



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

Case reference : LON/00AM/HMF/2021/0192

HMCTS code : V:CVPREMOTE

Property : Flat 14, Caliban Towers, Arden Estate, N1 6PW

Applicant : Floyd Santimano

Representative : Dr Mohan

Respondent : Aribibia Johnson

Representative : Not Represented

Type of application : Rent Repayment Order under provisions of the Housing and Planning Act 2016

Tribunal member(s) : Judge Bernadette MacQueen
Judge Andrew Dutton
Mr Kevin Ridgeway MRICS

Venue : 10 Alfred Place, London WC1E 7LR
(Remote hearing via CVP)

Date of decision : 26th October 2023

DECISION

1. The Tribunal finds that the Respondent has committed the offence of failing to license an HMO under the provisions of section 72(1) of the Housing Act 2004 and that accordingly a Rent Repayment Order in favour of the

Applicant can be made. A Rent Repayment Order for £2,088.92 is therefore made and must be paid within 28 days of the date of this decision.

2. The Tribunal also orders the reimbursement of the Tribunal fees in the total sum of £300 and costs of £900, which must be paid within 28 days of the date of this decision.

Hearing On 26th October 2023

3. This was a remote video hearing which was consented to by the parties. The form of remote hearing was Cloud Video Platform (CVP) (V: CVPREMOTE). A face-to-face hearing was not held because the representative for the Applicant was in Japan and so was unable to attend the hearing in person.
4. The Respondent did not attend the hearing and the Tribunal decided to proceed in the Respondent's absence. This was because no explanation had been provided to the Tribunal by the Respondent as to why he could not attend. Additionally, the Tribunal noted that this matter was listed for final hearing on 25th April 2022, however the hearing did not proceed as the respondent contacted the Tribunal at 10.26am on 25th April 2022 to say that he was having issues joining the remote hearing. This matter was therefore listed for 26th October 2023. The Tribunal was satisfied that the Respondent was given proper notice of the hearing, including emails containing the joining instructions for the hearing. Additionally, the Tribunal noted that the case officer telephoned the Respondent prior to the hearing on 26th October 2023, but did not manage to make contact with the Respondent. The tribunal also considered a previous case (reference LON/00AM/HMK/2019/0020) in which Aribibia Johnson was the Respondent. The Decision in this case (found at page 40 of the Applicant's bundle) records that at the hearing on 28th August 2019 the Respondent failed to attend and no reasons for this were provided to the Tribunal.

Taking all these factors into account the Tribunal proceeds with the hearing in the Respondent's absence.

5. The Tribunal heard submissions from Dr Mohan on behalf of the Applicant and also heard from the Applicant, Mr Santimano. The Tribunal was provided with a bundle of 89 pages, prepared by the Applicant, as well as a bundle in reply from the Respondent, the contents of which have been noted.

Background

6. On 6th August 2020 the Applicant made an application for a Rent Repayment Order under section 41 Housing and Planning Act 2016 in respect of Flat 14, Caliban Towers, Arden Estate, N1 6PW. This application was made to the Tribunal in time because the Property was let to the applicant at the time of the alleged offence, and the alleged offence was committed between 16th April and 9th August 2020 which was within the period of twelve months ending on the day on which the application was made.
7. The Tribunal did not conduct a site visit as this was not necessary to determine the issues in the case. However, in the application form (at page 12 of the Applicant's bundle) the flat was described as having a small entrance and hallway leading to a kitchen, bathroom, two storage cupboards and two bedrooms. The bathroom had a bath/shower, sink and kitchen.
8. The Respondent has the benefit of a long lease from the London Borough of Hackney from 24th October 2016 to 4th February 2115, registered under title number AGL400286.
9. Attached to the Applicant's witness statement and marked FS1 (pages 28-31 of the Applicant's bundle) was a copy of a "room agreement" made

between the Applicant and Respondent, showing Kitti Szoboszlai as the 'other occupant'. The document was dated 14th April 2020 and stated that from 16th April 2020 rent of £650 per month shall be paid for a bedroom and shared bathroom, kitchen and hallway. Whilst the document was called a "room agreement", the Tribunal was satisfied that this was an assured shorthold tenancy agreement. The Tribunal was referred to the case of *Street v Montford* (1985) at page 21 of the Applicant's witness statement and accepted that the Applicant had an assured shorthold tenancy agreement.

10. The Applicant confirmed that they moved into the Property on 16th April 2020 and left the Property on 13th August 2020.
11. At pages 36-39 of the Applicant's bundle was a copy of a "room agreement" made between Lucien Carey and Michelle Caudrillier (tenants) and the respondent as landlord for Flat 14 Caliban Towers (the Property) for the period 9th February 2020 until 9th August 2020. This agreement was identical to the "room agreement" made between the Applicant and the Respondent. The two agreements ran concurrently for the period of 16th April 2020 (when the applicant moved into Flat 14) to 9th August 2020 when the agreement with Lucien Carey and Michelle Caudrillier ended.

The Application

12. For a Rent Repayment Order to be made, the Tribunal must be satisfied beyond reasonable doubt that a specified statutory offence (as identified in table at section 40(3) Housing and Planning Act 2016) has occurred. The offence that the applicant alleges was that the Respondent landlord was in control or management of an unlicensed house in multiple occupation (Section 72(1) Housing Act 2004), which is a specified statutory offence under section 40(3).

13. The Respondent landlord had not been convicted of this offence and therefore this Tribunal needed to be satisfied beyond reasonable doubt that this offence was made out.
14. The Applicant sought a Rent Repayment Order for the sum of £2,600 along with payment of the Tribunal fee of £300 and costs of £900.
15. Kitty Szoboszlai, who is shown in the tenancy agreement as the “other occupant” was originally a joint applicant, however, she applied to the Tribunal to withdraw from the proceedings, and this application was granted on 30th March 2022. Floyd Santimano is therefore the sole applicant in these proceedings. However, in his submissions to the Tribunal, Floyd Santimano confirmed that Kitty Szoboszlai lived with him at the Property between 16th April 2020 and 13th August 2020.
16. The Respondent landlord did not appear at the hearing, however he did send to the Tribunal by email dated 31st March 2022 a bundle of documents. This bundle contained a short explanation of the Respondent’s position and some emails. The Respondent stated that the applicant and Kitty Szoboszlai were the sole occupiers of the Property as the tenants Lucian Carey and Michelle Caudrillier left the property in April 2020 to move back with family during the lockdown. The respondent also confirmed that he moved back into the property in August 2020.
17. The Tribunal considered the bundles provided by the Applicant and the Respondent and heard submissions from the Applicant and his representative at the hearing on 26th October 2023 in order to determine if a Rent Repayment Order should be made.

Reasons for the Decision

Does the Property Require an HMO Licence?

18. The Tribunal considered the Electoral calculus (pages 82 – 84 of the Applicant’s bundle and marked “FS 9”) and is satisfied that the Property falls within the local government area of the London Borough of Hackney. Additionally, the Tribunal has considered the Public Notice for the Additional Licensing Scheme (pages 85 – 86 and marked “FS10). The Tribunal finds that the Property was subject to the London Borough of Hackney Council’s Houses in Multiple Occupation (HMOs) Additional Licensing Scheme in accordance with section 71 Housing Act (“HA”) 2004, effective from 01/10/2018. This scheme makes it a compulsory requirement for all private landlords of HMOs to hold an additional HMO licence for all rented residential properties falling outside the statutory mandatory licensing scheme when the property is occupied by three or more people forming two or more households, including flats in multiple occupation in purpose built blocks of flats.
19. At page 87 of the bundle (marked “FS 11”) is an email from Hackney Borough Council that confirms there has never been a licensing application relating to the Property.
20. Given that the Property is subject to the additional licensing provisions and that there has never been an application for an additional licence, the Tribunal needs to be satisfied, beyond reasonable doubt, that the Property was an HMO.
21. The Tribunal finds that the two bedrooms of the Property, along with the communal areas, were occupied by three or more people by two separate household. We find this because between the period of 16th April 2020 and 9th August 2020 the applicant and Kitty Szoboszlai held a tenancy agreement for the Property (pages 28-30 of the applicant bundle and marked “FS1”) and that Lucien Carey and Michelle Caudrillier also held a tenancy during that period (pages 36-39 of the applicant bundle and marked “FS3”).

22. The Tribunal heard submission from the Applicant that he and Kitty Szoboszlai lived at the Property from 16th April 2020 until 13th August 2020, and when they moved in, Lucien Carey and Michelle Caudrillier also lived there. The applicant referred to photographs within the Applicant's bundle at pages 52-61 (marked "FS5") showing food and unwashed crockery and utensils that the applicant said belonged to Lucien Carey and Michelle Caudrillier. The Applicant also told the Tribunal that he was charged a lower rent because the other bedroom was rented out.
23. The Tribunal does not accept the position of the Respondent that Lucien Carey and Michelle Caudriller were not living at the property when the applicant and Kitty Szoboszlai were there. The Tribunals accepts the submissions of the Applicant and the two tenancy agreements for the Property.
24. The Tribunal therefore finds that for the period 16th April 2020 (when the applicant and Kitty Szoboszlai moved into the Property) to 9th August 2020 (when the tenancy agreement between the Respondent landlord and Lucien Carey and Michelle Caudrillier ended) the Property was occupied by three or more people forming two or more households. The Property therefore needed to be licensed under the London Borough of Hackney's Additional Licensing Scheme.
25. The Tribunal finds that the Respondent was the person having management and control of the HMO (as defined by section 263 Housing Act 2004) and was the immediate landlord at the time of the alleged offence as he was the person receiving the rent. This is evidenced by the bank statements of the Applicant (pages 64 – 81 of the Applicant's bundle) where £650.00 was paid to "ARI Johnson. Ref Rent"

Reasonable Excuse Defence

26. The Respondent's position is that the Property was not an HMO, however this argument is not accepted by the Tribunal. The Respondent did not raise any other matter and the Tribunal is satisfied that the facts of this case do not give rise to a reasonable excuse defence.

Should a Rent Repayment Order be made?

27. The Tribunal therefore finds beyond reasonable doubt that the Property was an HMO and should have been licensed under the Additional Licensing Scheme of the London Borough of Hackney and that the Respondent landlord was the person having control of or management of the Property. The Tribunal does not find that the Respondent landlord presented to the Tribunal a reasonable excuse defence.

28. Having made this finding, this Tribunal may therefore make a Rent Repayment Order. Given the offence is established the Tribunal sees no reason not to make a Rent Repayment Order.

The Amount of the Rent Repayment Order

29. Section 46 of the Housing and Planning Act 2016 specifies the circumstances where a tribunal is obliged to make a Rent Repayment Order in the maximum amount. However, these circumstances do not apply where a Tenant is seeking a Rent Repayment Order under section 72 (1) of the Housing Act 2004, as in this case.

30. The Tribunal must therefore take into account the factors set out in section 44 Housing and Planning Act 2016 in order to determine the amount the Rent Repayment Order should be for. Additionally, there is authority from the Upper Tribunal setting out factors the Tribunal needs to consider. The Tribunal therefore finds as follows:

- i. The relevant period to which the Rent Repayment Order relates is between 16th April 2020 and 9th August 2020 (a period of 115 days). The reasons for this period are set out in the Reasons for Decision section (above).
- ii. The Tribunal considered whether any element of the rent represents payment for utilities that only benefit the tenants. The Applicant told the Tribunal at the hearing on 26th October 2023 that the tenants were responsible for paying all the bills themselves. However, the tenants did not pay Council Tax or make payment for the internet. In relation to the internet the Tribunal notes that at paragraph 11, page 22 of the Applicant's bundle the Applicant shows that the internet was no longer connected on 1st July and the Applicant says that this was because of the Respondent's actions. However, the Tribunal does not have information before it to show whether or not the Respondent landlord was paying for internet. Given that the tenants paid for the utilities, the Tribunal does not make a deduction for payment of utilities.
- iii. Turning to the seriousness of the offence, when compared with other types of offences, the Tribunal does not find that this offence is the most serious offence and therefore the Tribunal makes a 15% deduction to the amount it could award.
- iv. Finally, the Tribunal considered the conduct of the landlord and the tenant. The Applicant told the Tribunal in his submissions on 26th October 2023 that he found the experience he had with the tenancy humiliating and stressful. Additionally, the Tribunal notes that the respondent withheld the deposit paid by the Applicant without explanation (£650). The Tribunal further takes into consideration that the gas to the Property was cut off by the Respondent landlord. This

involved the Applicant having to contact the London Borough of Hackney for assistance (paragraph 13, page 23 of the Applicant's bundle). Finally, the Tribunal also takes into consideration that the landlord attended the Property with two people without giving 24 hours notice (para 11 page 22 of the Applicant's bundle). Taking this into account the Tribunal does not make any further reduction below the 15% set out in paragraph iii above.

- v. The Tribunal has not been provided with any information about the financial circumstances of the tenant.

31. Taking the factors outlined above into consideration, the Tribunal finds that a reduction of 15% is appropriate.

Rent Actually Paid

32. A Rent Repayment Order can only be made in respect of rent that has actually been paid during the period the offence was committed. The Tribunal has been provided with copies of bank statements from the Applicant that show that £2,600.00 was paid by the Applicant to the Respondent landlord (pages 64 to 81 and marked "FS8" of the Applicant's bundle). The tenant paid the first and the last rent payment together on 15th April (£1,300.00) and then made payments of £650 on 18th May and 16th June. The Tribunal is therefore satisfied that the rent of £2,600.00 has been paid for the relevant period (16th April 2020 until 9th August 2020).
33. The relevant period is therefore 115 days, at a daily rate of £21.37 (based on £650 per month). The total amount paid for the relevant period is therefore £2,457.55. This amount is reduced by 15% to take into account the factors under section 44 (as set out at paragraph 30 above).

34. The Tribunal therefore makes a Rent Repayment Order for £2,088.92 which shall be paid within 28 days of the date of this decision.
35. The Tribunal orders that the application fee of £300 should be paid within 28 days of the date of this decision.
36. The Tribunal awards costs of £900. This amount has been reached because the hearing on 25th April 2022 did not proceed through no fault of the Applicant and the Tribunal notes that he was represented at this hearing. The hearing on 26th October 2023 was therefore an adjourned hearing and the Respondent did not attend and did not provide any explanation for his non-attendance. This amount shall be paid within 28 days of the date of this decision.

Tribunal Judge MacQueen

Date: 26th October 2023

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).