



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

**Case reference** : LON/00AU/HMG/2023/0025

**Property** : 11 Southcote Road, London, N19 5BJ

**Applicant** : Marco De Lorenzi (1)  
Nagma Chaudhry (2)  
Gervais Roubex (3)

**Representative** : David Gyulai

**Respondent** : Robert Rafiz Mohammad Khan Din

**Representative** : In person

**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

**Date of hearing** : 8 January 2024

**Date of decision** : 11 January 2024

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**DECISION**

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**Decision of the tribunal**

**(1)The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £9,745.10 in the following proportions. This sum to be paid within 28 days of this order.**

- (a) To Marco De Lorenzi the sum of £3,307.07**
- (b) To Nagma Chaudhry the sum of £3,367.07**
- (c) To Gervais Roubex the sum of £3,070.96**

- (2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.**

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

### **Reasons for the tribunal's decision**

#### **Background**

1. By an application dated 30/06/2023 Marco De Lorenzi ("A1"), Nagma Chaudhry ("A2") and Gervais Roubex ("A3") applied for a Rent Repayment Order ("RRO") in respect of rent paid to Robert Rafiz Mohammad Khan Din ("the respondent") from 25/08/2021 to 11/07/2022 in the sum of £20,400

2. The applicants allege that the respondent committed the offence of being in control and managing a House in Multiple Occupation in breach of the Additional Licencing requirements managed by the London Borough of Islington ("the Council"). The offence relates to 11 Southcote Road, London N19 5BJ ("the property") which required the property to be licenced by the Council under the Additional Licensing scheme that came into force on 01/02/2021.

3. An Additional Licence is required in designated areas for all houses or flats where there are three or four unrelated people, forming two or more households, and sharing facilities such as kitchen, bathroom and toilet.

4. The respondent denies that the property required a licence during the period of claim and his reasonable excuse defence is that he was deceived by A1 who told him that the property would be occupied by two separate households, those two households being (i) A1 and A2 who were a couple and (ii) A3 their friend; when the respondent found out that A1 and A2 were not a couple, he immediately applied for a licence from the Council on 11/07/2022; that he was in Australia at the time on a working holiday and trusted the applicants to pay the rent and look after the house; he gave the applicants a low rent; relied on the tenancy agreement typed up by A1, but which he agreed and signed.

5. The applicants deny that they told the respondent that A1 and A2 were a couple, and say that they could not advise him about whether he needed a licence.

6. The respondent further alleges that the applicants caused malicious damage to the property

7. The applicants entered into an Assured Shorthold Tenancy agreement (“AST”) with the Respondent landlord signed on 20/07/2021 for a period of one year from 25/08/2021 at a monthly rent of £1950. A deposit of £1950 was paid. The monthly rent was paid in equal proportions by the three Applicants.

8. The Council confirmed in writing that the property had no licence during the relevant period.

9. The applicants allege that the property is in a dangerous condition and had plumbing problems. The respondent alleges that the applicants caused in excess of £7,000 of damages to the property.

10. Directions were issued on 11/08/2023.

## **THE HEARING**

11. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles provided sufficient information.

12. This was a remote hearing conducted by video. The applicant provided a bundle of [132] pages as well as a skeleton argument. The respondent provided a bundle of documents of [6] pages.

13. The applicants each joined the hearing by video connection as did their representative Mr Gyulai. The respondent joined by video from Australia and represented himself.

14. The respondent had taken no steps to comply with the requirements at paragraph 11 of the Directions in relation to giving evidence from abroad. That direction required any party or witness intending to give oral evidence at the hearing from outside the United Kingdom to notify the Tribunal within 5 working days of receipt of the directions to confirm from which country a party wishes to give evidence and to confirm that they will follow the process in the Guidance Note.

15. When this issue was raised at the start of the hearing, the respondent asked that the hearing be adjourned to allow him to comply with this direction. Having considered the seriousness of the breach, and the failure of the respondent to seek to rectify the breach until the morning of the hearing, and finding that it was not in the interests of justice to adjourn the matter, the application was refused.

16. The respondent was informed that he would not be permitted to give evidence at the hearing, but that his written documents would be considered and that he would be permitted to challenge the applicants’ case by asking them questions in cross examination.

## **The evidence**

### **The RENT**

17. The rent is paid net of utilities. Council tax at a monthly rate of £47.77 per applicant is paid to the respondent in addition to the net rent of £650 pcm. The respondent could not confirm the amount of rent paid by the tenants as he had not checked his bank account. The Tribunal had to rely for evidence of rent paid on the bank statements submitted by each applicant for the period 25/08/2021-10/07/2022.

18. A1's bank statements confirmed that he paid net monthly rent to the respondent in the sum of £650 for 9 months; the payment for 25/09/2021-24/10/2021 including Council Tax was made on 04/10/2021 in the sum of £470, therefore net rent paid for that month after deducting council tax was £422.23.

19. A1 told the Tribunal that this was by agreement with the respondent because A1 had paid a sum to the plumber who had been called to resolve a problem with a leaking bath. However, he seemed unsure about the amount he had paid to the plumber and provided no documentary evidence to support his claim. The Respondent's position was that there had been no agreement to reduce the amount of rent paid to him.

20. Although the rent was due on the 25<sup>th</sup> of each month, A1 did not always pay on time. Rent was paid between 1-4 days late on various occasions.

21. The net rent paid for the last period of the claim, 25/06/2022-10/07/2022 (16 days @£21.37 per day) was £341.92.

22. The total net rent paid by A1 for the period 25/08/2021-10/07/2022 was £6,614.15

23. A2's bank statements confirmed that she paid net monthly rent to the respondent in the sum of £650 for 9 months; the payment for 25/09/2021-24/10/2021 including Council Tax was made on 04/10/2021 in the sum of £590, net rent paid for that month after deducting Council Tax was £542.23.

24. A2 told the Tribunal that this reduced rate was by agreement with the respondent because of the loss of amenity of the bathroom for 1-2 weeks because of a bath problem. Her evidence was uncertain as to how any such agreement was made, although she later said there were WhatsApp messages confirming this position. However, that evidence had not been provided. Nor could she tell the Tribunal the amount of the deduction. The respondent's position was that no agreement had been made with him to reduce the rent. His position in relation to the bathroom was that the tenants had blocked the bath, and that a plumber had been arranged to

unblock the bath and that this had been carried out promptly. He provided no evidence to support his assertion.

25. A2 paid her rent more promptly than her co-tenants, paying 1-4 days late only on 3 occasions.

26. The net rent paid by A2 for the period 25/06/2022-10/07/2022 (16 days @£21.37 per day) was £341.92

27. The total net rent paid by A2 for the period 25/08/2021-10/07/2022 was £6,734.15.

28. A3's bank statements confirmed that he paid net monthly rent to the respondent in the sum of £650 for 8 months (the month of November 2021 was missing from his bank statements); the payment for 25/10/2021-25/11/2021 was paid in the sum of £600 on 27/10/2021. This reduced amount, A3 said, was due to an agreement with the respondent. None of the applicants proffered an explanation as to why each of them had a different reduced amount from the rent apparently agreed by the respondent. In any event, the respondent disputed an agreement and said that the tenants had just reduced the rent.

29. The payment of £647.77 included the Council Tax payment of £47.77. The net rent paid for October was therefore £600.00.

30. A3 was not prompt with rental payments. The first month's rent due on 25/08/2021 was paid on 19/09/2021. November appeared not to have been paid at all. Several other months were paid a couple of days late. The reasons for this were, A3 said, the first month was due to some confusion as to when rent should be paid, and at other times due to financial difficulties.

31. The net rent paid by A3 for the period 25/06/2022-10/07/2022 (16 days @£21.37 per day) was £341.92.

32. The total net rent paid by A3 for the period 25/08/2021-10/07/2022 was £6,141.92.

## **HOW MANY HOUSEHOLDS**

33. The respondent's defence for not having obtained an additional licence was that A1 told him (i) that A1 and A2 were a couple and were moving in with their friend A3, and so there were only two households and (ii) that A1 told him because of the relationship between A1 and A2 that no HMO licence was required.

34. The respondent's defence is misconceived because even if he believed that to be the position, there remained two separate households in the property. An additional licence is required when there are 3 persons from

two separate households occupying a property in a designated area. This was pointed out to the respondent during the course of the hearing.

35. It is not in dispute that the 3 applicants were granted a tenancy at the property and the respondent does not seek to suggest that all three of the applicants are related so as to avoid an additional licence.

## **CONDUCT**

36. The applicants allege that the property put them in danger because of the condition. Although there are various emails from the tenants to the Council complaining of various issues at the property, and although the Council inspected in April 2022, no report has been disclosed of findings. Nor could any of the applicants provide oral evidence as to the Council's findings. The Respondent argues that the Council found nothing in the property other than two cracked panes of glass and a broken sash which, he says, was caused by the applicants.

37. A2 further alleges that she was unable to use the bath for between 1-2 weeks due to a leak. This allegation relates to the apparent agreement to reduce the rent in October 2021, which demonstrates that while there may have been a problem with the bath, this was resolved in a fairly short period of time.

38. The Applicants allege that no gas safety certificate was provided to them at the start of the tenancy. This was admitted by the respondent, but asked the Tribunal to accept that a gas safety certificate had been obtained but just not given to the tenants.

39. The applicants state that the deposit has not been returned to them since they vacated the property

40. Other than the allegation of deception by the applicants about whether or not they were two or three households, which has been dealt with above, the respondent's main objection to an award of a RRO is that he finds it unfair that the tenants occupied his house for a year, caused damage to it, and now want the rent returned to them. He has itemised damage caused to the property in his bundle [R6] which includes damage to the kitchen window, damage to the sashcords of 3 windows, damage to the central heating boiler requiring a replacement, damage to internal paintwork, stained carpet requiring replacement and a failure to remove unwanted furniture from the property when they moved out. The expenses claimed by him are in excess of £7000 but are not supported by any documentation, bills, reports or photographs.

41. One of the items of expense was admitted by A3 who confirmed that they had left unwanted furniture outside the house which had remained there for some weeks. He explained they had done this because they could not find anyone to take it away. The cost claimed by the respondent for this

item is £200. However no invoices were exhibited to his bundle to support this claim.

42. In submissions the respondent asked the Tribunal to consider that he is not a professional landlord, had just let the applicants move in to keep the property occupied and that he trusted them to look after the house. Having considered the applicants' skeleton argument, he asked the Tribunal to consider making a lower than maximum amount of RRO as his offence was relatively low on the scale of seriousness as per the principles under *Williams v Parmer* [2021] UKUT 0244 (LC).

## **LANDLORD'S FINANCIAL CIRCUMSTANCES**

43. The respondent makes no submissions on his financial circumstances, other than to claim in excess of £7,000 in expenses when the tenants vacated the property.

## **FINDINGS**

44. The Tribunal finds beyond a reasonable doubt that the respondent landlord is in breach of the additional licensing requirement for the property for the period claimed by the applicants from 25/08/2021 to 10/07/2022.

45. The reasonable excuse defence claimed by the respondent that two of the applicants were in a relationship and therefore there were only two households is misconceived. Even if there were only two households, he would still have required an additional licence for the property.

46. The Tribunal found that the amount of net rent paid by each applicant for the period was as follows:

- (i) A1 paid £6,614.15
- (ii) A2 paid £6,734.15
- (iii) A3 paid £6,141.92

47. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

48. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

49. There is no evidence to demonstrate that the landlord has been prosecuted.

50. The Tribunal finds that the applicants demonstrated less than perfect conduct in paying rent late, leaving furniture to be disposed of after they

moved out, and making unsubstantiated allegations that the property was in a dangerous condition.

51. The Tribunal finds that the respondent demonstrated less than perfect conduct in failing to apply at the start of the tenancy for an additional licence, failing to provide the tenants with a gas safety certificate. The issue of the deposit is not for this Tribunal and it may be due to complaints by the respondent that he may have justification.

52. The respondent makes no submission in relation to his financial circumstances and no deduction is made in that regard.

53. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not comply with the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and having had regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21.

- a. The rent paid by applicants for the period from 25/08/2021 to 10/07/2022 was £19,490.22 in the following proportions: A1 paid £6,614.15; A2 paid £6,734.15; and A3 paid £6,141.92.
- b. Utilities were not part of the rent. These were paid by the applicants and no deductions are made in that regard. Council tax was paid by the applicants to the respondent in addition to the rent, no deductions are made in that regard.
- c. The respondent is not a professional landlord. He inherited the house from his late father in 2021. When he was made aware of the requirement to obtain an additional licence, he made the application promptly on 11/07/2022.
- d. The respondent has not been prosecuted and there is no evidence before the Tribunal of any previous convictions. Considering the cases cited in paragraph 16 of the *Acheampong* case cited above, the starting point in this case is 50% because the evidence does not support the claims by the Applicants that the property was not safe.
- e. The assertion by the respondent that the applicants' conduct was poor in relation to deception is not upheld, however the allegation of poor conduct in payment of rent late and leaving furniture outside the property for some weeks after moving out is admitted by A3.
- f. The assertion by the applicants about the respondent's conduct is poor in continuing to defend these proceedings when he does not have a legal basis to do so, is not accepted. The respondent is not a lawyer and he is entitled to defend a claim to the final hearing. The Tribunal finds no aggravating features to support a higher award against the respondent, and that his offence was found to be on the low level of seriousness. The Tribunal therefore consider that 50% of the net rent for the period is repayable. Accordingly, we find £9,745.10 to be paid within 28 days of this order.



54. The Respondent is also ordered to repay to the Applicant the sum of £300 being the tribunal fees paid by them in relation to this application.

**Name:** Judge D. Brandler **Date:** 11 January 2024

### **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.

(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 by that landlord.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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.