



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

Case reference : **LON/00AU/HMF/2023/0218**

Property : **First floor Flat, 77 Lennox Road,
London N4 3JF**

Applicant : **(1) Lisa Angelini and (2) Joana
Rodrigues**

Representative : **Justice for Tenants
Ref: 18422**

Respondents : **Mrs Gillian Shirley Want-Sibley and the
late Michael John Want-Sibley**

Representative : **n/a**

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

Venue : **10 Alfred Place, London WC1E 7LR**

Tribunal : **Judge N O'Brien; Tribunal Member Mr
S Mason BSc FRICS**

Date of Decision : **7th March 2024**

DECISION

Decision of the Tribunal

- (i) The tribunal dismisses the application for a rent repayment order.
- (ii) The tribunal does not make any order for the reimbursement of fees pursuant to Rule 13(3) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.

Background

1. By an application received by the tribunal on 17th August 2023 the first and second applicants; Lisa Angeleni and Joana Rodrigues applied under s.41 of the Housing and Planning Act 2016 (HPA 2016) for rent repayment order (RRO) in relation to rental payments made in respect of their occupation of 77 Lennox Road, London N4 3JF. The first respondent is the owner of the premises, which consist of a 4 double bedroom maisonette occupying the first floor and second (top) floor of a Victorian building. The ground floor of the building is a shop occupied by commercial tenants. The first respondent is the freehold owner of the entire building. The property was jointly owned by the First and her husband the abovenamed second respondent, and while he is still registered as an owner of the building, the first respondent informed that tribunal that he died some years ago and that she is now the sole owner. The first respondent will be referred to as the respondent in this decision.
2. Ms Angelini initially sought a RRO in respect of the sum of £3241.25 paid to the Respondent as rent between 18 September 2021 and 18th September 2022. Ms Rodrigues sought a RRO in respect of the sum of £6480 representing the rent she paid to the respondent between 26 March 2022 and 21st September 2022. However in the course of the hearing, the applicants' representative, Mr Nielson of Justice for Tenants, recalculated the rent in relation to which each applicant sought a RRO, which reduced to £2135.21 in the case of Ms Angelini and £5876.28 in the case of Ms Rodrigues.
3. The applicants in their witness statements both state that the property was occupied by the following persons on the following dates;

Name	Date
Lisa Angelini	26 th March 2022 to 21 st September 2022
Joana Rodrigues	18 th June 2017 to 18 September 2022
'Stefan'	2 nd August 2021 to 1 April 2022
Michella Cartot	15 th April 2022 to 18 th August 2022
Cian Mahoney	July 2021 to 19 July 2022

It transpired in the course of the hearing that the Ms Angelini vacated the property on or about 18th August 2022, but decided to move back into the property, without the respondent's permission, on 24th August 2022 and remaining in occupation until 21st September 2022. In short the applicants' case is that the property was occupied by 3 people up until 18th August 2022 when 2 of the 3 remaining occupants moved out, albeit temporarily in the case of Miss Angelini.

4. The respondent did not dispute that the above occupants formed more than 1 household and shared amenities such as the bathrooms and a kitchen. She also accepted that the premises, if it were occupied by three or more persons forming more than one household, would be a HMO as defined by s.254 and paragraph 7 of Schedule 14 to the Housing Act 2004. She also accepted that if it were so occupied it would be subject to the London Borough of Camden's additional licencing regime and consequently would require a HMO licence pursuant to sections 61(1) and 55(2)(b) of the Housing Act 2004. The respondent accepts that she did not hold such a licence at any material time. She does not accept however that the property was occupied by 3 people as at 18th August 2022. She accepted that that was the date that Ms Angelini initially moved out and she also accepted that Ms Rodrigues remained in occupation until 18th September 2022. She did not know the precise date of Ms Cartot's departure from the premises save that she knew it was in mid-August and believed it was before 18th.
5. The applicants in their written submissions dated 7th November 2023 sought to raise for the first time an alternative case based on the selective licencing regime introduced by the London Borough of Camden on 1st February 2021 which applied to the Finsbury Park ward where the premises are situated. However in the hearing Mr Nielsen on behalf of the applicants expressly abandoned that alternative basis for a RRO. The tribunal is therefore solely concerned with an allegation of breach of the additional HMO licencing requirements introduced across the London Borough of Camden on 1 February 2021. In order to be guilty of an offence under additional licencing the accommodation must fulfil the statutory requirements of a HMO and in particular must be occupied by at least 3 people forming more than 1 household.

The Law

6. Section 40 of the HPA 2016 provides;
 - (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...*

(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.

7. Section 41 of the HPA 2016 provides

(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.

8. Section 43 of the Act provides;

(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);

9. Finally section 44(1) HPA 2016 of the Act provides that where the First-tier Tribunal decides to make a rent repayment order under s41(1) in favour of a tenant, the order may be made in relation to rent paid over the period not exceeding 12 months during which the landlord was committing the offence.

10. The effect of section 41(1) HPA 2016 is that the tribunal has to be satisfied that the application was made in time; i.e. that offence was being committed

at some point in the 12-month period ending on the day on which the application was made, in this case on 17th August 2023. For reasons which have not been made clear the applicants waited until the last possible day to make this application. Mr Nielsen accepted on behalf of the applicants that the tribunal could only make a RRO if it was satisfied that at least 3 people were in occupation of the premises as at 18th August 2022. We queried whether this had to be established to the criminal standard, beyond all reasonable doubt, or to the civil standard, on the balance of probabilities. In a document entitled 'Statement of Reasons' included with the applicants' bundle the applicants accepted that the tribunal had to be satisfied to the criminal standard that an offence under Chapter 4 Part 2 of the Housing Act 2016 had been committed on at least one day within the relevant 12 month period. However, in the course of his submissions Mr Nielson for the applicants resiled from this position and submitted that it is sufficient for the applicants to prove on the balance of probabilities that the offence was committed at some point within the relevant period. He relied on the decision of the Upper Tribunal in the case of *Williams v Paramar* [2021] UKUT 244 (LC) where Fanshaw J said at para 31;

"...Although the FTT must be satisfied beyond reasonable doubt that an offence to which Chapter 4 of Part 2 of the 2016 act applies has been committed thereby establishing jurisdiction to make an RRO it is not required to be satisfied to the criminal standard on the identity of the period specified in section 44(2). Identifying that period is an aspect of quantifying the amount of the RRO, even though the period is defined in relation to certain offences as being the period during which the landlord was committing the offence"

11. The issue in *Paramar* was different to the one before this tribunal. In that case the landlord appealed the amount he was ordered to repay by way of a RRO on the grounds that the tribunal had to be satisfied to the criminal standard that the offence was being committed when the rent was paid when assessing quantum under section 44(3) HPA2016. While the question of jurisdiction to make an order at all was not directly in issue in that appeal, the Upper Tribunal proceeded on the assumption that the tribunal would first have to be satisfied to the criminal standard that the offence under consideration was committed within the relevant 12-month period in order to make any order under s.41 of the Act. At paragraph 29 Fanshaw J observed;

“First there was and is no reasonable doubt that, in the period of 12 months ending with the application of the tenants to the FTT the landlord committed an offence under s72(1) of the 2004 Act... the FTT therefore had jurisdiction to make RROs in each of the cases before it”

12. We consider that the applicants’ statement of the law as set out paragraph 1 of their statement of reasons is correct. Firstly it is consistent with the observation of Fancourt J at para 29 of *Paramar*. Secondly Mr Neilson’s submission can only be correct if s.43(1) is considered entirely in isolation without reference to the preceding requirements of s.41. S.43(1) if read in isolation, does not require the tribunal to be satisfied to the criminal standard that the specific offence which forms the basis of the application has been committed, or that it has been committed at any particular point in time or that it was committed in relation to any particular premises. If Mr Neilson’s submission is correct the only jurisdictional requirement requiring proof to the criminal standard is that a relevant housing offence has been committed at some time by a landlord in relation to any property. This cannot be correct.

The Evidence

13. Both the applicants and the respondent agree that in or about June 2022 the respondent informed the 4 tenants then occupying the premises that she wanted to recover vacant possession in order to sell her interest in the building. It was also common ground that in the course of a meeting at the property in or about mid-June 2022 she personally served the tenants with a notice of seeking possession giving them 2 months’ notice. Both the applicants and the respondent agree that in the course of that discussion the respondent gave each tenant the option of either staying on until September, or if they would agree to move out one month early, to have a month’s rent-free period. It was common ground that Ms Angelini and Ms Cartot both decided to take the ‘one month rent-free’ option and decided to move out in August.
14. In their witness statements, both dated 7th November 2023, the first and second applicants state simply that Michelle Cartot moved out on 18th August 2022. In her oral evidence Ms Angelini stated that Ms Cartot moved out on the same date as she did. She exhibits to her statement a photo of the vacant room sent to the respondent on 18th August 2022 on WhatsApp. That message says nothing about Ms Cartot. Apart from the evidence of the first applicant there is no evidence put before the Tribunal from any other source

as to the date on which Ms Cartot vacated the property. It transpired in the course of her evidence that Ms Rodrigues was temporarily away from the property at this time and was unable to say when Ms Cartot had left.

15. The respondent told the tribunal that she had been aware that Ms Cartot was eager to leave as she had alternative accommodation already arranged. She told the tribunal that she moved out in 'mid-August'. and while that she could not be sure of the exact date, she believed it was before 18th August 2022. Given that the rent fell due on 18th of each month one would generally expect a tenant to vacate before the first day of a new period of a tenancy.

16. The only direct evidence that the tribunal has to support the contention that Ms Cartot remained in occupation until 18th August 2022 is the evidence of the Ms Angelini. The tribunal did not consider Ms Angelini to be a credible witness. Firstly she had to be reprimanded twice in the course of Ms Rodrigues's evidence for attempting to influence her answers. Secondly she has made assertions about the condition of the property which were demonstrably false. In particular she asserted as that a bedroom in the property was suffering from damp and '*significant*' mould growth which was not evident in the photographs she submitted. She relied in particular on a photo which she asserted showed mould growth on a bedroom ceiling but which had the appearance of scuff marks. Thirdly she relied on as evidence in this case a recorded telephone conversation between herself and the respondent which she recorded without the respondent's knowledge or consent. There was some dispute as to whether this was legal or not but in the view of this tribunal it was not particularly candid. Fourthly Ms Angelini, having indicated to the respondent that she had vacated her room, moved back into the premises without first informing her former landlord that she intended to do so, or seeking her consent.

17. We do not consider that the applicants have satisfied the legal burden of showing beyond reasonable doubt that the offence was committed at any point within the 12-month period ending on 17th August 2023. Consequently the Tribunal has no jurisdiction to make an order under s. 41 and s.43 of the HPA 2016 and the application has to be dismissed. As the application has been dismissed there is no basis to make an order for the reimbursement of fees under Rule 13(3).

Name : Judge N O'Brien

Date of Decision 7th March 2024

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).