FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/HMF/2023/0278**
Property	**:**	**18 Pennine Drive, London NW2 1PB**
Applicant	**:**	**Gergo Varga**
Representative	**:**	**In person**
Respondent	**:**	**Maria Bajo**
Representative	**:**	**Mr Tejdman, Property Manager**
Tribunal members	**:**	**Tribunal Judge I Mohabir** **Mr S Wheeler MCIEH, CEnvH**
Date of hearing	**:**	**26 June 2024**
Date of decision	**:**	**9 September 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 18 Pennine Drive, London NW2 1PB ("the property").

2. The property is described as a 5-bedroom house with 2 bedrooms on the ground floor and 3 further bedrooms on the first floor. The ground floor is also comprised on a bathroom, a dining room and a kitchen. There is a further bathroom on the first floor.

3. The freeholder of the property is Mr Adrian Parsons. By an assured shorthold tenancy agreement dated 15 June 2020, he let the property to the Respondent at a rent of £1,800 per month. Consent for the Respondent to sublet the various rooms in the property was also granted by Mr Parsons. It should be noted that at all material times the Respondent occupied one of the rooms in the property.

4. By an assured shorthold tenancy agreement dated 15 May 2021, the Respondent granted the Applicant a tenancy of one of the double bedrooms from that date for an initial fixed term of 6 months at a rent of £650 per month including utility bills. As the Applicant's immediate landlord, the Tribunal was satisfied that the Respondent falls within the definition in section 72 of the Housing Act 2004 ("the 2004 Act") below nor was this challenged by her.

5. It seems that upon the expiry of the fixed term of the Applicant's tenancy agreement, it continued as a monthly statutory periodic tenancy until, he alleges, he was unlawfully evicted by the Respondent on or about 16 April 2023.

6. On 26 January 2023, Barnet Council wrote to the Mr Parsons and the Respondent informing them that the property was in fact a house in multiple occupation ("HMO") and required a mandatory licence. In March 2023, Mr Parsons applied for a temporary exemption notice and on 8 September 2023 an HMO licence was granted by Barnet Council.

7. It was common ground that the property was an HMO and was not licensed at the commencement or for the duration of the Applicant's tenancy.

8. Subsequently, the Applicants jointly made this application dated 27 September 2023 for a joint rent repayment order for the maximum period of 12 months at £650 per month in the sum of £7,800.

Relevant Law
Requirement for a Licence

9. Section 72 of the 2004 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 metioned 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. Part 2 s.95(1) of the 2004 Act also 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 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 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 26 June 2024. The Applicant appeared in person. The Respondent was represented by Mr Tedjman, a Property Manager.

Was the Property an HMO?

14. The was not disputed by the Respondent. However, Mr Tedjman submitted that the Respondent was not the "relevant person" within the meaning of section 255(12)(a) of the 2004 Act against whom Barnet Council could make an HMO declaration. That was the freeholder, Mr Parsons, and therefore she was not liable for a rent repayment order. The lack of knowledge on his part amounted to a reasonable excuse.

15. The Tribunal did not accept the submissions as being correct in law. The Tribunal was satisfied that section 255(12)(b) also made the "person managing or having control" of the property also liable for a rent repayment order. As stated earlier, the Respondent accepted that she was the Applicant's immediate landlord and, as such, fell within the definition of a person managing or having control within the meaning of section 72 of the 2004 Act.

16. Furthermore, the Tribunal was satisfied that ignorance of the requirement to obtain a licence does not amount to a valid defence of reasonable excuse, see: ***Palm View Estates Ltd v Thurrock Council*** [2021] EWCA Civ 1871, where it was held that the defence of reasonable excuse must relate to the activity of controlling or managing the HMO without a licence. No good reason was

advanced by the Respondent. Therefore, the Respondent could not rely on the defence of reasonable excuse and the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72 of the 2004 Act.

17. It follows, that the Tribunal was required to make a rent repayment order against the Respondent and went on to consider the amount of the order.

Amount of RRO?

18. Mr Tedjman submitted that the Respondent did not make a profit from the total monthly rent she received from the 5 tenants in the sum of £2,340. Once, her rent of £1,800 was paid to Mr Parsons, the net income of £500 per month was used to pay the utility outgoings, although no evidence was provided by the Respondent.

19. The Applicant agreed that at the time his occupation ceased, he owed the Respondent £500 for rent arrears.

20. Mr Tedjman contended that a rent repayment order of no more than 10% should be awarded.

21. In the exercise of its discretion under section 44(4)(a) and (b) of the Act, the Tribunal had regard to the following matters:

    (a) the requirement to obtain an HMO licence from Barnet Council was a mandatory requirement, as opposed to selective licensing, which placed this offence at the more serious end of range for offences of this kind.

    (b) in relation to the Applicant's allegation that he was unlawfully evicted by the Respondent, the Tribunal attached no weight to this because it heard no evidence and made no finding about the matter.

    (c) in relation to the Applicant's admitted late payment of the rent and his arrears at the time his occupation ceased, the Tribunal attached some weight to his conduct.

    (d) as to the Respondent's financial circumstances, no disclosure made by her, so no assessment of this could be made by the Tribunal.

22. Guidance was given by the Upper Tribunal in ***Vadamalayan v Stewart*** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matters set out in section 43(4).

23. This decision was followed by the Upper Tribunal decision in the case of ***Williams v Parmar*** *[2021] UKUT 244 (LC)* where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.

24. The Upper Tribunal held that "*there is no presumption in favour of the maximum amount of rent paid during the period*". It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be "*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*". Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.

25. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord comprise part of the "*conduct of the landlord*" and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating "*meritorious conduct of the landlord may justify a deduction from the starting point*". It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the "*scale of seriousness, by reason of mitigating circumstances or otherwise*".

26. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.

27. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.

28. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the "starting point" that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.

29. Further guidance has been given by Judge Cook in the Upper Tribunal at paragraph 20 in *Acheampong v Roman* [2022] UKUT 239 about determining the amount of an RRO. Adopting that approach, the Tribunal determined:

(i) the starting figure for the assessment of the RRO was the sums claimed by the Applicants set out application for the periods of time in respect of which the property was unlicensed;

(ii) the relevant conduct on the part of both parties has already been considered above.

(iii) the financial circumstances of the Respondent are unknown. As the Tribunal understands it, the Respondent has not been convicted of any offence.

(iv) the Tribunal bore in mind that the Respondent is a professional landlord and, therefore, his failure to obtain a licence when he was on notice to do so resulted in a high level of culpability.

30. Accordingly, taking these considerations into account, the Tribunal made a rent repayment order in favour of the Applicants for 60% of the net rent paid by the Applicant. The Tribunal also applied a discount for the utility bills paid by the Respondent.

31. The total rent paid by the Applicant for the for 12 months was £7,800 (£650 x 12). The Tribunal then applied a discount of £600 in respect of the utility bills, leaving a figure of £7,200. From this, the Tribunal deducted the Applicant's admitted rent arrears of £500 providing a net figure of £6,700. Applying 60% to this figure resulted in a rent repayment order of £4,020 in favour of the Applicant.

32. The total amount of the rent repayment order is payable by the Respondent within 28 days of this decision being issued to the parties.

33. As the Tribunal understands it, no fees were paid by the Applicant to have the application issued and heard.

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).