



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

Case reference : **LON/00AM/HMF/2023/0183**

Property : **15a Urswick Road London E9 6EG**

Applicant : **Benjamin Isaac
Sherilyn Wright
Joanna Wells**

Representative : **Justice for Tenants Ref 24963**

Respondent : **Abdufuad Akanni Onigbanjo**

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 members : **Judge H Carr
Ms Fiona Macleod**

**Date and venue of
hearing** : **13th August 2024**

Date of decision : **19th August 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum of £17,468.
- (2) The tribunal determines that, by Monday 9th September 2024. the Respondent reimburse the Applicants for their application and hearing fees, totalling £300.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO). The Applicants allege that the Respondent landlord has committed the offence of control or management of an unlicensed house in multiple occupation under s. 72(1) of the Housing Act 2004.
2. The period for which the RRO is sought is from 16th July 2021 to 15th July 2022.
3. Joanna Wells is seeking to recover the sum of £21,835 on behalf of the Applicants for rent paid within this period.
4. The application was made to the tribunal on 11 July 2023. Directions were issued on 25th August 2023 which provided full instructions on how to participate in and prepare for the hearing.
5. By a notice dated 22nd May 2024 the Respondent was barred from participating in the proceedings as he had failed to comply with directions or take any part in the proceedings.

The hearing

6. The Applicants attended the hearing. They were represented by Mr Peter Eliot of Justice for Tenants.

7. The Respondent did not attend. The Applicants gave evidence that correspondence relating to the application has been sent to the following addresses
- (i) Erringtonconsultancy1@yahoo.co.uk (the email address on the tenancy agreement)
 - (ii) 17 Downing Road Dagenham, RM9 6NR (the address on the tenancy agreement)
 - (iii) 13 Jack Clow Road, London E15 3AR (the address on the Land Registry Document)

The background

8. The property is a two-storey ground floor and basement flat on the busy Urswick Road in Hackney. Access to the property is via a large front door and hallway that is shared with two other flats both of which are owned by the landlord. The ground floor of the property comprises a narrow hallway, the master bedroom, and a further two bedrooms. The lower floor comprises a living/dining room with a glass door that led to a rear paved terrace and a bathroom comprising a bath with an electric shower over the bath, a toilet, a sink and no window. The kitchen is also on the lower ground floor. It contains a fridge/freezer, gas hobs, a washing machine, a sink and a number of wooden cupboards. The kitchen does not have a window. The landlord created the basement accommodation.
9. Joanna Wells moved into the property on 16th March 2018. Sherilyn Wright moved into the property on 16th September 2019. Benjamin Isaac moved into the property on 3rd July 2021.
10. The house sharing was formalised through different tenants signing different tenancy agreements. Joanna Wells had signed a number of agreements in the past, but for the purposes of this application what is relevant is that all three Applicants signed a fixed term tenancy agreement for a 12 month term commencing 16th July 2021 and terminating 15th July 2022.
11. The rent was £2000 pcm. The Applicants paid utility bills and council tax in addition to their rent.

12. The Respondent is named as proprietor on the proprietorship register. He purchased the property on 25th May 2006.
13. He was also named as the landlord on the tenancy agreement

The issues

1. The issues that the tribunal must determine are;
 - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) Does the Respondent have a 'reasonable excuse' defence?
 - (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenant?
 - (iv) Should the tribunal refund the Applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the Respondent has committed the alleged offence?

2. The Applicants produced evidence that the property was in an area of additional licensing. They produced a copy of the public notice of the designation dated 10th May 2018 which stated that the entire area of Hackney is subject to additional licensing. The designation lasted until 30th September 2023. It required that all HMOs which were not subject to mandatory licensing to be licenced under the scheme. They also produced evidence that their property was within the Hackney council area.

3. The property required licensing under the designation as at the relevant time the three Applicants shared the property. They did not form one household but were three unrelated individuals.
4. The landlord failed to apply for a licence until 11th January 2023. The property licencing team at Hackney confirmed that there was nothing in place prior to this date. 11th January 2023 postdates the Applicants leaving the property.
5. The Applicants confirmed to the tribunal that the property was their only or principal home throughout the tenancy.
6. Despite their communications with Hackney Council the Applicants only became aware of the lack of a property licence after they had left the property.

The decision of the tribunal

7. The tribunal determines that the Respondent has committed the alleged offence.

The reasons for the decision of the tribunal

8. The tribunal relies on the evidence from the Applicants, and the information provided by the local authority.

Does the Respondent have a 'reasonable excuse' defence?

9. There was nothing before the tribunal that indicated that the Respondent had a reasonable excuse defence

Should the tribunal make an award of a RRO? If so, for what amount?

10. The Applicants provided evidence that Joanna Wells paid rent of £21,835.00 for the period of the claim. This comprises 9 payments of £2000, one payment of £1975 and one payment of £1860.
11. The Applicants gave evidence that none of them received housing costs through Universal Credit or received Housing Benefit during the period of the claim.
12. In addition to rent the Applicants paid the council tax on the property and all utility bills.

13. Therefore the maximum RRO payable is £21,835.00

The conduct of the tenants

14. The tenants argue that their conduct has been good. They have paid their rent regularly.

The conduct of the landlord

15. The complaints of the tenants are.
- (i) The landlord failed to deal with serious allegations of damp and mould in the property despite numerous requests. His response was simply to paint over the mould. The mould was most severe in the bathroom, kitchen and living room. Despite the Applicants' efforts to keep the bathroom door open, maintain good ventilation and clean the mould with mould sprays and bleach, the issue persisted.
 - (ii) The landlord failed to deal with a rat infestation. Rats were living at the property throughout the tenancy. The smell of rat was noticeable through the property and the storage cupboard had to be kept closed at all times. The rats chewed through and made lots of noise in the walls and ceiling. The rats chewed through the extractor fans exacerbating the damp problem. Whilst traps were set around the property by the landlord's handyman, it only led to dead rats in the walls and cupboard and no effective remediation was carried out.
 - (iii) The fire safety provision were very limited. There were no working smoke or fire alarm installed in the kitchen and the first floor hallway. No fire blanket or fire extinguisher were provided. There were no fire doors installed to the bedrooms.
 - (iv) No gas or electrical safety certificates were in place for the tenancy.
 - (v) The landlord made unannounced visits to the property and instructed workmen to attend the property without notifying the tenants.

(vi) The landlord failed to engage with Hackney Council Environmental Health Officers. The landlord also failed to engage with Justice for Tenants and the tribunal during the course of the application.

16. The Applicants provided a copy of a report from the local authority into the conditions in the property. This confirmed the allegations of the tenants although the report incorrectly refers to the pest infestation being mice rather than rats. The report followed an inspection of the property in September 2021.

17. The tribunal noted the timeline of the interactions between the tenants, Hackney Council and the landlord. This demonstrated that the landlord was aware of the condition of the property and the concerns of its occupants from 2018.

18. The tenants explained that they decided not to renew the tenancy in July 2022 because the rat infestation had become unbearable. They did not move out earlier because they had a good relationship as house sharers, because alternative affordable accommodation in London is hard to find, and they had expected that as a result of the contact between Hackney and the landlord, that the problems in the property would be rectified.

The financial circumstances of the Respondent

19. No evidence was provided by the Respondent to the tribunal about the Respondent's financial circumstances.

20. The tribunal noted that the landlord owns at least two other rental properties which indicates that he is a professional landlord with a property portfolio.

Submissions of quantum

21. Justice for Tenants provided submissions on quantum. They argued that the appropriate RRO in this instance was 90% on the basis of the number of breaches of housing laws, their seriousness, the length of time that the breach had continued, and the failure of the landlord to engage with the enforcement team at Hackney Council, Justice for Tenants and indeed the Tribunal.

The decision of the tribunal

22. The tribunal determines to award a RRO at 80% of the maximum RRO payable.

The reasons for the decision of the tribunal

23. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).
24. The starting point is to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.
25. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.
26. In this particular case the tribunal considered that the case is a very serious example of one of the less serious offences in which a rent repayment order may be made.
27. The reasons for this are those highlighted in the submissions of Justice for Tenants.
28. The property is an HMO which is in very poor condition. Indeed the conditions are so poor that they posed a real risk to the health of the occupiers. The lack of fire safety provisions and the failure to provide gas and electricity safety certificates indicate a disregard for the safety of the occupiers. The tribunal also finds that the landlord was a professional landlord with a property portfolio. The evidence suggests that the failure to licence the property was protracted and that the landlord had been aware of the local authority's concerns with the property since at least 2019. In addition the landlord failed to engage with the local authority over a long period of time and failed to engage with the tenants, other than carrying out half hearted and unprofessional attempts to deal with the problems. The lack of engagement persisted during the course of these proceedings with no effort to engage with Justice for Tenants, and no effort to engage with the tribunal.
29. As a serious example of the offence of failure to licence a property the tribunal concludes that the appropriate level of rent repayment order is 80%. This means that the rent repayment order is for £17,468.

30. In addition, and in the light of the findings above, the tribunal orders the Respondent to repay the application fee and hearing fee of the Applicants which total £300.

Name: Judge H Carr

Date: 19th August 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).