



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

Case reference : **LON/00AY/HMF/2023/0100**

Property : **41 Deerdale Road London SE24 0AP**

Applicant : **Ms E Bradshaw**

Representative : **Justice for Tenants (Mr C Neilson)**

Respondent : **Ms M Roy**

Representative : **In person**

Type of application : **Application for a Rent Repayment Order by tenants**
Sections 40, 41, 42, 43 and 45 Housing and Planning Act 2016.

Tribunal members : **Judge Pittaway**
Mr S Wheeler MCIEH CEnvH

Date and Venue of Hearing : **16 November 2023**
10 Alfred Place London WC1E 7EB

Date of decision : **20 December 2023**

DECISION

Decisions of the Tribunal

1. **The Tribunal find that the Respondent committed an offence under section 72(1) of the Housing Act 2004 without reasonable excuse.**
2. **The Tribunal makes a Rent Repayment Order in favour of the Applicants in the sum of 2,445.20.**
3. **The Tribunal orders the Respondent to refund the Applicants' application and hearing fees of £300.**
4. **The reasons for the Tribunal decisions are given below.**

The Hearing

5. Mr C Neilson represented Ms Bradshaw at the Hearing and Ms Roy appeared in person.
6. The Tribunal had before it an Applicants' bundle, 136 pages, a Respondent's bundle of 150 pages and a Response to the Respondent's Evidence Bundle of 16 pages.
7. The Tribunal heard evidence from Ms Bradshaw and Ms Roy and submissions from Mr Neilson and Ms Roy.

The background

8. The tribunal received an application from the Applicants dated 17 April 2023 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order in respect of 41 Deerdale Road London SE24 OAP ('the **Property**'). The amount stated in the application of £2,846.02 was subsequently amended to £3,260.27. The period in respect of which the application was made was 9 December 2021 to 19 April 2022 (the latter date having been amended from 10 April 2022).
9. The grounds for making the application were that the Respondent had committed the offence of having control or managing an unlicensed HMO in breach of section 72(1) of Housing Act 2004 (the '**2004 Act**').

The Property

10. The Property is described in the application as a ground floor self-contained 3-bedroom flat in a 2-storey terraced house.
11. The Tribunal heard evidence from Ms Bradshaw that the third bedroom (not hers) was accessed through the kitchen, and that the windows all had sash

restrictors in them, with the possible exception of the kitchen in respect of which Ms Bradshaw had no recollection.

12. No party requested an inspection and the tribunal did not consider that one was necessary.
13. Ms Roy let the Property under a single AST to Isabel Dakin, the Applicant and Ms Simone for a term of 12 months from 11 April 2021 to 11 April 2022 at a total rent of £2000 per month.

The Licence

14. The relevant local housing authority is the London Borough of Lambeth. Its additional licensing scheme came into force on 9 December 2021 for a period of five years.
15. The application states that the Property is an HMO in accordance with the self-contained flat test detailed in s.254 of the 2004 Act. It did not require a licence under s55(2)(a) of the 2004 Act as it was not occupied by 5 or more persons.
16. Paragraph 1 of the Public Notice Designation of an Area for Additional Licensing states that the designation applies to all HMOs that are privately rented and occupied by three or more persons forming two or more households under one or more tenancies or licences unless a mandatory HMO or subject to a statutory exemption.

Issues

17. The Respondent having agreed that she had committed an offence under section 72 (1) of the Housing Act 2004 (the '**2004 Act**') (controlling or managing an unlicensed HMO) the issues before the Tribunal to determine were;
 - During the period in which the offence was committed did the Respondent have a defence to the commission of the offence under section 72(5) of the 2004 Act?
 - If an offence has been committed the maximum amount of RRO that can be ordered under section 44(3) of the 2016 Act.
 - Whether the Respondent had been responsible for the cost of any utilities at the Property
 - The severity of the offence
 - Any relevant conduct of the landlord, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and the conduct of the tenants to which the Tribunal should have regard in exercising its discretion as to the amount of the RRO.

The tribunal's decision and reasons

18. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence
19. As appropriate, and where relevant to the Tribunal's decision these are referred to in the reasons for the Tribunal's decision.
20. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
21. The relevant legal provisions are set out in the Appendix to this decision

Did the Respondent have a reasonable excuse to the commission of an offence under section 72(1) Housing Act 2004

22. As Ms Roy agreed that the Property was one for which an additional licence was required the issue before the Tribunal was therefore whether Ms Roy had a reasonable excuse for the commission of the offence.
23. Ms Roy gave evidence that that the property had been let since 2012, to one family or three unrelated individuals. Until 2021 the property was not one for which a licence was required. She became aware of the need for an additional licence in April 2023, on receipt of the Applicant's application. Ms Roy confirmed that she had started but had not yet completed an application for the relevant licence. Ms Roy explained that she had been in Canada between January and April and by reason of unexpected bereavements had not engaged with the situation until recently. Ms Roy stated that she had not sought expert advice as she had had no reason to do so, and that she had not instructed a managing agent to manage the Property on her behalf.
24. Mr Neilson submitted that the Respondent had not shown that her ignorance was an objective reasonable excuse. Ms Roy had been a landlady since 2012 but had not kept up-to-date with the legal requirements on landlords. Until after becoming aware of the need for a licence she had not been a member of a landlords' association. During the pandemic it had been open to her to employ a managing agent but she had not chosen to do so.

25. Ms Roy submitted that there had been a lack of communication from the London Borough of Lambeth as to the need for an additional licence, during the period of the COVID pandemic. Ms Roy agreed that she had not checked with the council or its website as to up-to-date requirements of landlords. Since becoming aware of the need for the licence she had sought to become better-informed of her obligations, and had joined the National Residential Landlords Association.
26. Ms Roy submitted that ignorance of the need for the additional licence was a mitigating factor when considering the offence, rather than a reasonable excuse.
27. A landlord may rely on a defence of reasonable excuse under section 72(5) of the 2004 Act but Ms Roy has not sought to do so, but rather submitted that her ignorance was a mitigating factor to be taken into account.
28. The Tribunal therefore find that Ms Roy may not rely upon the defence of reasonable excuse, however the position in which she found herself is considered by the Tribunal as relevant to the factors considered by the Tribunal below in determining the amount of the RRO.

Amount of the RRO

29. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determining the amount to be repaid, which may be summarised as follows
- (a) ascertain the whole of the rent for the relevant period; (b) subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant; (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 compared to other examples of the same type of offence; and (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).
30. The Tribunal have adopted the approach recommended in *Acheampong v Roman and others*
31. The Respondent did not challenge the correctness of the amount of rent that the Applicant stated she had paid during the relevant period, nor the relevant period.
32. Mr Neilson submitted that the appropriate quantum was the total rent paid during the relevant period, namely £3,260.27, with the Tribunal having discretion as to whether or not to make deductions on account of utility payments. Mr Neilson referred the Tribunal to paragraph 53 of *Vadamalayan v Stewart & Ors* [2020] UKUT 0183 (LC) in which it was stated that there may be a case for deducting the cost of utilities if the landlord pays for them

out of rent, but that there was no justification for deducting for other expenditure.

33. Clause 1.2 of the Assured Shorthold Tenancy Agreement under which the Applicant occupied the Property specifically states that the tenant is responsible for Utility, Council Tax and charges for Services. The Tribunal therefore finds that there should be no deduction from the total rent for utility payments.

34. In fixing the appropriate sum the Tribunal has had regard to *Acheampong v Roman and others* and also the decision in *Hallett v Parker* [2022] UKUT 165 (LC) and have taken into account that that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of licensing system and to deter evasion, and the seriousness of the offence.

35. The offence in this application was failure to obtain an additional licence.

36. The Tribunal find that the offence of failing to obtain an additional licence is not the most serious type of offence for which a RRO may be sought, as recognised in the decision in *Daff v Gyalui* [2023] UKUT 134 (LC), which case also recognised that there can be more or less serious offences within each category.

37. Mr Neilson submitted that the following factors were relevant in assessing how serious this offence was within its category

- Failure to keep abreast of legal obligations
- The length of the offence
- Fire safety breaches
- Breach of The Management of Houses in Multiple Occupation (England) Regulations
- Breach of s234(3) of the 2004 Act
- Breach of housing health and safety rating system
- Disrepair and maintenance issues
- Failure to protect the Applicant's deposit
- Failure to ensure electrical safety certificate and EPC were in place and provided to the Applicant

38. Mr Neilson also referred the Tribunal to the fact that the Respondent had still not completed her application for a licence.

39. The Tribunal find, on the evidence before it, that in assessing the seriousness of the offence, the factors to be taken into account include the intrinsic risk when a property is let as a HMO, that the state of repair of the bathroom window was dangerous, the absence of a means of escape from the third bedroom other than through the kitchen (noting in particular the restrictor on the sash

window and that the fire alarm was on the far side of the kitchen). It has also had regard to the stated cost of the works required before a licence can be granted for the property (stated by the Respondent to be in the region of £4,000), which suggests that the current state of the property is below standard, and the fact that the application for a licence has not yet been made.

40. Section 44(4) provides that in determining the amount of the RRO there are various factors which the Tribunal should take into account, namely the conduct of the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which that Chapter of the 2016 Act applies.
41. Ms Roy submitted that she was a good landlord, she had received no complaints from her tenants in 11 years as a landlord. Ms Roy submitted that she had responded when the Applicant had made complaints but that sometimes the timing of dealing with complaints was outside her control, particularly during the pandemic. Ms Roy submitted that she was not a professional landlord. The failure to protect the Applicant's deposit was an oversight in this particular case.
42. Mr Neilson invited the Tribunal to consider Ms Roy a professional landlord, as she owned more than one property, did not employ a managing agent and had been a landlord for 11 years. Mr Neilson also referred to Ms Roy having failed to protect the Applicant's deposit. Mr Neilson submitted that he was not asking the Tribunal to double-count factors against the Respondent, under seriousness of the offence and factors to be considered under section 44(4).
43. Ms Roy had no submissions to make on the Applicant's conduct, other than to confirm that she had paid her rent in accordance with the requirements of the AST.
44. For a Tribunal to take the landlord's financial circumstances into account it would normally expect to see independent evidence of earnings and outgoings. There was no specific evidence in the bundle before the Tribunal as to Ms Roy's financial circumstances. Ms Roy gave oral evidence as to the amount of her pension, the income that she normally receives from having one or two lodgers at the house she lives in, and the rental income achieved from letting 41 Deerdale Road and stated that she has no other income. Ms Roy's own house is mortgaged as is 41 Deerdale Road and the repayments have increased substantially in the past year. Ms Roy stated that she had no other investments, her savings having been depleted by the necessity of recent travel to Canada.
45. Ms Roy submitted that to require her to repay the whole of the rent paid for the relevant period would be harsh. Mr Neilson invited the Tribunal to start from a sum of 85% of the total rent received during the relevant period.

46. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that it considers should be made in light of factors to which the Tribunal must have regard under section 44(4) of the 2016 Act, the Tribunal makes a Rent Repayment Order against the Respondent in the sum of £2,445.20, being 75% of the rent paid for the relevant period.

Fees

47. The Applicant sought repayment of her application and hearing fees under Rule 13(2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
48. The Tribunal finds it appropriate, in light of its decision to make an RRO, to reimburse the application and hearing fees, a total of £300.

Name: Judge Pittaway

Date: 20 December 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).

Appendix of Relevant Legislation

Housing Act 2004

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.

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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.
- (3) 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

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.
- (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.

43 Making of a 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 had 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 with –
- (a) section 44 (where the application is made by a tenant);

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

an offence

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

the period of 12 months ending with the

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