



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

Case reference : LON/00AB/HMG/2024/0027

Property : 205 Bonham Road, Dagenham, RM8
3BL

Applicant : Mr Fateh Khan

Representative : Mr Abdul Shahid

Respondent : Ms Sidra Begum Khan, Mrs Nusrat
Begum

Representative : Mr Brueton (Counsel)

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

Tribunal : Judge N O'Brien, Professional Member
Appollo Fonka FCIEH CEnvH

Date of Decision : 17 September 2024

DECISION

Decision of the Tribunal

- (1) The Tribunal makes a Rent Repayment order in the sum of £2,293.
- (2) The above sum is to be paid by 15 October 2024.

CASE SUMMARY

1. On 21 February 2024 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (HPA 2016) from the Applicant for a rent repayment order (RRO). The Applicant assert that the Respondents, their

current landlords, committed an offence of managing or operating a house required to be licensed pursuant to s.95 of the Housing Act 2004 (HA 2004) but which was not so licensed. The Applicant seeks a Rent Repayment Order (RRO) for the period from 22 October 2022 to 21 October 2023 in the sum of £5,985.87, this being the rent he says paid less housing benefit.

The Hearing

2. The matter was listed for a final hearing on 17 September 2024. The Applicant attended with his representative Mr Shahid. Both Respondents attended and were represented by counsel Mr Brueton. At the start of the hearing it transpired that the Applicant could not read the witness statement which had been prepared on his behalf for use in this application. He confirmed that he could understand and speak English but struggled to read in English. We adjourned for a short period so his statement could be read to him by his representative. At the start of his evidence Mr Khan confirmed that Mr Shahid had read the statement to him and the contents were true to the best of his knowledge and belief. We also heard oral evidence from the First Respondent Ms Sidra Khan and read her witness statement.
3. At the end of the hearing we informed the attendees that we would also give written reasons for our determination.

Background

4. The property is a 3-bedroomed house. It is situated within London Borough of Barking and Dagenham (LBBDD) which was at all material times the subject of a selective licencing regime. The selective licencing regime required all privately rented premises within to be licensed pursuant to s.85 of the Housing Act 2004. It is common ground that LBBDD no longer operates a selective licencing scheme.
5. It is agreed that the Applicant has resided in the property with his family since 2018 at a rent of £1,400 per calendar month. The property was initially let to him by a Mrs Saheeda Khan. In 2018, the former owner applied for a licence under the Selective Licencing Scheme. For reasons unknown this was not granted until 10 January 2023 but was backdated to 27 March 2020. However, by the time the licence was granted by LBBDD the property had already been sold to the First and Second Respondents. The First Respondent is the former owner's stepdaughter, and the Second Respondent is the First Respondent's mother. The Respondents completed their purchase of the property on 21 October 2022. The Applicant remained in occupation. The Respondents applied for a licence under LBBDD's selective licencing scheme on 3 January 2024.
6. It is agreed by both parties that the rent for the period October 2022 to August 2022 was paid to the Respondents' agent. There is a dispute as to when the rent for September 2023 was paid. The Applicant maintains it was paid to the agent when it fell due, but the Respondent maintains that it was not paid until May 2024. It is common ground that no rental payments were made in respect of

the months October 2023 to May 2024. It is common ground that on 30 May 2024 the Applicant made a lump sum payment of £12,600 in respect of rent arrears which he had by then accrued.

The Relevant Law

9. The power of local authorities to designate particular areas as being subject to a selective licencing regime is contained in the 2004 Act. By virtue of s.95 of HA 2004 Act a person commits an offence if they are in control or manage a house which is required to be licenced by virtue of s.85 of the Act but is not so licenced. An offence under s.95 is a relevant offence for the purposes of s43 of the HPA 2016.

10. Section 40 of the HPA 2016 provides;
 - (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...*
 - (3) *A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.*

10. Section 41 of the HPA 2016 provides
 - (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.*

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);

12. Section 44(1) HPA 2016 of the Act provides that where the First-tier Tribunal decides to make a rent repayment order under s41(1) in favour of a tenant, the order may be made in relation to rent paid over the period not exceeding 12 months during which the landlord was committing the offence.
13. In *Kowalek v Hassanien Ltd [2022] EWCA Civ 1041; [2022] 1 W.L.R. 4558* the Court of Appeal held that when calculating the maximum in order to be recoverable under a rent repayment order, the rent in question had both to have been paid to discharge indebtedness which had arisen during the relevant period of offending by the landlord and in fact paid during that period. Thus rent paid by the tenant after the landlord's offending had ceased could not be included in the calculation of the maximum amount of a rent repayment order even if it had been paid in order to satisfy a liability which had accrued during the relevant period.
14. It is the Applicant's case, which the Respondents accept, that the Respondents were in control of or managing a house which was required to be licenced but was not so licenced from the date of purchase. i.e. 21 October 2022. It is accepted by both the Applicant and the Respondents that the Respondents first applied to the relevant local housing authority for a licence in their names on 3 January 2024 and that from that date they were not committing an offence under s95 of the 2004 Act by virtue of s95(3)(b) of the Act.

The Respondents' Defence

15. Mr Brueton for the Respondents were not guilty because the previous owner had applied for a licence and property was licenced from January 2023 onwards. However s.91(6) of the 2004 provides that a licence granted pursuant to a selective licencing scheme is not transferrable. Thus, the fact that the previous owner had applied for and was ultimately granted a licence will not afford the Respondents a defence.
15. The Respondents assert that they are not guilty of an offence under s.95 of the HA 2004 because they have a reasonable excuse for being in control of or managing an unlicenced house. Ms Sidra Khan's evidence was that until January 2024 she believed that she was 'protected' by the application which had been previously made by her step-mother. It was her evidence that as soon as she was advised by her legal advisors that she and her mother needed to obtain a licence in their own name they applied immediately. Additionally, she asserts that the

Applicant prevented her from applying for a licence sooner because he refused to grant access to the property to allow a representative from LBBD to inspect until December 2023.

Findings of the Tribunal

14. The tribunal is satisfied beyond all reasonable doubt that the Respondents committed the offence of being in control or managing a house which is required to be licenced by virtue of s.85 of the HA 2004 but is not so licenced, pursuant to s.95 of the 2004 Act. We are satisfied that this offence was being committed by the Respondents from 21 October 2022 until 2 January 2024 when the First Respondent filed their application for a licence with LBBD.
15. The Respondents assert that they had a reasonable excuse for not holding a licence and so are not guilty of an offence by virtue of s95(4) of the 2004 Act. When considering a defence of reasonable excuse, the tribunal has to decide any disputed facts on the balance of probabilities. Mr Khan denied that he had failed to grant access at any stage. Furthermore, it is not clear to the tribunal why the Respondents would need access to the property in order to file an application for a licence with LBBD. We note that the application was filed electronically on 3 January 2024. We do not accept Ms Khan's evidence that she was not aware of the need to apply for a licence until just before the application was filed. We note that she has included in her bundle an iMessage sent to the Applicant on 23 October 2023 which clearly indicates that she was aware that she needed to apply for a licence by that stage. The tribunal questioned Ms Khan about this apparent discrepancy but we did not get a clear answer to our questions. We accept that she was unclear as to her obligations but consider that this is relevant to the quantum of the RRO. It would have been easy for the Respondents to ascertain the true position had they wished to do so.

Amount of RRO

16. We are satisfied that the sum of £4578 was paid by the Applicant in the relevant period being 21 October 2022 to 20 October 2023. The Applicant maintains he made 12 payments to the Respondent's agent during this period. The Respondent maintains he only made 11. The Applicant has submitted his bank statements which show 11 payments made to the agent during this period, 1 of which was refunded. We accept the Respondents' evidence that only 11 payments were made during this period and that the payment for September 2023 was not made until June 2024. Consequently it must be left out of account when calculating the rent paid for the relevant period. No part of the rental payment related to utilities.
17. In the case of *Acheampong v Roman [2022] UKUT 239 (LC)* the Upper Tribunal set out a 4-stage test which the tribunal must apply when considering how much to order a landlord to pay by way of an RRO. In summary the tribunal must;

1. Ascertain the whole of the rent for the relevant period.
 2. Subtract any element of that sum that represents payment for utilities that only benefit the tenant. It is for the Landlord to supply evidence of these, but an experienced Tribunal will be able to make an informed estimate.
 3. Consider seriousness both compared to other types of offences for which an RRO can be made and examples of the same type of offence. What proportion of the rent (after deductions as above) is a fair reflection of the seriousness of the offence? This is the starting point. It is also the default penalty in the absence of any other factors but maybe higher or lower in light of the final step.
 4. Consider deductions or additions in light of section 44(4) factors (conduct of landlord and tenant, financial circumstances of landlord and any previous convictions of the landlord in relation to offences set out in section 40)
18. In the case of *Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC)* the Upper Tribunal considered that in deciding the level of any RRO, the tribunal should distinguish between the rogue landlord against whom a RRO should be made at the higher end of the scale and the landlord whose failure was to take sufficient steps to inform themselves of the regulatory requirements.
19. We do not consider this is a particularly serious offence when compared to the other offence in respect of which a RRO can be made. These include controlling an unlicensed HMO, unlawful eviction and harassment. The Respondents cannot be described as rogue landlords. We accept that for at least part of the relevant period the Respondents were unclear as to their legal obligations. However, in our view they had no good reason for delaying the application once they became aware of the need for a licence. Further we note that there were some issues of disrepair at the property as evidenced by the conditions attached to the licence when it was eventually issued.
20. We bear in mind the fact that the Applicant fell into substantial rent arrears, and we note that he as at the date of this hearing he owes at least 2 months' rent. He told us that he has been receipt of Universal Credit since 2024 but is not in receipt of the housing element so has paid no rent. We also have considered the financial circumstances of the Respondents. The First Respondent is a teacher, and the Second Respondent works as a warehouse operative. It was their intention to live in this property when it was purchased. The Respondents are involuntary landlords in that they believed that the Applicant was going to move out when they purchased the property. They have had to pay rent for their own accommodation and have had to cover the mortgage on this property for long periods when the Applicant was not paying any rent. For all of these reasons we consider that a Rent Repayment Order representing 50% of the rent paid in the relevant period, less housing benefit. This will amount to £2293.

Name : Judge N O'Brien

Date of Decision 17 September 2024

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).