



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

Case reference : **LON/00AM/HMF/2023/0117**

HMCTS code : **V: CVPREMOTE**

Property : **12A Heyworth Road, London E5 8DR**

Applicant : **Christian Jaccarini (A1)
Georgia Hill (A2)
Elliot Mallen (A3)
Kellie Coyle (A4)
Laurence Flint (A5)**

Representative : **Elliot Mallen**

Respondent : **Sookra Raveendran**

Representative : **Desmond Taylor**

Type of application : **Application for a rent repayment order
by a tenant
Sections 40,41,43 & 44 of the Housing
and Planning Act 2016**

Tribunal member(s) : **Judge D Brandler
Mr C Gowman MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **14 December 2023**

Date of decision : **14 December 2023**

DECISION

Decision of the tribunal

(1) The application is dismissed.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. On 07/05/2023 the tribunal received an application seeking a Rent Repayment Order (“RRO”) under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”). The application was signed by 5 applicants. Three of those applicants, A1, A2 and A5 made an application to withdraw their part of the claim on 26/09/2023. The applicants seeking to pursue this application are Elliott Mallen (A3) and Kellie Coyle (A4).
2. Directions were issued on 07/08/2023 and revised on 15/09/2023.
3. The application alleged that Sookra Raveendran, “the respondent” landlord, failed to obtain an HMO licence for 14A Heyworth Road, London E5 8DR (“the property”), in breach of the Additional Licensing requirements operated by the London Borough of Hackney (“the Council”).
4. The Additional Licensing scheme introduced by the Council came into force on 01/10/2018 expiring on 30/09/2023. This required all properties located within the Council occupied by three or more persons comprising two or more households, occupying as their only or main residence, to be licenced under an additional HMO licensing scheme.
5. The property is a 4-bedroom leasehold flat located on the lower ground and ground floors of a converted house. The occupants of the 4 rooms shared kitchen and bathroom facilities.
6. The history of the occupancy is briefly as follows: By a tenancy agreement dated 08/05/2021 the respondent granted an assured shorthold tenancy (“AST”) to A3 and A4 and two other tenants. The term of the tenancy was for 2 years to expire on 07/05/2023. The monthly rent payable jointly by the 4 tenants was £2,925.00 pcm. The AST worked on the basis that the landlord did not object when existing tenants wanted to move out, as long as replacement tenants were found, and approved by him.
7. The application refers to 3 tenancy agreements over various periods. The only one relevant to the applicants still pursuing this application is the AST granted on 08/05/2021 until 07/05/2022.

8. A3 claims a RRO in the sum of £8,444.00 for the period 08/05/2021-07/05/2022

9. A4 claims a RRO in the sum of £8,564.00 for the period 08/05/2021-07/05/2022

10. A3 and A4 gave notice to the respondent landlord in March 2022 that they were going to move out on 30/04/2022 and that they had found replacement tenants who would move into their respective rooms, who would take over their responsibility for the AST and who would refund A3 and A4 for the period from 01/05/2022-07/05/2022. The Respondent landlord approved A3 and A4 moving out of the property before the end of the term of the AST and approved the new tenants moving into the property.

THE HEARING

11. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle was sufficient.

12. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the Tribunal. The Applicants' Bundle consisted of [185] pages and reference to pages in that bundle are prefixed by "A". The Respondent's bundle consisted of [36] pages and reference to pages in that bundle are prefixed by "R".

13. A3 and A4 joined the hearing by video connection and represented themselves. The respondent was represented by Desmond Taylor. They both joined by video connection.

Occupation and rent paid

14. The period of occupation and the rent paid is not in dispute. Nor is it in dispute that the Respondent landlord committed an offence by failing to obtain the relevant licence for the property during the period of claim. The only issue in dispute is whether the application was made in time.

15. Mr Taylor argues on behalf of the respondent that the application was not received by the Tribunal within 12 months of the offence in accordance with s.41(2)(b) of the 2016 Act which states "*the offence was committed in the period of 12 months ending with the day on which the application is made*".

16. It is submitted that moving out on 30/04/2022 the applicants surrendered their tenancy, did not occupy the property as their only or principle home, and were repaid by the incoming replacement tenants for the rent they had paid to the landlord for the period 01/05/2022-07/05/2022.

17. In the alternative he makes an argument that the applicants unlawfully sublet the property to the replacement tenants and that they in fact became landlords until the new AST naming the replacement tenants was granted on 08/05/2022.

18. If neither of the above apply, Mr Taylor argues that the application for a RRO should have been received by the Tribunal by 06/05/2022 and they were out of time. However, it was unclear from his submissions how he calculated that date.

19. In oral evidence both the applicants confirmed that there was an error in their witness statement in which they state that they contractually liable for the rent until May 2023. They confirmed that their application is based on the contractual term of the AST expiring on 07/05/2022. Neither of them could confirm when the replacement tenants repaid them for their overpaid rent, but both confirmed that they had received a refund from the incoming tenants which covered the period 01/05/2022-07/05/2022.

20. When it was put to A3 that he is asking for duplicate compensation from the landlord for that period already repaid by the incoming tenants, A3 conceded that the rent repayment order should run only to 30/04/2022.

FINDINGS

21. The Tribunal finds that the respondent landlord had control of the property and failed to apply for the requisite HMO licence until after the period claimed in this application.

22. The respondent did not have a reasonable excuse for not making an application. Nor did he apply for an exemption.

23. The Tribunal finds beyond a reasonable doubt that the respondent was in breach of the requirement to licence the property under the Additional Licensing scheme managed by the Council.

24. The applicants A1, A2, A5 withdrew their applications prior to the hearing and played no further part in this application.

25. However, A3 and A4 moved out of the property on 30/04/2022 surrendering their tenancy to the incoming tenants. They were no longer contractually bound by the terms of the AST from that date by agreement with the respondent landlord and were repaid the overpaid rent for the period 01/05/2022-07/05/2022 by the incoming tenants. Their application made on 07/05/2023 does not therefore comply with the requirement in s.41(2)(b) of the Housing and Planning Act 2016 and their application for a RRO is dismissed.

Name: Judge D. Brandler Date: 14 December 2023

ANNEX - 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(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.

(2) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(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.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (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).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

- (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.

If the order is made on the ground that the landlord has committed

the amount must relate to rent paid by the tenant in respect of

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period, not exceeding 12 months, during which the landlord was committing the offence

- (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.
- (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.