weighed in determining that there should be a 20% reduction of the sum payable.
40. The sum repayable is calculated as follows:

<b>5 Spencer Avenue, London N13 4TS</b>			
Reference: DB/ LON/00AK/HMF/2023/0082			
Total rent repayment Order	£8,400.00		£8,400.00
Less service charges for dwelling over 12 months			
Wifi charge	£840.00		
Council Tax	£2,000.00		
Water rates	£600.00		
Electricity charge	£2,100.00		
Gas bill	£1,420.00		
Property Total	£6,960.00		
Charge per flat	<b>£1,160.00</b>		
Sub-total less service charges			£7,240.00
<b>Mitigating factors</b>			
Landlord compliance with statutory testing { Gas, Electrical Fire Alarms}			
Apply 20% reduction		0.2	£1,448.00
<b>Balance of RRO</b>			<b>£5,792.00</b>

41. We order a repayment of £5,792 to the Applicant.

### Hearing costs

42. The tribunal pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 can order reimbursement of application and hearing fees paid by the Applicant. In the light of the above determination the tribunal orders the Respondent to refund the Hearing fee of £200 paid by the Applicant within 28 days of the date of this decision.

**Name:** Ian B Holdsworth

**Date:** 19 October 2023

### ANNEX - RIGHTS OF APPEAL

- i. 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.

- ii. 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.
- iii. 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.
- iv. 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.