



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

Case reference : LON/00AN/HMF/2023/0297 & /0217

Property : Rooms 3 & 4, 98 Adelaide Grove,
London W12 0JH

Applicant : (1) Ms Aida Zibaite
(2) Ms Xena Tick

Representative : In person

Respondents : (1) Oaklands Estates W12 Ltd
(2) Mr Mohammed Jakir Hoque

Representative : No appearance

Type of application : For the determination of the liability to
pay service charges under section 27A of
the Landlord and Tenant Act 1985

Tribunal members : Judge Tagliavini
Mrs A Flynn MA MRICS
Mr O Miller BSc

Venue : 10 Alfred Place, London WC1E 7LR

Date of hearing : 16 May 2024
Date of decision : 3 June 2024

DECISION

Summary Decisions of the tribunal

- (1) The tribunal finds the applicants have failed to establish an offence under s.72(1) of the Housing Act 2004, has been committed by either the first or second respondent.
 - (2) The tribunal refuses to make a rent repayment order in any amount.
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Background

1. The first and second applicants were previously occupiers of Room 3 and Room 4 respectively, at the subject address at 98 Adelaide Grove, London E14 ('the property'), under written 'Lodger Agreements' entered into between the applicants and the first and/or the second respondent. The first applicant paid £499 per month in respect of her occupation of Room 3 and the second applicant paid £950 per month for the sole use of Room 4 with shared use of the kitchen and bathroom/w.c. with two other unrelated occupiers.
2. The property comprises a four bedroom flat above a corner shop. The applicants assert that at all relevant times, the property was occupied by 4 unconnected persons until 23/07/2023 and thereafter by 3 persons until 07/08/2023 after which time there were 2 persons left in occupation.
3. In their individual forms of applicants application, the applicants alleged the first and/or second respondent failed to obtain an additional licence said to be required by the local authority, the London Borough of Hammersmith and Fulham (LBHF).

The application

4. Each applicant has made an application for a rent repayment order (RRO) for the alleged offence under s.72(1) of the Housing Act 2004 i.e. control or management of an unlicensed HMO.
5. The first applicant seeks a rent repayment order in the sum of £5,303.70 (revised after the return of the deposit to £4,804.70) for the period 22 October 2022 to 31 August 2023.
6. The second respondent seeks a rent repayment order in the sum of £3,800.00 for the period 11 March 2023 to 22 July 2023.

Litigation History/Preliminary issue

7. The tribunal gave directions on 25 January 2024, so it could be concluded after an oral face to face hearing. Subsequently, the hearing date was vacated due to uncertainty as to whether the respondents had been served with notice of this application and rescheduled.
8. Following re-service of the relevant applications and supporting documents the respondents have failed to play any part in these proceedings or to comply with the tribunal's directions and did not appear at the hearing and were not represented.
9. However, the tribunal was satisfied the respondents had been notified of this application by email using an email address associated with or used by the respondents. Consequently, the tribunal determined it was appropriate to proceed in the respondents' absence.

The hearing

10. An oral face to face hearing was held on 16/05/2023 at which the applicants represented themselves and relied upon a bundle of documents comprising 71 electronic pages. The respondent did not appear and were not represented and made no submissions in respect of their respective positions as regards the application.
11. The applicants spoke to their Statements in support of the application and showed the tribunal that the rent demanded had been paid in full and confirmed neither had been in receipt of housing costs/Universal Credit during the relevant periods.

Reasons for the tribunal's decision

12. Section 254 of the Housing act defines an HMO as:

(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.

(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 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).

(4)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.

(5)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.

(6)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.

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

(8)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.

12. The tribunal found the subject property satisfied the definition despite being variously described by the local authority as a house or referred to as a flat above a corner shop. The tribunal finds the applicants each had sole use of one room and share bathroom/w.c/ and kitchen facilities. The tribunal also finds the applicants occupied the subject property as their main accommodation throughout the relevant period for which the RRO is claimed.

13. The applicants were able to show through their copies of their ‘Lodger Agreements’ signed by the second respondent; the payment of rent to the first respondent and the group WhatsApp messages in respect of matters relating to the maintenance, works and use of the property. Consequently, the tribunal was satisfied the first and second respondents had the control or management of the property.

14. However, the applicants were also required to establish what sort of licence was required by the local and demonstrate it had not been obtained by the respondents. As the subject property was not said to have been occupied by 5 or more persons and there not a large HMO that required a mandatory licence.

13. The applicants relied on emails from exchanged between Michael Simms-Davis from LBHF and Oaklands Estates and the applicants. Although an inspection of the property was carried out by Mr Simms-Davis on 11 August 2023, this focused on the need for works of improvement, rather than the issue of licensing. Mr Simms-Davis stated in an email dated 16/10/2024:

‘Not only were there multiple hazards found during our inspection, but this HMO property appears to be unlicensed.

15. However no further evidence was provided by the applicants as to the local authority licensing schemes that were active at the relevant time or which included the subject property. Consequently, as the onus is on the applicants to prove each element of the alleged offence, the tribunal finds the applicants have failed to establish so that the tribunal is sure of:
 - (i) the licensing scheme that applied to the subject property; and
 - (ii) The requirements of that licensing scheme.
16. Therefore, the tribunal finds the applicants have failed to establish whether an offence was committed by the first and/or second respondents. Consequently, the tribunal is not required to consider whether a RRO should be made or in what amounts, although the tribunal was satisfied that the applicants had suffered from significant inconvenience as a result of the first and/or second respondent’s actions during the course of refurbishment works to the and kitchen. The tribunal accepts the applicants’ evidence that for significant periods they were without basic amenities such as a working toilet or cooking facilities.
17. In conclusion, the tribunal refuses the application for a rent repayment order.

Name: Judge Tagliavini

Date: 3 June 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).