



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

Case Reference : LON/00AZ/HMF/2024/0004

Property : 130 Foxberry Road, Lewisham, London,
SE4 2SH

Applicant : Claudia Louis, Marianne Skeffington, Rosa
Shindler, Anna Borgerding

Representative : Mr Peter Elliott
Justice for Tenants

Respondent : Clive Peter Williams

Representative :

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 A Parkinson MRICS

**Date and venue of the
Hearing** : 16 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 16 July 2024. Mr Peter Elliott of Justice for Tenants represented the Applicants, all of whom attended the hearing and gave evidence. The Respondent did not attend. The Tribunal was satisfied that the requirements of rule 34 of the Tribunal Procedure Rules 2013 were met and proceeded in the absence of 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 and the documents in the Applicant's hearing bundle. The Tribunal applied the law as set out in sections 40 to 47 of the 2016 Act, and took account of the following authorities: *Wilson v Campbell* [2019] UKUT 363 (LC) *Aytan v Moore* [2022] UKUT 27 (LC), *Acheampong v Roman and others* [2022] UKUT 239 (LC); *Williams v Parmar* [2021] UKUT 244 (LC); and *Newell v Abbott and other* [2024] UKUT 181 (LC).

Decision

8. The Tribunal orders the Respondent to pay to the Applicants the sum of £15,703.57 broken down: Anna Borgerding the sum of £3,976.44; Claudia Louis the sum of £3,187.85; Rosa Shindler the sum of £3,946.84; and Marianne Skeffington the sum of £4,592.44 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

Has the Respondent committed a specified offence?

9. The Tribunal makes the following findings of fact:
 - a) The Designated Additional HMO Licensing Scheme for the London Borough of Lewisham came into effect on 5 April 2022. The Scheme required properties where three or four people who are not part of the same household live together and share kitchen, toilet and/or bathroom facilities to be licensed as an HMO.
 - b) The property was a two-storey terraced house with a shared kitchen and bathrooms and located within the London Borough of Lewisham.
 - c) During the period of 18 April 2022 to 23 November 2022 the four Applicants were living as separate households occupied the property as their main residence.

- d) The Applicants held an AST for the property which required them to pay rent to the Respondent for their occupation. The Respondent was named as the landlord on the tenancy agreement. The Respondent held the freehold for the property under title number LN69065.
 - e) The property required an HMO Licence from the 5 April 2022
 - f) The property did not have an HMO Licence from 5 April 2022 to 1 December 2022. No application for HMO licence was made during this period.
 - g) The Respondent met the definition of a person having control and managing an HMO under section 263 of the 2004 Act. The Respondent was the owner of the property and received the rents from the tenants in occupation of the property.
 - h) The Respondent provided no explanation for why he did not have an HMO licence for the property.
10. The Tribunal is satisfied beyond reasonable doubt from the findings 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 5 April 2022 to 23 November 2022 in respect of the property and that he did not have a defence of reasonable excuse.

Should the Tribunal make a RRO?

11. 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?

12. Anna Borgerding, Claudia Louis and Rosa Shindler occupied the property under a tenancy from 18 October 2019 to 23 November 2022, whilst Marianne Skeffington occupied the property from 18 April 2022 to 23 November 2022.
13. The Tenancy agreement was for a period of six months from 18 April to 17 October which was renewed at 6 monthly intervals throughout the Applicant's occupation of the property. The current tenancy expired on 17 October 2022. The Tenancy Agreement required the tenants to pay a rent of £2,850 per calendar month which was split between the Applicants as follows: Anna Borgerding £690; Claudia Louis £675; Rosa Shindler £685; and Marianne Skeffington £800.

14. The relevant period for the RRO was 18 April 2022 to and including 23 November 2022. The section 21 Notice required the tenants to vacate the property after 23 November 2022. The total rent paid during this period was £20,512.20.
15. The Tribunal noted during the relevant period that Claudia Louis was in receipt of universal credit which included an element for the rent of the property. The amount of universal credit Miss Louis received varied in accordance with her self-employed income earned during the specific month. The Tribunal examined the calculation presented in evidence on the proportion of rent which was paid for by universal credit. The Tribunal decided that there were errors in calculation and that the amount of rent paid by Miss Louis from her earned income was £3,984.81.
16. The Tribunal also noted that the amount of rent claimed included the sum of £562.20 for the period 18 November to 23 November 2022. The sum of £562.20 was split equally between the four Applicants.
17. The total amount of rent the Applicants were seeking to recover was £19,631.46 which was broken down between the various Applicants as follows:
 - b) Anna Borgerding the sum of £4970.55;
 - c) Claudia Louis the sum of £3984.81;
 - a) Rosa Shindler the sum of £4935.55;
 - d) Marianne Skeffington the sum of £5,740.55.
18. The Tribunal decides that the total amount of rent paid during the relevant period was £19,631.46.

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

19. The Tribunal finds that the Applicants were liable to pay all charges in relation to the supply and use of utilities at the subject property. The Tribunal decides that there should be no deduction from the maximum award.

What is the Seriousness of the Offence?

20. The offence fell in the less serious category of offences covered by section 40(3) of the 2016 Act.
21. The Tribunal relied on the Applicant's evidence to determine whether the offence fell within the more serious category of HMO licensing offences
22. No evidence the Respondent was a commercial landlord

23. The Respondent did not apply for an HMO licence which indicated he was not aware of his legal obligations. The Applicants left the property on 23 November 2022. The duration of the offence was seven months.
24. On 21 September 2022 the Respondent's agent informed the Applicants that the Respondent was looking to take back possession of the property at the end of the tenancy on 17 October 2022. The agent issued a section 21 Notice which notified the Applicants that they should leave the property after 23 November 2022. The Applicants insisted that the Respondent comply with the two months period given in the section 21 Notice. Towards the end of the tenancy Miss Schindler answered the door to the Respondent with his bags to move into the property. Miss Shindler explained to the Respondent that they were not moving out until the expiry of the two month notice period. Miss Shindler to her credit did not suggest that the Respondent acted in an intimidating manner to her. Miss Shindler depicted the Respondent as confused, and that he left the property to speak to his agent. The fact remains, however, that the Respondent was not entitled to issue a section 21 Notice in respect of a property without an HMO licence, and it is fortunate for him that the Applicants left the property of their own accord otherwise any court proceedings based on the defective section 21 Notice to evict them would have failed.
25. The Respondent insisted on carrying out the maintenance of the property himself. He did not have a comprehensive property management agreement with his agent which meant that some of the contractors he engaged to carry out works to the property were of questionable competence. The Applicants' view was that the Respondent was reluctant to spend money in carrying out his responsibilities as landlord which meant that he cut corners.
26. The Tribunal finds in relation to the condition of the property the following:
- a) There were no fire doors in the property and one of the smoke detectors did not work. The doors to the property had key operated locks rather than thumb turn locks which meant that there was no way of opening the doors locked. The Respondent had not carried out a fire risk assessment for the property.
 - b) In October 2020 the gas certificate inspector identified a gas leak from the hob. The Respondent engaged a contractor to repair the leak which was unsuccessful. The Respondent used the same contractor to remedy the default. On 18 October 2021 the annual gas inspection was carried out which resulted in the gas being disconnected in respect of the hob owing to a gas leak arising from the bad pipework and no gas isolation valve. The bad pipework was the handiwork of the

Respondent's contractor. The inspector informed the Applicants that effectively they had been living in an unsafe house for over a year. The gas inspector also recorded that there was no carbon monoxide alarm fitted in close proximity to the boiler.

- c) The Applicants had difficulty in opening the front door when the door swelled in wet weather. The Respondent did not deal with this and advised the Applicants that one of them should remain inside to admit the others in the property.
- d) The Applicants stated that the property was cold during the winter months which was not assisted by the defective timer for the boiler. The Applicant stated that the Respondent despite being on notice did not rectify the fault with the timer. The Tribunal notes that the EPC for the property recorded a score of 55 within the lower range of the D rating. This, however, was above the Minimum Energy Efficiency Standard for the letting of properties.
- e) The Applicants contended that the property suffered from damp and mould. This was particularly marked in the living room and the upstairs front bedroom. The Tribunal is satisfied on the evidence that the Respondent had carried out the necessary repairs to remedy the major problem of water ingress to the lounge and the front bedroom. The incidence of mould in the bathroom remained throughout the Applicants' occupation of the property.
- f) The Applicants gave evidence of the water leak in the downstairs toilet. The Respondent blamed the Applicants for the leak saying that they had clogged the drain of the upstairs shower room with hair without sending a contractor to examine the cause of leak. When the Respondent eventually engaged a contractor, he simply replaced the ceiling in the downstairs toilet with an MDF board which became immediately damp and began to rot.
- g) The Applicants contacted the Respondent on 21 October 2020 informing him that the fuse in the kitchen kept tripping, meaning that the appliances in the kitchen were not working. This issue was isolated to the oven, which could not be used without it tripping the oven. This led to one of the Applicants receiving an electric shock when trying to turn the oven on and off. The Applicants reported that the grill in the oven was broken. This issue was reported again on 20 January 2021 and 2 March 2021 and in an email dated 29 October 2021, the Applicants mention that it was 'the fourth time' reporting these issues.

- h) The Applicants stated that the Respondent refused to replace the showerhead and repair the kitchen tap because he blamed the Applicants for damaging them. The Applicants in the end replaced the shower head and engaged a plumber to repair the kitchen tap at their own cost.
- i) The Applicants said that the Respondent had replaced two washing machines but had left the old washing machines at the rear of the property. Similarly the Respondent had engaged a contractor to take down the rotten decking outside the back door but the contractor did not take away the decking but left it in the garden.

27. 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 the following findings:

- a) The Respondent demonstrated a blatant disregard of his legal responsibilities as a landlord. The Respondent has not provided an explanation for not having an HMO licence for the property. The Respondent authorised the issue of an invalid section 21 Notice. The Respondent had an inadequate understanding of his legal repairing responsibilities.
- b) The Tribunal adopts the Applicants' description of the Respondent as a landlord prepared to cut corners in order to save costs. The consequence of his actions was that he put the health and safety of the Applicants at serious risk. This is demonstrated by the lack of adequate fire protection in the property, the botched workmanship in respect of the pipework for the gas supply to the hob, and the tripping of the electrical fuse box.
- c) The Tribunal is satisfied that the Applicant would have had to carry out additional works to the property before an HMO licence would have been granted. These additional works would relate in particular to fire safety.
- d) The Respondent committed various breaches of The Management of Houses in Multiple Occupation (England) Regulations 2006 in particular regulations 4 (safety measures), 5 (to maintain water supply and drainage), 7 (maintaining appliances in good and safe repair and 9 (duty to dispose of waste).

28. The Tribunal forms the view that an order of 80 per cent of the total rent paid during the relevant period 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?

29. The Respondent did not participate in the proceedings and offered no mitigation. The Tribunal has no information on his financial circumstances.
30. The Tribunal is satisfied that the Applicants acted as reasonable tenants, and that their conduct did not merit a reduction in the amount of the Order. The Applicants informed the Tribunal that they had arranged and paid for a deep clean of the property before they left. The Applicants supplied a copy of the Adjudication decision under the terms and conditions of the My Deposit tenancy scheme. The Respondent withheld £2,535.69 of the Deposit. The Adjudicator awarded £1,866.95 of the disputed amount to the Applicants and £668.74 to the Respondent. One of the items found in favour of the Respondent was that the Applicants had withheld £164.99 rent to pay for the plumber to repair the tap and replace the shower head. The Adjudicator's reason for allowing the Respondent to recover the rent of £164.99 from the deposit was that the Applicants had not followed the strict procedures for withholding rent. The Tribunal considers that the Adjudicator's decision was based on technicalities and did not demonstrate that the Applicants disregarded their contractual obligations to pay rent under the tenancy agreement
31. The Tribunal decides that no adjustments should be made in the light of section 44(4) of the 2016 Act. The Tribunal determines that the amount of the RRO should be 80 per cent of the total rent paid during the relevant period which was £15,703.57 (80 per cent of £19,631.46).

Reimbursement of Fees

32. 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. 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.