



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

Case Reference : **LON/00BB/HMF/2023/0194**

Property : **53 Hilda Road, London, E16 4NQ**

Applicants : **Jenny Dos Santos, Mihai Ranita,
Margarita Gandara Ladron de
Guevara**

Representative : **Margarita Gandara Ladron de
Guevara**

Respondent : **Lianwei Ji**

Representative : **Enping Zhao**

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

Tribunal : **Judge B MacQueen
Mrs Crane, MCIEH**

Date of Hearing : **23 February 2024**

Date of Decision : **11 March 2024**

DECISION

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1. The Tribunal finds that the Respondent has committed the offence of having control of or managing an unlicensed house under the provisions of section 95(1) of the Housing Act 2004, which is an offence under section 40(3) of the Housing and Planning Act 2016. Accordingly, a rent repayment order in favour of the Applicants can be made. The Tribunal determines that a rent repayment order of **£2,902.50** is made in favour of the Applicants and must be paid by the Respondent to the Applicants within 28 days of the date of this decision. This is for the period 13 June 2022 to 28 February 2023 and from 1 June 2023 until 13 June 2023 when the Newham Council's selective licensing scheme was in operation.
2. The Tribunal also orders the Respondent to reimburse the Applicants for the Tribunal fees in the total sum of £300. This amount must be paid by the Respondent to the Applicants within 28 days.

Background

3. On 4 August 2023 the Applicants made an application for a Rent Repayment Order (RRO) in relation to 53 Hilda Road, London, E16 4NQ (the Property). The Respondent was the freehold owner of the Property.
4. The Applicants occupied the Property as tenants, having entered into assured shorthold tenancy agreements with the Respondent that commenced on 13 December 2020 and ended on 13 July 2021, commenced on 13 July 2021 and ended on 13 June 2022 and that commenced on 13 June 2022 and ended on 13 June 2023. It was this final tenancy that was relevant to this RRO application and the rent for this period was paid by the Applicants to the Respondent, totalling £2,150.00 per month. A copy of the tenancy agreements were included in the Applicants' bundle at pages 2 to 39. The Applicants left the Property on 13 June 2023.

The Application

5. As the Applicants made their application on 4 August 2023, the Tribunal accepted this application as having been made in time as the offence related to housing that, at the time of the alleged offence, was let to the Applicants, and the alleged offence was committed in the period of 12 months ending with the day on which the application was made.
6. The Applicants alleged that the Respondent landlord committed an offence under section 95(1) of the Housing Act 2004 of having control of or management of a house that should have been licensed in accordance with the selective licensing regime of the London Borough of Newham.

7. The Respondent had not been convicted of the offence and therefore the Tribunal needed to be satisfied beyond reasonable doubt that this offence was established.
8. The Applicants alleged that the offence took place between 13 June 2022 to 13 June 2023 and sought a RRO for the rent paid by them to the Respondent in this period, namely £25,800.

Case Management

9. The Tribunal made Directions on 6 September 2023 that required parties to prepare a bundle of documents for use in determination of the application. The Applicants produced a bundle consisting of 42 pages, and the Respondent produced a bundle consisting of 73 pages.
10. The matter was listed for a face to face hearing at Alfred Place, London on 23 February 2024.

Hearing on 23 February 2024

11. The Respondent told the Tribunal that she was unable to attend the hearing as she was unwell, however she confirmed that Enping Zhao would represent her. Enping Zhao confirmed to the Tribunal that he was fully instructed by the Respondent and would be able to represent her. The Applicants did not object and so as not to cause any delay, the Tribunal accepted that, and the hearing proceeded.
12. Margarita Gandara Ladron de Guevara spoke on behalf of the Applicants, however the Tribunal heard from all Applicants at the hearing.

Having Control of, or Managing a House that is required to be licensed.

13. The Tribunal must be satisfied to the criminal standard (beyond reasonable doubt) that the offence of having control of or managing an unlicensed house (section 95 (1) Housing Act 2004) has occurred before it may consider making a RRO under section 40(1) Housing and Planning Act 2016.
14. It was agreed by all parties that the London Borough of Newham (the Council), was the relevant local authority for the area where the Property was situated, and that the Council had made a selective licensing scheme. The effect of this scheme was to require rented properties situated within the selective licensing area that met the criteria to be licensed by the Council. It was agreed by all parties that the Property was within the selective licensing area, met the licensing criteria under the scheme and was not subject to any exemption.

15. The relevant period that the offence occurred was in issue between the parties. It was common ground that the selective licensing scheme expired on 28 February 2023 and commenced again on 1 June 2023. The Applicants sought an RRO for a full 12 month period (13 June 2022 to 13 June 2023) despite the licensing regime not being in place for all of that time. The Applicants told the Tribunal that this was because had the Respondent obtained a licence when their tenancy began, it would be irrelevant that the licensing scheme ended on 28 February 2023 as the licence would already have been in place. However, the Respondent's position was that it was not possible to hold a licence for a period when the selective licensing scheme was not operational and therefore asserted that the relevant period was 23 July 2022 until 28 February 2023 and 1 June 2023 until the tenancy ended on 13 June 2023.
16. In relation to the relevant period, the Tribunal accepted the Respondent's submissions but found that the relevant period was 13 June 2022 until 28 February 2023 and 1 June 2023 until the tenancy ended on 13 June 2023. The Tribunal made this finding because it was not possible for an offence to be committed for a period when the selective licensing scheme was not operational. Section 95(1) states:

“A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85 (1)) but is not so licensed.”

Therefore, when a selective licensing scheme is not in force, there is no requirement for the property to be licensed which means that the offence cannot be made out.
17. The Respondent calculated the relevant period as 232 days and the rent payable for that period as £16, 399. The Respondent however calculated the commencement date as 23 July 2022 rather than 13 June 2022. The Tribunal therefore found that the relevant period was between 13 June 2022 to 28 February 2023 and 1 June 2023 to 13 June 2023, which is nine months rent at £2,150, and the amount of rent paid during this period was £19, 350.
18. Having established the relevant period, the Tribunal considered the Council's selective licensing scheme and found that the Property was within the selective licensing area and met the criteria requiring a licence to be obtained. The Tribunal accepted the Respondent's admission that the Property should have been licensed for that period and was not. The Tribunal relied on the Council's email dated 29 June 2023 sent to the Applicants (Applicants' bundle page 41) which confirmed that the Respondent did not have a licence. The Tribunal therefore found that the Property was within the selective licensing area and met the criteria requiring a licence under the scheme and that it was not subject to any exemption.

19. The Respondent accepted being the person having control/management of the Property as she was the immediate landlord of the tenancy and the beneficial owner and received the rent. The Tribunal therefore found that the Respondent was the “person having control/management” of the Property (as defined in section 263 Housing Act 2004).
20. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent was the person having control of or management of the Property which was required to be licensed under section 95(1) Housing Act 2004 but was not so licensed.

Reasonable Excuse Defence

21. The Respondent raised the defence of reasonable excuse because she said that she was unaware of the selective licensing scheme. In particular she said in her witness statement that when she contacted the Council Tax Department of the Council to tell them that the Property was being rented, she was not told that she required a selective licence and this was despite her leaving her full contact details and explaining that she was now renting the Property. Additionally, the Respondent stated in her witness statement that she had lived in Poplar, Tower Hamlets for more than 10 years before buying the Property in Newham and it had not occurred to her that adjacent towns would have different policies on renting homes.
22. The Applicants told the Tribunal that they had told the Respondent that the Property needed a licence at the point that they moved in. Further the Applicants said that they were told by the Respondent that she would apply for a licence once the renovations were completed.
23. The Tribunal must consider the reasonable excuse defence and the Respondent must establish a reasonable excuse defence for managing or controlling the Property without a licence to the lower standard of proof namely on a balance of probabilities. The Tribunal considered *Thurrock Council v Khalid Daoudi (2020) UKUT 209* where the Upper Tribunal said that “no matter how genuine a person’s ignorance of the need to obtain a licence was, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence”.
24. The Tribunal found that when renting the Property, the Respondents should have taken steps to find the relevant regulatory requirements. Whilst it can be confusing that neighbouring local authorities have different licensing regimes, the onus remained on any landlord to ascertain the requirements for the local authority area where the Property was situated. Equally, it was not reasonable to assume that by notifying the Council Tax Department, the Council would be required to notify the Respondent of the position with licensing when this fell to a different

Council department. The Tribunal therefore did not find, on a balance of probabilities, that the Respondent had a reasonable excuse for failing to obtain a licence.

Should the Tribunal make a RRO?

25. Having established beyond reasonable doubt that the relevant offence under section 95 (1) Housing Act 2004 had been committed, section 43 Housing and Planning Act 2016 provides that this Tribunal may make a RRO. The decision to make a RRO award is therefore discretionary although if an offence is established it would be exceptional not to order a RRO. The Tribunal therefore exercised its discretion and proceeded to make a RRO.

Ascertaining the Whole of the Rent for the Relevant Period

26. As stated above, the Tribunal found that the relevant period was between 13 June 2022 to 28 February 2023 and 1 June 2023 to 13 June 2023, and the maximum amount of rent payable during this period was nine months' rent at £2,150, totalling £19, 350.
27. There was no dispute between the parties that rent had been paid for this period by the Applicants to the Respondent.

Deductions for Utility Payments that Benefit the Tenants

28. The Tribunal has a discretion to subtract utility payments that are paid by the landlord that benefit the tenants. Both parties confirmed that there were no deductions that fell into this category and so the Tribunal made no deduction for utility payments

Determining the Seriousness of the Offence to Ascertain the Starting Point

29. The Tribunal must consider the seriousness of the offence compared to other types of offences for which a RRO can be made, and also as compared to other examples of the same offence.
30. The Tribunal considered Judge Cooke's analysis in *Acheampong v Roman* [2022] UKUT that the seriousness of the offence can be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house will generally be less serious.
31. The Tribunal accepted the analysis that using the hierarchical analyses of the relevant offences, the offence of having control or managing an unlicensed house would generally be less serious. The Tribunal then considered the seriousness of the circumstances of this particular case as compared to other examples of the same offence.

Conduct of Landlord and Tenant

32. The Applicants confirmed that they had done everything they were required to do in that they looked after the Property, and paid bills and rent on time.
33. The Applicants also confirmed that they were happy with the Property for the three years that they lived there and that there was nothing wrong, other than little issues that were normal in any tenancy.
34. The Respondent provided proof that the Tenancy Deposit Scheme was used (page 32 to 34 of the Respondent's bundle) and the Applicants confirmed that the deposit was returned to them at the end of the tenancy.
35. At page 45 of the Respondent's bundle she produced messages from 3 and 4 March 2022 sent between herself and one of the Applicants to show that the Respondent arranged to replace a shower hook that had been broken by one of the Applicants at the Respondent's expense and the replacement had been made the day after it was broken.
36. Whilst outside the relevant period, the Respondent at page 46 of the Respondent's bundle produced a message from the Respondent to the Applicants to ask if they liked the barbecue she had bought for them. Whilst not going into detail, the Applicants confirmed at the hearing that the barbecue had been bought because of a misunderstanding between the Applicants and Respondent. Given the messages appeared to relate to 6 February 2021, the Tribunal did not consider this matter relevant to the RRO.
37. Again, whilst outside the relevant period of the RRO, at page 47 to 48 of the Respondent's bundle she has produced messages from 26 June 2021 to show outside chairs that she had bought for the Applicants. At pages 49 to 50 of the Respondent's bundle were messages confirming that the Respondent had bought a new sofa for the Property and had consulted the Applicants on the colour before she bought it, and that the Applicants had consulted the Respondent about putting up shelves and a mirror. Whilst the Tribunal did not consider these exchanges relevant because they were outside the relevant period, the Tribunal noted that the Applicant and Respondent were communicating effectively.

Selective Licence Requirements

38. Whilst acknowledging that a licence should have been obtained, the Respondent in her witness statement confirmed that the Property met the selective licence requirements as to room sizes, electrical and gas certificates, EPC certificate, and smoke alarm testing. Copies of the certificates were included within the Respondent's bundle at pages 23-34. The Respondent also confirmed that the Property had been fully renovated in November 2020 and therefore was in excellent living and

safety condition and this was shown in the photographs of the Property at pages 36-38 of the Respondent's bundle.

Quiet Enjoyment

39. At page 51 to 58 of the Respondent's bundle were produced a series of messages between the Applicants and Respondent. The first message of 14 May 2023 was from the Respondent confirming that prospective tenants would be viewing the Property on 15 May 2023 between 6pm and 7pm. At 7.04pm, one of the Applicants messaged the Respondent to say that the person had arrived after 7pm. The Respondent stated that the last viewing was at 7pm whereas the Applicants maintained that Respondent's message confirmed that the viewing was between 6pm and 7pm. The tone of the messages deteriorated and the Applicants confirmed at the hearing that there were difficulties with viewings being arranged.
40. The Tribunal recognised that arranging viewings was a point of friction but did not find that this amounted to behaviour that could amount to a loss of quiet enjoyment of the Property by the Applicants. Indeed, the Tribunal noted that this issue was not raised by the Applicants in their bundle or application form.

Conduct of the Landlord Regarding the Licensing Scheme

41. The Respondent submitted that she deeply regretted not having a licence and confirmed that this was not a case where she had deliberately not obtained a licence but rather had been unaware of the need to have such a licence.
42. Whilst the defence of reasonable excuse was not made out by the Respondent, the Tribunal accepted that the Respondent did not deliberately fail to obtain a licence, but rather did not know that such a licence was needed. Whilst the Tribunal noted the evidence of the Applicants that they told the Respondent that a licence was required, the Tribunal accepted that once the Council had written to the Respondent to explain that a licence was needed, the Respondent had submitted an application to the Council for a licence on 29 June 2023. The Tribunal also noted that the Respondent had expressed regret in not applying for a licence and apologised.
43. The Respondent told the Tribunal that she was not a professional landlord but rather had two properties that she rented out. She did not have an agent to assist with property management. Whilst the Respondent should have taken steps to identify her duties and obligations, the Tribunal found that the Respondent did not deliberately fail to obtain a licence but rather did not take sufficient steps to inform herself of the regulatory requirements.

Financial Circumstances of Respondent

44. The Respondent told the Tribunal that she did not work at the time of the hearing. No other details were provided as to the Respondent's financial circumstances.
45. The Tribunal was therefore not presented with any evidence that the Respondent would not be able to meet any financial award the Tribunal made.

Whether the Respondent has been convicted of offence

46. There was no evidence before the Tribunal of any previous convictions of the Respondent.

Quantum Decision

47. Taking all of the factors outlined above, the Tribunal found that this licensing offence was not the most serious as covered under the 2016 Act.
48. The Tribunal found that the rent repayment figure be reduced by 85% and therefore ordered that the Respondent pay 15% of the amount claimed.

Total Claim - 9 months rent at £2,150 = £19,350.00
Less Utilities- -£0

15 % of which gives a **total amount of £2,902.50**

The Tribunal ordered that the payment be made in full within 28 days from the date of this decision.

Applicant Fee

49. The Applicants made an application for repayment of the hearing and application fees (totalling £300). The Respondent asked that this order was not made, but did accept that a mistake had been made by the Respondent but that no actual damage had arisen from that mistake.
50. As a rent repayment order had been made, the Tribunal made an order for £300 to be paid by the Respondent to the Applicants in respect of Tribunal fees. This amount to be paid within 28 days from the date of this decision.

Judge Bernadette MacQueen

Date: 11 March 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 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.