



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

Case reference : **LON/00AM/HMF/2024/0010**

Property : **Flat 1, 35 Reighton Road, London, E5
8SQ**

Applicants : **Andrew James Kemp (1)
William James Gabriel Lowe (2)
Patrick Christopher Hinton (3)
Ruby Elizabeth Corcoran (4)**

Representative : **Peter Elliott, instructed by Justice for
Tenants**

Respondent : **DIP Systems (UK) Limited**

Representative : **Emma Kiver, instructed by Jury O'Shea
LLP**

Type of application : **Application for a Rent Repayment
Order. Sections 40, 41, 43 & 44 of the
Housing and Planning Act 2016.**

Tribunal members : **Judge B MacQueen
Mr A Parkinson, MRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **7 August 2024**

Date of decision : **2 September 2024**

DECISION

DECISION

1. The Tribunal determined that the alleged offence was not committed in the period of 12 months ending with the day on which the application was

made. The application was issued on 29 November 2023 and the alleged offence ceased to be committed on 15 November 2022. The application was therefore made out of time.

2. The Tribunal made no order for the reimbursement of the tribunal fees which have been paid by the Applicants.
3. The Tribunal went on to consider the orders that the Tribunal would have made had the Tribunal been satisfied that the application was not made out of time. This determination was made for the benefit of the Upper Tribunal should there be an appeal in this matter.

The Application

4. By application dated 29 November 2023, and received by the Tribunal on 29 November 2023, the Applicant 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 1, 35 Reighton Road, London, E5 8SQ (the Property). The Applicants sought to recover £27,028.21 for the period 16 December 2021 to 15 December 2022 (the relevant period).
5. The Directions made by the Tribunal required each party to prepare a bundle of relevant documents for use at the hearing and send these to each party and the Tribunal.
6. Both parties compiled a bundle of documents which the Tribunal had read.

The Hearing

7. Peter Elliott appeared on behalf of the Applicants. All of the Applicants attended the hearing, with Andrew Kemp giving oral evidence to the Tribunal. The other Applicants were not required to give oral evidence.
8. Emma Kiver appeared on behalf of the Respondent. Lakhbir Singh Heer, a director of the Respondent (DIP Systems (UK) Limited)

attended and gave oral evidence as did Andy Hopkinson, a letting manager employed by Estates Management Services (London) Ltd (EMS). EMS was appointed manager of a portfolio of properties owned by the Respondent.

Background

9. The Property was a flat in a terraced building which had been divided into three separate flats. The flats shared a front door from the street and then once inside, each flat had their own secured front door. The Property was on two storeys with the first floor of the flat having two bedrooms, a shared bathroom and small storage cupboard. Down some stairs there were two further bedrooms. Additionally, down some further stairs was a large storage cupboard and a doorway into a shared living room and kitchen area.
10. The Applicants entered into an assured shorthold tenancy agreement with the Respondent dated 2 March 2021 which ran from 15 March 2021 to 14 March 2023. The tenancy then continued as a statutory periodic tenancy until it ended on 14 May 2023.
11. It was not disputed that the Property was situated within a London Borough of Hackney additional licensing scheme. This scheme came into force on 1 October 2018 and ceased to have effect on 30 September 2023.
12. The Property met all the criteria requiring it to be licensed under this additional licensing scheme and did not qualify for any licensing exemptions. This was because the Premises was a self-contained flat in a converted house. The Premises comprised the ground floor and lower ground floor of the building and had a shared kitchen and bathroom. It was not disputed that the Property therefore met the converted building test (section 254 (4) Housing Act 2004).

13. The Property was occupied by at least three people living in two or more separate households and occupying the Property as their main residence and paying rent as follows:
 - Room 1: Ruby Corcoran – 17 March 2021 to 6 May 2023, with £6,387.72 rent paid during the relevant period of 16 December 2021 to 15 December 2022.
 - Room 2: Andrew Kemp – 20 March 2021 to 12 May 2023, with £6,390.48 rent paid during the relevant period of 16 December 2021 to 15 December 2022.
 - Room 3: Patrick Hinton – 20 March 2021 to 14 May 2023 with £7,314 rent paid during the relevant period of 16 December 2021 to 15 December 2022.
 - Room 4 William Lowe – 15 March 2021 to 12 May 2023 with £6,936 rent paid during the relevant period of 16 December 2021 to 15 December 2022.
14. The occupation of the Property constituted the only use of the Property.
15. The Property therefore met all the criteria to be licensed under the additional licensing scheme as a house in multiple occupation (HMO).
16. The Respondent was the registered proprietor of the Property registered at HM Land Registry under title number 426048 and the landlord.
17. The Applicants therefore alleged that the Respondent was committing an offence under section 72(1) Housing Act 2004 namely of having control or management of a house in multiple occupation which was required to be licensed but was not so licensed.

Reasonable Excuse- Section 72 (5)

18. The Respondent strongly opposed the RRO Application on the basis that the Respondent believed they had a reasonable excuse for the alleged offence under section 72(1) from 16 November 2022 until 15 December 2022. As the application for a RRO was made on 29 November 2023, the Respondent stated that this meant that they could not be held liable for the alleged offence in the 12 month period prior to 29 November 2023, i.e from 30 November 2022 to 29 November 2023.
19. The Respondent provided evidence to the Tribunal to support their defence of reasonable excuse in that the Tribunal heard from Andy Hopkinson, (employed by EMS as lettings manager) and were also provided with a written statement from him dated 15 May 2024 (pages 14 to 17 of the Respondent bundle). Andy Hopkinson confirmed that EMS were appointed manager of a portfolio of properties owned by the Respondent, and that one of the properties that he had personally managed was the Property.
20. Andy Hopkinson told the Tribunal that on 16 November 2022 he made an application to Hackney Council for an HMO licence in respect of the Property. However, when he had tried to make payment, he had received notification from Hackney Council's portal that payment could not be made. Andy Hopkinson contacted Hackney Council on the same day and the email he sent was at page 21 of the Respondent bundle. At 6:02pm the same day, he received an email from the Business and Technical Support Team, Private Sector Housing which had advised that the payment system was down and payment could not be taken. The reply also advised Andy Hopkinson that he would be notified once the payment system was working again. The email was at page 23 of the Respondent bundle and read as follows:

“Good Afternoon,

I am sorry to hear about the troubles you are having with our website.

Please be advised that the payment system is currently down and we are working on it.

I have made a note of your email and will advise when it is back up and running.

Apologies for any inconvenience this may have caused and we will be in touch shortly.”

21. Andy Hopkinson told the Tribunal that he did not hear anything further from Hackney Council, and so he contacted them on 5 December 2022 to ask when the fee could be taken (page 24 of the Respondent bundle). On 8 December 2022 he received a reply to say that the system was back up and running (page 25 of the Respondent bundle). The email was again from the Business and Technical Support Team, Private Sector Housing and stated as follows:

“Good afternoon,

I can now advise that the payment system is back up and running.

Please log back into your account and make payment to submit the application.

Please contact us if you face any further issues.”

22. Andy Hopkinson confirmed that he had made payment for the HMO licence on 14 December 2022. He told the Tribunal that the payment was made on 14 December 2022 because EMS processed outgoing payments on a weekly basis on a Wednesday of each week. As 8 December 2022 was a Thursday the payment was processed in the next payment run, which was 14 December 2022. A receipt from Hackney Council showing the payment date of 15 December 2022 was at page 26 of the Respondent bundle.

23. Andy Hopkinson also told the Tribunal that Hackney Council had acknowledged that but for the fault with the payment system, the Council would have recorded the HMO licence application having been validly made on 16 November 2022. At page 32 of the Respondent bundle was an email from Hackney Council which confirmed that on 16 November 2022 the electrical and gas safety certificates and tenancy agreements were submitted and that on 15 December 2022 the payment was successfully processed. At page 44 of the bundle was an email from Sylvia Bryan dated 20 February 2024 which stated as follows:

“Good afternoon

Your payments for the 8 submitted applications were not received on 16 November 2022 due to a system error, which you duly reported and we confirmed, if payment had been received on the said date then the applications would have duly been valid from that date 16/11/2022.”

24. In cross examination Andy Hopkinson confirmed that he had been told by the Council that they would be in touch with him and so that is why he waited until 5 December 2022 before getting back in touch with the Council. In answer to questions as to why the payment was not made as soon as the Council said the system was back up and running Andy Hopkinson confirmed that EMS dealt with hundreds of payments and that the system was such that ad hoc payments could not be made. He further stated that if an ad hoc payment was made, it would not be possible to know if funds were available on the payment card so as to be able to process the payment. Andy Hopkinson confirmed that, on 16 November 2022, the accounts team had made the funds available and he was then given a card to make the payment. Payment had to be made by card as the payment was made on the Council’s portal.
25. Lakhbir Singh Heer, director of the Respondent provided a statement to the Tribunal (pages 18 -20 of the Respondent bundle) and also gave oral evidence to the Tribunal. He confirmed that the Respondent and

EMS were connected companies in that they had common shareholders and operated from the same office address, but that they otherwise operated as independent companies with separate directions. EMS was appointed as the manager of the Respondent's portfolio of properties which was governed by a management agreement. EMS actively managed all aspects of the Property.

26. In cross examination Lakhbir Singh Heer confirmed that EMS controlled the payments and there was no reason for an ad hoc payment to be made to the Council, although he accepted that it would be possible for a payment to be made if it was a matter of life or death. He further confirmed that the accounts team supported 45 companies and so when a payment was due it was put into a payment run. Lakhbir Singh Heer confirmed that the payment to the Council was made within seven days of them being notified the payment could be made, which he felt was reasonable.
27. Mr Elliott on behalf of the Applicants asked the Tribunal to consider why the licence had not been obtained earlier and why the payment had not been made before 8 December 2022. It was the Applicants' position that it was not reasonable to wait three weeks before contacting the Council to make payment, and that it was not reasonable to explain this delay by stating the Council often took several weeks to reply to queries, evidenced by the fact that, when Andy Hopkinson had contacted the Council on 5 December 2022 to ask when payment could be made, he had received a reply within three days (on 8 December 2022).
28. Further Mr Elliott submitted that waiting from 8 December 2022 when the Respondent was notified that payment could be made until 15 December 2022 when payment was actually made was not reasonable. Mr Elliott submitted that given the importance of HMO licensing, the payment should have been prioritised and treated as urgent rather than waiting for the payment run. He stated that whilst ad hoc payments were generally not done, it would have been possible for the payment

card to be provided to Andy Hopkinson earlier so an immediate payment could have been made given the seriousness of a licensing breach.

Tribunal's Findings in relation to Reasonable Excuse

29. The Tribunal found that the Respondent did have a reasonable excuse for having control or management of an HMO for the period 16 November 2022 to 15 December 2022.
30. The Tribunal accepted the evidence of the Respondent that Andy Hopkinson had made an application for an HMO licence on the Council's portal system but had been unable to complete the application because the payment system was not working. The email correspondence from the Council to EMS was very clear in that the Council was taking responsibility to contact EMS when the system was up and running. The first email from the Council of 16 November 2022 stated "I have made a note of your email and will advise when it [the payment system] is back up and running". It was therefore reasonable for EMS to wait for the Council to contact them. The fact that the email stated that a note of EMS's email address had been taken had meant that it was reasonable for them to be assured that the Council would make contact with them.
31. In light of this, the Tribunal accepted the evidence of the Respondent that it had been reasonable for them to wait until 8 December 2022 before contacting the Council for an update on the payment system.
32. Turning to whether it had been reasonable for the Respondents to wait from 8 December 2022 when they were notified that the system was working, until 15 December when the payment was made, the Tribunal accepted the evidence of the Respondent. The Applicants contended that the Respondent should have made the payment as soon as practicable after they were notified that the system was working and that EMS had the ability to make an ad hoc payment. However, the

Tribunal did not accept the Applicant's position. EMS had a payment system which meant that payments were made on a weekly basis. EMS proactively chased the Council to find out when payment could be made, and upon finding that the payment could be made followed their usual accounting practices which involved notifying the accounts team that the payment was due and arranging for sufficient funds to be available in order that a card payment could be made. The Tribunal found that this was reasonable and the payment was made within a reasonable time.

33. Adopting the three stage test in *Marigold v Wells [2023] HLR 27*:
- a. The Respondent believed they had a reasonable excuse because EMS had made an HMO licence application on 16 November 2022. The application could not be completed because the payment system was not working. EMS were told that they would be contacted again when the system was up and running. As EMS heard nothing further, they proactively contacted the Council on 5 December 2022 and were told, on 8 December 2002, that the system was now working, and therefore EMS made the payment in accordance with their accounting procedures on 15 December 2022.
 - b. The Tribunal accepted the Respondent's evidence that the Respondent's agent had been told that the Council would contact them. It was therefore reasonable for them to wait until 5 December 2022 before contacting the Council. Additionally, the Tribunal found that it was reasonable to make payment on 15 December 2022 in accordance with the Respondent's usual accounting practices.
 - c. The Tribunal was satisfied that, viewed objectively, the proven facts amounted to a reasonable excuse for the period 16 November 2022 when EMS initially attempted to make and pay for the RRO licence application until 15 December 2022 when the RRO licence payment was duly made.

34. The Tribunal therefore found on a balance of probabilities that the Respondent had a reasonable excuse for the period 16 November 2022 when the HMO licensing application was first submitted to the Council until 15 December 2022 when the payment was made.

Application Out of Time

35. Section 41 (2) (b) of the 2016 Act states:

“A tenant may apply for a rent repayment order only if –

(a) ...

(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

36. The RRO application was made to the Tribunal on 29 November 2023, meaning that to comply with section 41(2)(b) the section 72(1) offence would need to be committed in the period of 30 November 2022 to 29 November 2023. The Tribunal found that the Respondent had a reasonable excuse for the period 16 November 2022 until 15 December 2022. Therefore, the last date that the offence was committed was 15 November 2022, however the RRO application was not made until 29 November 2023. This meant that an offence was not committed in the period of 12 months ending with the day on which the RRO application was made. There was therefore no offence being committed within the 12 month limitation period of section 41(2)(b) namely between 30 November 2022 to 29 November 2023. The RRO application had therefore been made out of time and the Tribunal has no jurisdiction to deal with it.

What Decision Would have been Reached had the application been issued in Time?

37. The Tribunal considered the orders that it would have made had the Tribunal had jurisdiction to deal with the matter. This was for the

benefit of the Upper Tribunal should there be a successful appeal in this matter.

38. The Tribunal was satisfied beyond reasonable doubt that the Respondent had committed the offence of having control of or managing an unlicensed HMO under section 72(1) of the 2004 Act during the relevant period. The Respondent was the person managing the Property and the Tribunal found that the Respondent was the leaseholder of the Property who received rent from tenants through EMS who were the Respondent's agents.
39. The Tribunal considered the defence of reasonable excuse in that the Respondent stated that they relied on an agent. Lakhbir Singh Heer, in his evidence to the Tribunal, confirmed that EMS was appointed as the manager of the Respondent's portfolio of properties and that this arrangement was governed by a management agreement which meant that EMS actively managed all aspects of the Property. Lakhbir Singh Heer told that Tribunal that this meant that the Respondent had no knowledge or involvement of the licensing arrangements for the Property.
40. The Tribunal did not accept the Respondent's evidence. There was not a copy of the management agreement before the Tribunal and therefore the Tribunal did not accept that the Respondent was able to absolve themselves of any responsibility for licensing the Property. The Tribunal found that the Respondent was under a duty to ensure the Property was properly licensed and could not in the circumstances of this case rely on its agent. The Tribunal therefore did not accept that the Respondent had a reasonable excuse.
41. The Tribunal found that the Respondent was the person having control/person managing the Property within the definition of section 263 Housing Act 2004. The Respondent was named as the immediate landlord within the assured shorthold tenancy and was the beneficial owner of the Property as shown on the land registry title. They were

therefore a person having control of the premises as they received or would so receive rack-rent.

42. The Respondent was also the person managing the subject property as they were the owner/lessee of the Property who would receive or would so receive rent from tenants.

Ascertaining the Whole of the Rent for the Relevant Period

41. The Applicant was seeking to recover rent paid of £27,028.21 for the relevant period.

Deductions for Utility Payments that Benefit the Tenant

42. It was accepted by all parties that utility payments were made by the Applicants and so there was no need to make any deduction.

Determining the Seriousness of the Offence to Ascertain the Starting Point

43. 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.
44. 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 Landlord and Tenant

45. The Tribunal was satisfied that the Applicants had paid their rent on time and conducted themselves well throughout their tenancy.
46. The Applicants asked the Tribunal to consider the length of time the Property had been without a licence and also identified areas they wished the Tribunal to consider namely:
 - Failure to comply with section 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (2006 Duties)

- General Maintenance and Repair Work

Failure to comply with section 4 of the Management of Houses in Multiple Occupation (England) Regulations 2006 (2006 Duties)

47. The Applicants told the Tribunal that they were unaware of fire extinguishers and fire blankets at the Property and that the section 4 duties were not complied with as there was a lack of firefighting equipment and alarms.
48. Andy Hopkinson stated in his witness statement that to the best of his knowledge, all statutory requirements concerning the condition of a HMO were complied with. All fire-escape routes were kept free from obstruction and any firefighting equipment and fire alarms were maintained in good working order.
49. The Tribunal accepted the evidence of the Applicants and found that there was a lack of firefighting equipment and alarms. In particular the Tribunal accepted the evidence of Andrew Kemp (page 22 of the Applicant bundle) where he stated that the Respondent's agent had confirmed the presence of a carbon monoxide alarm and fire alarm but not fire extinguisher and fire blanket, and these were not listed in the inventory for the Property (AK2 and AK3).

General Maintenance and Repair Work

50. The Applicants identified a number of issues in their witness statements which could be summarised as follows:

Heating – radiators did not heat up evenly with some remaining cold

Oven fan made a noise that was loud and vibrated abrasively

Water Leak – water leaked from the bathroom floor, through the tiles into the ceiling below which was the living room. This resulted in a patch of damp forming.

Entry door into the Property from the communal hallway – The lock was in a deteriorated state, and eventually became non-functioning once a key became stuck inside the lock.

Entry door into the building from street level – the main door did not close properly.

Mice problem at the Property

Shower – cog used to control the water was broken resulting in the Applicants using pliers to adjust the water and shower not working for period of time.

Living room blinds – the blinds had fallen out of their fillings.

Boiler issues

51. The Respondent had produced at pages 53 to 234 of their bundle correspondence relating to the actions taken when an issue with the Property was reported. In particular at pages 207 to 211 was a schedule showing the date and details of the issue reported and the date that the issue was attended to. Andy Hopkinson told the Tribunal that repairs were categorised according to the level of urgency and, if the issue was urgent, it would be looked at on the day it was reported.
52. The Tribunal found that whilst it was clear that the action was taken quickly to investigate the issues, it was not always the case that a resolution was found quickly. Additionally, many of the issues reported were reported more than once.

Financial Circumstances of Respondent Landlord

53. The Tribunal was not presented with any evidence that the Respondent would not be able to meet any financial award the Tribunal made.

Whether Respondent Landlord has been convicted of offence

54. There was no evidence before the Tribunal that the Respondent had any convictions identified in the table at section 45 Housing and Planning Act 2016.

Respondent as a Professional Landlord

55. The Respondent was a professional landlord and the Property was unlicensed for a considerable period of time. The Tribunal accepted the evidence of the Applicants that the Property had been without a licence from the period when the tenancy began, namely 2 March 2021. The Tribunal found that these were aggravating factors.

Quantum Decision

56. Taking all of the above into account, the Tribunal would have assessed the RRO at 50% of the rent namely £13,514.05.

Application Fees

57. As the Tribunal found that the application was out of time, no order for the reimbursement of the Tribunal fees paid by the Applicants was made. However, had the Tribunal made a RRO then a reimbursement of Tribunal fees would have been ordered.

Judge Bernadette MacQueen

Date: 2 September 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.