FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BB/HMG/2024/0017**
HMCTS Code	**:**	**In- person hearing**
Property		**52B Terrace Road, London, E13 0PB**
Applicant	**:**	**Ms. Gifty Dufie Oppong**
Represented by		**Mr David Gyulai- Represent Law**
Respondent Represented by	**:**	**Dr Augustine O.Nwajana -In person** **Mr Kofo David**
Type of Application	**:**	**Application for Rent Repayment Orders by tenants under Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge Daley** **Ms Fiona Macleod – Professional Member**
Date of Hearing	**:**	**08 September 2024**
Date of Decision	**:**	**25 October 2024**

DECISION

Decision

I. The Tribunal is satisfied on the evidence before it that the Premises were unlicensed in accordance with the Additional licensing scheme, during the period 26 March 2022, until 26 January 2023. Accordingly, an offence of failing to license the premises has been committed.
II. The Tribunal finds that an offence was committed to the required standard of proof beyond reasonable doubt.
III. The Tribunal is satisfied that grounds exist to make a rent repayment order against the Respondent.
IV. The Tribunal makes an order in the sum of £3,185.00(70% of the payable rent, subject to a deduction of utility bills assessed at (£594.60) for the rent paid by the Applicant for the period between 7 June 2022 and 6 June 2023. In the total sum of £2590.40
V. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £200.00.

Introduction

1. This is an application by the Applicant's listed above for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed premises, that was subject to The Housing Act 2004 which introduced the Additional licensing of Housing in Multiple Occupation ("HMOs").

2. The Tribunal heard and accepted evidence from the Applicant that the Property, 52b Terrace Road ("The Property") which is the subject of this application, is in Plaistow North Ward, in the London Borough of Newham ("LBN"). Since 2013, LBN has operated a borough-wide additional licensing scheme. The property had a selective licence, however in accordance with the additional licensing scheme, if the Property was let to 3 or more people in 2 or more households, the property was required to be licensed under LBN's additional HMO licence scheme.

3. The Tribunal issued Directions on 26 March 2024 for this matter to be listed for an in- person hearing, the parties were subsequently notified that the hearing would take place on 9 September 2024 at 10.00 am.

Property Details

4. In the application, the Tribunal was provided with the following information, that the Premises that is subject to this application was a single room in a three roomed flat with a kitchen, and bathroom. The Tribunal did not inspect the

property and makes no assumptions about its current condition or regarding the accommodation.

5. The Tribunal was provided with information concerning the layout of the property from the evidence of the Applicant, and Respondent.
6. The Tribunal noted that the Applicant did not make any complaint about the condition of the property prior to the hearing. Accordingly, the condition of the property was assumed to be fair.

The Hearing

7. The hearing of this matter was held at the Property Tribunal 10 Alfred Place London, both the Applicant and the Respondent attended and were represented.
8. At the hearing the Tribunal identified the following issues-:
    - Whether the property known as 52b Terrace Road, London E13 0PB was occupied by at least three separate households
    - Whether the Applicant paid the Respondent rent
    - Whether the property required a licence and if so whether it was licensed. Whether an order for a rent repayment should be made?

Preliminary Matters

9. At the hearing the Respondent's representative renewed his application made on 23 May 2024 to strike out the Applicant's application. Mr David set out that Direction 1 provided that the parties "must communicate with each other within the next two weeks with a view to settling the dispute or narrowing the issues". Mr David stated that he had written to the Applicant's representative, and they had not responded. He relied upon the wording must as creating an obligation on the Applicant. He submitted that the two weeks was a mandatory period for mediation in accordance with the directions. He submitted that the bundle had been provided late and that it did not include specific documents including the official Land Registry copy entry for the property and the tenancy agreement. Accordingly, as the Directions had not been complied with, he invited the Tribunal to strike out the Applicant's Application.
10. The Applicant's representative submitted that there was no mandatory requirement to submit to mediation. He submitted that the directions although worded to include the word "must" it did not create such an obligation.
11. Mr Gyulai accepted that the bundle had been filed a few days late, however in respect of the documents which were alleged to have been omitted, he submitted that it was the Applicant's case was that no formal tenancy had been entered into. The Respondent's case was that the Applicant was in fact a lodger, given this, both parties accept that there was no written tenancy agreement albeit for different reasons. He also submitted that the Respondent was not the owner of the property, although he was the landlord, accordingly he submitted that as the claim was against Dr Nwajana, and he was not the freeholder there was little to be gained by including the land registry copy entry as a document within the bundle.

The Decision of the Tribunal on the Application to Strike out the Applicant's claim.

12. The Tribunal refused the Respondent's application, it noted that Rule 9(1) of the Procedure Rules state that the proceedings or case or the appropriate part of them will automatically be struck out if the Applicant fails to comply with the directions by a stated date will automatically lead to a strike out.
13. The Directions provide that under Rule 9 (3) the Tribunal may strike out the whole or part of the case if the Applicant has failed to comply with a direction which stated that failure to comply could lead to a strike out. the Applicant's bundle was served late, however the Tribunal determined that the Respondent had not suffered any prejudice in that the Respondent had received the bundle in sufficient time (three and a half months' ago) to enable the Respondent to deal with the issues in this case.
14. In respect of the directions the tribunal decided that although the directions specify that the Applicant must communicate with the Respondent this did not mean that there was a mandatory requirement for mediation and given this the Tribunal decided that this was not a ground upon which the application could be struck out. In respect of any failure on the part of the Applicant to include documents within the bundle, the tribunal would have to assess the weight of the case on the evidence before it. Accordingly, the Tribunal noted that any prejudice was unlikely to affect the Respondent as there was a requirement for the Applicant to prove her case beyond a reasonable doubt as such if there were missing documents this might affect the strength of her case. Accordingly, it decided that there was no prejudice to the Respondent in hearing the case on the basis of the evidence before it.
15. In reaching its decision the Tribunal applied the Overriding Objective, Rule 3 of the Tribunal Procedure Rules, which required the Tribunal to deal with cases fairly and justly and in ways which are proportionate to the importance of the case and the complexity of the issues. The Tribunal determined that in applying the Overriding Objective, it was proportionate for the Tribunal to hear the case and determine the matter on the issues.
16. Accordingly, the application to strike out the application is refused.

Relevant Law

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

> 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
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> (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

Section 40(5) of the 2016 Act lists 7 categories of offence and offence no 5 refers to Control or management of an unlicensed HMO. Category 2 refers to eviction or harassment of occupiers.

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether the landlord has been convicted).

Section 44 of the 2016 Act sets out the amount of order:

(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.
Under Section 44(4) the Tribunal in determining the amount the tribunal must, in particular take account of (a)the conduct of the landlord and 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.

The Applicants' Submissions

17. The Tribunal heard from the Applicant who provided a witness statement which was dated 12 December 2023. In her statement she set out that she had found the property on Gum Tree (an online advertising website). In her witness statement she set out that-; "... I lived at the property with 3 other tenants, called Morris, Mary and Michel. 4 of us lived in the property at any one time." The Applicant in her evidence referred to a What's App group which was made up of the named occupants. She also asserted that the occupations were not relatives of the Respondent landlord, they were all tenants. She also denied that Dr Nwajana had occupied the property as a resident at any stage whilst she had lived in the property.
18. In paragraph 9 of her witness statement, she stated that "I moved into the property on 26.03.2022 and moved out on 26.01.2023. The property was my main residence, and I stayed in the same room for the duration of my tenancy. After the landlord proposed a rent increase, I gave him my notice via text on 31.12.2022 and this was eventually agreed to on 04.01.2023 ... After I told the landlord my move out date, he initially agreed to refund my deposit, he then texted to say I needed to pay my bills and that was our agreement, but he said he would deduct bills from my deposit."
19. In cross-examination Ms Oppong was asked about the lack of tenancy agreement, and for information concerning the occupants, she admitted that she was unaware of their middle names. She told the Tribunal that she had shared a bathroom, kitchen and toilet with the other tenants. Ms Oppong stated that there had been changes of some of the tenants during the time she lived at the property however this had not included the Respondent. She denied that the Respondent had lived at the property. She told the Tribunal that he had been living somewhere in Kent during that time and had not lived at the property, although he came to The Property occasionally to sort out issues that arose.

20. Ms Oppong within her bundle had provided copies of her bank statement which showed the rent payments which had been made.

21. She did not accept that she had not moved into the property until March of 2023, she told the tribunal that she had seen the room advertised on Gumtree, she had

inspected it and decided to take it and had paid a deposition and had been given a key. She told the Tribunal that she had exclusive possession of her room.

22. Ms Oppong told the Tribunal that the Respondent had refused to refund her deposit. On being informed that she did not agree to the rent increase and would be leaving, she told us that "he then texted to say I needed to pay my bills." She considered it unfair that he would not return her deposit. As a result, she had sought advice and had been informed that the property was subject to the licensing requirements and that a failure to license the property meant that she could apply for a rent repayment order.

23. On 22 February 2023, the London Borough of Newham in answer to a request for information, informed the Applicant by email, that the property had a Selective licence. However, if the property was occupied by more than 3 occupants, an Additional Licence was required, and the Respondent had not applied for an Additional licence.

The Respondent's Submissions

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24. In his witness statement the Respondent set out his case in paragraphs 6 & 7, as follows- "Para 1 is denied. A is not entitled to any RRO. I lived there at all material times; it was never an unlicensed property as defined by s95 of the Housing Act 2004. A is required to prove that it meets all the required elements that makes it qualify under that description. 7. Para 2 is denied. A was a lodger and never a tenant at the Property …between 26 March 2022 until 26 January 2023 together with 3 unrelated tenants" as falsely claimed. A has failed to particularise the allegations. A is required to particularise them and then prove them."
25. In his oral evidence Dr Nwajana set out that he lived in the property and Miss Oppong was his lodger, he denied that she was a tenant, he stated that she was a lodger who stayed in his flat, where he also lived although he was sometimes away from the premises. He denied that there were any other occupants who were tenants, In answer to questions from Mr Gyulai He stated that his sister Mary whose husband was a student in Birmingham, occasionally stayed at The Property as did her husband He told the Tribunal that his sister stayed in his room when she came to London. This was possible as he worked in Kent as a university lecturer and was in Kent during the week and came to the flat on most Fridays and Saturdays. He stated that he used to stay in an Air B and B when he worked in Kent. However, he had recently brought a flat via a shared ownership scheme in the Kent area, although he still maintained that he resided at the Property most weekends and when he was not working.
26. He denied that the Applicant had paid a deposit, he told the Tribunal that the Applicant was not being truthful as she had in a letter before action written on her instructions set out that she had been a tenant since October 2021 to 26 January 2023. Which was not correct.
27. He accepted that the bills were split, as set out in the Applicant's WhatsApp message, in his witness statement he stated that "…d. I lived at the Property, and this can be seen in even A's own misconstrued WhatsApp. On the very first message when I am discussing a bill, I used the term "WE" which is evident I counted myself. If A thinks I do not live there then A should explain where I live, why A believes so and provide evidence. The issue that I shuttle to Kent for work

and arrive at different times of the day on different weeks does not remove from the fact that I live there…"

28. The Tribunal has not set out the evidence, which was given verbatim and as such as summarised the main points which were relevant to its decision. It did however consider all the evidence submitted both oral and in writing even if it has not all been set out.

The Closing Submissions

29. The Tribunal heard submissions from both representatives.
30. Mr Gyulai submitted that a licence was required as the property was occupied by three or more unrelated people. Given this he submitted that the property required an Additional licence. He stated that the test was whether the Respondent was in control of the property, and as such it did not matter whether the Applicant was a lodger or a tenant, or indeed whether the Respondent owned the property.
31. He submitted that the evidence within the bundle was conclusive, he referred to the Respondent's proposal for a new rent. The fact that he indicated that he would return the deposit if the Applicant found someone to take over the room.
32. He submitted that whilst in occupation of the premises, the Applicant had exclusive possession of her room, and paid a rent to the Respondent, as such she was a tenant. He referred to the test in Street and Mountford.
33. Mr Gyulai submitted that the Applicant evidence should be preferred to the Respondent's evidence. He submitted that he had provided no proof that he lived at the property during the material time. He noted that all the discussions concerning rent had taken place by WhatsApp rather than in person. He referred to the wording used by the Respondent such as he would be at the property at a specific time.
34. He stated that if the Tribunal found the Applicant's case proved to the required standard, in respect of the repayment order, the Tribunal should use the figure of 100% as the starting point. However, he accepted that the Tribunal could properly make a deduction for council tax and for bills. He assessed the Applicant's share for the period that she was a tenant as £594.60.
35. In reply, Mr David told the Tribunal that the Applicant had failed to produce evidence of the tenancy and the multiple occupation to the required standard which was proof beyond a reasonable doubt.
36. The bills were in the Respondent's name and the Applicant did not have the status of a tenant. He further denied that there were three other households living in the property. He referred to the Respondent, and occasionally his sister and her husband who formed one household. He submitted that there was no HMO at the property.
37. In his written submissions he set out at paragraphs 22-24 a summary of the Respondent's position that-: "A cannot establish the status of a tenancy or even an intention to create a tenancy or even a specific date for either. 23. A cannot establish that the Property was an HMO, neither can the Tribunal because in A's own argument, the property was in an area which was subject to a special Local

Authority planning policy/regime which is not before the Tribunal. There may well be caveats, exemptions or specific definitions which were not pleaded could be defended. A also failed to follow up a lead which could have clarified the actual status of the Property and such policies for the appropriate department.24. The Tribunal is aware its duty is to determine the case put before it not to be a passive advocate and plead a case for A. This was made clear by Denning L.J in Jones v National Coal Board [1957] 2 Q.B. 55 at 63."

38. He submitted that misleading and false information about the start of the tenancy had been provided and he submitted that there was no HMO at the property.

Tribunal Decision

39. The Tribunal then applied a four-stage test, it decided that to make an order it would have to satisfy itself of 4 matters –

    (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section72(1) of the Housing Act 2004
    (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
    (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
    (iv) And if so the amount of any order.

40. The Tribunal considered the evidence before it which includes the email from Newham Council, dated 23 February 2023, which confirmed that the property was unlicensed. The Tribunal accepted the evidence of the Applicant, it accepted that the premises was rented to three separate individuals/household during the Applicant's occupancy.
41. The Tribunal found that as the property was occupied by three separate tenants that in accordance with the scheme operated by the LBN an Additional Licence was required. It noted that the LBN had stated that no Additional Licence had been applied for, and that this was accepted by the Respondent.
42. The Tribunal considered the evidence in relation to the payment of rent. It was satisfied that the Applicant had exclusive possession of a room within the premises, and had paid rent, and that she had entered into an oral tenancy agreement with the Respondent.
43. The Tribunal decided that it was satisfied beyond a reasonable doubt that the Respondents committed an offence under section 72 of the Housing Act 2004, and that the Applicant is entitled to a rent repayment order.
44. The Tribunal accepted that the sum of £3185.00 was the relevant rent which had been paid by the tenant seeking the order rent during the period in issue.
45. The Tribunal also reminded itself of the law which had been referred to above. The Tribunal noted that the starting point was the maximum rent that had been paid, however the Tribunal noted that it had an obligation to exercise its discretion in the making of an order.

46. The Tribunal accepted the Applicant's evidence, it noted that the Applicant did not complain about the condition of the property. Notwithstanding the Respondent's failure to license the Property.
47. The panel also had regard to Acheampong –v- Roman [2022] UKUT 239 in which it was stated that the Tribunal should consider how serious this offence was both compared to other types of offence and what proportion of the rent is a fair reflection of the seriousness.
48. The Tribunal determined when considering all the factors and the nature and seriousness of the offence that, although it was appropriate to make an order, the appropriate and proportionate order required a deduction,
49. The Tribunal is satisfied that a rent repayment order should be made in the sum of 70% of the rent, the Tribunal in the absence of evidence or representations from the parties has assessed the utility bills for the period at £594.60.
50. The Tribunal makes an order for the sum of £2590.40 to be paid, which the Tribunal finds is the appropriate order to make to mark the offence which has been committed by the landlord in failing to apply for an Additional licence for the periods in issue.
51. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £300.00.

Signed: Judge Daley

Dated: 25.10.2024

Right to Appeal

52. 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.

53. 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.

54. 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.

55. 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.