



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

Case reference : **LON/00BF/HMF/2024/0013**

Property : **241 Croydon Road, Wallington, SM6
7LR**

Applicant : **Sunday Lawrence Akinwale**

Representative : **In person**

Respondent : **Samuel Babajide Saibu**

Representative : **Benson Fadaini , solicitor, of
Finsbury Law**

Type of application : **Application for a rent repayment
order by tenant**
Sections 40, 41, 43, & 44 of the Housing
and Planning Act 2016

Tribunal : **Judge Adrian Jack and Tribunal
Member Antony Parkinson MRICS**

Date of decision : **2nd July 2024**

DECISION

1. By an application dated 4th December 2023, received by the Tribunal on 5th December 2024, the applicant seeks a rent repayment order in the sum of £6,960, representing rent paid in respect of the three months January to March 2022 at £550 and nine months at £590 for April to December 2022. (Rent was paid on the 25th of the preceding month.) The applicant asserts that he was one of six men renting rooms in the property from the respondent, who was running the premises as an unlicensed house-in-multiple occupation (“HMO”).

2. The applicant said that he was nurse at a nearby hospital and in late 2020 had looked for accommodation in the locality. The respondent had offered him a room in December 2020 at a rent of £550 per month with a deposit of £580. The respondent told him that he did not live there; he was just managing the property. Upstairs there were four bedrooms. The downstairs living rooms had been converted into two further bedrooms. There were four men living there before he moved in, each in separate bedrooms. He took one of the empty rooms. The house had one shared bathroom, two shared toilets and one shared kitchen. The applicant moved in on 3rd January 2021 (paying a reduced rent in the first month), which he paid electronically, as he did all subsequent rent payments. The rent was increased to £590 per month from April 2022. The week he moved in another man moved in making six. All of them lived there as their only residence. They were all in separate households. The respondent never lived there.
3. The applicant said that in December 2022 the respondent told him to leave in two weeks' time. The applicant refused, saying he needed more time to find somewhere. He paid the rent on 25th January 2023, but the same day the respondent changed the locks and locked him out of the property. The respondent never repaid the deposit, nor the rent paid on 25th January 2023. He had difficulty recovering his property from his room.
4. The applicant called Samuel Kiladejo as his witness. Mr Kiladejo said that he had moved into the property on 17th February 2022. He replaced one tenant, Jordan Pratt, who was leaving. When he moved in the men living there were Leon Milaid (known as "K"), Simon, Olu, Augustine and the applicant. (He did not know all the surnames.) Each had their own bedroom with their own key to their individual bedroom. Each occupied the house as their only residence. The respondent did not live there.
5. The respondent said that he had rented the property from Priyanthini Naveenthiran, who used an estate agent Andrews to find tenants for the property. He held the property under an assured shorthold tenancy from 31st January 2020 to 30th January 2021 at £1,700 per month. It was a four-bedroom house. Originally, he had lived there with his brother and his mother. They had moved out and from November 2020 he had taken in lodgers. He always lived there. There were never more than four lodgers, so the property was never an HMO. Occasionally there were more than four in the house, because the lodgers sometimes had guests, but the guests did not occupy the property as their only or main residence.
6. The respondent was legally represented and chose to give evidence, although as this was a quasi-criminal case he was not obliged to. He produced a gas safety report and an electric installation and condition report, both good from 19th December 2020 to 19th December 2021, but

not for any subsequent period. He had a fresh assured tenancy agreement for one year from 31st January 2021.

7. Before the hearing the respondent produced a copy of a possession order made by District Judge Coonan on 23rd November 2022. The copy originally served was redacted. Prior to the hearing the Tribunal gave directions that if he was to rely on the document he should produce the original in unredacted form. At the hearing he did so. The redacted portion showed that the action number was J3PP9428. It also showed that he owed the landlord arrears of rent of £8,586.20 plus costs.
8. The respondent provided no evidence that he had paid the electricity or gas bills, nor the WiFi. He did provide a council tax bill dated 10th February 2023, which showed arrears of £3,991 of which £3,229.76 was already the subject of court proceedings.
9. The respondent said that, except for one or two payments in cash, all of his lodgers paid electronically. However, he did not produce any bank statements, which would have shown who had been paying him money. If there had never been more than four men paying, then the bank statements would have demonstrated that.
10. We are sure that the applicant has established his case. Throughout the period for which the rent repayment order is sought, the property was occupied by at least five men (and generally six) who all formed separate households. They occupied as their sole residence. The respondent did not live there at any time relevant to the applicant's claim.
11. Although it is not necessary for us to determine the status of the men, we are sure that they each held tenancies of the room they occupied: see the famous House of Lords case, *Street v Mountford* [1985] AC 809. They had exclusive possession of their bedrooms. The fact that the agreement between them and the respondent was oral is irrelevant. A tenancy from month to month can be made orally. The respondent was their landlord. He was not acting as agent for Mr Naveenthiran.
12. We reach these conclusions for these reasons. The applicant himself was an impressive witness who responded well to the vigorous cross-examination of the respondent's solicitor. Mr Kiladejo was also an impressive witness. He had brought no claim himself and therefore had no financial interest in the outcome of the litigation. Although he was friendly with the applicant, he was in our judgment a substantially independent witness. We find they were both witnesses of truth.
13. By contrast the respondent was an unsatisfactory witness. He did not deny changing the locks on the bedrooms. His eviction of the applicant was in our judgment illegal under the Protection from Eviction Act 1977. It is clear that in the latter part of 2022 he simply stopped paying the rent to Mr Naveenthiran or the utilities bills or the council tax. He pocketed

the monies from the men staying in the property without accounting for the monies owed to Mr Naveenthiran or paying the other overheads of the property. The inevitable consequence was that Mr Naveenthiran would (as he did) seek a possession order in respect of the property. This in our judgment is close to dishonest behaviour and is on any view reprehensible.

14. We do not accept the respondent's evidence where it contradicts the evidence of the applicant and Mr Kiladejo. We are sure the applicant and Mr Kiladejo were telling the truth. That is sufficient for us to find the applicant's case proven to the criminal standard. If, however, we had any doubts they would have been laid to rest by the fact that the respondent could have easily shown via his bank statements that there had never been more than four men paying rent in respect of the property. He did not do so and provided no reason for not having done so.
15. Accordingly, we find the applicant's case proven.
16. We turn then to the amount of the rent repayment order. We consider this to be a bad case. The respondent during the time in respect of which the repayment of rent is sought could not show the premises were safe in respect of gas and electricity. The number of persons in the property raised obvious fire safety issues, which appear never to have been addressed. He clearly took a deliberate decision not to pay the outgoings on the property with the inevitable consequence that his own landlord would (as then occurred) take possession proceedings on grounds of rent arrears. He illegally evicted the applicant.
17. Caselaw shows that in considering a rent repayment order the respondent should be given credit against the rent for outgoings such as utilities. In the current case, however, the respondent has made no attempt to show what he paid in respect of utilities. Given his failure to pay rent to Mr Naveenthiran or the council tax due on the property, we do not consider that there is any basis for assuming that he did pay these other outgoings. The likelihood in our judgment is that he did not pay any of these sums. There is no evidence that any enforcement actions are likely to be successful. In these circumstances, we give no credit for outgoings: the respondent has simply not proved that he paid any.
18. In a bad case such as the present, caselaw shows that an award of up to 85 per cent of the rent paid by the applicant can be made. We do, however, have to consider the respondent's means. He has a County Court award against him in favour of Mr Naveenthiran in the sum (including costs) of £9,067.95. He also owes council tax and other monies. In our judgment it is appropriate in these circumstances to make a rent repayment order in the sum of 70 per cent of the rent claimed. The rent repayment order will therefore be in the sum of £4,872 (70 per cent of £6,960).

19. As regards costs, the applicant has paid an application fee of £100 and a hearing fee of £200. Since he has won, it is right that the respondent should pay that.

DECISION

1. The Tribunal makes a rent repayment order that the respondent do pay the applicant £4,872.
2. The Tribunal orders that the respondent do pay the applicant £300 in respect of the fees payable to the Tribunal.

Judge Adrian Jack

2nd July 2024

SCHEDULE: THE LAW

1. Section 40 of the Housing Act 2016 confers power on this Tribunal to make a rent repayment order “where a landlord has committed an offence to which this Chapter applies.” The only relevant offence is that in section 72(1) of the Housing Act 2004 (control or management of an unlicensed HMO). Under section 41 a tenant can apply for a rent repayment order in respect of housing let to him in breach of, inter alia, section 72(1). By section 43(1) this Tribunal may only make a rent repayment order if it is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, here under section 72(1).
2. Because cases have to be proved to the criminal standard of proof, the burden is on the tenant to establish that an offence has been committed. The landlord has the right to silence. There is no provision for judgment by default. Where a tenant has established a *prima facie* case, it may be appropriate in some cases to draw an inference from the landlord’s failure to adduce evidence, but this cannot reverse the burden of proof. As in contempt proceedings, “[t]he burden of proof remains on the Claimant throughout, to the criminal standard, and the Claimant can invite the Court to conclude, on the basis of all the evidence in the case, that the Defendants [are in breach]. If the contemnor chooses to remain silent in the face of that dispute, the Court can draw an adverse inference against him, if the Court considers that to be appropriate and fair, and recalling that silence alone cannot prove guilt”: *VIS Trading Co Ltd v Nazarov* [2015] EWHC 3327 (QB), [2016] 4 WLR 1 at [31], approved by the Court of Appeal in *ADM International SARL v Grain House International SA* [2024] EWCA Civ 33 at [91].
3. Section 254 of the 2004 Act defines an HMO (so far as material to the current case) as follows:

- “(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’)...
- (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.”