FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AU/HMF/2023/0020 & LON/00AU/HMF/2023/0157**
HMCTS	**:**	**V: CVPREMOTE**
Properties	**:**	**12 Pritchard Court, George Road, London N78H2**
Applicants	**:**	**Maria de las Mercedes JUANIZ HERNANDEZ** **Jasmeet Singh Sumal**
Respondent	**:**	**EA Property Agents** **Mr Muhammed Abdul and Mrs Amina Khatun Hamid**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Shepherd** **Sue Coughlin MCIEH**
Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**15th March 2024**

DECISION

1. This case concerns a four bedroom flat in North London. The first Applicant had a tenancy in the flat which began on 30th December 2021. The tenancy was for Room 4 and the term was 9 months. The rent was £650 pcm. The second Applicant had a tenancy of another room which he occupied between March 2022 and March 2023 at a rent of £800 pcm. On its face the tenancy with both Applicants stated that the landlords were Mr Muhammad Abdul and Mrs Amina Khatun Hamid acting through their agents EA Property.

2. The First Applicant seeks a rent repayment order amounting to £7555 representing 12 months rent of the premises. After her tenancy term ended she occupied the premises under a statutory periodic tenancy on the same terms. She moved out on 24th January 2023. The Second Applicant's rent was £800 and he sought an RRO for £9090.6 for the period of 12 March 2022 and 28 February 2023 .

3. The Respondents, Mr and Mrs Hamid deny that they are liable for a Rent Repayment Order. They say that the agents EA Property made a mistake in naming them on the tenancies . They said that the tenancy should have been in the name of the owner of the leasehold Zafar Ahmed, their son. Zafar Ahmed was not a party to the proceedings. Despite a request by the Applicants to the Tribunal to join him this was not done. By the date of the hearing any joining of Mr Ahmed was worthless because the RRO application against him was time barred.

4. The Applicants represented themselves and the Respondents, Mr and Mrs Hamid were represented by Mr Khalisadar. He said he was solely representing Ms Hamid and Mr Abdul. He said that the Applicants should have been aware that Zafar Ahmed was the legal owner of the property as this was public information and they could have sought to join him earlier.

5. The Tribunal heard evidence from the Applicants' flat mates: Omar Soomro, and , Obede Songa. They were consistent in confirming that they all occupied

the premises at around the same time. They were not part of the same household and the premises were in a state of disrepair for much of their occupation. Mr Khalisader did not seek to challenge these issues but merely sought confirmation that they had not met Mr and Mrs Hamid. Ms Juaniz Hernandez also provided witness statements from Simone Baxter Thomas Lafave, who were work colleague and friend respectively.

6. Ms Juaniz Hernandez elaborated on the disrepair at the premises. There were water leaks, the entrance door was damaged, a mirror was broken, the oven door was damaged, the curtains were dirty, the carpets were unclean, there were mice, the electrical sockets were defective and the lights did not always work. She said that despite regular reports to EA only two items were repaired, namely the mice were eradicated by proofing and the kitchen door was repaired. For a period between October and November 2021 (6 weeks) there was only two people living in the premises. EA had provided photographs to the Tribunal but these showed the current condition and the remedial work was not carried out during the Applicants' occupation.

7. Mr Sumal gave consistent evidence and agreed with the existence of serious disrepair at the premises. He also said that EA had threatened to evict him on two occasions and someone had entered the premises.

8. Neither Applicant had received Universal Credit during their occupation. The rent was paid to EA properties.

9. Mr Hamid gave evidence. He appeared very unsure of the facts. The family owned other properties. He had four sons and one daughter. One was called Shahed, another Zafar. He denied that he owned the premises and said the agents had made a mistake in naming him and his wife on the tenancy as Zafar was actually the leaseholder. He said that it was hard to say how many properties he owned but it was more than ten and he considered himself to be a professional property owner.

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

10. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

11. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which states.

254 Meaning of "house in multiple occupation"

(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if–

(a) it meets the conditions in subsection (2) ("the standard test");

(b) it meets the conditions in subsection (3) ("the self-contained flat test");

(c) it meets the conditions in subsection (4) ("the converted building test");

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

12. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. Article 4 provides that an HMO is of a prescribed

description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

13. Section 56 Housing Act 2004 deals with the designation of Additional Licensing Schemes:

56 Designation of areas subject to additional licensing
(1) A local housing authority may designate either–
(a) the area of their district, or
(b) an area in their district,
as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.
(2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.
(3) Before making a designation the authority must–
(a) take reasonable steps to consult persons who are likely to be affected by the designation; and
(b) consider any representations made in accordance with the consultation and not withdrawn.
(4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.
(5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.
(6) Section 57 applies for the purposes of this section.

14. There is no dispute in the present case that Islington were operating an additional licensing scheme which applied to all properties with three or more

people in two or more households and that for much of the period in question the premises should have been licensed but wasn't.

15. Section 263 of the Act provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

The Housing and Planning Act 2016 ("the 2016 Act")

16. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

17. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

18. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that “the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The “main object of the provisions is deterrence rather than compensation.”

19. Section 40 provides (emphasis added):

"(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

(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."

20. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

21. Section 41 deals with applications for RROs. The material parts provide:

"(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.

22. Section 43 provides for the making of RROs:

"(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)."

23. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(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.

24. Section 44(4) provides:

"(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."

25. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

31. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).
>
> (iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).
>
> (v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

32.The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional

"rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

33.In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

> *"20. The following approach will ensure consistency with the authorities:*
>
> *a. Ascertain the whole of the rent for the relevant period;*
>
> *b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.*
>
> *c. 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 whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:*
>
> *d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).*
>
> *21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."*

Determination

34. It was not contested by either Respondent that the property was an unlicensed HMO until an application was made by EA Properties on 26 January 2023. The First R alleges that there were periods when there were only two residents. Having heard evidence from the Applicants and one of the Respondents the Tribunal sure beyond reasonable doubt that Mr and Mrs Hamid are the persons managing the HMO and that the Respondents are seeking to evade liability by falsely arguing that Mr and Mrs Hamid were not the landlords of the premises even though they were named on the tenancy agreement as such.

35. The Applicants were honest witnesses who had done their best to track down the responsible party. In contrast Mr Hamid appeared unclear and evasive. It also appeared very likely that Mr Khalisadar was acting or at least had acted on behalf of EA as well as Mr and Mrs Hamid. There were emails to suggest this was the case. We consider that a decision had been made by the family to name the landlords as Mr and Mrs Hamid . It was not a mistake. Indeed, to suggest it was a mistake was fanciful. No attempt had been made by the family to rectify this "mistake" during the relevant period. In truth the family had a portfolio of properties which were described by Mr Hamid. Some of these he owned as the paper owner and some of which his sons owned. The fact that the tenancy agreements for this property had been put in the parents' names was deliberate as they were intended to be the landlords. Indeed, the tenancy agreement was unusual because it named both EA, the agents and the couple as landlords. EA took no part in the hearing however the Tribunal considers that Mr Khalisadar was acting on their behalf as well. There was a concerted attempt by EA and the couple to avoid liability presumably with the hope that the Tribunal would decide that Zafar Ahmed should have been named as the liable party when it was known that any such application would fail as it was time barred. EA had not suggested in their bundle that the tenancy agreements were mistaken and had not mentioned this until they decided that they would not appear at the hearing.

Conduct

36. The fact that the Respondents sought to mislead the Tribunal weighs heavily against them. Equally it is clear that the premises were in a very poor condition throughout the Applicants' occupation.

A number of allegations were made against Ms Juaniz Hernandez by the First Respondent. We considered that none of these allegations were substantiated.

Quantum

37. Applying the criteria in Acheampong above:

38. The total rent claimed by each Applicant was as follows:

£7775 - Maria de las Mercedes JUANIZ HERNANDEZ

£ 9091.6 -Jasmeet Singh Sumal

39. There is no deduction to be made for utilities or Universal Credit.

40. The offence is considered at the serious end of the scale either comparing the offence to other offences or other cases of the same offence. The Respondents sought to evade liability deliberately when they should have licensed the premises and made them safe for the Applicants and other occupiers. We consider that a 100% penalty is appropriate. However, both Applicants agreed that for a period of six weeks there were only 2 occupiers. Accordingly, a deduction of say 12% is required. In addition in the case of Mr Sumal rent cannot be claimed for the period after the HMO application was submitted which according to EA Properties was 26 January 2023. An additional amount of £736.4 (28 days at £26.30 per day) must therefore be deducted.

46. Accordingly the Respondents Mr and Mrs Hamid must pay Maria de las Mercedes JUANIZ HERNANDEZ NANDEZ £6842 and Mr Sumal £7251. Both Applicants should also be paid their application and hearing fees amounting to £300 each.

Judge Shepherd

15th March 2024

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 Tribunal 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 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.

4. 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.