FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMF/2023/0313**
Property	**:**	**17 Balmoral Road, London E10 5ND**
Applicant	**:**	**Fabiola Betty Kouadio**
Representative	**:**	**Alexander Bunzl**
Respondent	**:**	**Penelope Hayhurst**
Representative	**:**	**Anthony Gold Solicitors LLP**
Type of Application	**:**	**Application for a rent repayment order by tenant**
Tribunal	**:**	**Judge Nicol** **Mr M Cairns MCIEH**
Date and Venue of Hearing	**:**	**4th April 2024;** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**8th April 2024**

DECISION

The Applicant's application for a Rent Repayment Order against the Respondent is dismissed because it is out of time.

Relevant legislation is set out in the Appendix to this decision.

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Reasons

1. The Applicant occupied a room at 17 Balmoral Road, London E10 5ND from 19th September 2018 until November 2022, sharing the property with the Respondent, her landlord, and other lodgers from time to time.

2. The Applicant seeks a rent repayment order ("RRO") against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

3. The Tribunal issued directions on 8th January 2024. There was a face-to-face hearing of the application at the Tribunal on 4th April 2024, attended by:

- The Applicant
- Mr Alexander Bunzl, counsel for the Applicant
- The Respondent
- Mr Robin Stewart, solicitor for the Respondent

4. The documents available to the Tribunal consisted of:

- A bundle of 65 pages from the Applicant;
- A bundle of 191 pages from the Respondent; and
- A skeleton argument from Mr Bunzl.

5. The Applicant provided witness statements from two former fellow occupants of the property, Ms Pamela Roberts and Ms Hannah Gawith, but they did not attend. At the hearing, the Applicant claimed that Ms Roberts could not find time off work and Ms Gawith lived too far away in Hull.

6. The Tribunal may make a RRO when it is satisfied beyond a reasonable doubt that a landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicant alleged that the Respondent was guilty of having control of or managing an HMO (House in Multiple Occupation) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").

7. However, section 41(2) of the 2016 Act provides that a tenant may apply for a RRO only if:

   (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

   (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

8. The Applicant made her application on 1st November 2023. To be within time in accordance with section 41(2), the property must have been let to the Applicant and the Respondent must have been

committing the relevant offence at some point in the period from 2nd November 2022 to 1st November 2023. On 21st February 2024 the Respondent applied to strike out the application on the basis that neither condition was met so that it was out of time. Because this involved a dispute of fact, it was adjourned to be heard at the substantive hearing rather than being determined separately ahead of the hearing.

9. Both Mr Bunzl and Mr Stewart felt that the witness evidence for the entire case should not take too long, following which the Tribunal would hear submissions on whether the Applicant's RRO application was within time or not. The Tribunal proceeded on this basis.

10. Both the Applicant and the Respondent confirmed their written witness statements and were subjected to cross-examination by the legal representatives and questions from the Tribunal members. The Tribunal's findings of fact set out below are based on their evidence and the documents.

11. The property at 17 Balmoral Road is the Respondent's home. As part of her pension planning, she bought another property in St Leonard's. She decided to rent the other rooms at 17 Balmoral Road from 2006 to cover the mortgages for the two properties.

12. The Respondent was unaware of any landlord's organisations she could join and did not seek professional advice on how to be a landlord. Instead, she relied on her own Google researches, from which she found suitable lodger agreement templates and how to declare her rental income for tax purposes. She carried out further researches in later years when tenants came and went but did not carry out any further researches in recent years. It did not occur to her that there might be any regulatory requirements for her situation, namely having just a few lodgers in her own home. She was aware that there was a licensing regime for HMOs with 5 or more people but she never had that many people in the property.

13. In 2020 the London Borough of Waltham Forest introduced an additional licensing scheme, extending licensing to HMOs with 3 or more occupants. Although the Applicant did not produce any evidence about it, as she should have done, both of the Tribunal's members were aware of it and its terms. On the face of it, the Applicant should have applied for an HMO licence under that scheme since she had 3 lodgers living with her in the house. However, the Respondent professed not to have seen any of the Borough's publicity and only knew about the scheme when they wrote to her not long after the Applicant left the property.

14. Since that time, the Respondent has not re-let the Applicant's room, leaving her with no more than 2 lodgers, and the property is therefore no longer licensable as an HMO under paragraph 6 of Schedule 14 to the 2004 Act. Since she is letting to fewer people, she says she can no

longer afford her mortgages and both properties are up for sale. She also said she intends not to resume being a landlord at any time in the future.

15. For most of her time at the property, the Applicant got on well with the Respondent. Both appear to have regarded the other as friends. However, when utility prices appeared to be on the increase, the Respondent sought to increase the rent for the first time, from £700 per month to £710. The Applicant insisted that utility prices were not going up and resisted the proposed increase. It appears that their relationship deteriorated thereafter.

16. The Respondent found living in the property intolerable and left for St Leonards. From there, she texted the Applicant on 30th September 2022, stating,

> Dear Fabiola I am really sorry but the whole electricity thing and the way you and Pam have reacted to the £10 rise and the issue with the deposit has done to much damage to our relationship that I no longer feel comfortable living together. I don't feel comfortable living with people who believed I have lied to them or exploited them when I have genuinely tried to be fair and do the exact opposite. ... I am therefore serving you 1 month notice to leave. ...

17. Overnight, the Respondent realised she hadn't specified the date when the Applicant was to leave and so sent another email on 1st October 2022 stating, "for the avoidance of any doubt this means you will need to vacate on 29 th October." Confusingly, she then sent two further emails:

- Immediately after, she wrote, "Sorry I mean 29 November 22"
- Overnight, she realised this too was an error and texted, "Sorry going mad one months notice means 29 th October but given my mistake let's make it 1 November 2022 so one months notice running from today."

18. Despite the Respondent's confusion, the Applicant was in no doubt what she meant. On 1st November 2022, the Applicant cleared out all her belongings, except for some plates and a couple of jumpers, and put them into storage. She put the keys back through the letterbox. She accidentally set off the alarm and contacted the Respondent about it. The Respondent told her not to worry.

19. It is the Applicant's case that, despite her actions, she still occupied the property and was entitled to return. Instead, she says that she had nowhere to go and spent the night at St Pancras railway station. Judge Nicol was concerned that this did not make sense and pressed her to explain why she preferred to spend the night in a railway station rather than in her bed. She claimed that she was "too stressed" to return and had been "verbally forced" to leave and return the keys. On being asked what constituted the "verbal force", the Applicant said that the

Respondent said she knew the law better than the Applicant and she would be in trouble with the law if she did not leave.

20. The Applicant also alleged that the Respondent screamed and shouted at her. Having listened to the evidence of both of them, the Tribunal finds it unlikely that this happened. The Respondent says she had one conversation with the Applicant in which she tried to clarify whether she would be leaving as requested on 1st November and they were interrupted by Ms Roberts who was the only one screaming and shouting. At that point, the Respondent withdrew from the conversation and did not try to speak to the Applicant again. The Tribunal is inclined to accept the Respondent's version of events. Ms Roberts was not available for cross-examination so her evidence is of little weight. The Applicant's evidence was devoid of any particulars, even when she was repeatedly pressed to give them, which seriously undermined its credibility.

21. In the Tribunal's opinion, it is nonsense to suggest that a landlord threatening to use due legal process constitutes the use of undue force on a tenant – quite the opposite, it is the only proper way for a landlord to act when they wish a tenant to leave. The most credible explanation for why the Applicant left the property and did not try to sleep there any more is because she had been told to leave and she thought she had no lawful choice but to do so.

22. The Tribunal does not find it credible that the Applicant felt too intimidated to stay or, having left, to return. She also says she was concerned that, if she returned, she would find new tenants installed in her room. However, she did return to the property, staying overnight on 4th November as a guest in Ms Gawith's room. She wasn't too intimidated by the Respondent to do that and would have been able to see for herself that there were no new tenants in her old room. The only further time she returned to the property was on 6th November when she helped Ms Gawith move out.

23. The Respondent asserts that the last day when the property was let to the Applicant was 1st November 2022. The Tribunal agrees. One month's notice was given, as per the contract, terminating the licence on that day. The Applicant had asserted that the licence must have continued to the next rent day, 18th November 2022, but there is no reason in fact or law to support that. Notices to quit tenancies must expire on a rent day but that rule does not apply to a licence which is what the Applicant had.

24. Even if the Tribunal were wrong about the last day of letting, the Tribunal is also satisfied that the Applicant ceased to occupy the property on 1st November 2022. Mr Bunzl put forward the following matters which he said showed her continued occupation:

(a) The Applicant left some belongings at the property. However, this was not a case where what was left indicated an intention to return. The

belongings were a few random items which were in no way sufficient to indicate a person's occupation. Simply having a few belongings in a certain place is not sufficient by itself to constitute occupation, by itself or in combination with the further matters below.

(b) On 4th November 2022, the Applicant stayed at the property as a guest of Ms Gawith. However, this supports the idea that she no longer occupied her room. She was in a different room as that occupant's guest. This is far more consistent with the Applicant accepting that she no longer occupied her room than it is with an intention to return.

(c) Mr Bunzl sought to rely on the fact that, in one text, the Respondent referred to 29th November 2022, as quoted above. However, that was clearly a mistake, corrected the following day. The Applicant gave no indication at the time that she thought 29th November was the correct date.

(d) A parcel was delivered to the property after the Applicant left because she had not changed her address. However, this was simply a convenience. The Applicant says she had nowhere else for her mail or deliveries to go to. Again, this is not indicative of occupation. It is not uncommon for mail to continue to be delivered to a place no longer occupied by the intended recipient.

(e) The Respondent says she felt scared by Ms Roberts's aggressive behaviour. Mr Bunzl submitted that, in such circumstances it is understandable that the Applicant didn't want to stay. However, whether the Applicant wanted to stay or not misses the point. Many tenants stay when they would prefer to be elsewhere, principally due to the difficulty of finding anywhere better in today's market. The Tribunal is prepared to accept that, like the Respondent, the Applicant did not want to stay but not to the extent that, without more, she would be prepared to clear her belongings out and spend the night at a railway station instead of staying in her own bed with all her belongings within reach.

25. In summary, by the commencement of the relevant 12-month limitation period on 2nd November 2022, the property was no longer let to the Applicant and no licensing offence could be committed because the Applicant was no longer in occupation, bringing the requisite number of occupants below the relevant threshold.

26. Therefore, the Applicant failed to comply with section 41(2) of the 2016 Act and, in making her application to the Tribunal on 1st November 2023, she was out of time. The Tribunal has no choice but to dismiss the application.

Name: Judge Nicol **Date:** 8th April 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).

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) 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 67(5), and

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

(4) 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

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(a) For the purposes of subsection (4) 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 (9) is met.

(b) 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.

(c) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

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.

(1) A building or a part of a building meets the standard test if–

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household (see section 258);
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(d) their occupation of the living accommodation constitutes the only use of that accommodation;
(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(2) A part of a building meets the self-contained flat test if–

(a) it consists of a self-contained flat; and
(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

(3) A building or a part of a building meets the converted building test if–

(a) it is a converted building;

(b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
(c) the living accommodation is occupied by persons who do not form a single household (see section 258);
(d) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
(e) their occupation of the living accommodation constitutes the only use of that accommodation; and
(f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

(4) But for any purposes of this Act (other than those of Part 1) a building or part of a building within subsection (1) is not a house in multiple occupation if it is listed in Schedule 14.

(5) The appropriate national authority may by regulations–

(a) make such amendments of this section and sections 255 to 259 as the authority considers appropriate with a view to securing that any building or part of a building of a description specified in the regulations is or is not to be a house in multiple occupation for any specified purposes of this Act;
(b) provide for such amendments to have effect also for the purposes of definitions in other enactments that operate by reference to this Act;
(c) make such consequential amendments of any provision of this Act, or any other enactment, as the authority considers appropriate.

(6) Regulations under subsection (6) may frame any description by reference to any matters or circumstances whatever.

(7) In this section–

"basic amenities" means–

(a) a toilet,
(b) personal washing facilities, or
(c) cooking facilities;

"converted building" means a building or part of a building consisting of living accommodation in which one or more units of such accommodation have been created since the building or part was constructed;

"enactment" includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30);

"self-contained flat" means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;
(b) either the whole or a material part of which lies above or below some other part of the building; and
(c) in which all three basic amenities are available for the exclusive use of its occupants.

SCHEDULE 14

BUILDINGS WHICH ARE NOT HMOS FOR PURPOSES OF THIS ACT (EXCLUDING PART 1)

6 Buildings occupied by owners

(1) Any building which is occupied only by persons within the following paragraphs –

(a) one or more persons who have, whether in the whole or any part of it, either the freehold estate or a leasehold interest granted for a term of more than 21 years;
(b) any member of the household of such a person or persons;
(c) no more than such number of other persons as is specified for the purposes of this paragraph in regulations made by the appropriate national authority.

(2) This paragraph does not apply in the case of a converted block of flats to which section 257 applies, except for the purpose of determining the status of any flat in the block.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(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.

(3) A reference to *"an offence to which this Chapter applies"* is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

	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).

Section 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 —

(c) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(d) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 **Making of 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 has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 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.

If the order is made on the ground that the landlord has committed	***the amount must relate to rent paid by the tenant in respect of***
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.