



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

Case reference : **LON/00BG/HMF/2022/0034**

Property : **Flat 118 Skyline Plaza Building
80 Commercial Road London E1 1NZ**

Applicant : **Mr Daniel Coelho Antao Da Silva (1)
Mr Arkadiusz Maciej Cieplak (2)**

Representative : **London Borough of Tower Hamlets –
Muhammed Williams**

Respondent : **Dr Ming Tsow**

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**

Tribunal members : **Judge H Carr
Mr A Fonka**

**Date and venue of
hearing** : **29th February 2024 - virtual hearing**

Date of decision : **20th March 2024**

DECISION

Description of hearing

This has been an online hearing. The tribunal were provided with an electronic bundle prepared by the applicant comprising 86 pages. The bundle prepared by the Respondent comprised 180 pages. These documents were read and taken account of by the tribunal in reaching its determination.

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum of £5460 for Mr Daniel Da Silva and the sum of £5,292,70 for Mr Cieplak.
- (2) The tribunal determines that the Respondent reimburse the Applicants for their application and hearing fees, totalling £300.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO). The Applicants allege that the Respondent landlord has committed the offence of control or management of an unlicensed house under s.95(1) of the Housing Act 2004.
2. The period for which the RRO is sought is from 20th August 2021 - 19th August 2022
3. Mr Daniel Coelho Antao Da Silva seeks an order in the sum of £7,800 made up of 12 monthly payments of £650.
4. Mr Arkadiusz Maciej Cieplak seeks an order in the sum of £7,561 made up of 11 monthly payments of £650 for the period 20th September 2021 to 19th August 2022 plus £411 for the 19 days he paid rent for the period 1st September – 19th September 2021 (19 x £21.6).
5. The application was made to the tribunal on 1st December 2022.

The hearing

6. The Applicants attended the hearing. They were represented by Mr Williams. Dr Tsow attended the hearing and represented herself. She was assisted by her PA, Ms Deborah Brown.

The background

7. The property is a two bedroomed self-contained flat with a small living room. It is on the top floor of a purpose-built block which comprises 10 storeys. It has a total floor area of 50 square metres. The parties provided a floor plan of the property.
8. The original lease agreement was made between one of the Applicants, Mr Da Silva and a Mr Troels Hedegaard Mortensen and the landlord Dr Ming Tsow. It was a for a fixed term of 18 months. The agreement commenced on 20th February 2021 and terminated on 19th August 2022.
9. The second applicant Mr Arkadiusz replaced Mr Mortensen on 1st September 2021. Mr Mortensen assigned his interest in the tenancy to Mr Cieplak on 1st September 2021. Mr Cieplak repaid the deposit amount and rent to Mr Mortensen to secure the accommodation at the request of Dr Tsow. Dr Tsow did not update the paperwork to record this but has acknowledged Mr Cieplak's status as a tenant.
10. The application for the RRO included an application in connection with failure to protect a deposit. This falls outside of the jurisdiction of the tribunal and will not therefore be considered.

The issues

11. The issues that the tribunal must determine are;
- (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) Does the Respondent have a 'reasonable excuse' defence?
 - (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?

(b) What account must be taken of

(1) The conduct of the landlord

(2) The financial circumstances of the landlord:

(3) The conduct of the tenant?

(iv) Should the tribunal refund the Applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the Respondent has committed the alleged offence?

12. The Applicants produced evidence that the property was in an area of selective licensing. The tribunal was informed that the London Borough of Tower Hamlets had introduced the Selective Licence Scheme in Tower Hamlets in 2016. The Selective Licensing Scheme applies to all rented properties in Whitechapel, Spital fields and Banglatown and Weavers areas of the borough excluding those needing a licence under the mandatory scheme.
13. The Selective Licensing Scheme expired on 30th September 2021 but was immediately renewed on 1st October 2021 without a gap in provision.
14. The Applicants were made aware of the lack of a property licence by Mr Abdul Azim, the Selective Licensing Team Officer for the LB of Tower Hamlets on 10th August 2022 when he visited all the flats in the block containing the property following a fire.
15. Mr Azim checked the local authority HMO data base to confirm that the property did not have a licence.
16. The landlord failed to apply for a licence until 6th September 2022
17. The Applicants confirmed to the tribunal that the property was their only or principal home throughout the tenancy.
18. The Respondent did not dispute any of the evidence of the Applicants although she is angry that there is a suggestion that she is anything other than a responsible landlord.

The decision of the tribunal

19. The tribunal determines that the Respondent has committed the alleged offence.

The reasons for the decision of the tribunal

20. The tribunal relies on the evidence from the Applicants, the statement of Mr Azim and the information provided by the local authority.

Does the Respondent have a 'reasonable excuse' defence?

21. The Respondent says that she is a responsible landlord who has been managing the property for more than 20 years. She says that she had not deliberately avoided the request to licence the property but was ignorant of the selective licensing scheme.

22. She received no reminder from the agent to licence the property nor from the tenants. She was previously a member of the National Association of Residential Landlords but ended her membership because she considered it expensive. She told the tribunal that another managing agent told her that her agent should have informed her of the need for the licence and she considers she was entitled to rely on the agent.

23. At the time of this letting the Respondent told the tribunal that she was under a sustained period of continuing stress following a violent assault and the Covid 19 pandemic. She provided a medical note.

24. She says that she applied to licence the property as soon as she could, disrupting her holiday to do so. She did this when she received the letter of 30th August 2022.

25. The Applicants say the Respondent had been sent a previous letter at 35 Connaught Road advising her to apply for a selective licence on 9th August 2022.

26. The Respondent's evidence was confused about when or even whether she received the first letter. She also seemed confused about who the letter of 30th August 2022 was from. The Respondent says that the letter was sent by Mr Williams. To the extent that it is material, the tribunal finds as a matter of fact that both letters were sent by Mr Azim to the address on the Land Registry documents. When Mr Azim did not get a response to the letter of 9th August 2022, he sent a second warning letter on 30th August 2022.

27. Dr Tsow applied for a selective licence on 6th September 2022 but failed to provide the necessary supporting evidence to enable the application to be processed.

The decision of the tribunal

28. The tribunal determines that the Respondent does not have a reasonable excuse for her failure to obtain a licence for the property during the period of the claim.

The reasons for the decision of the tribunal

29. The tribunal has some sympathy with the Respondent. It accepts that she was suffering from stress due to her personal circumstances and that she did not know of the licensing requirements. However, it does not accept that ignorance of the selective licensing scheme is a reasonable excuse. Moreover, when it becomes clear that managing properties is becoming difficult because of stress, or other reasons, it is beholden on a landlord to put other arrangements in place.
30. It also notes that the Respondent took some time to apply for a licence and that the application when made was defective because it lacked necessary documentation. Along with the failure of the Respondent to register the deposit for the property it does appear that the Respondent was a little chaotic about her management of the property.
31. The tribunal notes that the Respondent provides no explanation as to why she was not aware of the selective licensing scheme. It also notes that the management agreement that the Respondent has in place is not a full management agreement but is limited to finding and selecting tenants. The tribunal is concerned that the Respondent seeks to blame the agent, and indeed the tenants for her failure to licence. The tribunal is also concerned that the Respondent has not joined a professional landlord association to ensure she keeps up to date with her responsibilities and to take her responsibilities seriously.
32. The responsibility for managing the property lies with the Respondent, who is an experienced landlord, and that responsibility includes complying with licensing requirements. In these circumstances there is no reasonable excuse defence available to her.

Should the tribunal make an award of a RRO? If so, for what amount?

33. The Applicants provided evidence that they paid rent monthly on the following basis: Mr Cieplak transferred the amount of £650 per month to Mr Da Silva who would then transfer the full amount of £1,300 to the account of Dr Tsow each month.
34. The Applicants' rent is exclusive of council tax, water charges and utilities which the Applicants pay for themselves. The service charges, the ground rent and the boiler insurance are paid by the landlord.
35. The bank statement of Mr Da Silva showed only 11 payments, but the evidence provided by the Respondent confirmed that the final payment was made on July 20th 2022.
36. There was some confusion in the application about the periods and therefore the amounts of each of the Applicants claims. The tribunal granted a brief adjournment so that the Applicants could provide clarity on their position. They clarified that they were each claiming as follows.
- (i) Mr Da Silva is claiming a Rent Repayment order from 20th August 2021 to 19th August 2022 at £650 pcm totalling £7,800.
 - (ii) Mr Arkadiusz is claiming RRO from 1st September 2021 to 19th August 2022 which is the equivalent of 12 months at £650 pcm minus 10 days and totalling £7,561.
37. The Respondent accepted that the rent had been paid over the period of the claim.
38. She did not object to the adjournment for the Applicants to clarify the amount of her claim but pointed out that the amounts being claimed were confusing. In the application both Applicants claimed the same sum, £7,800 but their period of occupancy was different.

39. In the event the tribunal did not consider the Respondent was prejudiced by the brief adjournment as she was fully aware of what rent had been paid to her over the period of claim.

The conduct of the tenants

40. The tenants argue that their conduct has been good.
41. The Respondent says that the conduct of the tenants was poor. She says that Mr Da Silva broke the handle of a window which he did not replace. He threw away a tub chair which was in good condition without agreement or notice.
42. Mr Da Silva accepts that he broke the handle of the window; he has apologised for this and agreed to reimburse the cost of repair. He says it was an accident due to his ignorance of the window opening mechanism.
43. The Applicants say that they had agreement from an agent of the Respondent, Tom Chung that the chair could be disposed of.
44. The Respondent also complains that the Applicants provided no evidence of professional cleaning of the property at the end of the tenancy. The Applicants say that there was no requirement for professional cleaning in the tenancy agreement and that they left the property very clean. They agree that they carried out the cleaning themselves.
45. The Respondent thinks that the Applicants were annoyed that she kept them waiting for the tenancy check out and that this contributed to the claim. She was delayed by a couple of hours due to public transport failure.

The conduct of the landlord

46. The Respondent says that her conduct has been good. She has been a landlord for 20 years and has always carried out her responsibilities with care and skill. It was an oversight that the deposit had not been registered and the Applicants were not prejudiced by this. They got their deposit back within two weeks of their moving out.
47. She provided statements from Ms Brown and Mr Chung as to her good actions and intentions as a landlord.
48. She provided evidence of testing of fire alarm system in 2020 and evidence of electrical works in February 2021 which involved the

installation of a consumer unit, following a call out for tripping water heater and tripping cooker fuses.

49. The Respondent says that the property was in excellent condition. It was thoroughly cleaned before the tenants moved in. Boiler insurance was paid annually. No complaint was ever received about the condition from the tenants.

50. She reacted positively to all requests from the tenants. A new additional two-seater sofa bed was supplied, a new hob was provided as well as a new washing machine, a new fuse box installed and there was a smoke alarm.

51. The complaints of the tenants are.

(i) A hob was only replaced on 16 July 2022 despite several months of fruitless communication.

(ii) There were issues with the fuse box and power box from the start of the tenancy.

(iii) Mr Da Silva was pursued by solicitors to pay off a debt relating to electricity supply.

(iv) No safety certificates were provided for electricity.

(v) There was a fire in the block and there was no alarm in the building meaning that the Applicants were woken by smoke filling the apartment. This raises serious concerns about the fire safety compliance of the property. The Applicants raised their concerns with the Respondent.

52. The Respondent failed to register the tenancy deposit and did not amend the tenancy to reflect the new arrangements.

53. The Applicants did agree however that the Respondent did her best and in general had a good relationship with them. They would have been content to continue to rent the property, but the Respondent wished to raise the rent by what they felt was an excessive amount.

The financial circumstances of the Respondent

54. The Respondent provided no evidence of financial circumstances that she wanted the tribunal to consider.

55. The Respondent told the tribunal that she had another property that she rented out. The Applicants said that the Respondent had considerable equity in the property.

submissions

56. Mr Williams on behalf of the Applicants argued that the tribunal should make the maximum RRO that it could. At the same time, he agreed that the circumstances of this case were not amongst the most egregious of failures to licence.

57. The Respondent repeated her arguments that she had not been told about the requirement for licensing, that there were different arrangements in different boroughs and that this should be taken into account. She considered that there should be no award of a RRO. She had made the necessary arrangements to put the licence in place as soon as she was made aware. In her opinion she was a good and responsible landlord who had taken great care to ensure that the needs of her tenants were met.

The decision of the tribunal

58. The tribunal determines to make a rent repayment order of £5460 for Mr Daniel Da Silva and a rent repayment order of £5,292,70 for Mr Cieplak. This represents 70% of the maximum claim.

The reasons for the decision of the tribunal

59. The tribunal considered that in the circumstances of this case it was appropriate for it to make a RRO.

60. It has not reduced the amount of the award because of the conduct of the tenants. In its opinion the conduct of the tenants was good. Accidents happen, and Mr Da Silva has taken full responsibility for the breakage of the window handle. The tribunal does not consider that the removal of the tub chair was of any significance to the Respondent. She did not complain at the time and has only raised its removal as an issue since the commencement of these proceedings. The tribunal also accepts the evidence of the Applicants that the removal of the chair was with permission. As there was no requirement that the property was professionally cleaned at the termination of the tenancy it is not appropriate to reduce the RRO for not having professional cleaning done.

61. The tribunal has concerns about the conduct of the Respondent. It considers that the management of the property was chaotic. Not only was there a failure to licence the property, there was a failure to register the deposit and the Respondent appears to have found it difficult to turn up on time for appointments with the tenants. In circumstances like this where the Respondent considers that she is suffering from stress the tribunal would expect that a responsible landlord would arrange for professional management.
62. The tribunal also has concerns about conditions in the property. It takes on board that the Respondent made efforts to be a good landlord but it does consider that there were concerns about fire safety provision in the flat. It is very concerning that the Applicants only found out that there was a fire in the block when they awoke to find a smoke-filled property. The failure to provide an electrical safety certificate is also a concern. One of the major motivations for licensing under the Housing Act 2004 is concern about fire safety in rented properties. If the Respondent had gone through the licensing process the local authority would have ensured that the appropriate arrangements were in place to ensure the safety of the occupants. By neglecting to apply for a licence the Respondent placed the Applicants at risk.
63. In the light of the above determinations the tribunal also orders the Respondent to reimburse the applicant her application fee and hearing fee.

Name: Judge H Carr

Date: 20th 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).