FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BK/HMF/2022/0270**
Property	**:**	**103 St Mary's Mansions, St Mary's Terrace, London W2 1SY**
Applicant	**:**	**Ms H Seher**
Representative	**:**	**In person**
Respondent	**:**	**The Duke of Wellington and Lady Charlotte Anne Santo Domingo**
Representative	**:**	**Ms H Williams**
Type of Application	**:**	**Application for a rent repayment order by a tenant**
Tribunal Members	**:**	**Tribunal Judge Prof R Percival** **Mr M Cairns MCIEH**
Date and venue of Hearing	**:**	**25 April 2024** **10 Alfred Place**
Date of Decision	**:**	**26 April 2024**

DECISION

Orders

(1) The Tribunal determines that it cannot make a rent repayment order.

The application

1. On 15 October 2022, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order ("RRO") under Part 2, Chapter 4 of the Housing and Planning Act 2016. Directions were given on 16 October 2023.

2. The relevant period in respect for which the RRO is claimed is 30 August 2021 to 24 July 2022

The hearing

Introductory

3. The Applicant represented herself. The Respondent was represented by Ms H Williams, managing director of the company which manages the Wellington estate. Ms Seher was accompanied by Mr Willetts and Mr Newton of Westminster City Council, Ms Williams by Mr Peck and Ms Parris, both of the estate company (the latter a project manager).

4. The property is a three bedroom flat on the top floor of a mansion block. There are two bathrooms, one ensuite to the Applicant's room, a kitchen and an open plan dining and living room.

Preliminary issues

5. Strike out: The Respondent had indicated that they wished to apply to strike out the application. The basis was that, about two weeks before the hearing, I had asked the case officer to write to the Applicant, stating that her bundle was not compliant with the directions. The Respondent argued that the same bundle was now being relied on. I explained that, as a result of an administrative slip in the Tribunal office, the bundle to which I was referring was an old version, the deficiencies of which had already been addressed. On the basis of that explanation, the Respondent withdrew the application.

6. Identity/substitution of the Respondent: The Tribunal brought to the attention of the parties a concern as to the identity of the Respondent, and the consequences for substitution.

7. The Respondents were as specified above, the Duke of Wellington and a daughter. It was on their behalf, as landlord, that the Applicant's assured shorthold tenancy had been signed. The Applicant had provided in her bundle (as now constituted) the title extract for the property. This showed the freehold owner since 2018 as the Hon Frederick Charles Wellesley, one of the Duke of Wellington's sons. Ms Williams confirmed that there was no intermediate leasehold interest held by the Duke of Wellington and Lady Charlotte Santo Domingo.

8. By section 41(2)(b) of the 2016 Act, a tenant may only apply for an RRO where the offence was committed in the period of 12 months ending with the day on which the application was made. That a licence was required during the relevant period, and that one was only applied for on 25 July 2022. Thus there was no dispute that the last day upon which the offence contrary to section 72(1) of the 2004 Act was committed was 24 July 2022.

9. Accordingly, our concern was that, first, the wrong Respondents have been, and continue to be, identified; and that secondly, given that the 12 months specified in section 41(2)(b) had elapsed, the Tribunal could not substitute the Hon Frederick Wellesley now.

10. That was, we suggested to the parties, the effect of *Gurusinghe and others v Drumlin Ltd* [2021] UKUT 268 (LC). We cited to them particularly paragraph [28]:

> The FTT has no power to extend [the section 41(2)(b)] limitation period. … it is … a limitation period prescribed by primary legislation, in the form of a statute, which cannot be extended by the FTT because there is no statutory power to do so. Nor is there any statutory provision, or power conferred by any procedural rule created by secondary legislation, which would enable the FTT effectively to override that limitation period by substituting the correct respondent landlord to proceedings commenced within time but against the wrong respondent.

11. Neither of the parties were aware of the case. We supplied them with copies, and adjourned to give them time to consider it. Having done so, we heard submissions.

12. Ms Seher argued that, in contradistinction to *Gurusinghe*, in this case the tenancy was signed on behalf of two natural persons, the Duke of Wellington and Lady Charlotte Santo Domingo, not a company. She only became aware that the landlord was the Hon Frederick Wellesley when he and his wife attended the property after the relevant period. She acted in good faith throughout, representing herself without assistance from, for instance, organisations such as Flat Justice or Justice for Tenants. These were, she said, stark differences between this case and *Gurusinghe*.

13. Ms Williams submitted that it was, in the light of *Gurusinghe*, a fundament matter of jurisdiction such that the Tribunal did not have the authority to amend the Respondent's name, and thus the application for an RRO was out of time.

14. We concluded that it was appropriate for us to make a ruling having heard submissions, rather than hear evidence and further submissions on the issues that would arise if the RRO application was effective.

15. We concluded that *Gurusinghe* did apply, that we could not make an RRO against the existing Respondents as they were not the landlord, that we could not substitute the real landlord, time having elapsed, and that therefore the application for an RRO must necessarily fall.

16. The principle set out in paragraph [28] of *Gurusinghe* applies, regardless of whether the person named as landlord was a natural person or a legal person, such as a company. In either case, the substitution of a respondent was necessarily equivalent to a new claim made at the point of substitution, and was therefore subject to the time limit set out in section 41(1)(b).

17. We do not doubt that the Applicant acted in good faith in identifying the landlord as the Duke of Wellington and Lady Charlotte Santo Domingo, because those were the people purporting to be her landlord on her tenancy agreement. We also accept that the situation dealt with in *Gurushinghe* is not one that would be at all evident to most litigants in person. But neither of those factors is sufficient to clothe the Tribunal with a jurisdiction that it simply does not enjoy as a strict matter of law.

18. *Gurusinghe*, a decision of the Upper Tribunal, is binding on us as a matter of precedent or *stare decisis*, a fundamental principle of England and Welsh law. We add that we do not doubt the correctness of *Gurusinghe*, precedent apart.

19. Nonetheless, the rule may be described as a trap for the unwary. It may result on results that are not obviously substantively just in a case in which an applicant in person has taken the identity of the landlord from their tenancy agreement and it later turns out that, for whatever reason, that that is not the correct landlord. Part of the point of the RRO system is to incentivise individual tenants to take a role in enforcing the regulation of HMO licencing, thus pursuing the public policy end of improving conditions in HMOs in particular and the private rented sector in general. The more that the system lays traps for the unwary, the less likely it is that an independent applicant in person will be able to successfully navigate the route to a successful application for an RRO, and so as advance the public benefit the system aims to achieve. But if there is a defect, it is a defect in the statutory scheme itself, and not one that can be remedied without legislation.

20. In the result, we are required to determine that the application for an RRO fails.

Rights of appeal

21. 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 London regional office.

22. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

23. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

24. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Name: Tribunal Judge Professor Richard Percival **Date:** 26 April 2024