



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

Case reference : **MM/LON/00BG/HMF/2023/0274**

Property : **13 Wynan Road, London E14 3AF**

Applicants : **(1) Ariane de la Motte
(2) Frederico Cinti
(3) Giorgia Hounkpatin
(4) Matteo Colletti**

Representative : **Mr Williams, London Borough of
Tower Hamlets**

Respondent : **Russel Haque**

Representative : **In person**

Tribunal members : **Tribunal Judge I Mohabir
Mr S Wheeler MCIEH, CEnvH**

Date of hearing : **16 May 2024**

Date of decision : **17 June 2024**

DECISION

Introduction

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondent in respect of 13 Wynan Road, London E14 3AF (“the property”).
2. The property is described as a 4-bedroom semi-detached house with 2 bathrooms, kitchen, living room, toilet and garden.
3. The Respondent had initially granted an assured shorthold tenancy jointly to the Applicants commencing on 25 August 2021 for a term of 12 months at a rent of £2,650 per month. On 25 August 2022 the Respondent granted a further assured shorthold tenancy agreement to the Applicants for a term of 12 months at a monthly rent of £2,850.
4. The London Borough of Tower Hamlets (“LBTH”) introduced the Additional licence scheme in Tower Hamlets on 01/04/2019. The Housing Act 2004 provides for licensing to be extended by a local authority to include HMOs not covered by mandatory licensing. The Additional Licence is applicable to all properties 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.
5. It was common ground that the property was an HMO and was not licensed pursuant to the scheme at the commencement of each of the Applicants’ tenancies. It was also common ground that the Respondent did not apply for an HMO licence until 20 May 2023.
6. Subsequently, the Applicants jointly made this application dated 30 October 2023 for a joint rent repayment order limited to the 11 month period from 26 April 2022 until 27 March 2023 in the sum of £33,400.

Relevant Law

Requirement for a Licence

7. Section 72 of the Act provides:
 - (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.
 - (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person’s occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) ...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(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 occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

8. The Housing Act 2004 Part 2 s.95(1) provides:

(1) A person commits an offence if he is a person having control of or managing an house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Section 263 of the Act defines a person having control or managing as:

(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (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; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through an other person as agent or trustee, that other person.

Making of rent repayment order

9. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers) and 5 (control or management of unlicensed house) of the table.

10. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(1) 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 has 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 in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) ...

(c) ...

Amount of order: tenants

11. Section 44 of the Act provides:

(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 the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of

the period of 12 months ending with the date of the offence

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 paid 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, and

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

Hearing

12. The hearing in this case took place on 16 May 2024. The Applicants were represented by Mr Williams, a Rent Repayment Project Officer employed by LBTH. The Respondent appeared in person.

Was the Property an HMO?

13. This was not disputed by the Respondent. In his statement of case, he admits that he received letters from LBTH on 5 December 2020 and 19 January 2021 requesting that he obtain an HMO licence for the property.

14. In subsequent correspondence with LBTH, he sought to dispute the necessity for the licensing scheme and made various criticisms of it. In addition, the Respondent raised an issue about the public register kept by the Council about who held an HMO licence and how this violated his privacy. Of course, none of these matters can be taken into account in the exercise of the Tribunal's decision under section 44(4) of the Act.

15. Based on the evidence before it, the Tribunal made the following findings of fact beyond reasonable doubt:

(a) that the property was a house and was in the additional licensing area in the London Borough of Tower Hamlets, therefore, required to be licensed under sections 61(1) and 55 respectively in the Act.

(b) that the property was not licensed during the Applicants' occupation, but any award is limited to a maximum of 12 months' rent received for the periods of time claimed by them. Therefore, the Tribunal was the

satisfied that the Respondent had committed an offence under section 72(1) of the Act.

Amount of RRO?

16. In the exercise of its discretion under section 44(4)(a) and (b) of the Act, the Tribunal made the following findings of fact:
- (a) for an additional licence this was not the most serious offence within this category because the property was not so seriously deficient and was later granted an HMO licence by LBTH. The only requirement for the Respondent to obtain the licence was to fit a kitchen door. This was the only condition for HMO licence.
 - (b) in relation to the Respondent's conduct, as a professional landlord, he deliberately ignored LBTH's instruction to obtain a licence in 2020 for the previous tenants. The Respondent then proceeded to relet the property as an HMO to the Applicants rather than getting a licence or reletting to a single family unit. It was open to him to apply for a licence as a protective measure on a without prejudice basis and continue to make his arguments with the LA about the rationale for the scheme. The Tribunal was satisfied this was a deliberate act by the Respondent for financial reasons and attached a high level of culpability to this.
 - (c) in relation to allegations by both parties about the others conduct in relation to disrepair by the Respondent and damage caused by the Applicants, the Tribunal was satisfied that neither allegations were serious or significant. In any event, the Tribunal not presented any evidence about these matters apart from a few photographs by the Respondent, which appears to have been resolved by a deduction from the deposit paid by the Applicants. Therefore, the Tribunal attached no weight to these allegations.
 - (d) as to the Respondent's financial circumstances, no disclosure made by him about his financial circumstances, save for assertions about his strained finances caused by the Covid-19 pandemic and the increase in mortgage costs which resulted in a small profit being made by him from the rental income. However, the complete lack of financial disclosure by the Respondent meant that his assertions could not be substantiated. Therefore, Tribunal placed no reliance on his alleged financial difficulties.
17. The Tribunal then turned to assess the quantum of the rent repayment order that should be made against the Respondent.
18. Guidance was given by the Upper Tribunal in ***Vadamalayan v Stewart*** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting

point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matters set out in section 43(4).

19. This decision was followed by the Upper Tribunal decision in the case of ***Williams v Parmar [2021] UKUT 244 (LC)*** where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.
20. The Upper Tribunal held that “*there is no presumption in favour of the maximum amount of rent paid during the period*”. It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be “*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*”. Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.
21. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord comprise part of the “*conduct of the landlord*” and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating “*meritorious conduct of the landlord may justify a deduction from the starting point*”. It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the “*scale of seriousness, by reason of mitigating circumstances or otherwise*”.
22. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.
23. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.
24. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the “starting point” that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.

25. Further guidance has been given by Judge Cook in the Upper Tribunal at paragraph 20 in [Acheampong v Roman](#) [2022] UKUT 239 about determining the amount of an RRO. Adopting that approach, the Tribunal determined:
- (i) the starting figure for the assessment of the RRO was the sums claimed by the Applicants set out application for the periods of time in respect of which the property was unlicensed;
 - (ii) the relevant conduct on the part of both parties has already been considered above.
 - (iii) the financial circumstances of the Respondent are unknown. As the Tribunal understands it, the Respondent has not been convicted of any offence.
 - (iv) the Tribunal bore in mind that the Respondent is a professional landlord and, therefore, his failure to obtain a licence when he was on notice to do so resulted in a high level of culpability.
26. Accordingly, taking these considerations into account, the Tribunal made a rent repayment order in favour of the Applicants for the total rent (including any arrears) paid by them for the period in respect of which the property was unlicensed of 70% of the total rent paid by the Applicants. The Tribunal noted that the tenancy agreements required A to pay the utilities, so no discount is made for this. The claim was limited to the 11 months in the application, which was not amended, so Tribunal cannot make a higher award for 12 months.
27. The total rent paid by the Applicants for the claim period was £30,737 (from 26.4.22-27.3.23 = 11 month and 2 days) and the RRO is therefore £30,737 @ 70% = £21,515 (rounded).
28. The total amount of the rent repayment order is payable by the Respondent within 28 days of this decision being issued to the parties.
29. In addition, the Respondent is ordered to reimburse the Applicants the fees of £300 paid to the Tribunal to have the application issued and heard on the basis that the application has only succeeded in part. This sum is also to be paid by the Respondent within 28 days of this decision being issued to the parties.

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).