



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

**Case Reference** : **LON/00AZ/HMF/2024/0084**

**Property** : **114 Malham Road, London, SE23 1AN**

**Applicants** : **Nolan Barthel  
Santiago Dovidio  
George Smith  
Ema Peleckyte**

**Representative** : **Brian Leacock, Justice for  
Tenants**

**Respondent** : **Chunxiu Zhao**

**Representative** : **In Person**

**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 Fonka, FCIEH CEnvH M.Sc.**

**Date of Hearing** : **26 October 2024**

**Date of Decision** : **28 October 2024**

---

**DECISION**

---

© CROWN COPYRIGHT 2024

## **DECISION**

1. The Tribunal found that the Respondent had committed the offence of failing to license a House in Multiple Occupation (HMO) under the provisions of section 72 (1) of the Housing Act 2004, and that accordingly a Rent Repayment Order in favour of the Applicants could be made. The Tribunal made a rent repayment order for the reasons set out in this Decision. The total amount of the order was £11,162.18 and this was made up of £3,494.17 for Nolan Barthel, £2,402.17 for Santiago Docidio, £2,733.67 for George Smith and £2,532.17 for Ema Peleckyte. This must be paid by the Respondent to the Applicants within 28 days.
2. The Tribunal also ordered that the Respondent must reimburse the Tribunal fees in the total sum of £330 and that this amount must be paid by the Respondent to Justice for Tenants within 28 days.

## **Background**

3. On 24 February 2024 the Applicants made an application for a RRO under section 41 of the Housing and Planning Act 2016 (the Act) in relation to 114 Malham Road, London, SE23 1AN (the Property).
4. The Directions made on 7 May 2024 required each party to prepare a bundle of relevant documents for use at the hearing and to send these to each party and the Tribunal.
5. The matter was listed for final hearing on 25 October 2024.

## **The Hearing**

6. The hearing was held as an in person hearing and each of the Applicants attended and gave oral evidence; they were represented by Brian

Leacock of Justice for Tenants. The Respondent appeared and gave oral evidence; she represented herself as a litigant in person.

7. In accordance with the directions given on 7 May 2024, the Tribunal had before it a bundle of documents prepared by the Applicants which consisted of 493 pages, as well as a Response to the Respondent's Submissions which consisted of 6 pages. The Respondent provided the Tribunal with a bundle of documents which consisted of 66 pages. The Applicants and Respondent both provided the Tribunal with skeleton arguments prior to the hearing.

### **Agreed Facts**

8. The Respondent accepted both in her written statement (page 2 of the Bundle) and at the hearing that during the relevant period (6 December 2020 to 20 June 2023) the Property was required to be licensed and was not so licensed. The Respondent also accepted that she was the owner of the Property and the person receiving and collecting rent.

### **Tribunal Decision**

9. On the basis of the evidence as presented by the Applicants and the admission made by the Respondent that the Property was required to be licensed for the relevant period, the Tribunal found that the offence under section 72 (1) Housing Act 2004 had been committed. The Tribunal was satisfied beyond reasonable doubt that the Property was occupied by five persons from more than two separate households and that the Property was their main residence. Further, the occupation of the Property was the only use of the Property and the Applicants were living at the Property, and sharing basic facilities.
10. The Tribunal found that the Property required a mandatory licence under the standard test but that the Property was not licensed. The Respondent accepted that she was 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.

11. The Respondent also accepted that she was the person receiving rent and was therefore in control of the Property and also managing the Property. The Tribunal accepted this and found that the Respondent was the immediate landlord and beneficial owner of the Property and was collecting and receiving the rent for the Property.

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

12. The Respondent accepted that she had not made any application to the London Borough of Lewisham Council for a licence and therefore did not raise a statutory defence. The Tribunal noted that Lewisham Borough Council at page 369 of the Applicant's bundle had confirmed that there was no trace of the Property being licensed or any application for a licence being made. The Respondent did not seek to put forward a statutory defence and the Tribunal was satisfied that such a defence did not exist in this case.
13. However, the Respondent relied on the defence of reasonable excuse and set out her position in her statement at page 2 of the Respondent's bundle. Both in oral evidence and in her written statement she told the Tribunal that she had not intentionally failed to license the Property.
14. The Respondent told the Tribunal that following a relationship breakdown she had expected that the Property would be sold. An initial court hearing had been held in January 2022 and the Respondent told the Tribunal that she had expected that the Property would be sold within 6 to 9 months, however this court process had been delayed, and it was not until April 2023 that a final hearing had been held and an order to force the sale of the Property had not been made until July 2023. The Respondent told the Tribunal that COVID-19 had delayed the process two or three times and a further delay had been caused as a new

valuation of the Property had been required because of the time that had elapsed.

15. Further, the Respondent explained that in January 2023 she had lost her job and so she had been unsure as to whether she would be able to obtain a mortgage so that she could buy the Property outright.
16. Therefore, as a result of delays caused through COVID-19 and the expectation that the Property would be sold quickly, the Respondent had not obtained a licence.
17. In cross examination, the Respondent confirmed that she had been unaware of the licensing provisions and so accepted that she would not have known that she needed to apply for a licence. However, the Respondent stated that she had expected the Property to be sold quickly but that this had not happened because of COVID-19. Added to this, the uncertainty of losing her job could have meant that she might not have been able to buy the Property. But for these circumstances, she may have been able to find out about the licensing requirements.

### **Tribunal's Findings – Reasonable Excuse**

18. The Tribunal did not find on a balance of probabilities that the Respondent had a reasonable excuse. The Respondent admitted that she had not known that she required a licence until this matter was brought to the Tribunal. The Tribunal did not accept the evidence of the Respondent that she thought that the Property would be sold quickly and therefore had not turned her mind to the issue of licensing the Property. The Respondent was under a statutory duty to obtain a licence and this duty had existed for as long as the Property met the requirements to be licensed. The Tribunal therefore did not find the Respondent's expectation that the Property would be sold quickly to be a reason for not

licensing the Property. The Respondent had failed to comply with the statutory obligations to license the Property.

### **Should the Tribunal Make a Rent Repayment Order (RRO)?**

19. Section 43 Housing and Planning Act 2016 provides that the Tribunal may make a RRO if it is satisfied beyond reasonable doubt that the offence has been committed. The decision to make a RRO award is therefore discretionary. However, because the offence was established, the Tribunal found no reason why it should not make an RRO in the circumstances of this application.

### **Ascertaining the Whole of the Rent for the Relevant Period**

20. The Applicants were seeking to recover rent paid as follows:
- Nolan Barthel - £5,850 for the period 27 April 2022 to 26 April 2023
  - Santiago Dovidio - £4,170 for the period 1 February 2021 to 31 January 2022
  - George Smith - £4,680 for the period 1 March 2022 to 28 February 2023
  - Ema Peleckyte - £4,370 for the period 6 December 2020 to 20 June 2023
21. The Respondent accepted that this rent had been paid for the periods set out by the Applicants, with the exception of the rent paid by Nolan Bathel. The Respondent said that the amount of rent paid was actually £5,750. At pages 3 to 8 of her bundle she stated that Nolan Bathel had deducted money from rent for items bought for the Property and that Nolan had damaged a tile in the bathroom, and had caused damage to decking at the Property. The Respondent's position was therefore that

the total amount of rent should be £5,570, less £1,300 for damage (page 8 of the Respondent's bundle).

22. The Tribunal did not accept the Respondents' submissions that rent could be off set against items bought for the Property and accepted the Applicants' argument that any amount off set was still rent in accordance with Section 52 Housing and Planning Act 2016. The Tribunal accepted the evidence given by Nolan Barthel which set out the payments he had made (paged 118 to 138 of the bundle). The Tribunal also did not accept the Respondent's argument that the rent could be reduced because of any damage the Respondent alleged may have been caused. The Tribunal therefore found that the total rent the Tribunal was considering for Nolan Barthel was £5,850.

### **Deductions for Utility Payments that Benefit the Tenant**

23. When determining the amount of a RRO, the Tribunal has a discretion whether or not to make a deduction for utility payments. *Acheampong v Roman* [2022] UKUT 239 confirmed that it will usually be appropriate to deduct a sum representing utilities.
24. It was accepted by both parties that the rent included utilities. The Respondent included within her bundle evidence of utility payments she had made and at page 2 of her bundle set out that gas and electricity bills averaged £219 per month, internet £27 per month, and water £64 per month which gave a total of £310 per month. The Respondent then divided this between 6 people and concluded that £52 per month, which was £624 per year, for each person should be deducted for utility bills.
25. In reply the Applicants submitted that whilst they asked the Tribunal not to make any deduction, they had calculated the utility payments by using average amounts from the bills provided by the Respondent. This calculation was set out at page 6, Exhibit 1 of their Response. This could be summarised as £53.10 for broadband (made up of 12 months of

broadband at £26.55 per month divided between 6 tenants), and, for gas/electricity, the Applicants had taken the average gas and electricity payment from the bills provided and had calculated a yearly amount of £421.25 per tenant.

26. The Tribunal did not accept the position that utilities should not be deducted and instead found that this amount should be deducted given the Respondent had made payments for utilities from the rent the Applicants had paid. In terms of the amount to be deducted, the Tribunal preferred the evidence of the Applicants as this was based on a calculation using average amounts from the bills provided. The Tribunal therefore made the following deductions for utilities - £421.25 per year for gas and electricity and £53.10 per year for broadband - totalling £474.35 per person.

27. The Tribunal therefore found that the total amount of rent payable less utilities was as follows:

<b>Applicant</b>	<b>Rent Claimed</b>	<b>Period (365 days)</b>	<b>Less utilities (365 days)</b>	<b>Total rent for Relevant Period</b>
Nolan Barthel	£5,850	27/04/22 to 26/04/2023	£474.35	£5,375.65
Santiago Dovidio	£4,170	01/02/2021 to 31/01/2022	£474.35	£3,695.65
George Smith	£4,680	01/03/22 to 28/02/2023	£474.35	£4,205.65
Ema Peleckyte	£4,370	06/12/2020 to 20/6/2023	£474.35	£3,895.65



## **Determining the Seriousness of the Offence to Ascertain the Starting Point**

28. The Tribunal had to consider the seriousness of the offence compared to other types of offences for which a RRO could be made, and also as compared to other examples of the same offence.
29. In determining the seriousness of the offence, the Tribunal adopted Judge Cooke's analysis in *Acheampong v Roman* [2022] that the seriousness of the offence could be seen by comparing the maximum sentences upon conviction for each offence. Using this hierarchical analysis, the relevant offence of having control or managing an unlicensed house would generally be less serious. However, the Tribunal had to consider the circumstances of this particular case as compared to other examples of the same offence.

## **Conduct of Landlord and Tenant**

30. The Applicants had set out the areas of conduct they wished the Tribunal to consider within their bundle and particularised these at the hearing with a focus on fire safety at the Property, pest infestation, lack of certificates provided to tenants and the condition of the Property and behaviour of the Respondent.
31. As well as providing witness statements which the Tribunal considered, each applicant gave oral evidence.
32. In terms of fire safety, the Applicants were unable to say whether there were fire doors in the technical sense of the word at the Property; they were able to confirm that there was a gap at the bottom of the kitchen door which they believed was a potential fire hazard. The Applicants also confirmed that the alarm in one of the kitchens was broken and that there were not alarms in every room.

33. The Respondent confirmed that the alarm in the kitchen was a heat detector and so would not have been activated when food was burnt in the oven. Additionally, the Respondent confirmed that the doors at the Property were fire doors but accepted that they were not of high quality.
34. With regards to the mice at the Property, the Applicants confirmed that the Respondent had provided traps and had told the Applicants to use peanut butter to attract the mice but that this had been ineffective. The Respondent told the Tribunal that she had provided mice traps and poison and felt that she had done all she could to deal with this issue which was also an issue for neighbouring properties.
35. The Applicants outlined an issue with a light not working for a few days in one of the bathrooms, but the Respondent confirmed that she simply had needed to replace a bulb. The Applicants further stated that they were concerned about reporting issues for fear of being told to leave the Property.
36. The Applicants confirmed that they believed they had been good tenants and had done all they were required to do.

### **Tribunal's Findings in Relation to Conduct of the Landlord and Tenants**

37. The Tribunal accepted the evidence of the Applicants that they had done all that was required of them as tenants. The Tribunal also accepted the evidence of the Applicants that they had not been provided with a copy of the "How to Rent" booklet, gas safety certificates or energy performance certificate. The Tribunal found that the Respondent had not understood her obligations as a landlord and noted that the period of the offence was from December 2020 to 20 June 2023.
38. Regarding the pest infestation, the Tribunal accepted the evidence of the Applicants that the Property had mice which had resulted in droppings

in the kitchen (photograph at page 68 to 69 of Applicants' bundle). Additionally, the Tribunal accepted that the incident had occurred where multiple flies hatched. In considering this further, the Tribunal considered the actions that the Respondent had taken and accepted the Respondent's evidence that she had attended the Property and cleaned the cupboards following being told that flies had hatched, and that she had tried to deal with the mice problem by providing traps and poison, however the Tribunal accepted the Applicants' evidence that this had not resulted in the eradication of the mice.

39. In terms of the behaviour of the Respondent, the Tribunal accepted the evidence of the Applicants that they had been provided with a lodger agreement when in fact the Respondent confirmed in evidence to the Tribunal that she did not live at the Property during the relevant period. The explanation given by the Respondent was that she had used this agreement as she needed to give two months' notice because of her expectation that the Property might need to be sold quickly was not accepted by the Tribunal. It was evident to the Tribunal that the Respondent had not taken advice before renting the Property and was unaware of her obligations as a landlord.
40. The Tribunal noted that the Applicants, in their oral evidence, stated that the Respondent had been mostly responsive to issues that they raised, however also noted that the Applicants stated that they did not always feel comfortable raising issues because of fear that the Respondent would ask them to leave the Property.

### **Financial Circumstances of Respondent Landlord**

41. The Tribunal was not presented with any evidence that the Respondent would not be able to meet any financial award the Tribunal made.

### **Whether Respondent Landlord has been convicted of offence**

42. The Respondent confirmed that she did not have any convictions identified in the table at section 45 Housing and Planning Act 2016, and there was no evidence before the Tribunal that this was not the case.

### **Respondent as a Professional Landlord**

43. The Respondent confirmed in evidence to the Tribunal that she rented out other Properties. The Tribunal accepted this evidence and found her to be a professional landlord. She therefore should have had systems in place to ensure that her obligations as a landlord were met.

### **Quantum Decision**

44. Taking all of the factors outlined above into account, the Tribunal found that this licensing offence was not the most serious under the 2016 Act. However, taking the factors of this particular case into account and the findings of the Tribunal as set out above, the Tribunal found that a RRO of 65% should be made as follows:

#### **Apportionment of RRO based on 65% of the payable sum after deduction of utilities:**

<b>Applicant</b>	<b>Total Rent Claimed</b>	<b>Total rent Less utilities of £474.35 per year</b>	<b>Total Rent Repayment Order (65%)</b>
Nolan Barthel	£5,850	£5,375.65	<b>£3,494.17</b>
Santiago Dovidio	£4,170	£3,695.65	<b>£2,402.17</b>
George Smith	£4,680	£4,205.65	<b>£2,733.67</b>
Ema Peleckyte	£4,370	£3,895.65	<b>£2,532.17</b>

45. The Tribunal ordered that the payment be made in full within 28 days.

### **Application Fees**

46. The Applicants made an application for a refund of the amount they had paid by way of an application fee and hearing fee. In reply the Respondent reiterated that she had made a genuine mistake.
47. Given that the Tribunal made a RRO and taking into consideration the findings made, the Tribunal exercised its discretion and ordered that the Respondent must pay £330 in respect of the Tribunal fees. This amount must be paid by the Respondent to Justice for Tenants within 28 days.

**Judge Bernadette MacQueen**

**Date: 28 October 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.