



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00BG/HMF/2023/0215.

Property : 60 Buxton Street, London E1. 5AT.

Applicant : Mr. Justinas Kiskis and Ms. Neringa Cypaite.

Representative : Muhammed Williams, LBTH
Environmental Health and Trading Standards.

Respondent : Ahjay Rai So Lalhar and Chandsekar Rai Lalhar.

Representative : n/a

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 N O'Brien, Professional Member Apollo Fonka

Date of Decision : 28 June 2024

DECISION

Decision of the Tribunal

- (1) The Tribunal makes a Rent Repayment order in the sum of £17,220.
- (2) The Tribunal orders the Respondents to repay the application and hearing fees paid by the Applicants in the sum of £300.
- (3) The above sums are to be paid by 26 00.

CASE SUMMARY

1. The Tribunal has received an application under section 41 of the Housing and Planning Act 2016 (HPA 2016) from the applicant tenants for a rent repayment order (RRO). The Applicants assert that the Respondents, their former landlords, committed an offence of managing or operating a house required to be licensed pursuant to s.85 of the Housing Act 2004 (HA 2004) but which was not so licensed. The Applicants seek a Rent Repayment Order (RRO) for the period from 25 October 2021 and 25 September 2022 in the sum of £24,600. The application was sent to the tribunal on 15 August 2023. It is the Applicant's case that the landlords did not apply for a licence until 27 October 2022.

The Hearing

2. The matter was initially listed for a final hearing on 15 May 2024. Shortly before that hearing the First Respondent applied to have that hearing adjourned due to medical treatment which the Second Respondent was undergoing. That hearing was adjourned and relisted on 28 June 2024, being one of 3 dates which the Respondents had indicated would be convenient for them both. On 25 June 2024 the First Respondent again requested that the hearing be adjourned due to Second Respondent's poor health. No medical evidence was supplied. That application was refused by Judge Mohabir and the matter remained listed for hearing on 28 June 2024. The Second Applicant attended the hearing as did the Applicants' representative Mr Williams of the London Borough of Tower Hamlets (LBTH). Neither Respondent appeared at the day of the hearing, and the tribunal considered that it would be in the interests of justice to proceed in their absence.
3. At the end of the hearing we gave an oral determination but informed the attendees that we would also give written reasons for our determination.

Background

4. The property is a 2 bedroomed house. It is situated within a ward within LBTH which is the subject of a selective licencing regime. The selective licencing regime required all privately rented premises within specific wards to be licensed pursuant to s.85 of the Housing Act 2004. The statement of reasons filed with the application indicates that this selective licencing regime has been in place since 2016. In the hearing we were shown a map of the areas covered by the regime and it includes Buxton Street.
5. It is the applicant's case that they rented the property through a company known as Greenhill Investments Ltd, which trades under the name Winkworths Estate Agents, pursuant to an assured shorthold tenancy which commenced on 27 September 2021. A copy of the tenancy agreement is included in the bundle. It states clearly on its face that both respondents are the landlords and the Applicants are tenants. A further tenancy agreement was entered into on 1 October 2022 which is included in the bundle. It appears to be manually signed by both respondents and confirms that they are the landlords and names the Second Applicant as the tenant. Ms Cypaite told

us that both she and Mr Kiskis were given their own electronic copy of the 2022 tenancy agreement to sign.

6. It is the Applicants' case that they jointly paid to the Respondents the sum of £24,600 in rent between 25 October 2021 to 25 September 2022. The Applicants have included in their bundle copies of the Second Applicant's bank statements which show that a payment of £2050 was made to Greenhill Investments Ltd on 24 October 2021, and that thereafter 11 payments of £2050 were made directly to the Second Respondent, the last relevant payment being on 25 September 2022.
7. The Respondents initially appointed Winkworths Estate agents to manage the property. However shortly after the commencement of the tenancy they terminated this arrangement and informed the Applicants that thenceforth their agent would be a Mr James Cooke. The applicants have never met either Respondent or the said Mr Cooke. Ms Cypaite informed us that she believed that 'James Cooke' may have been an alias for the First Respondent. She thought this because she noted that when he messaged her via WhatsApp the initials shown were not JC but AR, these being the First Respondent's initials. She related that during one telephone conversation with 'James Cooke' she heard someone on the other end of the call refer to the caller as 'Jay'. Finally she related that on more than one occasion she called the number she had been given for the Respondent's agent and asked if she was speaking to 'Mr Cooke'. She got the impression that the other person on the call appeared to be momentarily confused before affirming that he was.
8. Included in the bundle is email correspondence passing between LBTH and the First Respondent in October 2022. Initially the first Respondent indicated that he was living at the property and that the First Applicant was his friend and was merely looking after the property for him. However he later stated that he thought that licencing only applied to HMOs (houses in multiple occupation) and accepted that he had to apply for a licence. A copy of his application dated 27 October 2022 for a licence pursuant to the selective licencing regime is included in the bundle. The form completed by the First Respondent indicates that this was a first application in respect of this property and that it was being occupied by 2 people.
9. The Respondents have played very little active part in these proceedings. They did not file a bundle as directed by the tribunal. They filed a one-page bare denial in which they denied that the Applicants were ever their tenants, and deny that they ever received any rent from either of them.

The Relevant Law

9. Section 40 of the HPA 2016 provides;
 - (1) *This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.*
 - (2) *A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—*

(a) repay an amount of rent paid by a tenant, or...

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

10. Section 41 of the HPA 2016 provides

(1) 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.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

11. Section 43 of 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);

12. Section 44(1) HPA 2016 of the Act provides that where the First-tier Tribunal decides to make a rent repayment order under s41(1) in favour of a tenant, the order may be made in relation to rent paid over the period not exceeding 12 months during which the landlord was committing the offence.

13. The power of local authorities to designate particular areas as being subject to a selective licencing regime is contained in the 2004 Act. By virtue of s.95 of HA 2004 Act a person commits an offence if they are in control or manage a house which is required to be licenced by virtue of s.85 of the Act but is not so licenced. An offence under s.95 is a relevant offence for the purposes of s43 of the HPA 2016.

Findings of the Tribunal

14. The tribunal is satisfied beyond all reasonable doubt that the Respondents committed the offence of being in control or managing a house which is required to be licenced by virtue of s85 of the HA 2004 but is not so licenced, pursuant to s.95 of the 2004 Act. We are satisfied that this offence was being committed by the Respondents from 27th September 2021 until 27 October 2022 when the First Respondent filed his application for a licence with LBTH. We are so satisfied for the following reasons; Firstly the applicants have supplied copies of two tenancy agreements which stated expressly that the respondents were the landlords in respect of the premises. Secondly the second tenancy agreement dated 1 October 2022 bears two manual signatures in the names of both Respondents. Thirdly we have been shown copies of the Second Respondent's bank statements which show regular monthly payments of £2050 being made to a bank account in the Second Respondent's name.
15. The respondents have not sought to argue that they had any reasonable excuse for not having the required licence. Consequently, we are satisfied that they have committed a relevant offence for the purposes of s.41 of the Housing and Planning Act 2016.

Amount of RRO

16. We are satisfied that the sum of £24,600 was paid to the respondents between October 2021 and 25 September 2022. These payments covered the period up to and including 24 October 2022. The application for a licence was made on 27 October 2022 and so all these payments were made in respect of a period during which the Respondents were committing the offence. We note that the first payment was made directly to the Respondents' agent, but the Respondents have not sought to raise any particular argument in respect of this payment, and we therefore conclude that it was made to the Respondents via their agent.
17. In the case of *Acheampong v Roman [2022] UKUT 239 (LC)* the Upper Tribunal set out a 4 stage test which the tribunal must apply when considering how much to order a landlord to pay by way of an RRO. In summary the tribunal must;
 1. Ascertain the whole of the rent for the relevant period.
 2. Subtract any element of that sum that represents payment for utilities that only benefit the tenant. It is for the Landlord to supply evidence of these, but an experienced Tribunal will be able to make an informed estimate.
 3. Consider seriousness both compared to other types of offences for which an RRO can be made and examples of the same type of offence. What proportion of the rent (after deductions as above) is a fair reflection of the seriousness of the offence? This is the starting point. It is also the default penalty in the absence of any other factors but maybe higher or lower in light of the final step.

4. Consider deductions or additions in light of section 44(4) factors (conduct of landlord and tenant, financial circumstances of landlord and any previous convictions of the landlord in relation to offences set out in section 40)

18. In the case of *Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC)* the Upper Tribunal considered that in deciding the level of any RRO, the tribunal should distinguish between the rogue landlord against whom a RRO should be made at the higher end of the scale and the landlord whose failure was to take sufficient steps to inform themselves of the regulatory requirements.

19. We do not consider this is a particularly serious offence when compared to the other offence in respect of which a RRO can be made. These include controlling an unlicensed HMO, unlawful eviction and harassment. The Respondents cannot be described as rogue landlords. We note that the Second Applicant accepts that they were given copies of the relevant gas safety certificate at the start of the tenancy and a copy of the electrical certificate. They accept that the respondents did attend to reports of disrepair although they expressed dissatisfaction with the speed with which their concerns were addressed and, in the case of a leak from the upstairs bathroom, the quality of the remedial work. The deposit was protected in a relevant statutory scheme, and we note that initially the Respondent let the property through a well-known and reputable nationwide estate agent, although we would have expected such an agent to be aware of the existence and details of any selective licensing regime applicable in their area. We also take account of the fact that once the Respondents were made aware of the requirement for a licence, they made the appropriate application with relative alacrity.

20. There was no conduct on the part of the Applicants which might be relevant to the quantification of the RRO.

21. Had the above been the only considerations we would not have imposed a RRO of any more than 50% of the maximum. However the First Respondent has conducted himself poorly both when LBTH was initially investigating this matter in October 2022 and in the course of these proceedings. At first he represented to LBTH's officers that the First Applicant was just a friend who was looking after the property. It is the Applicant's case that the First Respondent/James Cooke asked them to lie to officers of LBTH as regards their occupancy of the property. Secondly, they have done nothing more in these proceedings other than to flatly deny that the Applicants were their tenants or that they ever received rent from them. We have rejected this defence for the reasons set out above. Thirdly although they contested the application, they did not file any evidence in support of their defence and failed to file any bundle. Finally we find that, irrespective of whether or not 'James Cooke' was in fact the First Respondent, they complied with their duties to repair and maintain the property in a lackadaisical and hands-off manner.

22. We consider the above matters to be aggravating features and for those reasons we consider that the correct award is 70% of the rent paid in the relevant period. This results in a RRO of £17,220.
23. We also order the Respondent to reimburse the Applicants in relation to the Tribunal fees of £300. Both sums must be paid by 24 July 2024.

Name : Judge N O'Brien

Date of Decision 28 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).