



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

Case Reference : **LON/OOAJ/HMF/2023/0094**

HMCTS : **V: CVPREMOTE**

Property : **40B Palace Road, London, SW23NJ**

Applicants : **Candice George, Nicole Forster,
Issariya Morgan**

Representative : **In person**

Respondent : **Edward Sykes**

Representative : **In person**

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

Tribunal Member : **Judge Shepherd
Chris Gowman MCIEH**

Venue of Hearing : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **7th December 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing

1. In this case the Applicants, Candice George, Nicole Forster and Issariya Morgan (The Applicants) are seeking a Rent Repayment Order against the Respondent, Edward Sykes (The Respondent).
2. The Applicants were in occupation of premises at **40B Palace Road, London, SW23NJ** (The premises).
3. It was the Applicants' case that the Respondent had failed to license the premises when he was required to do so. Specifically, they claim Rent Repayment Orders as follows:
 - Nicole Forster , occupant 25/06/21 to 24/09/2022, 5 months @ 580/month: £580 x 5 = £2900
 - Candice George , occupant 25/06/21 to 24/09/2022, 5 months @645/month £645 x 5 = £3225
 - Issariya Morgan occupant, 25/06/21 to 24/09/2022, 5 months @675/month =£3375
 - **TOTAL CLAIM = £9500**
4. The applicants also apply for the award of the fees we have paid under rule 13(2) of the Tribunal rules 2013, namely £100 application fee and £200 hearing fee, totalling £300.
5. The Rent Repayment Order application was made pursuant to section 41 of the Housing and Planning Act 2016. The property is a self-contained 3 bedroom flat over 2 floors with a shared bathroom, shared kitchen and dining facilities. The property is situated in the Streatham Hill ward of Lambeth. This

area lies within an area designated as an Additional License Scheme. There was no dispute that the premises required a license and did not have one.

6. The Applicants signed a tenancy to occupy the premises on 18th June 2021. The tenancy began on 25th June 2021 for a fixed term of 12 months. The Applicants paid a deposit of £2192.31. The landlords were named as Edward Sykes and Bettina Hassan. The latter was removed as a Respondent earlier in the proceedings because for practical purposes Mr Sykes was the sole landlord.

7. During their tenancy the Applicants complained of various disrepair including a fence blowing down and a boiler defect. The Tribunal were unimpressed by allegations about the landlord's conduct and the premises appeared from photographs to be attractive.

8. Mr Sykes appeared to be an honest witness. He said he'd submitted an application for a license once he realised he needed one. He said he had a medical condition and took Propranolol which affected his capacity as it had a soporific affect. This had affected his ability to function. This condition started in October 2020. His agents did not help him. The premises had been bought 18 years ago as a family home. He thought his agent would keep him up to date. He was fairly ignorant in property affairs. He hadn't applied for a temporary exemption.

The Additional Licensing scheme

9. This was introduced by Lambeth in September 2021. The designation was made pursuant to Housing Act 2004, s.56. It applies to all HMOs which are occupied by three or more persons who are not member so the same household.

The Housing Act 2004 (“the 2004 Act”)

10. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licencing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicensed HMO and under section 95(1) of having control or management of a licensed house. On summary conviction, a person who commits an offence is liable to a fine. An additional reedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

11. Part 2 of the 2004 Act relates to the licencing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that 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.”

12. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description 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 the standard test under section 254(2) of the 2004 Act.

13. In addition, as stated above Islington introduced an Additional Licencing Scheme.

14. Section 263 provides:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

The Housing and Planning Act 2016 (“the 2016 Act”)

15. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.
16. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore

been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

17. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that “the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The “main object of the provisions is deterrence rather than compensation.”

18. Section 40 provides (emphasis added):

“(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.”

19. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of

the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

20. Section 41 deals with applications for RROs. The material parts provide:

“(1) 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.

21. Section 43 provides for the making of RROs:

“(1) The First-Tier Tribunal may make a rent repayment order 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).”

22. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for

repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

23. Section 44(4) provides:

“(4) In determining the amount 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 this Chapter applies.”

24. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

25. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the “purposes intended to be served by the jurisdiction to make a RRO” (at [41] and [43]).

26. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional “rogue” landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

27. In *Acheampong v Roman* [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

Application to the present case

28. The Tribunal had considerable sympathy with Mr Sykes who appeared genuinely not to have realised he needed a license. He was candid enough to accept that the medical factors did not constitute a reasonable excuse but went to mitigation. He applied for the license as soon as he was aware of the need to do so.

29. The Applicants provided evidence of the rent that they had paid and satisfied the Tribunal that for the relevant period the premises should have been licensed but were not. The Tribunal were not impressed by the evidence as to bad conduct by Mr Sykes who genuinely sought to be a good landlord. The premises were attractive to occupy.

30. Although this was a serious offence of failure to license there was considerable mitigation. Applying the criteria in Acheampong above:

- The total rent paid for the relevant period was £9500
- There was no evidence of the cost of utilities paid for by the landlord.
- As already indicated, this was a serious licensing breach although compared to other types of offence such as unlawful eviction it was not as serious and there was considerable mitigation. The premises were an attractive place to live.

31. Applying the other criteria under the Act there was no real evidence of poor conduct by the Respondent.

32. In light of all of these matters we consider that an 40% award is appropriate which equates to **£3800 in total**. This will need to be divided between the Applicants proportionately in relation to their individual claims. We also award the Applicants £300 representing the return of the application and hearing fee.

Judge Shepherd

7th December 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.