FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UK/HMG/2023/0001**
Property	**:**	**15 Canterbury Road, Watford WD17 1QT**
Applicant	**:**	**Hanna Pikulska, Ingrid Wydler, Maria Florencia Tarroza Barranco and Sylvia Elena Ibanez Tojo**
Representative	**:**	**Mr Cameron Neilson of Justice for Tenants together with Ms Lucy Breen, Interpreter**
Respondent	**:**	**Christine and Eustace Cornwall**
Representative	**:**	**In person**
Type of Application	**:**	**Claim for a repayment order under provisions of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge Dutton** **Mr R Thomas MRICS**
Date and venue of Hearing	**:**	**Hilton Hotel, Watford on 18th July 2023**
Date of Decision	**:**	**16 August 2023**

DECISION

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DECISION

1. The Tribunal finds that the Respondents have committed the offence of failing to licence 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 Applicants can be made. The amounts of the rent repayment order are set out on the schedule annexed hereto 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 to Justice for Tenants within 28 days.

BACKGROUND

1. This application was made by the forenamed Applicants on 22nd December 2022. The application seeks to recover the following sums of rent and in relation to the following periods (a) for Hanna Pikulska the sum of £4,9016.88 for the period 17th June 2021 to 16th March 2022 and 21st March 2022 to 21st April 2022, (b) for Ingrid Wydler the sum of £6,023.01 for the period 17th June 2021 to 16th March 2022, 21st March 2022 to 21st April 2022 and from 30th April 2022 to 1st May 2022, (c) in respect of Maria Tarroza Barranco the sum of £4,275 is claimed for the period from 17th June 2021 to 16th March 2022 and finally (d) in respect of Sylvia Ibanez Tojo the sum of £8,444.13 is claimed for the period 17th June 2021 to 16th March 2022 and thereafter from the 21st March 2022 to 21st April 2022 and then for the period 30th April to 1st May 2022 and 8th May 2022 to June 2022. The reasons for these differing dates are that within some of these periods the number of people occupying the Property fell below five and there were room changes. No tenant was in receipt of Housing Benefit or Universal Credit. The differing sums represent the differing sizes of the accommodation that was occupied by each.

2. The Property met the standard test under the Housing Act 2004 as amended by the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. This statutory instrument reduced the number of storeys that were required to two and the number of persons to five. It is said by the Applicants that save for those gaps in the dates which are set out above, this Property has been at all times been occupied by five people and that accordingly it met the standard test and should have been licensed but was not.

3. The Respondents Christine Elizabeth Cornwall and Eustace Barnaby Angelo Cornwall are the freehold owners of the Property having acquired same in August of 2017.

4. As we indicated above the Property is a two-storey terraced house with shared kitchen and bathroom facilities, being occupied by at least five people at all times during the periods referred to above save for some days when either the numbers dropped below five or there were movements between rooms. The full details of the number of tenants and the rooms they occupied is set out at paragraph eight of the Applicants' statement of case, which was included within a bundle of some 309 documents upon which reliance was placed by the Applicants.

5. The Respondents produced their own bundle running to some 24 pages. This in turn elicited a response from the Applicants. We have noted the contents of all these documents in reaching our decision.

6. It is noted that an application for a mandatory licence was made by the Respondents on 15th September 2022.

7. In the Applicants' statement of case, we have noted the matters raised under the heading Conduct of both parties and summary. This is a common submission made by Justice for Tenants. We have noted all that has been said and bear that in mind when assessing the culpability of the Respondents. Of interest to us in this particular case is the Applicants' allegation that none of the bedrooms or the living room had smoke detectors and nor was one installed on the first-floor hallway. Apparently smoke detectors were installed towards the end of the tenancy and a carbon monoxide detector did not work. There was no centralised fire alarm system and the Property lacked fire extinguishers and fire doors. It also alleged that certain doors within the Property did not effectively open or close, which could have hindered the Applicants' ability to escape in the event of fire. It is also said that there was mould at the Property and problems with mice. The statement of case went on to list a number of alleged failings on the part of the Respondent although not all were proved to us, in particular an allegation that the Health and Safety Rating System had been breached.

8. Within the bundle was proof of payment of rent and for the periods stated which were clarified at paragraph 15 of the Applicants' statement of case. However, we record the fact that at the start of the hearing Mr Cornwall on behalf of himself and his wife agreed that an offence had been committed and agreed the levels of rent being claimed. We will turn to the Respondent's position in due course.

9. Each of the tenants had made witness statements and we heard from them in turn. Miss Tojo was assisted by Ms Breen in connection with any language difficulties and she also provided assistance generally to Miss Tojo and Miss Tarroza Barranco. The witness statements were relied on as evidence in chief and Mr Cornwall was then invited to ask any questions. The first one he asked, in fact he asked each of the tenants, was whether they considered they were good landlords. The response was generally positive, although one of the major issues that appears to have caused the disintegration of the relationship between the landlord and tenant, was the occupancy of the Property by Michele Macali. He is described as being angry/hot tempered and appears to have acted in an untenant-like manner, particularly towards Miss Ibanez Tojo where it is alleged that he would often wait by the bathroom in the hope of seeing Miss Ibanez Tojo leave the shower area. This was raised with the Respondent and forms a large part of the complaints that the Applicants have in that they feel the Respondent did not take steps to evict Mr Macali, perhaps it is suggested because there was no licence and therefore such an eviction would not have been successful.

10. The witness statements spend a good deal of time explaining the household dynamics, which we have noted. They also raise concerns in relation to the Property, in particular lack of fire protection, mould and some issues with mice. It is said that a gas safety certificate, energy performance certificate and How to

Rent Guide were never provided, and it is believed that the deposit was not put into a deposit protection scheme.

11. We have noted the contents of the various witness statements and the responses to the questions asked by Mr Cornwall. The cross-examination of the various witnesses elicited responses that Mr Cornwall had eventually arranged for Mr Macali to vacate the Property in May of 2022, although it is not clear whether this was voluntarily or as a result of any Court action. Questions were raised concerning the number of times that the mice had been sited, which appeared to be in the region of three. It was also of concern that apparently the gas cooker has been left on and the carbon monoxide monitor did not show any problems, but it was Mr Cornwall's view that that would not pick up gas in the kitchen.

12. The report of mould was raised, and Mr Cornwall said that that had been dealt with.

13. On the question of the HMO requirements, Mr Cornwall asked whether the tenants had informed him that a licence was required. They relied an email which was in the bundle addressed to Miss Pikulska from Simone Smith at Watford Council in which she says *"thank you for your email which Chrystal has forwarded to me; I am the other Officer that came and did the inspection.*

I can confirm that the Property has five tenants and it does need an HMO licence to operate.

I have spoken to your landlord today. He was not aware of this requirement and he has confirmed he will submit an application form." This email is dated 25th February 2022.

14. Following conclusion of the Applicants' evidence we heard from the Respondents. Their statement contained within a smallish bundle descended to the minutia of the Applicants' statements. It confirms that the house was bought in 2017 and that they were not aware of the requirement to license the Property until they were contacted by the Council. They say that was in March of 2022, although the email we referred to was the month before. An application for a licence has been made and was received by the Respondents. It is thought that this may have been in February of 2023.

15. The statement of case went on to confirm that they admitted the breach of the regulations by not having an HMO licence, but they did not think it meant the Property was unsafe. It is said in the statement that none of the Applicants had been financially or materially disadvantaged during the period when the house had no licence and that the Respondents considered that this was *"akin to an extortion attempt."*

16. The statement goes on to say that the strategy for the RRO was to demonise the Respondents as landlords. Issues are raised concerning a coin meter which did not appear in the Applicants' complaints and there is comments concerning Mr Macali and the position that the landlords found themselves. We have noted all that has been set out in this statement, which goes into detailed responses to what are perceived to be each and every allegation made. It also records the

special efforts the landlord had put in to help the tenants, again those have been noted. Towards the end of the bundle under a heading 'Evidence', are details concerning a number of items which we have noted and have taken into account insofar as they are relevant to us in making a determination as to the appropriate rent repayment order to be made.

17. In their oral evidence to us, Mr and Mrs Cornwall confirmed that they had two other properties that they were renting, one apparently a flat owned by Mrs Cornwall before she married and another property that they acquired at some time in the past. They did not appreciate the law and did not consider that the Property was in anything other than good order. It was however noted that the requirements for a licence to be granted included the need for them to undertake the following works (a) install fire doors throughout, (b) install an integrated smoke alarm system which needed to be wired to the mains as well as a heat detector, (c) update the electrical system, (d) install fire rated down lighters, (e) install notices about exits, (f) install a new lock to the door to the garden, (g) a install a keypad in the Property and (h) install firefighting equipment, in particular fire extinguishers. We were told that there was work done to the Property, which Mrs Cornwall described as a pretty Victorian house in keeping with those in the neighbourhood. They had wanted to keep the Property in this way, which had good open space and a courtyard garden. The reasonable excuse they relied on was that they were not aware that the Property required to be licensed.

18. There were items of outgoings that we needed to consider, including the gas and electricity charges, cleaning and the provision of Broadband.

19. On the question of conduct, they were of the view that the tenants had on occasions failed to comply with the tenancy agreement, for example by allowing people to visit and accessing rooms. Generally, the rent was paid on time although we were told that each of the tenants had on occasions been late but only by a few days. There were certainly no rent arrears when the tenants/Applicants left the Property.

20. On the question of the deposits, Mr Cornwall expressed surprise that his had not been done, although he had the control of them, however the deposits were paid back and there was no issue that they had not been returned.

21. As to financial circumstances, we were told that both Mr and Mrs Cornwall worked full time. Mrs Cornwall's mother requires support and is living in Birmingham where she gets assistance, which means that there are pressures upon them to visit to ensure her mother's wellbeing. It is also suggested that Mrs Cornwall who works for the NHS may have problems with regard to her employment in the future and that a consultation was taking place in September of this year.

22. The three properties that they own, including this one, were all subject to mortgage and of course the mortgage costs have risen. The Respondents had no idea of the values of the properties.

23. Asked by Mr Neilson one of two questions of relevance, we were told that when they bought the Property in 2017 the Respondents were aware that it did not need a licence. They, however, had not kept abreast of the changes and were unaware of the mandatory licensing scheme. Asked what steps had been taken by them to check the law, the response was that they did not expect it to change and had not actually checked but were instead operating on an assumption that the law had not altered.

24. Asked about the fire issues at the Property Mr Cornwall said that he had done his own fire risk assessment and that he had followed Council guidance although did not keep the matter under review. He accepted there were no smoke alarms at the Property or fire extinguishers. He did say there was a gas safety certificate but that was not produced in evidence. As far as the electricity supply certificate was concerned, he had assumed that it had one when they bought and was intending to arrange for a new certificate after five years. It had been bought from a family and was used as a family home and only became an HMO after the Respondents acquired same.

25. As to utilities we were told that the water was not metered and therefore the sums paid were not tied to consumption. There had been cleaning of the common areas for which the tenants benefitted and there was confirmation that these expenses were included within the rent.

26. In closing, Mr Neilson reminded us that the offence had already been conceded and that there was no reasonable excuse. This was not a selective licensing scheme but a mandatory one and that there was a substantial period of time from the change under the 2018 statutory instruments to the time that the offences were committed in 2021. The scheme was well established by then.

27. As to quantum, it was said that the order should be made by reference to the rent paid and that the costs of the utilities should also be divided between the Applicants on that basis of the rent paid.

28. As to the seriousness of the offence, it was accepted that this licensing offence was perhaps not the most serious as covered under the 2016 Act. However, we should consider the lack of the Respondents attempts to understand the law, the length for which the offence had been committed and the fire safety issues. We were referred to various Upper Tribunal cases and in the end Mr Neilson concluded that a 90% award would be reasonable in the circumstances. There was also a request for repayment of the hearing and application fees.

29. The Respondent, Mr Cornwall said the purpose of the litigation was not to reward tenants at the expense of the landlord. He said that they had worked hard all their lives and that the tenants had at times breached their agreements and that in some cases their behaviour had been unacceptable. It was suggested by him that there had been lies, exaggerations and half-truths. His view was that the main incentive in this claim was purely for a financial return and a chance to gain revenge for the misdemeanour of a male tenant. His view was that the Applicants had dehumanised him and shown him no respect. His view was that the underlying attitude was that they should do what they wanted whereas his view was that it was his decision as to what steps needed to be taken in any particular

matter. He said they could not afford a large penalty, that they were good landlords.

FINDINGS

30. It is not disputed that this was a Property that required a mandatory licence and it was not licensed. Equally, there is not challenge to the levels of rent that the Respondents admit would be payable if a 100% award were made. There is no other landlord involved. Mr and Mrs Cornwall are the immediate landlords of the Applicants and we have no argument therefore to consider as to liability.

31. In the light of the admissions made by Mr and Mrs Cornwall and the evidence given to us by the Applicants, we are satisfied beyond reasonable doubt that an offence has been committed under the provisions of section 72(1) of the Housing Act 2004 and entitle the Applicants to claim for a rent repayment order under the 2016 Act. The period for which the rent repayment can be claimed has been clearly set out in the Applicants' statement of case, which we have referred to above and is not disputed by the Respondents.

32. It is not a reasonable excuse on the part of the Respondents to say they did not know that the Property required to be licensed. In fact, Mr Cornwall freely admitted that there had been no attempt by him or his wife to keep up to date with the legislation and they knew nothing of the 2018 statutory instruments, which extended the mandatory HMO licensing provisions to two storey properties with five or more tenants insitu. It is also noted that in February of 2022 the Council said to Miss Pikulska that a licence was needed, and that Miss Smith had spoken to the landlord that day. However, it was not until September that an application for a licence was made, and no compelling explanation was provided by the Respondents as to this delay. Some mention is made of improvements being carried out in this period. However, it is noted that there were a number of fire issues that the Respondents had to undertake to enable a licence to be granted and we bear this in mind when assessing the level of the rent repayment order.

33. There are a number of Upper Tribunal authorities directed to the assessment of the award to be made and have borne in mind the provisions of section 44 of the 2016 Act in making our findings as to the level of the rent repayment. The whole amount of rent that is sought by the Applicants is £23,659.02. This is to be apportioned on the basis of the rent paid by the Applicants for the rooms that they occupied which are set out in the Applicants' statement of case and are not challenged by the Respondents.

34. We are then required to deduct from that the sums involved in connection with the utilities, which were provided within the rent. We have assessed these as set out on the attached schedule. This is for the 12-month period from June 2021 to May 2022 and is in respect of the gas and electricity, which we calculate to be £2,133.71, the cleaning at the Property of £918 and the Virgin Broadband of £699. These are only utilities/services that we think are appropriate. Mr Neilson sought to argue that cleaning was not included but this does seem to us to be a service which was provided and for which the landlord is entitled to have credit.

35. The sums involved are set out below. We have apportioned those as we were requested by reference to the rent that was paid by the Applicants as can be seen from the percentages applied. Clearly this split does not relate to individual usage but that is how the Applicants wished to proceed.

36. Having considered those matters we then need to reflect the seriousness of the offence. It is we think accepted that the licensing obligations are not as serious as other offences within the 2016 Act. However, the issues with regard to fire safety do cause us concern and need to be reflected in the level of rent repayment order that we make. The rent repayment provisions are not intended to be compensatory. They are intended to send a strong message to landlords requiring them to comply with the legislation or if not then to suffer the consequences. The consequences are set out in legislation and can include financial penalty, barring orders and, in this case, rent repayment orders.

37. We must take into account the conduct of the parties. In this case we do not think that is of any particular relevance. The difficulties that the Respondents had with the recalcitrant tenant are noted. It is not an easy thing to evict a tenant even if you do have the correct licence in place. The other issues concerning mould were attended to, the mice issues seem to be of a relatively minor problem and the other matters which are referred to in the evidence of the Applicants concerning the alleged conduct of the Respondents, do not persuade us that there should be any uplift because of this. Equally, however, we cannot see that there were any actions on the part of the tenants in the way of conduct that need to be taken into account. The fact that some of the rental payments may have been late did not seem to cause Mr and Mrs Cornwall any difficulties and certainly we understand that at the time the tenancy terminated there were no rent arrears.

38. We had little information on the financial circumstances of the landlord. We were told that both were in full time employment and that they owned three properties as well as their own house. There does not seem therefore to be any pressing financial issues that we need to factor into our assessment of the rent repayment order. It is noted that so far as we are aware, there has been no conviction of an offence identified in the 2016 Act for which some credit must be given.

39. The recent Upper Tribunal authorities indicate quite a variation on the level of deductions that can be made from the rent repayment. These vary from 90% down to 25%.

40. Our decision is that we must reflect the fact that the offence was admitted and that there was no argument on the question of the rental payment. The Respondents showed a complete disregard of the law, had no knowledge of the 2018 changes and have allowed the offence to be committed for some time. There were also our concerns with regard to the level of potential fire issues. Taking these matters into account, it seems to us that the most that we could reduce the rent repayment figure by is 15% and we therefore order that the Respondents should pay 85% of the amount claimed after the deduction of the outgoings which we have listed. A schedule attached shows the sums that are payable in respect of the Applicants and we order that the payment should be made in full to Justice for Tenants within 28 days who will then distribute on the

basis of the assessment set out in the terms of this order. That will make it easier for the Respondents to make the payment and to leave Justice for Tenants with the responsibility of distributing it between their clients.

41. Finally, we find that given the success of the Applicants the Respondents should reimburse the Applicants, through Justice for Tenants, the tribunal fees of £300, within 28 days.

Judge: Andrew Dutton

A A Dutton

Date: 16 August 2023

Schedule of outgoing apportionments

For the inclusive 12 month period June 2021 to May 2022 the total utility amount was £3,750.71
(Gas and Elec £2,133.71, cleaning £918 and Virgin broadband £699)

Hannah rent apportionment is 20.78% x £3,750.71 = £799.39

Ingrid rent apportionment is 25.45% x £3,750.71 =£ 954.55

Maria rent apportionment is 18.07% x £ 3,750.71 = £ 677.75

Silvia rent apportionment is 35.69% x £ 3,750.71 =£ 1,338.63

Apportionment of RRO based on 85% of the payable sum after deduction of the share of outgoings as set out above.

Hannah £4,916.88 less £799.39 = £4,117.49 x 85% = RRO of £3,499.86

Ingrid £6,023.01 less £954.55 = £5,068.46 x 85% = RRO of £4,308.19

Maria £4,275 less £677.75 = £3,597.25 x 85% = RRO of £3,057.66

Silvia £8,444.13 less £1,338.63 = £7,105.50 x 85% = RRO of £6,039.67

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 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 to 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 (ie 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.