



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

Case Reference : **MM/LON/00AY/HMF/2023/0266**

Property : **Flat 2, 4 St Johns Crescent, London
SW9 7AG**

Applicants : **Mr Richard Brooks (1)
Mr Callum Dronfield (2)
Mr Julius Wrobel (3)**

Representative : **Mr Richard Brooks**

Respondents : **Lexadon Limited**

Representative : **Mr Amar Hothi**

Type of application : **Application for a Rent Repayment Order
by Tenants – Sections 40, 41, 43 & 44 of
the Housing and Planning Act 2016**

Tribunal members : **Judge J P Donegan
Mrs Sarah Redmond MRICS (Valuer
Member)**

Date of hearing : **12 April 2024**

Date of decision : **22 April 2024**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes the following rent repayment order ('RRO').**
- 2. The respondent shall repay £10,108.80 (Ten Thousand, One Hundred and Eight Pounds and Eighty Pence) to the applicants by 20 May 2024.**
- 3. The respondent shall reimburse the Tribunal fees paid by the applicants in the total sum of £300 (Three Hundred Pounds). The respondent must pay this sum to the applicants by 20 May 2024.**

The background

1. The respondent company is the registered freehold proprietor of 2 and 4 St John's Crescent, London SW9 7AG ('the Building') and forms part of the wider Lexadon Property Group Limited ('Lexadon').
2. The applicants were tenants of Flat 2, 4 St John's Crescent ('the Flat') between 01 October 2022 and 30 September 2023.
3. The Flat is on the first floor of 4 St John's Crescent and comprises three bedrooms (one with ensuite bathroom), a main bathroom and kitchen/living room.
4. The applicants were granted an assured shorthold tenancy of the Flat on 01 October 2022 for a term of 12 months at a rent of £2,808 per calendar month, excluding utility bills and Council Tax. The tenancy agreement named the respondent as the "*Landlord*" and all three applicants as the "*Tenants*".
5. There were various maintenance issues when the applicants moved in. The Flat had not been properly cleaned, the stairs to the garden were covered in fox droppings, the burglar alarm, carbon monoxide alarm, bathroom extractor fans and some light fittings were not working, the taps in the main bathroom had come away from the sink and there was no lock on one of the living room windows. There were also problems with the shelves and shower curtain in the main bathroom and marks on some of the walls.
6. The applicants raised these issues in a letter to the respondent dated 02 October 2022. A cleaner attended a few days later and the other issues were subsequently remedied. There were further maintenance issues later in the tenancy, being broken door handles, a water leak from the flat above and a fault with the carbon monoxide alarm. These were all reported to the respondent via an online maintenance platform (Fixflo).
7. There were also problems with people drinking and taking drugs on the main entrance steps at the Building.

8. All three applicants vacated the Flat on 30 September 2023. The second applicant, Mr Dronfield explored the possibility of taking on a new tenancy or extending the existing tenancy but did not pursue this.
9. The respondent returned the applicants' security deposit in October 2023, having made a minor deduction of £30.
10. The applicants are not members of the same family, and each had their own bedroom at the Flat. The main bathroom and kitchen/living room were in communal use during the tenancy. The total rent paid to the respondent was £33,696 (12 months @ £2,808).
11. On 08 September 2021 the London Borough of Lambeth ('LBL') designated an additional licensing scheme in respect of houses in multiple occupation ('HMOs'). The borough wide scheme came into force on 09 December 2021 and continues for five years.
12. During the scheme, a person having control or managing a prescribed HMO within the borough must apply to LBL for a licence. Failure to apply for a licence is an offence under section 72(1) of the Housing Act 2004 ('the 2004 Act'). The Flat is within the borough and was not licensed during the applicants' tenancy.

The application and procedural history

13. The applicants seek a RRO pursuant to sections 40 to 44 of the Housing and Planning Act 2016 ('the 2016 Act').
14. The Tribunal application was submitted on 23 September 2023, shortly before the applicants vacated the Flat.
15. The Tribunal issued directions on 17 November 2023 and the case was subsequently listed for a face-to-face hearing 12 April 2024. This was later converted to a remote video hearing to facilitate the participation of the first applicant, Mr Brooks who currently resides in New York. The Tribunal gave Mr Brook permission to give evidence from abroad in a letter dated 03 January 2024.
16. Directions 5-10 dealt with the filing and service of digital hearing bundles. Direction 9 listed the documents to be included in the respondent's bundle, including:
 - “(b) a copy of all correspondence relating to any application for a licence and any licence that has now been granted.*
 - ...
 - (f) a statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see Annexe), including full details of any conduct by the tenant said to be relevant to the amount of the Rent Repayment Order sought. If reliance is placed on the landlord's financial circumstances, appropriate*

documentary evidence should be provided (redacted as appropriate)”.

17. Both parties produced bundles in accordance with the directions. There were two bundles from the applicants and one from the respondent.
18. The relevant legal provisions are set out in the appendix to this decision.

The hearing

19. The hearing took place on 12 April 2024, by remote video conferencing. Mr Brooks was the lead applicant and spoke on behalf of all three applicants. He was accompanied, remotely, by Mr Dronfield and Mr Wrobel. Mr Amar Hothi appeared for the respondent. He is the Operations Director for Lexadon and was accompanied by a colleague, Ms Alaliyah Eggay.
20. Mr Brooks took the Tribunal through the key documents in the bundles, including an email from LBL dated 18 December 2023 that stated, *“I can confirm Lexadon has submitted a HMO licence application for Flat 2, 4 St. John's Crescent, SW9 7AG on 31/10/2023.”*
21. All three applicants gave oral evidence and verified their respective witness statements. It is unnecessary to recite their evidence in detail, as little was in dispute and there was no cross-examination. In brief, they contend the respondent committed an offence under section 72(1) of the 2004 Act as the Flat was unlicensed throughout their tenancy and period of occupation. They seek to recover the full rent paid to the respondent.
22. In response to questions from the Tribunal, Mr Brooks stated that most of the initial maintenance issues were resolved within a couple of weeks.
23. The applicant's main bundle included the respondent's unaudited financial statements for the year ended 31 December 2022. The balance sheet shows net assets of £81,947,541.
24. Mr Hothi also gave oral evidence and verified a witness statement dated 14 February 2024. His evidence is summarised below:
 - a. The respondent has a portfolio of approximately 600 properties, of which 126 required HMO licences under LBL's additional licensing designation.
 - b. The respondent employs approximately 20 people. Given the number of licences required it took on an additional employee, Ms Jessica Stevenson, to identify the properties involved, submit the licence applications and deal with other compliance work. She was employed for approximately one year but no longer works for the respondent.
 - c. Between 2021 and March 2023 licences had to be applied for via LBL's website. Ms Stevenson started the process of submitting applications online, but LBL were slow to process these and request fees. Lexadon did not receive any licences until 2023.

- d. A licence application was made for the Flat in 2022, before the applicants' tenancy.
 - e. In March 2023, LBL changed the application process and moved to a dedicated licensing platform called Metastreet. Applications that had already been submitted via their website, but with no fee paid, had to be resubmitted using Metastreet. This meant the respondent lost 90% of its pending applications, including that for the Flat.
 - f. Following this change, a new application was submitted for the Flat. This is still pending (application number Y-LLBC-5268435375).
 - g. The Metastreet platform can only accept payment for up to 8 applications at once. This meant the respondent had to pay for their applications in tranches of 8. They offered to pay by bank transfer, but this was not accepted.
 - h. The respondent has applied for licences for all HMOs in their portfolio and await licences from LBL. It understands the importance of, and the policy reasons for, additional licensing.
 - i. Mr Hothi has asked LBL for evidence of the original licence applications submitted on the old system, including that for the Flat, but this is no longer available.
 - j. The Flat complied with the HMO licence requirements throughout the applicants' tenancy and had an Energy Performance Certificate, Gas Safety Certificate and Electrical Installation Certificate.
 - k. The Flat was in good condition and the applicants asked to stay on at the end of the tenancy.
25. Mr Hothi's statement included an extract from LBL's website, dealing with the transition to the Metastreet platform reading:
- "If you have applied and paid the initial fee, the application information will be transferred into the new system. If you have not made an initial payment before 15 March 2023 you will need to submit a new application."*
26. In cross-examination, Mr Hothi accepted that LBL had consulted the respondent in 2021 before introducing the additional licensing scheme. LBL sent letters for five properties that required licensing. The respondent had to identify the other properties covered by the scheme.
27. Mr Hothi also accepted that two of the respondent's properties had been granted additional HMO licences by LBL in 2022.
28. On questioning from the Tribunal, Mr Hothi said the respondent had no internal records or property files evidencing the licence applications submitted before March 2023. His colleague, Ms Eggay now maintains a spreadsheet of all applications and licences, but this did not exist in 2022.
29. Mr Hothi accepted there was no documentary evidence of a 2022 licence application for the Flat but blamed this on LBL's failure to keep information from their old system. He has not contacted Ms Stevenson, to check the position.

30. Following a short adjournment, the Tribunal heard brief closing submissions. Mr Hothi referred the respondent as “*a well-established property company in Brixton that abide by the laws of Lambeth*”. He suggested the applicants had an “*enjoyable time*” at the Flat and all maintenance issues were dealt with promptly. He accepted the applicants were good tenants, as evidenced by the modest reduction from their security deposit.
31. In response, Mr Brooks said the applicant were not “*completely happy*” living at the Flat and stressed there was no HMO licence, or temporary exemption, throughout their tenancy.

Findings

32. The Flat was an HMO throughout the applicants’ tenancy and occupation. It meets the converted flat test at s.254(3) of the 2004 Act in that it is a self-contained, the living accommodation was occupied by the applicants as their only or main residence, their occupation constituted the only use of that accommodation, they paid rent for this occupation, did not form a single household, and shared one or more of the basic amenities (the main bathroom and kitchen/living room).
33. The Flat is within the borough of Lambeth, so the 2021 designation applies.
34. The only documentary evidence of a licence application for the Flat relates to that made on 31 October 2023. There are no documents or correspondence evidencing a 2022 application. Mr Hothi says an application was made but this is supposition. The HMO applications were made by Ms Stevenson, and he cannot say which properties they relate to. If there was a 2022 application for the Flat, which is not accepted, then no initial fee can have been paid to LBL as there was no transfer of the application to the Metastreet platform.
35. In the absence of any documentary evidence of a 2022 application, or a statement from Ms Stevenson confirming the application, the Tribunal finds that no such application was made.
36. The Tribunal is satisfied the Property was unlicensed throughout the applicants’ tenancy and occupation.
37. The respondent was the applicants’ landlord throughout the tenancy, as evidenced by the tenancy agreement.
38. The Tribunal is satisfied, beyond a reasonable doubt that an offence has been committed under section 72(1) of the 2004 Act in that the respondent controlled or managed an unlicensed HMO which was required to be licensed. It is the landlord named in the tenancy agreement and is the registered freehold proprietor of the Building.
39. There was no reasonable excuse for the respondent’s failure to licence the Flat that might give it a defence under section 72(5). The respondent is a substantial property company, employs approximately 20 people, took on a

designated employee to submit licence applications and had the resources to make applications promptly. It was consulted about the additional licensing designation in 2021 and was aware the scheme was being introduced.

40. The designation was made in September 2021 but only came into force in December 2021. The respondent had three months to identify affected properties in their portfolio and establish a system for submitting licence applications. The tenancy started 10 months after the designation came into force. This was ample time for the respondent to submit the application and pay LBL's fee. The Tribunal notes the current, pending application was submitted on 31 October 2023, a month after the RRO application and seven months after the change to the Metastreet system.

The Tribunal's decision

41. Having satisfied itself that an offence had been committed under section 72(1) of the 2004 Act, the Tribunal then considered whether to make an RRO. Given the respondent's failure to licence the Flat throughout the twelve months of the tenancy and the seriousness of this offence it is appropriate to make such an order.
42. This is an application under section 41 of the 2016 Act and the amount of the RRO falls to be determined under section 44. The respondent not been convicted of any offence (s.44(4)(c)).
43. There have been numerous Upper Tribunal decisions on the quantification of RROs, including ***Acheampong v Roman [2022] UKUT 239 (LC)*** where Judge Cooke gave the following guidance:
 - “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 and 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 made by made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same 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).”

44. Following this approach, the rent paid during the relevant period (01 October 2022 to 30 September 2023) was £33,696. There is no deduction for utilities or Council Tax, as the applicants paid these in addition to their rent. A failure to licence an HMO is always a serious offence, but this case is at the lower end of the seriousness range. The initial maintenance issues were dealt with promptly and the respondent had a system in place (Fixflo) for reporting maintenance issues. Further, there was little they could do to prevent drinking/drug taking on the entrance steps.
45. The Flat had Energy Performance, Gas Safety and Electrical Installation Certificates during the tenancy and the applicants appear to have been content there. This is not a case where there were repeated complaints and save for the initial problems, there was no mention of any safety issues. The fact that Mr Dronfield enquired about staying on at the Flat suggests that he, at least, was happy there. Having regard to these factors and the size and nature of the respondent, the offence justifies repayment of 30% of the rent.
46. Finally, the Tribunal considered the section 44(4) factors. Save for the failure to licence the Flat, there was no suggestion the respondent was a bad landlord. Equally, there was no suggestion the applicants were bad tenants. To the contrary, Mr Hothi accepted they were good tenants. The respondent supplied no evidence as to its financial circumstances., so there is no financial justification to reduce the RRO. The company’s financial statements for 2021/22 show substantial net assets. The Tribunal considered whether this justified an addition to the RRO but decided against this, as the size and nature of the respondent had already been considered when determining the seriousness of the offence. The Tribunal makes no adjustment to the 30% assessment.
47. All of this means the respondent must repay £10,108.80 to the applicants being 30% of the total rent paid during their tenancy (£33,696). This sum must be repaid within 28 days of this decision.
48. At the end of the hearing, Mr Brooks requested a refund of the application and hearing fees paid to the Tribunal. Given the outcome of the case, the Tribunal also orders reimbursement of these fees pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. These total £300 and must be reimbursed within 28 days of this decision.

Name: Judge J P Donegan

Date: 22 April 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.

Appendix of relevant legislation

Housing Act 2004

PART 2

LICENSING OF HOUSES OF MULTIPLE OCCUPATION

55 Licensing of HMOs to which this Part applies

- (1) This Part provides for HMOs to be licensed by local housing authorities where –
 - (a) they are HMOs to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority -
 - (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
 - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in that designation.
- (3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection 2(a).

...

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.

...

72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control or managing a HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- ...
- (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 occupying the house, or
 - (c) for failing to comply with the condition,as the case may be.

...

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 condition 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.
- (2) 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.
- (3) A part of a building meets the converted flat test if –
 - (a) it consists of a self-contained flat, and
 - (b) paragraph (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).

...

258 HMOs: persons not forming a single household

- (1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.
- (2) Persons are to be regarded as not forming a single household unless –
 - (a) they are all members of the same family, or

- (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purposes of subsection 2(a) a person is a member of the same family as another if –
 - (a) those persons are married to, or civil partners of, each other or live together as if they were a married couple or civil partners;
 - (b) one of them is a relative of the other; or
 - (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For these purposes –
 - (a) a “couple” means two persons who fall within subsection (3)(a);
 - (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
 - (c) a relationship of the half-blood shall be treated as a relationship of the whole blood, and
 - (d) the stepchild of a person shall be treated as his child.

...

259 HMOs: persons treated as occupying premises as only or main residence

- (1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.
- (2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person –
 - (a) as the person’s residence for the purpose of undertaking a full-time course of further or higher education,
 - (b) as a refuge, or
 - (c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

...

SCHEDULE 4

LICENCES UNDER PARTS 2 AND 3: MANDATORY CONDITIONS

...

- 1A- (1) Where the HMO is in England, a licence under Part 2 must include the following conditions
- (2) Conditions requiring the licence holder –
- (a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square meters.

...

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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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.
- (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.

...

43 Making of a rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond a 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);
 - (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).

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 this 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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.