



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

Case Reference : **LON/00BE/HMG/2024/0013**

Property : **12b Brunswick Park, London, SE5
7RH**

Applicants : **Freeman Winston Williams (1)
Fergus William Garside Riley (2)**

Representative : **Arjona Hoxha, Represented Law ltd**

Respondent : **Karen Patricia Sanderson**

Representative : **In person**

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

Tribunal : **Judge Bernadette MacQueen
Mr Fonka, FCIEH CEnvH Msc**

Date of Hearing : **2 September 2024**

DECISION

DECISION

The Tribunal does not make a Rent Repayment Order for the Reasons set out below.

REASONS

Background

1. On 13 November 2023 Freeman Winston Williams made an application for a rent repayment order on the basis that the Property was located in the St Giles ward in the London Borough of Southwark which was subject to a selective licensing scheme.
2. The Applicant stated that on 1 March 2022 the London Borough of Southwark implemented a selective licensing scheme and since at all times the Property was occupied by four or more unrelated persons in two or more households was subject to selective HMO licensing. The grounds of application then stated that the Respondent had committed an offence under section 72 (1) Housing Act 2004.
3. Directions were made which were dated 8 March 2024 which required both parties to exchange documents and prepare a bundle for hearing.
4. On 23 July 2024 an application was made by Fergus Riley to be included as a party and an application was made to amend the grounds of the application together with evidence of Mr Riley's occupation and rent payments.
5. This application was granted and further time was given to the Respondents to submit evidence in reply. The matter was listed for hearing on 2 September 2024.

Documents before the Tribunal

6. The Tribunal was provided with a bundle of 240 pages which had both parties relevant documentation.
7. Included within the bundle was a copy of the London Borough of Southwark's Selective licensing scheme (pages 27 to 29 of the bundle).

The Hearing – 2 September 2024

8. At the start of the hearing, the Tribunal reminded parties that the Tribunal needed to be satisfied beyond reasonable doubt that a relevant

offence had been committed. Given that the Applicants made reference to offences under both section 72 (1) and 95 of the Housing Act 2004, the Tribunal gave the Applicants the opportunity to confirm the basis upon which their case was being put at the start of the hearing.

9. The representative for the Applicants confirmed that the alleged offence was being brought as a breach of the selective licensing scheme.
10. The Tribunal clarified that the Applicant's evidence was that James Sanderson-Hall lived at the Property and that he was the Respondent's Son. The Applicants confirmed that this was the basis upon which their case was put. The Respondent confirmed that James Sanderson-Hall lived at the Property.
11. In light of this confirmation, the Tribunal gave parties time to consider the selective licensing scheme contained within the bundle at page 27 and in particular to consider the Selective Licensing of Houses (specified Exemptions) (England) Order 2006 SI 370/2006.
12. When the hearing reconvened, the representative for the Applicants sought permission of the Tribunal to change the basis on which the case had been brought so as to rely on the Southwark Additional Licensing scheme.
13. It was the Applicants position that the Additional licensing scheme specified 3 or more people in 2 or more households and therefore the fact that James Sanderson-Hall was the son of the Respondent meant the case could be brought on that basis. The Applicants asserted that if the Tribunal allowed the Applicants to now bring the case on the basis of the additional licensing scheme the same evidence would still be before the Tribunal and there would be no prejudice to the Respondent.
14. The Respondent objected to the applicants changing the basis of the offence to now being one brought under the additional licensing scheme. The Respondent stated that since day one she felt that there had been changes to the grounds of the case and she had struggled to keep up with the evidence. She further stated that she was not a professional landlord, and that this case had been going on for a long time.

Decision

15. The Applicants presented their case to the Tribunal on the basis that James Sanderson-Hall lived at the Property and was the son of the Respondent. This was stated within the witness statements from the Applicants and their witness, as well as included in messages from a group chat that were exhibited. The Respondents confirmed at the hearing that James Sanderson-Hall did live at the Property. The Applicant therefore conceded, and the Tribunal agreed, that the selective licensing was not applicable because the Exempted tenancies

or licences Selective Licensing of houses (specified Exemptions) (England))order 2006 SI 370/2006 stated that:

A tenancy or licence of a house or a dwelling contained in a house is an exempt tenancy or licence for the purposes of part 3 of the Housing Act 2004 (“the Act”) if it falls within any of the following descriptions—

....

(h) “a tenancy or licence under the terms of which the occupier shares any accommodation with the landlord or licensor or members of the landlord’s or licensor’s family”.

16. The Tribunal found that it would not be in the interest of justice to allow the Applicants to change the basis of the case to allege now that the offence was under the Southwark Additional licensing Scheme instead. In reaching this decision the Tribunal considered the necessity for a party to know the case that is being brought against it, and also the overriding objective as set out in Rule 3 of the First-tier Tribunal (Property Chamber) Rules 2013.
17. In reaching this decision the Tribunal noted that the Southwark Additional licensing Scheme was not before the Tribunal, and the Tribunal therefore found that it would not be appropriate for the Respondent, as a litigant in person, to address this scheme when a copy of it was not before the Tribunal. The Tribunal considered rule 3 of the First-tier Tribunal (Property) Chamber Rules 2013 rules and in particular the need to ensure that parties have the opportunity to participate fully in proceedings. The Applicants had not clearly stated the basis upon which the case was being brought and this did not allow the Respondent the opportunity to participate fully.
18. The Tribunal also considered whether it would be appropriate to adjourn the matter to allow further time, however the Tribunal was conscious of delay and again considered rule 3 of the First-tier Tribunal (Property) Chamber Rules 2013. The application was first made to the Tribunal on 13 November 2023 and from the outset had been put on the basis of a breach of Southwark Council’s selective regime, the Tribunal therefore did not consider it appropriate when the Respondent had attended the hearing expecting the matter to be heard and concluded.
19. The Tribunal noted in particular that in order to make a rent repayment order, the Tribunal has to be satisfied beyond reasonable doubt that a relevant offence has been committed. The allegation being made is therefore that a person has committed a criminal offence and any finding by the Tribunal may be used in a subsequent prosecution. Given the seriousness of this, it is incumbent upon those who bring cases to the Tribunal to ensure that the basis upon which the Applicant is brought is clear.

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.