



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

Case reference : **LON/00BG/HMF/2023/0149**

Property : **Flat 5, 13 New Road, London, E1 1HE**

Applicant : **Iris Athanasiadi
Sam Ingvorsen**

Representative : **Mr McGowan of Justice for Tenants**

Respondent : **Sean Jay Jevan**

Representative : **Phillip Noble, counsel**

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

Tribunal members : **Judge Tueje
Mr K Ridgeway MRICS**

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

Date of hearing : **16th February 2024**

Date of decision : **14th March 2024**

DECISION

Decisions of the Tribunal

- (1) The Tribunal find that the Respondent committed an offence under section 95(1) of the Housing Act 2004 without reasonable excuse.
- (2) The Tribunal makes a rent repayment order for the period 20th October 2021 to 6th June 2022 in the following amounts:
 - (i) in favour of Iris Athansiadi for £3,150.82; and
 - (ii) in favour of Sam Ingversen for £3,150.82.
- (3) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
- (4) The reasons for the Tribunal decisions are given below.

The Application

1. This application for a rent repayment order is dated 28th April 2023, and is made under section 41 of the Housing and Planning Act 2016 by the Applicants, who were the tenants. The Tribunal received the application on 5th June 2023. The Applicants claim a repayment order of £4,201.10 to each of them, representing 100% of the rent paid between 20th October 2021 to 6th June 2022.
2. The application relates to the property known as Flat 5, 13 New Road, London, E1 1HE (“the property”), which is a top floor one bedroom flat.
3. The application is made against the Respondent, who is the freehold owner of the building within which the property is situated. The Respondent was also the Applicants’ immediate landlord.
4. By an order dated 4th August 2023 the Tribunal gave directions, including provision for the Applicants to provide a bundle containing supporting documents and an expanded statement of reasons for the application. Subsequently, the Tribunal listed the final hearing on 16th February 2024.

The Hearing

5. Neither party requested an inspection by the Tribunal, and the Tribunal did not consider one was necessary or proportionate.

6. Mr McGowan of Justice for Tenants represented the Applicants at the hearing, which they both attended. They had prepared a 245-page bundle for use at the hearing containing the application form with a statement of truth that appears to be signed by both applicants.

7. The Applicants also provided a 59-page supplemental bundle containing documents addressing the Respondent's case, including the First-Tier Tribunal decision in *Wilson and others v Lidder (BIR/OFN/HMK/2022-0017-0022)*.

8. The Respondent was represented by Mr Noble of counsel, who prepared a 10-page skeleton argument. The Respondent also prepared a 76-page bundle, and provided a separate Domestic Installation Certificate dated 20th September 2021. The Respondent's bundle included witness statements as follows:

- 8.1 From the Respondent dated 2nd October 2023;
- 8.2 Joseph Pettigrew, a roofer, dated 2nd October 2023; and
- 8.3 Steven Irons, an estate agent, dated 29th September 2023.

9. Before hearing any evidence, the Tribunal dealt with two preliminary issues raised by the Respondent. Firstly, whether the application for a rent repayment order was made in time, and secondly, whether the Applicants had amended their claim out of time. These applications are dealt with at paragraphs 26 to 29 below.

10. The Tribunal heard evidence from Ms Athansiadi on behalf of both Applicants, from the Respondent and one of his witnesses, Mr Irons, his managing agent. Mr Pettigrew did not give evidence at the hearing.

The Background

- 11. On 28th April 2021 the London Borough of Tower Hamlets designated three areas within its borough for selective licencing under section 80. There is a copy of the relevant Notice of Designation of Areas for Selective Licensing stating it has been published in accordance with section 83 of the Housing Act 2004, which deals with the statutory requirements for notification. The designation took effect from 1st October 2021. One of the designated areas is Bangalatown, where the property is situated.
- 12. By a written agreement commencing 20th September 2021, the Respondent granted the Applicants a joint assured shorthold tenancy of the property. The rent payable was £1,100 per calendar month, which the Applicants paid to the Respondent directly. We understand the rent is exclusive of all utilities. Furthermore, by clause 2.1.7, the Applicants were liable for the electricity, council tax and water rates.
- 13. The tenancy was a 12-month fixed term tenancy; when it expired on 19th September 2022, the parties entered into a further 12-month fixed term

tenancy. The Applicants vacated the property on 19th September 2023, when the second fixed term tenancy expired.

14. In the interim, on 7th June 2022 the Respondent applied for a selective licence pursuant to section 87 of the 2004 Act. Tower Hamlets subsequently issued a selective licence on 19th December 2022. It is common ground that the last day on which the alleged offence was committed was 6th June 2022.
15. In his oral evidence, the Respondent explained he has been renting out properties for over 40 years, and has a portfolio of properties. He was initially unable to recall how many properties, but then confirmed he has 26 residential properties. He also explained that although he is a qualified solicitor, he is non-practising, and his practice was not in landlord and tenant. He said his primary source of income is from his property portfolio. The Respondent states he does not have a system for keeping abreast of amendments to the legal requirements imposed on landlords.
16. The application form states the grounds for the application were that the Respondent had control or managed an unlicensed house thereby committing an offence under section 95(1) of the Housing Act 2004.
17. In the application form the Applicants indicated they wished to pay the Tribunal application fee via online banking. In a letter 22nd June 2023, the Tribunal wrote to the Applicants confirming their application was received on 5th June 2023. The letter also contained the relevant bank details to pay the application fee, which the Applicants were required to pay within 14 days. Mr McGowan informed the Tribunal he had an e-mail sent by the Tribunal on 4th July 2023 acknowledging receipt of the payment.
18. In accordance with the Tribunal's directions, in August 2023 the Applicants submitted supporting evidence. This included evidence they relied on to establish poor conditions at the property, which they argued the Respondent failed to address or to address adequately within a reasonable period of time. The Applicants relied on this as evidence of the Respondent's conduct.
19. The Respondent admits the selective licensing scheme came into force on 1st October 2021. However, he states he was unaware of this at the time, that Tower Hamlets failed to adequately publicise this, including by failing to contact landlords within the borough to notify them about the scheme.
20. At paragraph 13 of his witness statement, the Respondent also states:

... I am in a poor state of health. I am aged 62. I have respiratory problems. I am asthmatic and suffer from shortness of breath. I use a number of inhalers. It was probably that I would die if I contracted COVID. I therefore did my best to avoid going out during covid or mixing in public or travelling on public transport.

21. Consequently, the Respondent said he wouldn't see any public notification of the designated areas, which is why he says Tower Hamlets should have written to landlords in the area, including him. The Respondent did not provide any supporting medical evidence relating to the above-mentioned condition.
22. He argues Tower Hamlets' allegedly inadequate notification and his health provide a reasonable excuse for contravening section 95(1), which he says thereby amounts to a defence.

Issues

23. The preliminary issues are (1) whether this application for a rent repayment order was made in time, and (2) whether the Applicants have amended the application after expiration of the limitation period.
24. In his witness statement dated 2nd October 2023, the Respondent admits the following:
 - 24.1 Details of the written tenancy agreement commencing 20th September 2021 provided as the Applicant's exhibit C;
 - 24.2 The Applicants each paid the amount of rent claimed, being £4,201.10 each;
 - 24.3 That the rent was paid directly to him;
 - 24.4 That the property is within the Banglatown ward;
 - 24.5 When the Banglatown ward became a designated area for selective licencing on 1st October 2021, he did not have a licence; and
 - 24.6 He applied for a licence on 7th June 2022.
25. In light of the above admissions, which satisfy the elements of section 95(1), the substantive issues before the tribunal to determine were as follows.
 - 25.1 During the period in which the offence was committed did the Respondent have a defence to the commission of the offence under section 95(4) of the 2004 Act?
 - 25.2 If an offence has been committed, the maximum amount of rent repayment order that can be ordered under section 44(3) of the 2016 Act.
 - 25.3 The severity of the offence.
 - 25.4 The conduct of the parties, the landlord's financial circumstances, whether the landlord has any previous conviction of a relevant offence, and any other circumstances which the Tribunal should have regard in exercising its discretion as to the amount of the rent repayment order.

The Preliminary Issues

Out of Time Application

26. Mr Noble provided a printed case digest of *Page v Hewetts Solicitors [2013] EWHC 2845 (Ch)*; he did not provide a copy of the judgment. He relied on the case, which stated a claim is brought when the Claimant submits the claim form to the court accompanied by the appropriate fee. He argued that pursuant to section 41(2) of the 2016 Act, the limitation period expired on 6th June 2023. Therefore, he argues that according to *Page*, the Applicants brought their application on 4th July 2023 when the fee was paid, which is outside the limitation period.
27. The Tribunal accepts the Applicants' submissions on this preliminary issue. We do not consider *Page* to be of assistance because it is based on a claim brought under the Civil Procedure Rules. The Tribunal has its own procedure rules: while rule 26 requires an application is accompanied by the appropriate fee, the Tribunal's application form allows an applicant to pay the fee online after submitting the application form, as set out at paragraph 17 above. The Applicants complied with the requirements for paying the fee online. The Applicants could not pay the fee on 5th June 2023 because they did not have the Tribunal's bank details. When they received the bank details on 22nd June 2023, they paid the fee within the required 14 day period, namely on 5th July 2023. We do not consider that an applicant's compliance or non-compliance with rule 26 is dependent on when the Tribunal provides the necessary information to pay the fee. Accordingly, we find that the Tribunal received the application on 5th June 2023. It was therefore brought within the limitation period, which expired on 6th June 2023. Furthermore, although we are not bound by it, we note the Tribunal reached a similar conclusion in *Wilson and others v Lidder*.

Amend the Application after Expiration of the Limitation Period

28. The Respondent argues the Applicants sought to amend their claim by adding matters relating to the condition of the property which were not part of the original application. Mr Noble further argues that these matters were added to the application in August 2023. It submitted that subsections 35(2) and 35(3) of the Limitation Act 1980 state a new claim includes a cause of action and that a new claim may not be added after expiration of the limitation period. He says CPR 17.4 also prohibits adding a new claim except in specified circumstances which don't apply in this case.
29. The Tribunal does not accept the Applicants have sought to amend their application by adding a new cause of action. We find the application seeks a rent repayment order, and no new claim has been brought in respect of the condition of the property. In August 2023, the Applicants filed a bundle which included evidence regarding the condition of the property, and they

rely on that evidence on the issue of the Respondent's conduct. In other words, it's relied on to support the amount of the rent repayment order sought. Furthermore, the evidence has been submitted in accordance with the Tribunal's directions order, which made provision for providing documentary evidence and an expanded statement of reasons. The application form seeks a rent repayment order totalling £8,402.20 consisting of £4,201.10 for each applicant, and that is still what the Applicants are claiming, even after submitting the additional evidence in August 2023.

The Tribunal's Decision and Reasons

30. The Tribunal reached its decision after considering the witnesses' oral and written evidence, including documents referred to in that evidence, and taking into account its assessment of the evidence
31. As appropriate, and where relevant to the tribunal's decision these are referred to in the reasons for the tribunal's decision.
32. This determination does not refer to every matter raised by the parties, or every document the Tribunal reviewed or took into account in reaching its decision. However, this doesn't imply that any points raised or documents not specifically mentioned were disregarded. If a point or document was referred to in the evidence or submissions that was relevant to a specific issue, it was considered by the Tribunal.
33. The relevant legal provisions are set out in the Appendix to this decision.

The offence under section 95(1) Housing Act 2004

34. The Tribunal is satisfied beyond reasonable doubt that the offence under section 95(1) of the Housing Act 2004 was committed based on the admissions made by the Respondent as set out at paragraphs 24 to 24.6 above.
35. A landlord may rely on a defence of reasonable excuse under section 95(4) of the 2004 Act. We remind ourselves the landlord needs to prove the defence of reasonable excuse on a balance of probabilities.
36. The Respondent contends Tower Hamlets failed to adequately publicise the designation of Bangalatown, that it should have sent notification to landlords in the designated areas, but failed to do so. We consider it is reasonable for a landlord be responsible for keeping abreast of relevant legal requirements, include relating to selective licensing. We also consider that if the Respondent had a system for doing so, he may well have learnt

about the designation in good time. Additionally, we have had regard to Tower Hamlets' Notice of Designation of Areas for Selective Licensing, which expressly states it has complied with section 83, which we find amounts to adequate notice.

37. The Respondent has not provided any supporting documentary medical evidence, there was no explanation regarding the absence of such evidence, nor did Mr Noble address this issue during closing submissions. The Tribunal had insufficient evidence and/or argument to determine whether the Respondent's health provided a reasonable excuse. Therefore, we find this aspect of the defence is not established.
38. Having found that the Respondent does not have a reasonable excuse, we also find it is appropriate to exercise our discretion by making a rent repayment order, there being no exceptional circumstances that would justify refusing to make the order.

Amount of the Rent Repayment Order

39. In its decision in *Acheampong v Roman and others* [2022] UKUT 239 (LC), the Upper Tribunal recommended a four-stage approach to determine the amount of the rent repayment order, that approach is summarised as follows:

- 39.1 ascertain the whole of the rent for the relevant period;
- 39.2 subtract any element of that sum that represents payment by the landlord for utilities that only benefited the tenant;
- 39.3 consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made and compared to other examples of the same type of offence; and
- 39.4 consider whether any deduction from, or addition to, that figure should be made pursuant to section 44(4) of the 2016 Act in the light of the parties' conduct, the landlord's financial circumstances and whether the landlord has previously been convicted of an offence to which Chapter 4 of the 2016 Act applies.

40. The Tribunal have adopted the approach recommended in *Acheampong v Roman and others*

41. The Applicants are seeking repayment of the totality of the rent they paid during the period in which the offence was committed, namely the period 20th October 2021 to 6th June 2022. Although in closing, Mr McGowan argued any award should not be less than 80% of the rent paid during that period. Mr Noble argued if a rent repayment order is made, it

should be equivalent to a maximum of 12.5% of the rent paid during that period.

42. In fixing the appropriate sum the Tribunal had regard to *Acheampong v Roman and others* and the decision in *Hallett v Parker [2022] UKUT 165 (LC)*. We have also taken into account that proper enforcement of licensing requirements against all landlords, good and bad, is necessary to ensure the general effectiveness of the licensing system and to deter evasion.
43. We find the period of the offence was 1st October 2021 to 6th June 2022, and during that period, the Applicants each paid £550 per month from 20th October 2021 to 20th May 2022. Although the amount of rent repayable in respect of the May 2022 rent is pro rata to 6th June 2022. The Applicants claim the total amount due is £8,402.20, or £4,401.10 each. The Respondent accepts that was the rent paid to him in respect of that period.
44. As the rent paid was exclusive of bills, no element of the rent paid is to be deducted on the basis that it represents payment for utilities.
45. Regarding the seriousness of the offence in this application, namely the failure to obtain a selective licence, we find this is at the lower end when compared to other offences for which a rent repayment order may be made. We consider this offence was also committed out of ignorance rather than due to wilful evasion of the selective licensing scheme.
46. As to the conduct of the parties, Mr Pettigrew's statement says damage to the roof was likely to be caused by people walking on the roof. The Respondent complains the Applicants caused this damage by going on to the roof. Ms Athansiadi denied this in her oral evidence. We accept Ms Athansiadi's direct evidence, particularly as there is no evidence as to who may have caused the damage by going on to the roof, as neither the Respondent nor Mr Pettigrew claim to have witnessed the Applicants going up there.
47. As to the Respondent's conduct in respect of the offence, we take into account that once he was aware a licence was required, he applied for a licence without undue delay, and was subsequently granted a licence.
48. In exercising our discretion to determine an appropriate amount, we have considered the Respondent's conduct more generally. The Applicants complain that the Respondent failed to carry out various repairs and attend to related matters in a timely manner. This includes an alleged failure to deal with a faulty boiler, damp, mould and mice within a reasonable period. But it was the damage to the roof which caused leaking internally, that they found most inconvenient.

49. From the photographs of the property provided, we consider the condition of the property was satisfactory. We also note the Applicants renewed the tenancy in September 2022, which suggests they were not overly concerned about the property. It's not uncommon for various repair and maintenance issues to arise. We find that when problems were reported, either the Respondent or a contractor would visit to deal with it in a reasonable period. We note it took some time to repair the leaking roof. However, in her oral evidence Ms Athansiadi confirmed the roofer visited on a number of occasions. And the Respondent's evidence was that the damage to the roof was difficult to identify, which consequently affected the time it took to address this. We do not find that the defects that arose and the time it took to repair them was out of the ordinary, or that these amount to misconduct by the Respondent.
50. We were not provided with direct evidence regarding the Respondent's finances, nor were any submissions made on this issue. However, in oral evidence, the Respondent confirmed the extent of his property portfolio. Based on that information, and in the absence of any direct evidence or submissions to the contrary, we do not consider there is sufficient information to justify the Respondent's financial circumstances affecting the amount of the rent repayment Order
51. Having regard to the total rent for the relevant period, the severity of the offence and the deductions that it considers should be made in light of factors to which the Tribunal must have regard under section 44(4) of the 2016 Act, the Tribunal makes a rent repayment order against the Respondent in the total sum of £6,301.64, consisting of £3,150.82 payable to each Applicant, which represents 75% of the rent paid during the relevant period.
52. The Tribunal would remind the parties that it does not have the power to order the payment of the rent repayment order. It can only determine the amount of the rent repayment order.

Name: Judge Tueje

Date: 14th March 2024

Appendix of Relevant Legislation Housing Act 2004

83 Notification requirements relating to designations

- (1) This section applies to a designation-
 - (a) When it is confirmed under section 82, or
 - (b) (if it is not required to be so confirmed) when it is made by the local housing authority.
- (2) As soon as the designation is confirmed or made, the authority must publish in the prescribed manner a notice stating-
 - (a) that the designation has been made,
 - (b) whether or not the designation was required to be confirmed and either that it has been confirmed or that a general approval under section 83 applied to it (giving details of the approval in question),
 - (c) the date on which the designation is to come into force, and
 - (d) any other information which may be prescribed.
- (3) After publication of a notice under subsection (2), and for as long as the designation is in force, the local housing authority

must make it available to the public in accordance with any prescribed requirements-

(a) copies of the designation, and

(b) such information relating to the designation as is prescribed.

(4) In this section “prescribed” means prescribed by regulation made by the appropriate national authority.

95 Offences in relation to licensing of houses under this Part

(1) 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.

(2) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6), and

(b) he fails to comply with any condition of the licence.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1) or 86(1), or

(b) an application for a licence had been duly made in respect of the house under section 87,

and that notification or application was still effective (see subsection (7)).

(4) In proceedings against a person for an offence under subsection (1) or (2) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for failing to comply with the condition,

as the case may be.

(7) For the purposes of subsection (3) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (8) is met.
- (8) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (9) In subsection (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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 to that landlord.

Act

section

general description of offence

1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

(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.

43 Making of a rent repayment order

(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 had 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 with –
 - (a) section 44 (where the application is made by a tenant);

44 Amount of order: tenants

- (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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
 - (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (4) In determining the amount the tribunal must, in particular, take into account—
 - (a) the conduct of the landlord and the 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.

