FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/HMF/2024/0043**
Property	:	**First Floor Flat, 155 Fordwych Road, London NW2 3NG**
Applicant	:	**Isabelle Hayden, Bethan Langley and Garbrielle Needler**
Representative	:	
Respondent	:	**City & Suburban Properties Limited**
Representative	:	**Julian Hunt Counsel**
Type of Application	:	**Application for a rent repayment order by tenant** **Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member(s)	:	**Judge Tildesley OBE** **Mr S Wheeler MCIEH CEnvH**
Date and venue of the Hearing	:	**23 July 2024** **10 Alfred Place, London, WC1E 7LR**
Date of Decision	:	**30 July 2024**

DECISION

Senior President of Tribunals Practice Direction: Reasons for Decisions 4 June 2024

1. This Practice Direction states basic and important principles on the giving of written reasons for decisions in the First-tier Tribunal. It is of general application throughout the First-tier Tribunal. It relates to the whole range of substantive and procedural decision-making in the Tribunal, by both judges and non-legal members. Accordingly, it must always be read and applied having regard to the particular nature of the decision in question and the particular circumstances in which that decision is made (paragraph 1).

2. Where reasons are given, they must always be adequate, clear, appropriately concise, and focused upon the principal controversial issues on which the outcome of the case has turned. To be adequate, the reasons for a judicial decision must explain to the parties why they have won and lost. The reasons must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the main issues in dispute. They must always enable an appellate body to understand why the decision was reached, so that it is able to assess whether the decision involved the making of an error on a point of law. These fundamental principles apply to the tribunals as well as to the courts (paragraph 5).

3. Providing adequate reasons does not usually require the First-tier Tribunal to identify all of the evidence relied upon in reaching its findings of fact, to elaborate at length its conclusions on any issue of law, or to express every step of its reasoning. The reasons provided for any decision should be proportionate, not only to the resources of the Tribunal, but to the significance and complexity of the issues that have to be decided. Reasons need refer only to the main issues and evidence in dispute, and explain how those issues essential to the Tribunal's conclusion have been resolved (paragraph 6).

4. Stating reasons at any greater length than is necessary in the particular case is not in the interests of justice. To do so is an inefficient use of judicial time, does not assist either the parties or an appellate court or tribunal, and is therefore inconsistent with the overriding objective. Providing concise reasons is to be encouraged. Adequate reasons for a substantive decision may often be short. In some cases a few succinct paragraphs will suffice. For a procedural decision the reasons required will usually be shorter (Paragraph 7).

Application and Procedural History

5. The Application is a for a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 ("2016 Act) for the offence of having control of, or managing, an unlicensed HMO,

under Part 2 of section 72(1) Housing Act 2004 which is an offence under s40(3) of the 2016 Act.

6. The Tribunal heard the Application on 23 July 2024. The Applicants appeared in person. Julian Hunt of Counsel represented the Respondent. Laurence Bellman, director of the Respondent, Darren Yanover, director of Cedar Estates, the managing agent for the Property, and Victoria Herkner, senior property manager of Cedar Estates responsible for the management of the Property attended as witnesses for the Respondent.

7. In reaching its decision the Tribunal had regard to the relevant details in the Application, the directions, the oral testimony of the Applicants and their witness statements, the oral testimony of the Respondent's witnesses and their witness statements and the documents in the parties' hearing bundles. The Tribunal admitted in evidence the floor plan for the Property which was agreed by the parties.

8. The Tribunal drew the parties' attention to the Public Notices of The Designated Additional HMO Licensing Scheme for the London Borough of Camden which came into effect on 8 December 2015 and was renewed for a period of five years with effect from 8 December 2020. The Additional Licensing Scheme applied to all HMOs as defined by section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households.

9. The Tribunal applied the law as set out in in sections 40 to 47 of the 2016 Act, and took account of the following authorities: *Hancher v David* [2022] UKUT 277 (LC); *Acheampong v Roman and others* [2022] UKUT 239 (LC); *Williams v Parmar* [2021] UKUT 244 (LC); *Daff v Gyalui* [2023] UKUT 134 (LC), and *Newell v Abbott and other* [2024] UKUT 181 (LC).

Decision

10. The Tribunal orders the Respondent to pay to the Applicants the sum of £19,753.00 and to reimburse them with the application and hearing fees in the sum of £300.00 within 28 days from the date of this decision.

Reasons

11. The Respondent on advice of Counsel accepted that a RRO should be made and that the only issue in the case was the amount of the RRO.

12. The Respondent accepted that the Property was an HMO in the Borough of Camden and subject to the additional licensing scheme which originally came into force on 8 December 2015.

13. The Tribunal accepted Mr Bellman's evidence that the Respondent purchased the Property in 2010 and has let the Property continuously since its purchase. Mr Bellman believed that the Property was let to couples until 2021 when tenancies were granted to three persons under the previous management arrangements which continued after Cedar Estates took over the management in November 2021. The Respondent applied for an HMO licence on 29 February 2024.

14. The Respondent accepted that it did not have a reasonable excuse for having no HMO licence for the Property.

15. The Tribunal is satisfied beyond reasonable doubt from the findings and admissions above that the Respondent had committed the specified offence of control or management of an unlicensed HMO contrary to section 72(1) of the 2004 Act from a date in 2021 prior to June 2021 to 28 February 2024 in respect of the Property and that it did not have a defence of reasonable excuse.

Should the Tribunal make a RRO?

16. In view of its finding that the Respondent has committed the offence of no HMO licence the Tribunal decides to exercise its discretion to make an RRO.

What is the Amount of the RRO?

What is the whole of the rent for the Relevant Period?

17. The Tenancy agreement required the tenants to pay a rent of £2,816.67 per calendar month which was split equally between the Applicants who each paid £938.89 per calendar month. The Tenancy started on 5 April 2023 and ended on 4 April 2024.

18. The total amount of rent paid by the Applicants during the relevant period of 5 April 2023 to and including 28 February 2024 was £30,389.17 (10 months at £2,816.67 = £28,166.70 + 24 days at a daily rate of £92.60 = £2,222.47). The Applicants were not in receipt of Universal Credit during the period.

19. The Tribunal decides that the total amount of rent paid during the relevant period was £30,389.17.

Should there be any deduction for any element of the rent that represents payment for utilities?

20. The Tribunal finds that the Applicants were liable to pay all charges in relation to the supply and use of utilities at the Property. The Tribunal decides that there should be no deduction from the total amount of rent paid during the relevant period.

What is the Seriousness of the Offence?

21. The offence of no HMO licence fell in the less serious category of offences covered by section 40(3) of the 2016 Act.

22. The Tribunal finds that the Respondent was a commercial landlord. Mr Bellman explained that in 2021 he and his wife bought out the previous partner in the Company, and that he took an active part in the management of the Respondent. Mr Bellman stated that he had over 50 years' experience in the property profession as a chartered surveyor and property manager, and that he controlled 20 odd properties in four property companies, some commercial, mainly residential. Mr Bellman said that he had other residential properties in the London Boroughs of Brent and Camden and in the City of Westminster which required HMO licences.

23. The Tribunal is satisfied on the evidence that the Respondent had committed the offence of no HMO licence continuously from a date in 2021 prior to June 2021 to 28 February 2024 in relation to this Property, a period of almost three years.

24. The Tribunal finds that the Respondent engaged professional agents, Cedar Estates, to manage the property. Mr Yanover explained that he had run Cedar Estates since 1995, and currently employed nine members of staff. Cedar Estates had a portfolio of 800 properties housing 2,500 tenants principally in London. Mr Yanover stated that he was aware of the additional HMO licensing schemes prevalent throughout London. Mr Yanover accepted full responsibility for the offence, and expressed his sincere apologies for not picking up earlier that the Property had no HMO licence.

25. Counsel contended that the Respondent should be given credit for engaging professional agents to manage the property, and that ultimately it was the agents' fault for the property having no licence. Counsel argued that the agents' default was one of inadvertence rather than deliberate.

26. The Tribunal finds that (1) The Respondent is bound by the actions of its agent to whom it has given full authority to act on its behalf. (2) The Respondent accepted that it had no defence of reasonable excuse. (3) The Directors of the Respondent and of the managing agent were experienced property managers fully aware of the various regimes for HMO licensing in London. (4) The offence of no HMO licence commenced before Cedar Estates took over the management of the Property. (5) A reasonable expectation of professional landlords and managing agents is that they should have systems in place for checking the regulatory requirements in respect of a property. Such arrangements for ensuring compliance with HMO licensing are not onerous and akin to those for checking that a property has electrical and gas safety certificates. The Tribunal is satisfied in this case that the Respondent and its

managing agent knew the legal requirements for HMO licensing and their failure to check that the Property had an HMO licence which happened over a period of time including several new tenancies amounted to an act of recklessness. In this regard the Tribunal rejects the Respondent's depiction of its failure as one of inadvertence.

27. Mr Yanover said that the London Borough of Camden had not yet considered the application for an HMO licence and had not carried out an inspection of the Property. Mr Yanover was confident that the application would be granted pointing out that all the necessary documentation was in place. Mrs Herkner stated that the Property had fire alarms in the hall and on the stairs landing, a heat detector in the kitchen, and fire doors. Mrs Herkner expected that the London Borough of Camden would insist on the installation of intumescent strips to the doors as a requirement of the HMO licence. The Tribunal observes that intumescent strips relate to fire safety. The Tribunal finds on the Respondent's evidence that works on the Property albeit limited to intumescent strips were necessary to bring it to the required standard for the grant of an HMO licence.

28. The Applicants complained about water leaks and the presence of mould in the property. The predominant problem concerned the water leak in bedroom 2. This was first reported by the Applicants on 2 August 2023 and repaired on or around 21 August 2023. On 31 August 2023 the contractor emailed the agent pointing out that other areas of the roof were in poor condition, and that water leaks might occur in the future if the repairs were not carried out. On 2 and 7 November 2023 the Applicants reported water ingress from the skylight in bedroom 2 and the build up of mould around it. The occupant of bedroom 2 had to move out for one week. On 23 November 2023 the contractor patched up the skylight which did not work with further water leaks happening around December 2023. In January 2024 the Respondent replaced the skylight which stopped the water leak from it. Around February 2024 the Applicants reported another water leak in bedroom 2 which was not resolved by the time the tenancy ended. Mrs Herkner believed that the roof required major repairs. The Respondent did not challenge the sequence of events for the water leak in bedroom 2.

29. The Respondent argued that it had done its best to resolve the water leaks. The Respondent pointed out that the problem was complicated by the need to consult with the other freeholder who owned the ground floor flat, and the difficulties of finding competent roofing contractors in London. The Respondent also relied on the facts that they dealt with other issues with the Property swiftly, and that the Property otherwise was in decent condition. The Tribunal holds that the problems with the water ingress and the roof amounted to a serious incidence of disrepair which persisted for eight months of the tenancy, and outweighed the Respondent's reliance upon its assertion that the property

otherwise was in good condition. Further the Tribunal considers that a professional landlord and its managing agent had the wherewithal and knowledge to remedy the disrepair quickly despite the obstacles identified which were foreseeable.

30. The Tribunal turns to its assessment of the seriousness of the offence. The Tribunal takes into account that the offence under section 72(1) of the Housing Act 2004 is not one of the more serious of the offences for which a rent repayment order can be made. The Tribunal, however, finds that this offence fell within the upper range of seriousness for a section 72(1) offence. The Tribunal's assessment is derived from its findings that the Respondent was commercial and professional landlord, the offence had been ongoing for a period of almost three years, the Respondent's and the managing agent's knowledge of the requirements for HMO licensing, the Respondent's and the managing agent's recklessness in not having systems in place to check the requirement for licensing the Property, that works on the Property albeit limited to intumescent strips were necessary to bring it to the required standard for the grant of an HMO licence, and that the problems with the water ingress and the roof amounted to a serious incident of disrepair which persisted for eight months of the tenancy.

31. The Tribunal forms the view that an order of 75 per cent would be appropriate to reflect the seriousness of the offence.

Whether Adjustments should be made in the light of the factors identified in Section 44(4) of the 2016 Act?

32. The Respondent accepted that the Applicants were good tenants who had paid their rent on time. The Respondent made no submissions on its financial circumstances. The Tribunal is entitled to assume that the Respondent has the means to meet an RRO.

33. Counsel argued that the Tribunal should make adjustments for the Respondent's good character, and for the manner in which the Respondent conducted the proceedings. Mr Bowman stated that he and the Respondent had not received civil penalties for Housing Act Offences and no other regulatory proceedings had been taken against him and the Respondent. Mr Bowman acknowledged in the 1970's that he had been fined by Camden Council for taking a premium for a flat. The Tribunal accepts that the Respondent's contravention in respect of the Property although serious was a "one-off". The evidence indicated that on the whole the Respondent was a responsible landlord and had licences for the other HMOs in its portfolio. The Tribunal decides to make a deduction of ten per cent to reflect the Respondent's previous good character as a landlord.

34. The Tribunal was not convinced with Counsel's argument about giving a reduction for the Respondent's conduct of the proceedings. Counsel contended that the Respondent should be given credit for narrowing the nature of dispute and restricting it to quantum. Counsel applied the analogy of discount for guilty pleas in criminal proceedings. The Tribunal considered that the Respondent had no real choice but to make the admissions with respect to the offence. The substantive dispute was about the quantum which was contentious between the parties.

35. The Tribunal decides that the amount of the RRO should be 65 per cent of the total rent paid during the relevant period which was £19,753.00 (65 per cent of £30,389.17).

Reimbursement of Fees

36. Under rule 13(1) of the Tribunal Procedure Rules 2013 the Tribunal has a discretion to make an order requiring a party to reimburse the other party the whole or part of the fees. Counsel argued that the Respondent had attempted to settle the matter and that the Respondent would have to pay its own legal costs. The Tribunal took the view that the Applicants had been successful and had been awarded a substantial RRO. The Tribunal decides that the Respondent should reimburse the Applicants with the application and hearing fee totalling £300.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.