



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

**Case Reference** : **LON/OOAN/HMF/2024/2011**

**Property** : **4 Biscay Road , London , W6 8JN**

**Applicants** : **Matthew Farrell, Joshua Squires,  
William Churchill, Ross Kerslake  
and Carl Griffiths**

**Respondent** : **Stevan Gorgievski**

**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** : **Judge Shepherd  
Steve Wheeler MCIEH**

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

**Date of Decision** : **3<sup>rd</sup> September 2024**

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**DECISION**

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1. The Tribunal has received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicants for a rent repayment order (RRO).
2. It is asserted in the application notice that the landlord committed an offence of having control of or managing a house in multiple occupation (HMO) that was required to be licensed but was not so licensed.
3. The Applicants in this case are Matthew Farrell, Joshua Squires, William Churchill, Ross Kerslake and Carl Griffiths ( The Applicants).The Respondent is Stevan Gorgievski ( The Respondent).
4. The Applicants are seeking a Rent Repayment Order. They were all in occupation of premises at 4 Biscay Road , London , W6 8JN ( The premises). The Respondent was their landlord. The Applicants allege that during their occupation at least five persons were living in two or more separate households and occupying the property as their main residence.
5. The premises were occupied as follows:
  - Room 1: Ross Kerslake occupied Room 1 from 10th of October 2021 and vacated the room on 10th of May 2023
  - Room 2: A tenant known as Ornella occupied Room 2 from 2nd July 2021 and vacated shortly before Matthew Farrell occupied in Room 2 from 7th of November 2021 and vacated the room on the 2nd of April 2023.
  - Room 3: Joshua Squires occupied Room 3 from the 5th of June 2021 until the 25th of April 2023.
  - Room 4: William Churchill occupied Room 4 from the 12th of March 2022 until the 9th of May 2023. Prior to William's occupation of Room 4, it was previously occupied by Aulia Setyadi from the 9th of November 2021 until the 17th of February 2022.
  - Room 5: Carl Griffiths occupied Room 5 from the 20th of July 2021 until the 10th of May 2023
6. During the Applicants' occupation the premises were located in an area operating an additional licensing scheme. The local authority confirmed that there was no license despite the requirement to have one. A license was obtained on 5<sup>th</sup> July 2023, an application having been made on 29<sup>th</sup> November 2022. Title deeds confirmed that the Respondent owned the premises during the relevant period. Rent was paid direct to him. We were shown evidence of the rent payments.

7. Mr Farrell gave live evidence as well as submitting a witness statement. He said the housekeeper Lesley Nurse had become hostile towards the end of his occupation. She occupied the living room being deliberately obstructive. He was given a bogus possession notice. He said some of the disrepair at the premises remained unresolved. He accepted that he had installed a second hand freezer in the basement which tripped the electrical supply.
8. Mr Griffiths also gave live evidence. He said there had been a mice infestation. He had blocked the holes with newspaper. He said the hole was properly filled but not until some time after.
9. Mr Squires gave live evidence. He carried out health and safety work for a retailer. He said there was no central alarm panel. He had seen mice running around. He said there had been random visits by the Respondent and Lesley the housekeeper. Lesley would spend several hours in the lounge.
10. Mr Kerslake said he went away for a few days and when he came back his door was broken. He did not know who had done this.
11. The Respondent has two other properties, one of which he let out He had provided details of the utility costs.

### *The law on Rent Repayment Orders*

### **The Housing Act 2004 (“the 2004 Act”)**

12. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licencing of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an unlicenced house. On summary conviction, a person who commits an offence is liable to a fine.

An additional remedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

13. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which states.

*254 Meaning of "house in multiple occupation"*

*(1) For the purposes of this Act a building or a part of a building is a "house in multiple occupation" if—*

- (a) it meets the conditions in subsection (2) ("the standard test");*
- (b) it meets the conditions in subsection (3) ("the self-contained flat test");*
- (c) it meets the conditions in subsection (4) ("the converted building test");*
- (d) an HMO declaration is in force in respect of it under section 255; or*
- (e) it is a converted block of flats to which section 257 applies.*

14. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence under the mandatory licensing scheme. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

15. Section 56 Housing Act 2004 deals with the designation of Additional Licensing Schemes:

*56 Designation of areas subject to additional licensing*

*(1) A local housing authority may designate either—*

*(a) the area of their district, or*

*(b) an area in their district,*

*as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.*

*(2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular problems either for those occupying the HMOs or for members of the public.*

*(3) Before making a designation the authority must—*

*(a) take reasonable steps to consult persons who are likely to be affected by the designation; and*

*(b) consider any representations made in accordance with the consultation and not withdrawn.*

*(4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.*

*(5) In forming an opinion as to the matter mentioned in subsection (2), the authority must have regard to any information regarding the extent to which any codes of practice approved under section 233 have been complied with by persons managing HMOs in the area in question.*

*(6) Section 57 applies for the purposes of this section.*

16. There is no dispute in the present case that the local authority were operating an additional licensing scheme and that for the period in question the premises should have been licensed but wasn't.

17. Section 263 of the Act provides:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

### **The Housing and Planning Act 2016 (“the 2016 Act”)**

18. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

19. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought.

The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

20. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

21. Section 40 provides (emphasis added):

"(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

22. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

23. Section 41 deals with applications for RROs. The material parts provide:

“(1) A tenant or a local housing authority may apply to the First-Tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if –

(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and

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

24. Section 43 provides for the making of RROs:

“(1) The First-Tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).”



25. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

26. Section 44(4) provides:

“(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.”

27. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

31. In *Williams v Parmar* [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

(i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);

(ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);

(iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the “purposes intended to be served by the jurisdiction to make a RRO” (at [41] and [43]).

32. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions *Simpson House 3 Ltd v Osserman* [2022] UKUT 164 (LC); [2022] HLR 37 and *Hallett v Parker* [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional “rogue” landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

33. In *Acheampong v Roman* [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

*"20. The following approach will ensure consistency with the authorities:*

*a. Ascertain the whole of the rent for the relevant period;*

*b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.*

*c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step:*

*d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).*

*21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."*

## **Determination**

34. In this case there was no dispute that the premises were unlicensed when they should have been. The Respondent sought to argue that his previous agents (Kingsman) had failed to tell him to get a license when they were managing the property. At the time of the Applicants' occupation however the premises were being managed by the Respondent because Kingsman had gone into liquidation. We do not find the Respondent's account credible and even if it was the onus was on him to determine if the property needed a license. The conduct of the landlord overall was poor. There were problems of disrepair and infestation, the occupation of the lounge by him and the housekeeper was a form of harassment. The conduct of the tenants was generally good.

35. Applying the *Acheompong* criteria: the total rent paid for the relevant period was the following:

a. Matthew Farrell is claiming £10,468.17 for the period between the 29th of November

2021 to the 28th of November 2022.

b. Ross Kerslake is claiming £8,700.00 for the period between the 24th of November 2021 to the 23rd of November 2022.

c. William Churchill claiming is £8,119.29 for the period between the 12th of March 2022

to the 28<sup>th</sup> November 2022.

d. Josh Squires is claiming £8,700.00 for the period between the 27th of November 2021 to the 26th of November 2022.

e. Carl Griffiths is claiming £9,888.13 for the period between the 29th of November 2021

to the 28th of November 2022.

36. None of the Applicants were in receipt of a housing element of Universal Credit or Housing Benefit.

37. Deducted from the total rent are the cost of the utilities which we calculate at £758 per person.

38. The failure to license offence is serious but not as serious as other offences such as unlawful eviction. Nonetheless we do take into account the landlord's poor conduct as indicated above. We also take into account the fact that the Respondent has no previous convictions as far as we are aware. We consider that an award of 80% of the rental value is appropriate in this case.

39. Accordingly, we determine the following:

a. Matthew Farrell is awarded £7768.14

b. Ross Kerslake is awarded £6353.60

c. William Churchill is awarded £5889

d. Josh Squires is awarded £6353.60

e. Carl Griffiths is awarded £7304.10

40. In addition the Respondent should repay the Applicants their application and hearing fee of £700 in total.

Judge Shepherd

28<sup>th</sup> August 2024

## 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 Tribunal 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 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.

4. 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.