



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

Case Reference : **CAM/38UC/HMJ/2023/0002**

Property : **7 Moody Road, Headington, Oxford,
OX3 0DH**

Applicant : **Claire-Adeline Veronique Le
Prestre de Vauban**

Respondents : **1. Room to Go Ltd
2. Selven Pursooramen
3. Mahadeva Properties Ltd**

Type of Application : **Application by Tenant for rent
repayment order. Sections 40,41, 43
& 44 of the Housing and Planning Act
2016**

Tribunal : **Judge Bernadette MacQueen
Mr Gerard Smith, MRICS, FAAV, REV**

Date of Hearing : **5 April 2024**

Date of Decision : **7 May 2024**

DECISION

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1. The Tribunal did not make a rent repayment order as it was not satisfied that the First Respondent, Room to Go Ltd, as the landlord, committed the offence under section 72(1) Housing Act 2004, namely having control or management of a house in multiple occupation which was required to be licensed but was not so licensed. The Tribunal decided that the Second and Third Respondent were not the landlord and therefore a rent repayment order could not be made against them in any event.

Background

2. On 13 April 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 7 Moody Road, Headington, Oxford, OX3 0DH (the Property).
3. The Applicant stated in her application that she had paid rent of £775 for “sub room 2” at the Property for three months from 9 January 2023 to 8 April 2023 (the Relevant Period). The Applicant alleged that nine people were living at the Property, sharing basic facilities and therefore the Respondents were 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. The Applicant also alleged that there were a number of problems with the condition of the Property.
4. The Applicant named Selven Pursooramen as the Respondent. However, when directions were made on 12 December 2023, Judge Wyatt properly added Room to Go Ltd as First Respondent pending further clarification given that they were named in the tenancy agreement as the “landlord”. However, this was in terms which included

an agent of the landlord and therefore this may have meant that there was an undisclosed principal. In light of this, the Applicant was directed to obtain Land Registry entries for the Property by 22 December 2023 and then:

- a. if neither of the respondents was the registered proprietor of the Property, or there was a leasehold title in addition to the freehold title, the applicant would have to apply to the Tribunal immediately for further directions, enclosing copies of the Land Registry entries;
 - b. otherwise, the applicant would have to send copies of their application, these directions and the covering letter from the Tribunal to the relevant respondent at the correspondence address given for them in the Land Registry entries for their title to the Property.
5. The Applicant did not obtain office copies from the Land Registry, but she did produce a GOV.UK search for land and property information which she had accessed on 19 December 2023 at 22:44:46. This showed the Property title number as ON7808 and showed the Registered Owners as Mahadeva Properties Ltd. In the entry no reference was made to any leasehold title. In light of this, the Tribunal made further directions on 22 January 2024 adding Mahadeva Properties Ltd as the Third Respondent on the basis that they may have been the Applicant's undisclosed landlord. Mahadeva Properties Ltd were ordered to comply with the directions given by the Tribunal on 12 December 2023.
6. The directions made on 12 December 2023 required each party to prepare a bundle of relevant documents for use at the hearing and send these to each party and the Tribunal.
7. Although not paginated, the Applicant sent a bundle of documents that consisted of the application, directions, an email exchange during February and March 2023 between the applicant and the Oxford City

Council Environmental Health Department, emails between Room to Go Ltd and the Applicant (16 January 2023 and 3, 13 and 21 February 2023), the GOV.UK search (referred to above), evidence of rent paid in January, February and March 2023, and a copy of the tenancy agreement.

8. The First Respondent (Room to Go Ltd) and the Third Respondent (Mahadeva Properties Ltd) did not provide any documentation in compliance with the directions. The Second Respondent (Selven Pursooramen) provided a bundle consisting of 110 pages which formed a one page response headed “Response to Background Allegations” and copies of HMO license applications between the period 2 December 2021 and 31 March 2023. This evidence was submitted after the date specified in the directions order of 12 December 2023. The Tribunal heard representations, and following this, allowed the addition of this late evidence. In reaching this decision the Tribunal considered Rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and in particular the need to avoid unnecessary formality and seek flexibility in the proceedings. The evidence, although late, was served before the hearing and the Applicant had time to consider this; there was therefore no prejudice to the Applicant.

The Hearing

9. The Hearing on 5 April 2024 took place via Cloud Video Platform (CVP). Initially the Applicant did not attend and so the Tribunal waited until 10.15am before commencing the hearing. The Applicant joined the hearing at 10.35am, attending in person.
10. Selven Pursooramen, the Second Respondent, attended the hearing in person and confirmed that he was a Director of Room to Go Ltd (the First Respondent). Khoosan Gopee attended the hearing as manager of Room to Go Ltd. Khoosan Gopee and Selven Pursooramen told the Tribunal that Khoosan Gopee would speak at the hearing as he had the relevant detail about the management of the Property. Both Khoosan Gopee and Selven Pursooramen confirmed that the tenancy agreement with the Applicant was with the First Respondent – Room to Go Ltd.

11. The Third Respondent did not attend the hearing and was not represented.
12. The Tribunal sought clarification as to the relationship between the Respondents. Khoosan Gopee told the Tribunal that in December 2022, Room to Go Ltd had entered into a “common law agreement” with Mahadeva Properties Ltd, the Third Respondent. The agreement was that Room to Go Ltd would pay rent to the Third Respondent but it was Room to Go Ltd, the first Respondent, that would enter into tenancy agreements with tenants with the Third Respondent taking no part in arrangements with tenants. Khoosan Gopee was not able to produce to the Tribunal any written agreement between Mahadeva Properties Ltd and Room to Go Ltd.
13. In his written evidence to the Tribunal, Selven Pursooramen, Second Respondent, Director of Room to Go Ltd, stated that the Property was rented from Mahadeva Properties Ltd to Room to Go Ltd to under a long-term commercial lease. He further stated that “the subsequent subletting of individual rooms to occupants was conducted under the authority of Room to Go Ltd, acting as the landlord at the time”.
14. The Tribunal did not receive any submissions from Mahadeva Properties Ltd; however, Khoosan Gopee confirmed that Mrs Kanta Sharma (the person to whom the HMO licence was granted) was a Director of Mahadeva Properties Ltd.

The Law

15. Section 41(1) of the Act states:

“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”

12. Section 43(1) of the Act states:

“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 had been convicted)”

13. Section 40(3) of the Act defines “an offence to which this Chapter applies” by reference to a table. The offence under section 72(1) Housing Act 2004 (control or management of unlicensed house) is within that table.

Control or Management of Unlicensed HMO:

14. Section 72(1) Housing Act 2004 provides:

“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 but is not so licensed.”

An HMO required to be licensed is defined in Section 55(2)(a) Housing Act 2004 as:

“any HMO in the [local housing] authority’s district which falls within any prescribed description of HMO”.

The Licensing of Houses in Multiple Occupation (Prescribed Description) Order 2018/221 states:

“An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act [Housing Act 2004] if it

(a) is occupied by five or more persons;

(b) occupied by persons living in two or more separate households; and

(c) meets either (i) the standard test under section 254(2); (ii) the self-contained flat test under s.254(3) except for purpose-built flats situated in blocks comprising three or more self-contained flats; or (iii) the converted building test under section 254(4) of the Act [Housing Act 2004], unless the HMO has a temporary exemption notice or is subject to an interim or final management order;

Finally, section 254 Housing Act 2004 defines the standard test, self-contained test and the converted building test:

Section 254 provides:

(1)“For the purposes of this Act a building or 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 condition in subsection (3) (“the self-contained flat test”)
(c) it meets the conditions in subsection (4) (“the converted building test”).

The standard test is defined as:

A building or a part of a building meets the standard test if–
(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
(b) the living accommodation is occupied by persons who do not form a single household;
(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Person having Control of or Managing

16. The section 72(1) offence is committed by the person having control/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as “the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person)”. Section 263(2) defines “person managing” as the person who, being an owner or lessee of the premises (a) received (whether directly or through an agent or trustee) rents or other payments (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises.
17. It is now well established that an RRO may only be made against the immediate landlord. The Tribunal accepted the evidence of the first and Second Respondent that Room to Go Ltd had entered into an agreement with Mahadeva Properties Ltd which meant that Room to Go Ltd entered into tenancy agreements and collected rent and therefore was the landlord of the Applicant. The Tribunal therefore found that no RRO could be made against Mahadeva.
18. In relation to the Second Respondent, a director of Room to Go Ltd, the Tribunal reminded itself that where the landlord was a company (as in this case), there was no provision in the Act for making a director of that company personally liable for an RRO. This meant that an RRO could not be made against the Second Respondent. The Tribunal therefore

found that the correct respondent was the First Respondent, Room to Go Ltd.

19. The Applicant provided receipts for Room to Go Ltd for the rent she had paid in January, February and March. The Tribunal was therefore satisfied that Room to Go Ltd was collecting rent and therefore was the “person having control” for the purposes of the section 72(1) offence. Additionally, the Tribunal found that Room to Go Ltd were the “person managing” as they were the lessee of the premises and received rent from the people occupying the Property. Room to Go Ltd could therefore commit an offence under section 72(1).

Was the Property an HMO that was required to be licensed?

20. It was agreed by the Applicant and Khoosan Gopee and Selven Pursooramen that the Property was an HMO and was required to be licensed. It was also agreed that the Relevant Period was 9 January 2023 (when the Applicant moved into the Property) until 8 April 2023 (when the Applicant left the Property).
21. The Applicant told the Tribunal that when she first moved into the Property on 9 January 2023 there were eight people living at the Property, but this became nine people shortly after. The Applicant confirmed that there had been a couple in one of the downstairs rooms and a single woman in the other. Upstairs there had been a couple in one room and a single man in another room and another single man in another room. The Applicant had a further room meaning that there was a total of eight people forming six separate households. Further, the Applicant stated that a partner of one of the occupants had moved into the Property shortly after the Applicant had moved in which had brought the total number of people living at the Property to nine people who formed six separate households. The Applicant confirmed that this had remained the position for the Relevant Period.

22. Further, the Applicant produced her tenancy agreement which was described as an “assured shorthold tenancy agreement – room only for a furnished room in a shared house or flat (landlord not resident)”, for which the Applicant had paid rent of £775 per month. The Applicant confirmed that the residents had shared cooking, personal washing and toilet facilities.
23. The First and Second Respondents accepted that the Property had required an HMO licence for the Relevant Period. As the Third Respondent was not present at the hearing the Tribunal did not know their position and so the Tribunal was required to make a finding as to whether the Property was an HMO.
24. The Tribunal considered the evidence of the Applicant and the submissions of the First and Second Respondents and found that the Property was an HMO, identifying the standard test as the applicable test. The Tribunal accepted the unchallenged evidence of the Applicant and found that the Property had consisted of one or more units of living accommodation not consisting of a self-contained flat or flats and that the occupiers had not formed a single household. Additionally, the occupiers had been occupying the Premises as their main residence, paying rent, and there had been two or more households occupying the Property who were sharing toilet, personal washing and cooking facilities. The Property was therefore required to be licensed.

Was the Property licensed?

25. The Tribunal was therefore satisfied that the First Respondent had control/management of an HMO which was required to be licensed. However, for an offence under section 72(1) to be proved, the Tribunal had to be satisfied that the Property was not licensed. The burden of proof remained on the Applicant to prove this beyond reasonable doubt.
26. The Applicant stated in her RRO application form that Oxford City Council had confirmed that the Property was “not in regulation”;

however, the Applicant did not provide any further detail on the form as to what was meant by this. Within her bundle, the Applicant had provided copies of email correspondence that she had had with Matt Kidger, Environmental Health Officer at Oxford City Council. An email dated 23 February 2023 from Matt Kidger to the Applicant confirmed that an inspection of the Property would be completed by the Council on 1 March 2023. Further, in an email dated 7 March 2023, Matt Kidger stated:

“the Council intend to add conditions to the HMO licence requiring repairs and improvement works are carried out to the house. The HMO licence is due to be issued. The Council will then revisit the house to check that the HMO licence requirements have been met”.

Additionally, in an email dated 8 March 2023, Matt Kidger stated “I haven’t written a report so I am not able to send one. I can however confirm that at the time of my visit the house was occupied by more persons than it is suitable for based on standards for HMOs”.

27. The Tribunal noted that the Applicant did not produce any evidence from Oxford City Council that confirmed that the Property did not have an HMO licence. Rather, the evidence before the Tribunal was that the email from the Council of 7 March 2023 confirmed that a licence was going to be issued with additional conditions added.

Statutory Defence – Section 72(4)(b) and Reasonable Excuse

28. In their written evidence and submissions made to the Tribunal, both the First and Second Respondents stated that the Property had an expired HMO licence and the owner of the Property was in correspondence with the Council regarding renewal of the licence.

29. The Tribunal therefore had to consider Section 72(4) Housing Act 2004 which provides:

“In proceedings against a person for an offence under subsection (1) [offence of failing to obtain an HMO licence] it is a defence that, at the material time -

(a)

(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”...

Subsection (8) clarifies what is meant by the application being still effective and this is that for the purposes of subsection (4) if it has not been withdrawn and one of two conditions are met. The relevant condition for this application is that the authority have not decided whether to grant a licence in pursuance of the application.

30. Selven Pursooramen, Second Respondent, provided the following documents to the Tribunal:

- i. A copy of HMO licence granted by Oxford City Council for the Property for the period 2 December 2021 until 17 November 2022. The licence was granted to Mrs Kanta Sharma of Stone Dean, 13 Ashley Drive, Walton On Thames, Surrey, KT12 1JL. (Khoosan Gopee confirmed that Mrs Kanta Sharma was a Director of Mahadeva Properties Ltd). A condition of the HMO licence included that the Property was to be occupied by no more than 5 people.
- ii. A copy of a letter dated 3 February 2023 sent to Sudhir Sharma (also a Director of Mahadeva Properties Ltd) as an interested party. The letter confirmed that Oxford City

Council intended to grant an HMO licence for the Property to Mrs Kanta Sharma. The letter confirmed that the “stage two payment” was required by 24 February 2023 and that the consultation period would end on 24 February 2023. The proposed conditions included that no more than 5 people occupy the house.

iii. A copy of a letter sent on 17 March 2023 by Oxford City Council to Khoosan Gopee as an interested party. This letter was sent as modifications to the proposed licencing conditions that had been sent out previously were being made. The letter confirmed that Oxford City Council intended to grant an HMO licence with modified conditions to Mrs Kanta Sharma. The consultation period was set to end on 27 March 2023.

iv. A copy of a letter sent on 31 March 2023 to Khoosan Gopee as an interested party that stated that Oxford City Council had decided to grant a licence with conditions to Mrs Kanta Sharma from 31 March 2023 until 30 March 2024.

31. The Tribunal reminded itself that the relevant period was 9 January 2023 to 8 April 2023. The documents were silent as to what happened between 9 January and 3 February 2023, but the 3 February 2023 letter showed that the application had reached the “stage two payment”. The correspondence from Oxford City Council showed that an application would have been made before 3 February 2023 but there was no clarity on the date the application was “duly made”.

32. In oral evidence to the Tribunal, Khoosan Gopee confirmed that, between the date when the licence expired (17 November 2022) and 3 February 2023, Mr Sharma of Mahadeva Properties Ltd had been in communication with the Council to make an application for a new

licence and that the Council had granted a “grace” period whilst the licence was renewed.

Tribunal’s Findings on Statutory Defence Section 72(4)

33. It was for Room to Go Ltd to show, on a balance of probabilities, that the statutory defence under section 72(4) was met. The question for this Tribunal to consider was when the application was “duly made” (section 72(4)(b)). Room to Go Ltd have not adduced evidence on this point. All the Tribunal had before it on this point was evidence that on 3 February 2023 the “second stage payment” had been reached and the Second Respondent’s written response that the “application for renewal was made on the 3 February 2023”. The Tribunal did not find this sufficient to satisfy it that on a balance of probabilities an application had been duly made and in any event, certainly not for the whole of the Relevant Period.
34. The Tribunal therefore considered whether the First Respondent had a reasonable excuse.

Reasonable Excuse

35. The burden of proof remained on the Respondent to prove a reasonable excuse on a balance to probabilities.
36. Section 72(5) Housing Act 2004 provides that 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)...
37. In his oral evidence to the Tribunal, Khoosan Gopee told that Tribunal that the Third Respondent had been in communication with the Council to renew the licence from 17 November 2022 and that the Council had

given a “grace period” whilst the licence renewal was being processed. Khoosan Gopee maintained that the Property was licensed. Additionally, it was clear that the documents adduced to the Tribunal from the Second Respondent showed that from 3 February 2023 the application for renewal of the licence had reached the second payment stage. The Tribunal therefore found that it was reasonable for Room to Rent Ltd to accept what Mr Sharma told them that the Council had granted a grace period whilst the licence was applied for and that the licence application was progressing.

38. The Tribunal did not have any confirmation before it from Oxford City Council to confirm the details of any licence application nor had the Applicant adduced evidence from Oxford City Council to show that the Property did not have a licence.
39. The Tribunal therefore found that Room to Go Ltd were under the reasonable impression that there was a grace period between the expiry of the licence in November 2022 and the application for the new licence and that the Third Respondent, Mahadeva, had applied for a new licence. The Tribunal therefore found on a balance of probabilities that the reasonable excuse defence was made out.
40. The Tribunal was disappointed that the Respondents chose to adduce evidence which led to the reasonable excuse defence at such a late stage and noted that it was not until the Tribunal hearing that the detail that Mahadeva Properties Ltd had been in communication with Oxford City Council since December 2022 about licence renewal was given.

The Decision

41. The Tribunal did not make a rent repayment order as it was not satisfied that the First Respondent, Room to Go Ltd, as the landlord, had committed the relevant offence. This was because the Applicant

had failed to prove the offence beyond reasonable doubt, firstly as she did not have any evidence that the Property was unlicensed and secondly because the Respondent had established a reasonable excuse on a balance of probabilities due to the ongoing discussions with the Council and their belief that in the circumstances no offence was being committed.

42. The Tribunal decided that the Second and Third Respondent were not the landlord and therefore a rent repayment order could not be made against them in any event.

Judge Bernadette MacQueen

Date: 7 May 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.