



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

Case reference : **LON/00/0AY/HMF/2023/0200**

Property : **68 Stockwell Park Road, St John's
Park, London SW9 0DA**

Applicants : **(1) Ms M Incantalupo
(2) Ms S Incantalupo**

Representative : **In person**

Respondent : **Mrs C Harman**

Representative : **In person**

Tribunal members : **Tribunal Judge I Mohabir
Mr A Lewicki BSc (Hons) FRICS
FCIArb
Mr O N Miller BSc**

Date of hearing : **30 May 2024**

Date of decision : **30 August 2024**

DECISION

Introduction

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondent in respect of 68 Stockwell Park Road, St John’s Park, London SW9 0DA (“the property”).
2. The property is described as a 4-storey terraced house. The Applicants occupies the 2-bedroom basement flat pursuant to a house share agreement commencing from 4 December 2022 (“the agreement”) on a monthly periodic basis until either party terminated the agreement. The rent payable was £1,600 payable on the fourth day of each calendar month.
3. The agreement expressly provided that the Applicants would have exclusive use of the two bedrooms in the basement flat but would otherwise have shared use of the common parts and the facilities such as the bathroom, toilet, kitchen and sitting room at the property.
4. However, the actual living arrangements were the property has two entrances being the front door and a side entrance. The Respondent lived on the upper floors, which contains a kitchen, dining room, living room, 4 bedrooms, 2 bathrooms and a further toilet. The self-contained basement flat is entered from the ground floor at the side of the property and contained its own kitchen, bathroom, toilet, living room and the two bedrooms occupied by the Applicants.
5. At the relevant time, the upper floors of the property was also occupied by the Respondent’s daughter, Rebecca Harman, and the Respondent’s carer, Molly Woodward, pursuant to a licence dated 1 April 2023.
6. The Applicants vacated the property on 21 August 2023.
7. By an application dated 31 July 2023, the Applicants made an application to the Tribunal seeking a rent repayment order for the period of 8 months and 17 days preceding the date they vacated the property in the sum of £13,677.42.

Relevant Law

Requirement for a Licence

8. Section 72 of the Act provides:
 - (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
 - (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person’s occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) ...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,
as the case may be.

9. The Housing Act 2004 Part 2 s.95(1) provides:

(1) A person commits an offence if he is a person having control of or managing an house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Section 263 of the Act defines a person having control or managing as:

(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.

Making of rent repayment order

10. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers) and 5 (control or management of unlicensed house) of the table.

11. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(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).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) ...

(c) ...

Amount of order: tenants

12. Section 44 of the Act provides:

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of

the period of 12 months ending with the date of the offence

a period not exceeding 12 months, during which

the landlord was committing the offence

(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.

(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.”

Hearing

13. The hearing in this case took place on 30 May 2024. The Applicants appeared in person. The Respondent appeared in person and was assisted by Ms Wallis.

Was the Property an HMO?

13. The Applicants submitted that it was because it fell within the definition of section 254(2)(d) of the Housing Act 2004 (“the 2004 Act”) as:

- There are three or more occupiers,
- Who form two or more ‘households’, and
- Who share a kitchen, bathroom or toilet

14. It was common ground that both the Applicants and the Respondent had shared use of the washing machine and the toilet and there was no physical separation between the basement flat and the upper floors of the building. To that extent, this part of the definition of an HMO was satisfied.

15. However, the Tribunal found that the Applicant’s daughter, Rebecca Harman, fell within the definition of a “relative” under section 258(4)(b) and could not be regarded as a separate ‘household’ because this is expressly exempted by section 258(2)(a) of the 2004 Act.

16. Similarly, the Tribunal found that the occupation by the live in carer, Molly Woodward, pursuant to the licence agreement dated 1 April 2023 cannot be treated as being a separate “household” within the meaning of section 254(2)(d) because it is expressly exempted by sections 258(2)(b), (5) and (6) of the 2004 Act.

17. Of course, as a resident landlord and owner, the Respondent cannot be regarded as a separate household in her own property and does not, in any event, fall within the definition of a 'household' in section 258 of the 2004 Act.
- 18, Therefore, for the purpose of section 254(2)(f), the Tribunal was satisfied that the only 'household' was in fact the Applicants. In other words, there were not two households and the test for an HMO was not met in this regard.
19. Furthermore, as a resident landlord, the Respondent is permitted to allow two 'non-family' lodgers before the property will be classed as an HMO. The only two such lodgers were the Applicants themselves.
20. For the reasons set out above, the Tribunal concluded that the property was not an HMO and did not require a licence. It follows that the Applicants were not entitled to a rent repayment order and the application was dismissed. The Tribunal orally provided the Applicants with its findings at the hearing and dismissed the application then. The purpose of this decision is to formally confirm the position to the parties.

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).