



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

Case Reference : **LON/00BB/HMF/2023/0272**

Property : **30 Croombs Road, Newham, London,
E16 3RY**

Applicant : **Cathy Newman (1)
Moby Dean (2)**

Representative : **Mr Elliott, instructed by Justice for
Tenants**

Respondent : **Pankaj Goyal**

Representative : **Did not appear and was not
Represented**

Type of Application : **Application by Tenants for rent
repayment order. Sections 40,41, 43
& 44 of the Housing and Planning
2016**

Tribunal : **Judge B MacQueen
Mr A Lewicki, FRICS**

Date of Hearing : **30 April 2024**

Date of Decision : **9 May 2024**

DECISION

DECISION

1. The Tribunal finds that the Respondent has committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72(1) of the Housing Act 2004, and that accordingly a rent repayment order in favour of the Applicants can be made. The Tribunal makes a rent repayment order of £3,800 for Cathy Newman and £3,464.52 for Moby Dean and these amounts must be paid by the Respondent to the Applicants within 28 days of the date of this decision.
2. The Tribunal also orders the reimbursement of the Tribunal fees in the total sum of £400 and this amount must be paid by the Respondent to the Applicants within 28 days of the date of this decision.

Background

3. On 28 September 2023 the Applicants made an application for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) in relation to 30 Croombs Road, Newham, London, E16 3RY (the Property).
4. The total amount of rent the Applicants were seeking to recover was £9,080.65, which was the rent paid for the period between 29 May 2022 and 14 October 2022. This was made up of £4,750.00, which was the amount of rent paid by Cathy Newman for the period she lived at the Property (1 June 2022 until 31 October 2022), and £4,330.65, which was the amount of rent paid by Moby Dean for the period he lived at the Property (29 May 2022 until 14 October 2022).

5. The Applicants alleged that five people were living at the Property, sharing basic facilities and therefore the Respondent was committing an offence under section 72(1) Housing Act 2004 namely of having control or management of a house in multiple occupation which was required to be licensed but was not so licensed. The Applicants also alleged that there were a number of problems with the condition of the Property.
6. The Respondent was Pankaj Goyal as he was identified by the Applicants as the immediate landlord in the assured shorthold tenancy agreement and was the beneficial owner of the Property.
7. The Directions made on 7 December 2023 required each party to prepare a bundle of relevant documents for use at the hearing and send these to each other and the Tribunal.
8. The Applicants produced a paginated bundle of documents that consisted of 194 pages and included the application, directions, witness statements, tenancy agreements, details of rent paid, a land registry document and correspondence with the London Borough of Newham. Two videos were also exhibited.
9. The Respondent did not produce any documents to the Tribunal.

The Hearing

10. The Hearing took place on 30 April 2024. The Applicants appeared and were represented by Mr Elliott on behalf of Justice for Tenants. The Respondent did not appear, was not represented and did not provide the Tribunal with an explanation for this non-attendance or non-compliance with the Tribunal's directions.
11. The Tribunal waited until 10.05am to allow the Respondent additional time to arrive, however he did not attend. The Tribunal was satisfied that the application had been properly served on the Respondent and that he was aware of the hearing. The Tribunal noted in particular that

as recently as 25 April 2024 the Tribunal had emailed the Respondent to remind him of the hearing. Mr Elliott, on behalf of the Applicants, confirmed that as an additional step they had written to the Respondent's agent (Mahogany Properties) on 26 April 2024 at the address that was registered at Companies House for Mahogany Properties.

12. On 15 April 2024, the Applicants had made an application for a barring order as the Respondent had not complied with the Tribunal's directions requiring the Respondent's bundle to be submitted by 4 March 2024. That application was adjourned to be determined at the commencement of the hearing on 30 April 2024. Given that the Respondent did not attend, the Applicant asked the Tribunal to proceed in the Respondent's absence.
13. The Tribunal, being satisfied that the Respondent was aware of the hearing, determined that it was in the interest of justice to proceed in the Respondent's absence given that he had not provided evidence to the Tribunal and to avoid delay.

The Law

14. Section 41(1) of the Act states:

“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”

15. Section 43(1) of the Act states:

“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)”

16. Section 40(3) of the Act defines “an offence to which this Chapter applies” by reference to a table. The offence under section 72(1) Housing Act 2004 (control or management of unlicensed house) is within that table.

Control or Management of Unlicensed HMO

17. Section 72(1) Housing Act 2004 provides:

“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 but is not so licensed.”

An HMO required to be licensed, is defined in Section 55(2)(a) Housing Act 2004 as:

“any HMO in the [local housing] authority’s district which falls within any prescribed description of HMO”.

The Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018/221 states:

“An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act [Housing Act 2004] 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 either (i) the standard test under section 254(2); (ii) the self-contained flat test under s.254(3) except for purpose-built flats situated in blocks comprising three or more self-contained flats; or (iii) the converted building test under section 254(4) of the Act, unless the HMO has a temporary exemption notice or is subject to an interim or final management order;

Finally, section 254 Housing Act 2004 defines the standard test, self-contained test and the converted building test:

Section 254 provides:

(1) For the purposes of this Act a building or 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”).

The standard test is defined as:

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;

(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;

(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.

Person having Control of or Managing

18. The section 72(1) offence is committed by the person having control of/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as “the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person). Section 263(2) defines “person managing” as the person who, being an owner or lessee of the premises (a) received (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.
19. It is now well established that an RRO may only be made against the immediate landlord.
20. The Applicant asserted that Pankaj Goyal was the appropriate Respondent as he was shown as the immediate landlord on the assured shorthold tenancy and was the beneficial owner of the Property.
21. The Applicants confirmed in their evidence to the Tribunal that they paid rent to Pankaj Goyal and provided proof of payment of the rent in the form of bank statements (pages 137 to 179 of the bundle).
22. The Tribunal was therefore satisfied that Pankaj Goyal was collecting rent and therefore was the “person having control” for the purposes of the section 72(1) offence. Additionally, the Tribunal found that Pankaj Goyal was the “person managing” (section 263(2) Housing Act 2004) as Pankaj Goyal was the beneficial owner of the Property as shown by the land registry title deed (office copy of register of title, title number EGL28826, page 181-182 of the bundle) who received or would receive the rent from the tenants. The assured shorthold tenancy agreements for both Applicants named Pankaj Goyal as the landlord with Ishtyaq Ahmed of Mahogany Properties as the managing agent (pages 98 to 133

of the bundle). The Tribunal was therefore satisfied that Pankaj Goyal could therefore commit an offence under section 72(1).

Was the Property an HMO that was required to be licensed?

23. The Applicants submitted to the Tribunal that the Property met the criteria to be licensed under the mandatory scheme as a House in Multiple Occupation (HMO) under section 254 Housing Act 2004 and was not subject to any statutory exemption. The Applicants also submitted that if the Respondent argued that the Property was not subject to mandatory HMO licensing at all points during the Applicants' period of claim and the Tribunal should agree, then the Applicants would argue that the Property was within an additional licensing area.
24. The Tribunal considered the statements of the Applicants, in addition, the Tribunal heard evidence from both Applicants. The Applicants told the Tribunal that the Property was a five-bedroom end of terrace house comprised of three storeys. There was a shared kitchen and a shared conservatory that adjoined the kitchen. At the hearing, the Applicants described the occupancy of the Property with reference to the plan at page 285 of the bundle. Cathy Newman's and Moby Dean's evidence was that during the relevant period (29 May 2022 until 31 October 2022) the Property was occupied by at least five persons living in two or more separate households occupying the Property as their main residence as follows:
 - first floor front bedroom - Cathy Newman lived at the Property from 1 June 2022 until 31 October 2022
 - second floor bedroom – Moby Dean lived at the Property from 29 May 2022 until 14 October 2022

- ground floor bedroom – James occupied the Property before Moby Dean moved in and continued to live at the Property after Cathy Newman moved out
 - first floor back bedroom - Luca lived at the Property before Moby Dean moved in and moved out on 11 June 2022. Utkarsh moved into the Property from 16 July 2022 and continued to live at the Property after Cathy Newham moved out.
 - second floor front bedroom- Margaret was living at the Property when Cathy moved in, and then shortly afterwards Margaret’s son moved into the Property.
25. The Tribunal considered the evidence of the Applicants and found that the Property was an HMO, identifying the standard test as the applicable test. The Tribunal accepted the evidence of the Applicants and found that the Property consisted of one or more units of living accommodation not consisting of a self-contained flat or flats and that the occupiers did not form a single household. Additionally, the occupiers were occupying the Property as their main residence, paying rent, and there were two or more households occupying the Property who were sharing cooking facilities. The Property was therefore required to be licensed.

Was the Property licensed?

26. For an offence under section 72(1) to have been proved to the required standard (beyond reasonable doubt), the Tribunal had also be satisfied that the Property was not licensed.
27. The Tribunal considered the correspondence between Justice for Tenants on behalf of the Applicants and the London Borough of Newham at pages 183 to 187 of the bundle. By email dated 4 August 2023 (page 185 of the bundle) Cleve Jeffers, Principal Property

Licensing Officer of London Borough of Newham, had confirmed that the Property had not previously held an HMO licence. The property register showed that a selective license had been applied for on 22 March 2022, but no application for an HMO had been made. Additionally, at page 186, Angela Jones, Assistant Licensing Officer for the London Borough of Newham, had confirmed that a temporary exemption notice had never been served on the Property.

28. The Tribunal therefore accepted the evidence of the Applicants that the Property did not have an HMO licence.

Tribunal's Finding Under Section 72(1)

29. Having considered each element of the offence, the Tribunal was satisfied beyond reasonable doubt that Pankaj Goyal was the person having control of/ management of an HMO which was required to be licensed but was not so licensed.

Statutory Defence and Reasonable Excuse

30. The Respondent did not provide any evidence to the Tribunal and did not attend the hearing. The Respondent therefore did not put forward any statutory defence or reasonable excuse. For completeness the Tribunal considered whether the Respondent could put forward a statutory defence/reasonable excuse.
31. The Tribunal noted that a selective licence application had been made in March 2022, however the findings of the Tribunal were that the Property was an HMO. The Tribunal found that this licence application was therefore not relevant to these proceedings.
32. Additionally, the Tribunal noted that the Respondent had a property agent (Mahogany Properties). However, the Tribunal found that it was not reasonable for the Respondent to rely on an agent and that the responsibility to obtain a licence rested with the Respondent. The

Tribunal did not find, on a balance of probabilities, that the Respondent had a reasonable excuse.

33. The Tribunal was therefore not satisfied, on a balance of probabilities, that a statutory defence or a reasonable excuse was made out by the Respondent.

Should the Tribunal Make a Rent Repayment Order (RRO)?

34. The Tribunal found, beyond reasonable doubt, that Pankaj Goyal was a person having control/management of a property which was an HMO under the standard test, and was therefore required to be licensed; however, the property was not licenced as an HMO. The Tribunal therefore found that the section 72(1) offence had been committed.

35. Section 43 of the Act provides that the Tribunal may make an RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence was established, the Tribunal found no reason why it should not make an RRO in the circumstances of this application.

Ascertaining the Whole of the Rent for the Relevant Period

36. The Tribunal considered the bank statements provided by Cathy Newman (pages 137 to 178 of the bundle) and was satisfied that she had paid rent to the Respondent for the relevant period of 1 June 2022 until 31 October 2022 and that the total amount of rent she was seeking to recover was £4,750.

37. The Tribunal also considered the bank statements provided by Moby Dean (pages 179 of the bundle) and was satisfied that he had paid rent to the Respondent for the relevant period of 29 May 2022 until 14

October 2022 and that the total amount of rent he was seeking to recover was £4,330.65.

Deductions for Utility Payments that Benefit the Tenant

38. The Applicants confirmed that utility payments were included in their rent. Mr Elliott submitted to the Tribunal that the Tribunal had a discretion as to whether it reduced the RRO amount to take account of utility payments and he based this submission on *Ball v Sefton Metropolitan Borough Council* [2021] UKUT 42 (LC) (page 15 of the bundle). He asserted that this was an example of a case where it was not possible to deduct utility payments where a maximum amount must be made, and therefore this case was clear authority for the proposition that utility deductions are made pursuant to the Tribunal's discretion when having regard to the financial circumstances of the landlord under section 44(4)(b) of the Act rather than as a result of an inherent jurisdictional limit.
39. Mr Elliott further submitted that the legislation refers to "the rent" and not "the net rent" and that rent has a clearly defined meaning namely "the entire sum payable to the landlord in money" (para 12 page 17). Mr Elliott therefore submitted that utility payments should not be deducted in this case.
40. The Tribunal accepted that when determining the amount of an RRO, the Tribunal has a discretion whether or not to make a deduction for utility payments. *Acheampong v Roman* [2022] UKUT 239 confirmed that it would usually be appropriate to deduct a sum representing utilities. Whilst a tribunal would be able to make an informed estimate, this Tribunal was not able to do so in this case as it did not have sufficient clarity as to the amount paid by the Respondent. In the circumstances of this case, the Tribunal was, therefore, unable to make any deduction.

Determining the Seriousness of the Offence to Ascertain the Starting Point

41. The Tribunal had to consider the seriousness of the offence compared to other types of offences for which an RRO could be made, and also as compared to other examples of the same offence.
42. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in *Acheampong v Roman* [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal had to consider the circumstances of this particular case as compared to other examples of the same offence.

Conduct of Landlord and Tenant

43. The Applicant submitted the following factors as being relevant when determining the seriousness of the offence in this case:
 - The Respondent's lack of processes to keep abreast of their legal obligations.
 - The length of the offence
 - The Respondent's knowledge that the subject property required a licence
 - Fire Safety Breaches
 - The Respondent's breach of the Management of Houses in Multiple Occupation (England) Regulations 2006
 - The Respondent's breach of section 234(3) Housing Act 2004
 - The Respondent's breach of the Housing and Health and Safety Rating System (HHSRS)
 - Disrepair and maintenance issues in the subject property

- Breach of local authority HMO standards
- Unlawful retention of the Applicants' deposit

Fire Safety Breaches

44. Cathy Newman told the Tribunal (paragraph 5, page 23 of her witness statement and in oral evidence to the Tribunal), that when she had first moved into the Property she had locked her room door with a key from the inside, but when she had tried to unlock the door it would not unlock. Cathy Newman told the Tribunal that she had been locked in the room for twenty minutes. She said that she had reported this issue to the Respondent's agents but that it had taken about two months for the issue to be resolved. Cathy Newman told the Tribunal that whilst the lock was not working she would not have been able to escape from her room easily in the event of a fire.
45. Both Applicants told the Tribunal that the Property lacked smoke detectors or carbon monoxide detectors. Additionally, they stated that the Property did not have fire-escape notices.
46. The Tribunal accepted the evidence of the Applicants and found them to be credible witnesses. A broken lock which inhibits escape in a property that does not have smoke or carbon monoxide detectors is an aggravating factor.

Window Deficiencies

47. Moby Dean gave evidence to the Tribunal that there had been three windows in his room, but only two had opened and the two that did open had only opened to about 10 centimetres or less. Moby Dean told

the Tribunal that this had meant that his room became very hot and had poor air circulation. When there was hot weather, the heat in the room had been excessive given that the room was in the converted loft without windows that opened properly. Moby Dean explained that this had led to him becoming ill, for which he had needed to take time off work.

48. The Tribunal accepted the evidence of Moby Dean and found that the poor air circulation and excessive heat was an aggravating factor.

Disrepair and Maintenance Issues

49. Both Applicants told the Tribunal that the glass to the conservatory door had been broken and, despite reporting this issue to the Respondent's agent, it was never repaired. The Applicants stated that this had represented a security risk and had also posed a hazard when the tenants needed to open the door. Additionally, the Applicants gave evidence to the Tribunal that the garden had been cluttered with building material and rubble and the decking in the garden had been riddled with holes and on the verge of collapse.

50. The Tribunal considered the evidence of the Applicants and in particular the photographs they had provided at pages 50 and 52 to 54 and 194 of the bundle and accepted the evidence of the disrepair the Applicants described.

Respondent's Agent

51. Moby Dean told the Tribunal that the Respondent had appointed Mahogany Properties Ltd to act on his behalf but that the agent was not registered with the Property Redress Scheme or the Property Ombudsman.

52. The Tribunal considered the exhibits 3a, 3b and 4a (pages 47-49 of the bundle) and accepted the evidence given by Moby Dean that the Respondent's agent was not registered as described and therefore the respondent had appointed a non-registered property manager to manage the Property.

Return of Deposit

53. Moby Dean told the Tribunal that the Applicant had not returned his deposit of £950 that he had paid at the commencement of his tenancy. He therefore had had to raise a dispute with the Tenancy Deposit Scheme to recover the deposit.
54. The Tribunal accepted the evidence of Moby Dean and noted the report of the independent adjudicator at pages 74 to 77 of the bundle whereby no award was made to the Respondent, but the full deposit was awarded to Moby Dean. There was therefore no justification for the Respondent not returning the deposit.

Other Matters Raised by the Applicants

55. The Applicants described to the Tribunal how they had been subject to anti-social behaviour by one of the other tenants, Margaret. Whilst the Tribunal accepted the evidence the Applicants gave and recognised that this would have been a very difficult living environment, the Tribunal noted that the Respondent did take steps to evict the tenant from the Property.
56. Additionally, the applicants told the Tribunal that not all sockets in the kitchen had been working; however, the Tribunal noted that the socket that was not working had had three sockets, two of which were

working. Additionally, the Tribunal found that the maggots in the bin had been as a result of food waste in the internal bin, which would have been a tenant issue.

Applicants' Conduct

57. The Tribunal found that the Applicants had conducted themselves well. They had complied with the terms of the tenancy agreement and raised issues with the Property with the Respondent or his agent appropriately.
58. For the reasons given above, the Tribunal accepted the aggravating factors set out by the Applicants at paragraph 40.

Financial Circumstances of Respondent Landlord

59. The Respondent did not provide the Tribunal with any evidence of outgoings and other financial circumstances that may be relevant to an assessment of an RRO.

Whether Respondent Landlord has been convicted of offence?

60. The Tribunal was not presented with any evidence that the Respondent had any convictions identified in the table at section 45 of the Act.

Quantum Decision

61. Taking all of the factors outlined above into account, the Tribunal found that this licensing offence was not the most serious under the Act. The Tribunal concluded that the starting point for an offence of this nature would be 60%. Taking the factors of this particular case into account, the Tribunal increases this amount to 80% in line with the findings made above.

62. The Tribunal therefore reduced the rent repayment figure by 20% and ordered that the Respondent pay 80% of the amount claimed, with no deduction made for utilities.

Amount - Cathy Newman:

Total Claim - £4,750

Less utilities - £ 0

80% of which gives a **total amount of £3,800**

Amount - Moby Dean:

Total Claim - £4,330.65

Less utilities - £ 0

80% of which gives a **total amount of £3,464.52**

63. The Tribunal ordered that the payments be made in full within 28 days of the date of this decision.

Application Fees

64. The Applicants asked the Tribunal to make an order for the Application fees to be paid to them by the Respondent.
65. Given that the Tribunal had made an RRO, the Tribunal exercised its discretion and ordered that the Respondent must pay the Applicants £400 in respect of Tribunal fees. This amount to be paid within 28 days of the date of this decision.

Judge Bernadette MacQueen

Date: 9 May 2024

ANNEX – RIGHTS OF APPEAL

1. If a party to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier 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 to 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 (ie 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.

