FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/HMF/2023/0235**
Property	:	**Flat 14 Atlantic House, 14 Waterson Street, London, E2 8HH**
Applicants	:	**Alexander Charles Knapper** **Fraser Edward Llewellyn Lloyd** **Samuel Hives**
Representative	:	**Jamie McGowan, Justice for Tenants**
Respondent	:	**Andrew Linch**
Representative	:	**Michael Field, Counsel**
Type of Application	:	**Application by Tenants for rent repayment order. Sections 40,41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal	:	**Judge Bernadette MacQueen** **Rachael Kershaw, BSc**
Date of Hearing	:	**29 May 2024**
Date of Decision	:	**4 July 2024**

DECISION

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DECISION

1. The Tribunal found that the Respondent had committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72(1) of the Housing Act 2004, and that accordingly a rent repayment order in favour of the Applicants could be made. The Tribunal made a rent repayment order in the total sum of £7,200.04 for the period 4 September 2021 until 3 September 2022, and this must be paid by the Respondent to the Applicants within 28 days of the date of this decision.

2. The Tribunal also ordered the reimbursement of the Tribunal fees in the total sum of £300 and this amount must be paid by the Respondent to the Applicants within 28 days of the date of this decision.

Background

3. On 31 August 2023 the Applicants made an application for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) in relation to Flat 14 Atlantic House, 14 Waterson Street, London, E2 8HH (the Property).

4. Directions made on 17 November 2023 required the Applicants and Respondent to prepare bundles of relevant documents for use at the hearing and to send these to each party and the Tribunal.

5. The Applicants produced a bundle that consisted of 362 pages, and the Respondent produced a bundle that consisted of 167 pages.

The Hearing

6. The Hearing took place on 29 May 2024 via the Video Hearing Service (VHS). This was directed because an application had been made for Fraser Edward Llewellyn Lloyd to give evidence from abroad. No party objected to the hearing being conducted remotely.

Agreed Facts

7. The Property was a three-bedroom flat in a five-storey building located over a business. The Applicants were the tenants of the Property as follows:

   - Alexander Charles Knapper lived at the Property from 4/2/2021 to 2/9/2022.
   - Fraser Edward Llewellyn Lloyd lived at the Property from 4/2/2021 to 2/9/2022.
   - Robert Oscar Lindley lived at the Property from 4/2/2021 to 10/01/2022.
   - Samuel Hives moved his belongings into the Property on 10/01/2022, and his tenancy began on 4/2/2022 to 2/9/2022.

8. Both the Applicants and the Respondent agreed that the relevant period was 4/9/2021 to 3/9/2022 and that the Property was occupied by at least three persons living in two or more separate households and occupying the Property as their main residence.

9. It is further agreed that the Applicants' occupation of the Property constituted their only use of the accommodation, and the Property had a shared kitchen and bathroom.

10. The Respondent was the immediate landlord in the assured Tenancy Agreement and was the beneficial owner of the Property as shown within the land registry title deed for the Property.

11. The Respondent accepted that he was the person having control/person managing the Property, and that the Property was subject to London Borough of Hackney's Additional Licensing Scheme for the period 4 September 2021 to 3 September 2022 (the relevant period). Further, the Respondent accepted that the Property required a licence as it was a House in Multiple Occupation (HMO) under section 254 Housing Act 2004. The Respondent further accepted that no HMO licence was held, and no licence application was made for the Property, and so no statutory exemptions were applicable.

12. The Respondent submitted that he had a reasonable excuse for not licensing the Property during the relevant period and stated that he was therefore not guilty of an offence under section 72(1) Housing Act 2004.

Reasonable Excuse

13. The Respondent provided a witness statement (pages 9-13 of Respondent bundle) and gave oral evidence. He told the Tribunal that he was a non-professional landlord, with a very busy unrelated professional job and also was a busy family man. He therefore had appointed an agent to manage the Property on his behalf and had relied upon the agent as to the need for any licence during the relevant period. The agent had failed to inform him that the Property required a licence.

14. The Respondent confirmed in his witness statement and in his oral evidence that he had appointed Blueprint Properties as his agent. He had chosen this agency as it was a company he trusted as they had acted as estate agent when the Respondent purchased the Property in 2013 and so he already had a relationship with them. Additionally, the Respondent confirmed that he had been impressed by their website, which had appeared professional, and that Blueprint were responsible for other properties within the same block.

15. The Respondent confirmed that the agents had been instructed to undertake the "fully managed" service at a cost of 8% rental income. The Respondent had been unable to find a copy of a management agreement and confirmed in his evidence to the Tribunal that he did not recall signing an agreement.

The Law – Reasonable Excuse

16. Section 72(5) Housing Act 2004 provides:

> "(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.

Tribunal Findings in Relation of Reasonable Excuse

17. The Tribunal's attention was drawn to *Aytan v Moore [2022] UKUT 27 (LC)* and in particular Counsel for the Respondent relied on *Marigold and Ors v Wells [2023] UKUT 33 (LC),* in which Perrin v HMRC [2018] UKUT 156 (TCC) was sighted as providing useful guidance on the approach a First-tier Tribunal should use when determining reasonable excuse. The staged approach used in that case was as follows:

i. Establish what facts the Respondent asserts give rise to a reasonable excuse.

ii. Decide what facts are proven.

iii. Decide whether, viewed objectively, those proven facts amount to an objectively reasonable excuse for the default and the time when that objectively reasonable excuse ceased. In doing so, the

Tribunal should take into account the experience and other relevant attributes of the Respondent and the situation in which the Respondent found himself at the relevant time.

18. Further at paragraph 82 it is stated that "it will be a matter of judgement for the First-tier Tribunal in each case whether it was objectively reasonable for the [Respondent], in the circumstances of the case, to have been ignorant of the requirement in question, and for how long".

19. Applying this approach, the Tribunal accepted that the Respondent was not a professional landlord and was not aware of the requirement for an HMO licence for the relevant period. The Tribunal also accepted that the Respondent worked as a full-time solicitor with family responsibilities and a heavy workload and had therefore engaged an agent that he trusted to manage the Property. However, whilst the Respondent gave evidence that he had engaged Blueprint to undertake a "fully managed" service at a cost of 8% rental income, the Respondent was not able to provide a copy of the management agreement to show the extent of the agent's role. Additionally, the Respondent confirmed at paragraph 10 of his witness statement (page 10 of the Respondent bundle) that he did not recall signing a management agreement with Blueprint.

20. The Tribunal therefore found, on a balance of probabilities, that without knowing the extent of the agent's responsibility to the Respondent, it was not reasonable for him to assume that the agent would inform him that an HMO licence was needed.

21. The Tribunal therefore found on the facts of this case that, on a balance of probabilities, the Respondent did not have a reasonable excuse.

Tribunal Findings in Relation to the Property Being an HMO

22. The Tribunal therefore found beyond reasonable doubt that the landlord had committed the offence of having control or management of an unlicensed HMO.

Should the Tribunal Make a Rent Repayment Order (RRO)?

23. Section 43 of the Act provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence was established the Tribunal found no reason why it should not make an RRO in the circumstances of this application.

Ascertaining the Whole of the Rent for the Relevant Period

24. At page 132 of the Applicant's bundle, the total rent reclaimable was set out as £28,800.14. This calculation was not disputed by the Respondent. The Tribunal accepted this amount as the whole amount of rent for the relevant period and noted that the rent was paid from Fraser Edward Llewellyn Lloyd's account and that the other Applicants had paid their share of rent into Fraser's account.

Deductions for Utility Payments that Benefited the Tenant

25. It was agreed by the Applicants and Respondent that the Applicants were responsible for utility payments and therefore no deduction needed to be made for utility payments.

Determining the Seriousness of the Offence to Ascertain the Starting Point

26. The Tribunal had to consider the seriousness of the offence compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.

27. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in Acheampong v Roman [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal had to consider the circumstances of this particular case as compared to other examples of the same offence.

Conduct of the Landlord and Tenants

28. The Applicants identified the following factors as relevant to assessing the seriousness of the offence and the conduct of the landlord namely:

    a. The Respondent's lack of process to keep abreast of his legal obligations
    b. The length of the offence
    c. Fire safety breaches
    d. The Respondent's breach of the Management of Houses in Multiple Occupation(England) Regulations 2006
    e. Breach section 234(3) Housing act 2004
    f. Breach of the Housing Health and Safety Rating System (HHSRS)
    g. Disrepair and maintenance issues within the Property
    h. Breach of local authority HMO standards
    i. The Respondent's failure to ensure a gas safety certificate and electrical safety certificate were in place and provided to the Applicants
    j. The purpose of an RRO is to punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending.

29. The Respondent highlighted the following factors as relevant to the Respondent's conduct namely:

   a. The Property was provided in good condition and maintained to a good standard
   b. The Respondent instructed an agent on a full management service basis to ensure the Applicants were adequately catered for at the Property
   c. Maintenance and repair issues were remedied promptly
   d. Nothing suggested that a licence would not have been granted, meaning that this was an administrative oversight rather than a deliberate attempt to avoid regulation.

Tribunal's Findings in Relation to Conduct of the Landlord and Tenant

30. The Tribunal found that the property was provided in good condition and maintained to a good standard. The Respondent had engaged an agent to manage the Property and the Tribunal was satisfied that the Respondent replied promptly to any requests for repairs. In particular, the Tribunal noted the invoice at page 14 of the Respondent's bundle which showed that new furniture was bought for the Property prior to it being rented to the Applicants.

31. The Applicants highlighted that the Respondent had not ensured that his name, address and telephone contact number were clearly displayed in a prominent position in the HMO; the Tribunal found that, whilst this was a breach of section 3 of The Management of Houses in Multiple Occupation (England) Regulations 2006, it was not a significant breach because the Respondent's details were clearly set out in the tenancy agreement and the Applicants were able to contact the Respondent's agent.

32. Regarding fire safety breaches, the Applicants stated that the Premises lacked fire extinguishers, internal fire doors and fire blankets. The Respondent accepted this position but told the Tribunal that he would have remedied this had he been made aware of the issue. The Tribunal found that these fire safety breaches were significant and found that, had the Property been licensed, these breaches would have been addressed. Therefore, at the time the Applicants were living at the Property, their safety was compromised.

33. Turning to the gas and electricity certification, at pages 14 and 15 of the Respondent's bundle was an invoice for a gas safety check dated 15 March 2021 (page 15) and for an electrical check dated 22 February 2021 (page 14). Additionally, at page 30 of the Respondent's bundle was a report dated 4 February 2021 of the domestic electricity installation condition in which the condition was described as satisfactory. The Tribunal was therefore satisfied that appropriate gas and electricity checks had been made but accepted the evidence of the Applicants that copies of the relevant certificates were not provided to them.

34. The Applicants stated that black mould had formed in the bathroom. It was the Applicants' position that despite reporting this to the Respondent (through the agent) several times, the issue was never resolved. The Respondent told the Tribunal that there was not black mould at the Property when he lived there, and that he was not made aware of black mould during the Applicant's tenancy by the agent.

35. The Tribunal found that the existence of black mould was not a result of the Respondent failing to keep the common parts of the HMO in good and clear decorative repair. The Tribunal found that it was the Tenant's responsibility to ventilate the Property.

36. The Applicants stated that there was an uncovered ventilation hole in the ceiling of the kitchen (shown in photograph AK22, page 47 of the

Applicant's bundle). The Respondent accepted this but told the Tribunal that had he been advised of the missing vent cover he would have remedied this straightaway. The Tribunal accepted that the vent cover was missing but that the Respondent had provided some mitigation in that he would have remedied this defect had he been told.

37. The Applicants also stated that, upon moving into the Property, the Property had not been in a clean condition. The Respondent told the Tribunal that he had relied on the agent and that the agent had told him that the Property was clean. The Tribunal considered the text messages between the agent and the Respondent at page 23 of the Respondent's bundle, which showed that the agent had told the Respondent on 2 November 2020 that the previous tenants had left the property "nice and clean". The Tribunal therefore did not find that this was an aggravating factor. The Respondent had engaged an agent and relied on them.

38. The Applicants stated that the Respondent had taken approximately one month to refund the deposit to the Applicants. Whilst the Tribunal accepted the evidence of the Applicants, the Tribunal accepted that this would be the responsibility of the agent to arrange.

39. Fraser Edward Llewellyn Lloyd described a continuous noise of a creaking pipe in one of the Applicants' bedrooms that disrupted their sleep and that this had been reported to the Respondent's agent. The Respondent told the Tribunal that he had not been made aware of the noise by the agent. The Tribunal accepted the evidence of the Respondent that he had not been made aware of this issue by the agent and therefore had not been able to remedy it.

40. The Applicants stated that throughout the tenancy, the Respondent's agent had frequently failed to respond to the Applicants within a reasonable timeframe. However, the Tribunal found that when the Respondent had been contacted by the agent, he was very responsive.

41. The Applicants stated that, at the start of the tenancy the boiler had broken, which had resulted in the Applicants being without heating for about 10 days. However, the Respondent told the Tribunal that the agent had contacted him, and he had promptly agreed to the boiler repair (pages 20 to 22 of the Respondent's bundle). Additionally, the Respondent had agreed to a refund of £300 from the rent because of the issues with the boiler. In light of this, the Tribunal did not find the Respondent's conduct with regards to the boiler to be an aggravating factor.

42. The Applicants told the Tribunal that, at the beginning of the tenancy, the washing machine door was not functional meaning that the Applicants could not wash their clothes. At page 24 of the Respondent's bundle, the Respondent reproduced messages between the Respondent and the agent that demonstrated that the Respondent had authorised the washing machine to be replaced on the same day he was told it was unrepairable. The Tribunal therefore found that the Respondent had conducted himself well to ensure that any issues were quickly resolved.

43. The Tribunal made the same finding in relation to the dishwasher in that it accepted that there was a period when there was not a working dishwasher at the Property. This had been reported by the Agent to the Respondent on 28 February 2022; however, the Respondent had acted extremely promptly and had approved an engineer's attendance at the Property.

Financial Circumstances of Respondent Landlord

44. The Respondent did not provide financial information to the Tribunal.

Whether Respondent Landlord has been convicted of offence

45. The Respondent confirmed that he did not have any convictions identified in the table at section 45 of the Act. The Tribunal accepted this evidence.

Respondent as a Professional Landlord

46. The Tribunal accepted the evidence of the Respondent that he was not a professional landlord and that the Property had not been licensed owing to a genuine mistake.

The Conduct of the Tenants

47. The Tenants stated in their evidence to the Tribunal that they had conducted themselves well in that they had paid rent and complied with the terms of their tenancy agreement. The Tribunal accepted this evidence.

Quantum Decision

48. Taking all of the factors outlined above into account, the Tribunal found that this licensing offence was not the most serious under the Act. The Tribunal concluded that the starting point for an offence of this nature would be 60%. However, taking the factors of this particular case into account, the Tribunal decreased this amount to 25% in line with the findings made above.

49. The Tribunal therefore reduced the rent repayment figure and ordered that the Respondent pay 25% of the amount claimed, with no deduction made for utilities.

Total Claim - £28,800.14
Less utilities - £ 0

25% of which gives a **total amount of £7,200.04**

50. The Tribunal ordered that the payment be made in full within 28 days.

Application Fees

51. The Tribunal invited the parties to make representations as to whether or not the Respondent should refund the Applicants for the application fee paid to the Tribunal. The Applicants asked the Tribunal to make such an order, whereas the Respondent requested that this order was not made.

52. Given that the Tribunal had made a RRO, the Tribunal exercised its discretion to order that the Respondent must pay the Applicants £300 in respect of Tribunal fees. This amount shall be paid within 28 days.

Judge Bernadette MacQueen **Date: 4 July 2024**

ANNEX – 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 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 to 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 (ie 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.