



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

Case reference : **LON/00BK/HMF/2023/0196**

Property : **12 Arden Crescent, London E14 9WA**

Applicant : **(1) Ms Severgnini
(2) Ms Ecsedi
(3) Ms Hae Won Kim**

Representative : **Mr Muhammed Williams, Tower
Hamlets Borough Council**

Respondent : **Mr Far Hor Chong**

Representative : **In person**

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
Ms F Macleod MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **22/3/2024 & 13/5/2024**
Date of decision : **11 June 2024**

DECISION

Summary of the Decisions of the tribunal

- (1) The tribunal finds the respondent has committed an offence under s.72(1) of the Housing Act 2004 between the period 2/2/2022 to 13/1/2023.
 - (2) The tribunal makes rent repayment orders (RRO) in the following sums:

(1) Ms Severgnini:	£5,264.50
(2) Ms Ecsedi:	£3,939.50
(3) Ms Hae Won Kim:	£4,552.00
 - (3) The respondent is to reimburse the applicants with the sum of £100 for their application and £200 reflecting the application and hearing fees paid.
 - (4) The tribunal directs the respondent to pay the said sums at (2) and (3) above within 28 days of the Date of this Decision being sent to the parties.
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Background

1. This is an application under section 41 of the Housing and Planning Act 2016 from the applicant tenants for rent repayment orders (RROs). The three applicants occupied the subject property situate over three floors with 4 bedrooms, three of which were ensuite, a living room, kitchen and bathroom under individual tenancy agreements with shared use of kitchen bathroom and w.c. facilities ('the property'). The respondent is the registered owner and was the named landlord on the applicants' tenancy agreements.

The application

2. It is asserted that the landlord committed an offence of controlling or managing an unlicensed HMO contrary to Housing Act 2004, section 72(1). An Additional Licence being required by the London Borough of Tower Hamlets (LBTH) under its Additional Licensing Scheme introduced with effect from 01/04/2019 where there are:

*Three or more people living as 2 or more households
They share facilities such as a bathroom or kitchen
At least one of the tenants pays rent.*

The Additional HMO Licence scheme also includes flats with 5 or more tenants living as two or more households in purpose built blocks with three or more flats.

3. The Applicants sought RROs for different periods.
 - (i) Ms Severgnini claims from 2 February 2022 to 13 January 2023 in the sum of £10,529.00 having occupied under an Agreement from 2 August at a rent of £925 per month.
 - (ii) Ms Ecsedi claims from an unspecified day in May 2022 to 13 January 2023, in the sum of £7,879.00 having occupied under an Agreement from 1 May 2022 at a rent of £925 per month which increased to £1,000 per month in November 2022 and to £1,250 in December 2022 until she left on 30/06/2023.
 - (iii) Ms Hae Won Kim from 1 April 2022 to 13 January 2023, in the sum of £9,104.00 under an Agreement with effect from 1 April 2022 at a rent of £950 per month which increased to £1,000 per month from November 2022 and £1,025 in December 2022 and moved out of the premises on 31/04/2023.

Litigation History

4. Directions were given by the tribunal dated 21 September and a hearing of the application was held on 22 March 2024. This was adjourned part-heard in order to provide an opportunity for a further witness relied upon by the applicants to attend. A reconvened hearing was held on 13 May 2024.

The Law

5. The tribunal referred to relevant law under the following sections:

Section 72(1) and (2) of the Housing Act 2004 states:

(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.

Parties' contentions

6. The applicants asserted they had been in occupation of the subject property during the period for which the respective RRO's are sought as their main or only occupation. The Applicants each entered into an agreement with respondent that purported to be both variously a 'Licence to occupy' and an Assured Shorthold Tenancy Agreement.' They asserted they paid their rent in full and had not been in receipt of Universal Credit Housing Costs. The respondent did not dispute these assertions nor sought to deny the property required an additional licence during the period of the applicants' occupation.
7. The respondent asserted he had applied for an additional licence and his application had not been properly processed by the local authority. Specifically the respondent asserted he had created general profile on the LBTH website and had then gone on to complete and application for an additional licence for the subject property. However, because he wanted to be sure he had all the information the local authority might require before granting a licence and did not want to run the risk of forfeiting any fee he was required to pay before a decision was made on his application, he did not submit the application. The respondent told the tribunal he had expected to be able to return to the application but found it had 'disappeared' when he had gone back to it.
8. Subsequently, the respondent applied for an additional licence on 14/01/2023.

Reasons for Decision

9. In reaching its decision the tribunal took into account all of the documentary and oral evidence the parties relied upon at both the hearing and the reconvened hearings. However, the tribunal did not take into account the unsolicited further evidence the respondent sent to the tribunal after the conclusion of the reconvened hearing.
10. The tribunal finds the respondent was aware from around 2019 that an additional licence was required for the property. Having heard and considered the written and oral evidence of Ms Ashin, Team Leader from the LBTH who explained in detail the process for any person who wishes to apply for an HMO licence.
11. The tribunal finds the respondent did not submit an application for licence as he stated in his witness statement:

At some point around late June/July 2021, I contacted the council Environmental Health number and asked to speak to an Additional Licensing officer whom(sic) could go through the applications online with myself before I pay for them. I

informed the officer that I was anxious with one particular condition under the terms and conditions found on the portal – It stipulated that the council could reject application and not refund any payment if any missing document is found to have been missed out from the application. I did not want to make avoidable mistakes on each of the 4 applications and wasting the fees.

12. The tribunal finds the respondent chose not to run the risk of losing the licence application fee in case he was not granted a licence. The tribunal finds the respondent was at all times, aware of the steps required to make an application and is someone who by his own admission is computer and financially literate and was not misled either by the online application or by an unnamed local authority. The tribunal finds the respondent did not submit his application for an additional licence until 14/01/2023.
13. Therefore, the tribunal finds the respondent's defence of 'reasonable excuse' as not made out on the balance of probabilities. The applicants have proved, so the tribunal is sure the respondent has committed the offence of having the control and management of a property that was required to be licensed but was not so licensed.
14. In considering the amount of any RRO the tribunal had regard section 74(6) of the Housing Act 2004 which states:

In such a case the tribunal must, in particular, take into account the following matters—

(a)the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);

(b)the extent to which that total amount—

(i)consisted of, or derived from, payments of relevant awards of universal credit or housing benefit, and

(ii)was actually received by the appropriate person;

(c)whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;

(d)the conduct and financial circumstances of the appropriate person; and

(e)where the application is made by an occupier, the conduct of the occupier.

15. The tribunal finds the conduct of the applicants does not require any deductions to be made as they conducted themselves in a good tenant-like manner throughout. The tribunal finds as is common in shared accommodation settings, not all tenants are able to ‘get on’ with each other but places no significance on the respondent’s allegation the applicants’ behaviour caused another tenant to move out.
16. The tribunal finds the respondent is a professional landlord as he owns a number of properties of which 4 are ‘buy to let’ properties in LBTH and which he has let for some time. The tribunal finds the respondent is knowledgeable about the fire/safety/licensing requirements imposed by the HMO licensing schemes.
17. However, the respondent provided no evidence of his income from both his employment and his properties. However, the tribunal take into account the respondent has no previous relevant convictions and was responsive to the applicants’ complaints. The tribunal accept the respondent remotely controlled the level of heating which did not suit all of the applicants but accepts the respondent’s explanation that other tenants liked the heating to be set at a tolerable level rather than being subject to excessive heating levels preferred by others.
18. Therefore, the tribunal considers that in all the circumstances, it is appropriate to make a deduction of 50% from the sums sought by the applicants. The tribunal makes the following awards:

(1) Ms Severgnini:	£5,264.50
(2) Ms Ecsedi:	£3,939.50
(3) Ms Hae Won Kim:	£4,552.00
19. The tribunal also make an award of £300 for reimbursement by the respondent to the applicants for the application and hearing fees. This sum and the sums at paragraph 13 above are to paid to the applicants within 28 days of this decision being sent to the parties.

Name: Judge Tagliavini

Date: 11 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).