



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

**Case Reference** : **LON/00BJ/HMF/2023/0139**

**HMCTS Code** : **In- person hearing**

**Property** **First floor Middle Room, 62 Elmfield Road, Balham London SW17 8AN**

**Applicant** : **Mr. Nathan Lavenstein**

**Represented by** **In person**

**Respondent** : **Mr. Gauhar Khan**

**Represented by** **In person**

**Type of Application** : **Application for Rent Repayment Orders by tenants under Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**

**Tribunal Members** : **Judge Daley  
Ms R Kershaw – Professional Member**

**Date of Hearing** : **2 February 2024**

**Date of Decision** : **27 February 2024**

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**DECISION**

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## **Decision**

- I. The Tribunal is satisfied on the evidence before it that the Premises were unlicensed in accordance with the Mandatory licensing scheme, during the period 7 June 2022, until 6 June 2023. Accordingly, an offence of failing to license the premises has been committed.
- II. The Tribunal finds that an offence was committed to the required standard of beyond reasonable doubt.
- III. The Tribunal is satisfied that grounds exist to make a rent repayment order against the Respondent Mr Gauhar Khan.
- IV. The Tribunal makes an order in the sum of £5000,00 (70% of the payable rent, subject to a deduction of utility bills assessed at (£1000) for the rent paid by the applicant for the period between 7 June 2022 and 6 June 2023.
- V. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £200.00.

## **Introduction**

1. This is an application by the Applicant's listed above for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed premises, that was subject to The Housing Act 2004 which introduced the mandatory licensing of Housing in Multiple Occupation ("HMOs").
2. The Tribunal heard and accepted evidence from the applicant Mr Lavenstein, that Property was occupied by 5 to 8 tenants during the relevant period. This evidence was not contested by the Respondent Mr Khan who is the landlord for the property who accepts that the premises were an HMO.
  - The Tribunal issued Directions on 7 July for this matter to be listed for an in-person hearing, the parties were subsequently notified that the hearing would take place on 2 February 2024 at 10.00 am. The hearing subsequently commenced at 10.30am to accommodate Mr Khan who was running late.

## **Property Details**

3. In the application, the Tribunal was provided with the following information, that the Premises that is subject to this application was a single room on the first floor of a three storey Victorian terraced property, which has been converted internally to form a 7 Bedroom premises which is arranged into bedsits, the premises has two bathrooms, and an additional toilet. One of the bathrooms has a shower and Wash hand basin only.
4. The Tribunal did not inspect the property and makes no assumptions about its current condition or regarding the accommodation. The Tribunal was provided with information concerning the layout of the property from the evidence of the applicant and from a plan which was within the hearing bundle.

## **The Hearing**

5. The hearing of this matter was held at the Property Tribunal 10 Alfred Place London, both the applicant and the respondent attended and represented themselves
6. At the hearing the Tribunal identified the following issues-:
  - Whether the property known as 62 Elmfield Road Balham London SW17 8AN an HMO?
  - Whether the property required a licence and if so whether it was licensed.
  - Whether an order for a rent repayment should be made?

## **Preliminary Matters**

7. There were no preliminary matters, the Tribunal noted that the respondent did not appear to have a bundle, however he was able to access an electronic copy via his mobile phone.

## **Relevant Law**

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

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.

Section 40(5) of the 2016 Act lists 7 categories of offence and offence no 5 refers to Control or management of an unlicensed HMO. Category 2 refers to eviction or harassment of occupiers.

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether the landlord has been convicted).

Section 44 of the 2016 Act sets out the amount of order:

(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. Under Section 44(4) the Tribunal in determining the amount the tribunal must, in particular take account of (a)the conduct of the landlord and 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.

8. The Licensing of Houses in Multiple Occupation Order (Prescribed Description) Section 4 of the 2018 Order states that:

9. "An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—
10. (a) is occupied by five or more persons living in two or more households;
11. The subject property met the conditions to be licensed under this Order because of it was occupied by five or more persons from more than two separate households and the property met the standard test under s.254 of the Housing Act 2004.)

### **The Applicants' Submissions**

12. The Tribunal was provided with a copy of his tenancy agreement.
13. The agreement was signed by the applicant and on behalf of the respondent by Marta Stone of Bluestone Properties, who had also provided the pro forma tenancy agreement. The rent payable was £700.00 PCM
14. The Tribunal heard from Mr Lavenstein and had sight of his written Application in which he set out his case, he stated that he had contacted the London Borough of Wandsworth enquiring whether the property was licensed and that after a delay he received an email dated 2 June 2023 confirming that the property was unlicensed.
15. He explained that he had been told by a friend that there was a requirement to license properties, and although he had some concerns that the property might not be licensed he took this no further until the landlord decided to sell the property and was asking the tenants to permit access to their rooms on less than 24 hours' notice.
16. He stated that the property was in good condition save that some of the electricals needed additional work, and there was one occasion when an appliance caused a power outage. He was concerned that the lock on his room door was broken and despite promises to fix this the landlord had not carried out a repair. In answer to questions, he confirmed that neither the kitchen or his room had a fire door, and that although there were fire alarms, he was not sure that he had seen one in the kitchen. He was also concerned that his tenancy deposit did not appear to have been protected under the tenancy deposit scheme. He told the panel that he had seen Gas and Electrical safety certificates prior to moving into the property.
17. In answer to questions from Mr Khan he agreed that he had renewed his tenancy even though he had become concerned that the property might not be licensed. He explained that he liked the area, was neurodiverse and as part of this did not find change and disruption to routine easy to deal with.
18. The Applicant in his evidence set out proof of payment of the rent, which had increased to £750.00 when the tenancy was extended. He was seeking the total sum of £8600. He was asked by the Tribunal and confirmed that the rent was inclusive of utilities including internet.

## **The Respondent's Submissions**

19. In his response Mr Khan accepted that the property was an HMO, that it was required to be licensed and that it was unlicensed although he had applied for a temporary license on 4 January 2024, to cover the property whilst it was for sale. Mr Khan also accepted that the rent had been paid. He had matters which he wished to put to the panel. He had also provided a written submission a letter to whom it may concern dated 20 August 2023. The substance of his submissions was that he had inherited the property from his father, and that the property had been subject to a loan, He had remortgaged the property to pay the loan and to provide sums for his brother and sister which were payable to them as part of their inheritance. Mr Khan was the executor of his father's estate. He had subsequently taken out a bridging loan to fund work to the property. His reason for not applying for a license was two-fold firstly his mortgage on the property did not permit the premises to be occupied as an HMO, and secondly the cost was not affordable as with the loan and mortgage there was a shortfall against the rent. He had another property on the same road, he claimed that both properties, after rental income was taken into account had a shortfall against the mortgage/loans that were payable.
20. Mr Khan did not provide the Tribunal with any evidence such as mortgage and loan statements. He appeared to be saying that he was in default and was looking to sell both properties to repay the outstanding finance. He referred to attempts that he had made to settle this matter such as offering the Applicant lower rent and to move to a property across the road with a larger room.
21. He was concerned that this case had been brought simply because the property was being sold and Mr Lavenstein could not extend his tenancy. He accepted that he had not protected the tenant's deposit. He also acknowledged that there were works to be carried out in the premises in respect of the fire door and that he had not repaired Mr Lavenstein's lock.

## **The Closing Submissions**

22. The Tribunal heard very brief submissions from the Respondent which largely repeated his mitigation. Mr Lavenstein was content to rely on his evidence. He was asked whether he sought reimbursement of his application and hearing fee and he confirmed that he did.

## **Tribunal Decision**

23. The Tribunal then applied a four-stage test, it decided that to make an order it would have to satisfy itself of 4 matters –
  - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004
  - (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
  - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
  - (iv) And if so the amount of any order.
24. The Tribunal considered the evidence before it which included an email from Councillor Norman Marshall dated 2 June 2023, confirming that he made enquires

and the premises is not known to be licensed. The Tribunal has also considered the admissions made by Mr Khan that the property is unlicensed, and that it is operating as an HMO.

25. The Tribunal is satisfied beyond a reasonable doubt that the respondents committed an offence under section 80 of the Housing Act 2004, and that the Applicant is entitled to a rent repayment order.
26. The Tribunal accepted that the sum of £8600.00 was the relevant rent which had been paid by the tenant seeking the order rent during the period in issue.
27. The Tribunal also reminded itself of the law which had been referred to above. The Tribunal noted that the starting point was the maximum rent that had been paid, however the Tribunal noted that it had an obligation to exercise its discretion in the making of an order.
28. The Tribunal accepted the Applicant's evidence. It noted that there was a lack of detailed evidence concerning the mortgage and loan amounts outstanding, and Mr Khan's financial position. There was also no information on the costs of utilities. It noted that in respect of culpability Mr Khan knew that there was a requirement to license the property and has only recently made efforts to regularise the situation increased by Shakeela Ali, because of her boyfriend staying in the premises.
29. The Tribunal accepted Mr Lavenstein's evidence that the property was in good condition, and that notwithstanding it was not licensed and there were issues with the lock and the access on less than 24 hours' notice, he had been content to live in the property. The panel also had regard to *Acheampong -v- Roman* [2022] UKUT 239 in which it was stated that the Tribunal should consider how serious this offence was both compared to other types of offence and what proportion of the rent is a fair reflection of the seriousness.
30. The Tribunal determined when considering all the factors and the nature and seriousness of the offence that, although it was appropriate to make an order, the appropriate and proportionate order required a deduction,
31. The Tribunal is satisfied that a rent repayment order should be made in the sum of 70% of the rent, the Tribunal in the absence of evidence or representations from the parties has assessed the utility bills for the period at £1000.00. The Tribunal makes an order for the sum of £5000.00 to be paid for the period in which the Tribunal finds is the appropriate order to make which marks the offence which has been committed by the landlord in failing to apply for a mandatory licence for the periods in issue.
32. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £300.00.

Signed: Judge Daley

Dated: 27 February 2024

## **Right to Appeal**

33. 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.
34. 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.
35. 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.
36. 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.