FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AR/HMF/2023/0304**
HMCTS	:	**V: CVPREMOTE**
Property	:	**Flat 1, 5A Clockhouse Lane, Romford, Essex, RM5 3PH**
Applicants	:	**Chloe Spiteri**
Representative	:	**Deborah Haywood**
Respondent	:	**Rightstone Limited**
Representative	:	**Marisa Testa**
Type of Application	:	**Application for a Rent Repayment Order**
Tribunal Member	:	**Judge Shepherd** **Chris Gowman MCIEH**
Venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2nd July 2024**

DECISION

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1. On 28 October 2023, the Applicant issued an application under section 41 of the Housing and Planning Act 2016 for a rent repayment order (RRO). The application relates to Flat 1, 5A Clockhouse Lane, Romford, RM5 3PH ("the premises"). The Flat is one room in a three bedroom maisonette above shop premises. The Applicant moved into occupation of the Flat on 22 August 2020. She still occupies the Flat.

2. The Applicant issued the application against both Rightstone Ltd, her landlord, and Rainbow Reid Property Management, the managing agents. On 29 November, the Tribunal sent a copy of the application to these respondents. Later she focussed her application on the Respondents Rightstone Ltd.

3. At an oral case management hearing which took place by video conferencing attended by Ms Deborah Haywood, the Applicant's mother, and Mr Dino Da Silva, on behalf of the respondents Judge Latham decided the application was made in time. This decision was not challenged.

4. The Applicant lives with autism and struggles with PTSD. She therefore appointed her mother to represent her in these proceedings.

5. In her application, the Applicant sought a RRO based on the following offences:

   (i) control or management of an unlicenced HMO contrary to section 72(1) of the Housing Act 2004;

   (ii) unlawful eviction contrary to section 1(2) of the Protection From Eviction Act 1977; and

   (iii) harassment of occupier contrary to section 1(3) and (3A) of the Protection From Eviction Act 1977.

5. At the hearing on 28th May 2024 the Applicant accepted that her allegations did not support the latter two offences and agreed to focus her attention on the first alleged offence. She was represented by her mother and the Respondents were represented by Marissa Tsbta an employee of Rightstone Limited.

6. The Respondent was a self - proclaimed professional land lord who had let premises for over 30 years. The premises were converted between 7-8 years ago. The managing agents at that time were Rainbow Lettings.

7. The council, Havering declared the Additional Licensing scheme which included the premises on 1st March 2018. The Applicantr's tenancy at the premises began on 22nd August 2020. This was for a six month term. She signed a further tenant agreement which was for a further 6 month term from 22nd August 2021 to 21st February 2022. Thereafter she occupies under a statutory periodic tenancy.

8. On 13th July 2023 the council wrote to the agents to state the following:

   An inspection of the above property was carried out by an Officer from this Service on 13/07/2023. The inspection revealed that the property is a House in Multiple Occupation (HMO), (as defined by The Housing Act 2004) and that there were contraventions of The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007. I understand that you are the `person managing' The House in Multiple Occupation (as defined by section 263 of The Housing Act 2004) and as such, you are responsible for ensuring that the provisions of The Licensing and Management of Houses in Multiple Occupation (Additional Provisions) (England) Regulations 2007 are complied with. A person who fails to comply with these regulations commits an offence under section 234(3) of the Housing Act 2004 and is liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently £5,000). Details of the contraventions of the regulations which were noted at the time of the inspection are set out on the attached schedule together with appropriate remedies ….

   I intend to revisit the property on Thursday 10 August at 10:00am to ascertain whether or not you have taken the necessary measures to remedy the contraventions listed in the attached schedule. ….

9. In their written representations the Respondents say that they sought to carry out all remedial works required by the council in a timely manner. There were clearly issues as to access which delayed the process. Overall, it does seem to us that the Respondents did respond positively to the communication from the council. Notwithstanding this we are concerned with the period before, namely between October 2021 and October 2022 when the Applicant and other occupiers were necessarily occupying premises that did not meet necessary safety standards. The Respondents did not provide any viable defence to their failure to license the premises during this period.

Relevant law

10. The Housing Act 2004 (“the 2004 Act”)

11. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an licenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional reedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

12. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that 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."

13. In addition to this definition s.257 states the following:

257 HMOs: certain converted blocks of flats

(1) For the purposes of this section a "converted block of flats" means a building or part of a building which–

(a) has been converted into, and

(b) consists of,

self-contained flats.

(2) This section applies to a converted block of flats if–

(a) building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and

(b) less than two-thirds of the self-contained flats are owner-occupied.

(3) In subsection (2) "appropriate building standards" means–

(a) in the case of a converted block of flats–

(i) on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulations 1991 (S.I. 1991/2768), and

(ii) which would not have been exempt under those Regulations,

building standards equivalent to those imposed, in relation to a building or part of a building to which those Regulations applied, by those Regulations as they had effect on 1st June 1992; and

(b) in the case of any other converted block of flats, the requirements imposed at the time in relation to it by regulations under section 1 of the Building Act 1984 (c. 55).

(4) For the purposes of subsection (2) a flat is "owner-occupied" if it is occupied–

(a) by a person who has a lease of the flat which has been granted for a term of more than 21 years,

(b) by a person who has the freehold estate in the converted block of flats, or

(c) by a member of the household of a person within paragraph (a) or (b).

(5) The fact that this section applies to a converted block of flats (with the result that it is a house in multiple occupation under section 254(1)(e)), does not affect the status of any flat in the block as a house in multiple occupation.

(6) In this section "self-contained flat" has the same meaning as in section 254.

14. As already indicated there was no viable defence that this provision did not apply in the present case.

15. Section 263 provides:

"(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 another person as agent or trustee, that other person."

16. The Housing and Planning Act 2016 ("the 2016 Act")

17. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

18. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

19. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

20. Section 40 provides (emphasis added):

"(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

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply withprohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

21. Section 41 deals with applications for RROs. The material parts provide:

"(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.

22. Section 43 provides for the making of RROs:

"(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)."

23. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(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.

24. Section 44(4) provides:

"(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."

25. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

26. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

27. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

28. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It

is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What

proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

Determination

29. In the present case there was a breach during the 12 month period claimed. Between October 2021 and October 2022 the Respondents should have obtained a license. They did not do so. They are therefore liable for a penalty as no viable reasonable excuse has been offered.

30. The Applicant provided evidence of the rent that she had paid for the relevant period. We were not impressed by her allegations as to bad conduct by the landlord. Overall, we consider that the landlord did seek to address the issue of inadequate works once they were aware of it. There were delays caused by a failure to provide access albeit for valid reasons.

31. Although this was a serious offence of failure to license there was some mitigation. Applying the criteria in Acheampong above:

· The total rent paid for the relevant period was £10404

· There was evidence of the cost of utilities paid for by the landlord. The Respondents provided evidence for this. We consider that it is only right to apply a 25% proportion of the electricity bill to the Applicant as the other flat was entirely powered by electricity. The other charges were not challenged by the Applicant. The council tax paid by the landlord is not recoverable. This means that the total deduction is

£306 – electricity

£57.66 – water

£237.30- gas

Total deductions = **£600.96**.

32. As already indicated, this was a serious licensing breach although compared to other types of offence such as unlawful eviction it was not as serious and there was some mitigation.

33. Applying the other criteria under the Act there was no real evidence of poor conduct by the Respondent.

34. In light of all of these matters we consider that an 70% award is appropriate which equates to £7280 minus the deductions £600.96 = **£6679.04**.

35. Accordingly, we determine that the Respondent should pay £6679.04 to the Applicant. In addition, the Applicant should be reimbursed her hearing and application fee by the Respondent (a total of £300)

Judge Shepherd

2nd July 2024

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber)

RIGHTS OF APPEAL

1. 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.

2. 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.

3. 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.

4. 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.