



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

Case Reference : **LON/00AE/HMF/2024/0035**

Property : **60 London Road, Wembley, London,
HA9 7HG**

Applicants : **Jen ni Liang
Feng Chi Lee
Wen Jing Yin**

Representative : **Jamie McGowan, Justice for Tenants**

Respondents : **Shin-yi Lin
Qin Bao
Jianhua Xu**

Representative : **In person**

Type of Application : **Application by Tenants for Rent
Repayment Order. Sections 40,41, 43
& 44 of the Housing and Planning Act
2016**

Tribunal : **Judge Bernadette MacQueen
Mr M. Cairns, MCIEH**

Date of Hearing : **7 October 2024**

Date of Decision : **30 October 2024**

DECISION

DECISION

1. The Tribunal found that the Respondents 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 (RRO) in favour of the Applicants could be made. The Tribunal made a RRO of £3,505.78 for the period of 15 August 2021 to 18 January 2023 in favour of Jen ni Liang and a RRO of £3,576.86 for the period 18 May 2022 to 18 January 2023 in favour of Feng Chi Lee and Wen Jing Yin. This must be paid by the Respondents to the Applicants within 28 days.
2. The Tribunal also ordered the reimbursement of the Tribunal fees (application fee and hearing hearing) totalling £330 and this amount must be paid by the Respondents to the Applicants within 28 days.

Background

3. By application dated 21 December 2023 the Applicants made an application for a RRO under section 41 of the Housing and Planning Act 2016 (the Act) in relation to 60 London Road, Wembley, London, HA9 7HG (the Property).
4. The Applicants stated in their application that Jen ni Liang was claiming a rent repayment of £4,410 for the period 15 August 2021 to 31 March 2023 and that Wen Jing Yin and Feng Chi Lee were claiming £6,352.88 for the period of 22 May 2022 to 1 January 2023. By application dated 12 March 2024, the Applicants applied to the Tribunal to amend the total sum requested for repayment to £6,480.65 for rent paid over the period between 15 August 2021 and 12 March 2023 for Jen ni Liang, and

£6,811.67 for the rent paid for the period of 18 May 2022 and 18 January 2023 for Wen Jing Yin and Feng Chi Lee.

5. The Applicants alleged that the Property met the criteria requiring it to be licensed under the mandatory scheme as an HMO as the Property was occupied by five people from more than two separate households who were sharing basic facilities. Therefore, the Applicants alleged that the Respondents were 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. The Applicant also alleged that there were a number of problems with the condition of the Property.
6. In the alternative, the Applicants submitted that the Property was situated within an additional licensing area and was therefore required to be licensed under the additional licensing scheme and did not qualify for any exemptions. The relevant additional licensing scheme was made by the London Borough of Brent (Applicants' bundle at pages 140 to 141). This additional licensing scheme came into force on 1 February 2020 and would cease to have effect on 31 January 2025. It applied to the whole area of the district of the London Borough of Brent (as delineated on the map attached to the scheme).
7. The Directions made on 29 February 2024 and amended on 15 March 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.
8. The Applicant sent a bundle of documents that consisted of 294 pages, along with a response to the Respondents' submission which consisted of 46 pages. The Respondents submitted a statement of case and a bundle consisting of 37 pages.

The Hearing

9. The Hearing took place on 7 October 2024. The Applicants did not appear but were represented by Jamie McGowan of Justice for Tenants. The Tribunal was told that Feng Chi Lee and Wen Jing Yin were in Taiwan and, although an application had been made for them to give evidence from abroad, it was not permitted for evidence to be given from Taiwan. The Applicants were therefore only in a position to rely on their written statements.
10. Shin-yi Lin and Qin Bao attended the hearing, however Jianhua Xu did not attend.
11. At the hearing, the representative for the Applicants confirmed that their case was based on a breach of the London Borough of Brent's additional licensing scheme rather than mandatory licensing.

The Law

12. Section 41 (1) Housing and Planning Act 2016 states:

“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”

12. Section 43 (1) Housing and Planning Act 2016 states:

“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 had been convicted)”

13. Section 40 (3) Housing and Planning Act 2016 defines “an offence to which this Chapter applies” by reference to a table. The offence under

section 72 (1) Housing Act 2004 (control or management of unlicensed house) is within that table.

Control or Management of Unlicensed HMO:

14. Section 72 (1) Housing Act 2004 provides:

“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 but is not so licensed.”

Agreed Facts

13. There was no dispute that the Property fell within the area for which additional licensing applied. The effect of this was that all privately rented properties occupied by three or four people making up two or more households that met HMO conditions required a licence.
14. There was also no dispute that rent had been paid as set out by the Applicants in their bundle, that the Property had been occupied as the only or main residence of the occupiers and that the occupiers shared basic facilities and that the living accommodation constituted the only use of that accommodation.
15. Additionally, there was no dispute that the Respondents had not applied for any licence for the Property.

Occupancy of the Property

16. The issue in dispute that the Tribunal needed to determine was the occupancy of the Property.
17. The Applicants' written evidence was that during the period 15 August 2021 to 12 March 2023 the Property was occupied by at least five people

living in two or more separate households and occupying the property as their main residence and their occupation of the Property constituted the only use of the accommodation.

18. The Applicants' position was that they were tenants of the Property. Feng Chi Lee did not have a tenancy agreement but their evidence to the Tribunal was that Wen-Jing Yin and Feng Chi Lee occupied one room as a separate household.

19. The Applicants' written evidence as to occupation was summarised as follows:

- **Room A** – Shin-yi Lin lived at the Property before Jen ni Liang moved in (15 August 2021) and moved out after Jen ni Liang moved out (12 March 2023).
- **Room D** – Jen ni Liang lived at the Property from 15 August 2021 to 12 March 2023.
- **Room E** – Dory lived at the Property from 15 August 2021 to 28 April 2023
- **Room C** –
 - Yu Chieh Yang lived at the Property before Jen ni Liang (15 August 2021) and moved out on 8 March 2022
 - Wen Jing Yin and Feng Chi Lee replaced this occupant, living at the Property and sharing the same room from 18 May 2022 to 18 January 2023.
 - After Wen Jing Yin and Feng Chi Lee moved out another resident moved in on 12 February 2023 and continued to reside at the Premises after Jen ni Liang moved out (8 March 2022).

- **Attic Room** – Brenda lived at the Property from around December 2021 until mid-February 2022.
20. The Respondents' evidence to the Tribunal was that Feng Chi Lee did not have a tenancy agreement and was not authorised by the Respondents to live at the Property. Additionally, the Respondents produced within their written evidence a witness statement from Choi Ian Lai dated 22 April 2024. It was the Respondents' position that this was the person that the Applicants stated moved into Room C after Wen Jing Fen moved out. The Applicants stated that this was on 12 February 2024, however it was the Respondents' position that there was therefore no overlap with Jen ni Liang and this person actually moved in on 1 April 2023.
 21. Having heard this evidence from the Respondents, and the Applicants only being in a position to provide written evidence to the Tribunal, the representative for the Applicants confirmed that they were asking the Tribunal to find that the Respondents were in breach of the additional licensing scheme.
 22. Additionally, in light of the written evidence of Choi Ian Lai, the Applicants conceded that the relevant period in relation to Jen ni Liang's case ended on 18 January 2023 rather than 12 March 2023.
 23. The Applicants' position was therefore that there had been a breach of the London Borough of Brent's additional licensing scheme as the Property was occupied by three or more unrelated people who shared one or two basic amenities occupying the Property as their main residence and that being the only use of the Property. The effect of this was that the Tribunal was not asked to consider the basis upon which Feng Chi Lee was present at the Property.
 24. Regarding whether Feng Chi Lee could bring an application, Mr McGowan on behalf of the Applicants stated that it was not necessary to resolve whether Feng Chi Lee could bring an application as section 262 (b) Housing Act 2004 provided that an application for a RRO could be

made by an “occupier” and that “occupier” meant a person who was an occupier at the time of payment, whether under a “tenancy, licence or otherwise”. The Tribunal accepted that “or otherwise” was sufficiently wide to cover Feng Chi Lee in bringing the application even though the Tribunal had made no finding on the basis upon which Feng Chi Lee was at the Property. The Tribunal was satisfied that Feng Chi Lee was therefore able to make an application and in reaching this decision noted in particular the payments made from Feng Chi Lee to Shin-yi Lin at pages 116 to 122 of the Applicants’ bundle.

25. The Applicants’ evidence as to occupancy was therefore amended as follows:

- **Room A** – Shin-yi Lin lived at the Property before Jen ni Liang moved in (15 August 2021) and was present when Jen ni Liang moved out (12 March 2023).
- **Room D** – Jen ni Liang lived at the Property from 15 August 2021 to 12 March 2023.
- **Room E** – Dory, lived at the Property from 15 August 2021 to 28 April 2023
- **Room C** –
 - Yu Chieh Yang lived at the Property before Jen ni Liang (15 August 2021) and moved out on 8 March 2022
 - Wen Jing Yin replaced this occupant and lived at the Property from 18 May 2022 to 18 January 2023.

26. The relevant period was also amended to being between 15 August 2021 and 18 January 2023.

Tribunal's Findings on Occupancy

27. Having considered the written evidence from the Applicants and Respondents and the oral evidence of Shin-yi Lin, the Tribunal was satisfied that three people from two or more separate households had occupied the Property during the relevant period. It was not disputed between the parties that Wen Jing Yin had occupied the property between 18 May 2022 and 18 January 2023. The Tribunal accepted this and noted that Wen Jing Yin's "Rental Agreement" at pages 65 to 70 of the Applicants' bundle was dated 18 May 2022 with the start date set as 22 May 2022, ending on 22 November 2022, and The Tribunal also accepted the evidence of payments of rent made as set out at page 84 and 109 to 115 of the Applicants' bundle.
28. It was also not disputed between the parties that Jen ni Liang had lived at the Property between 15 August 2021 and 18 January 2023. The Tribunal accepted the "rental agreement" at pages 71 to 76 of the Applicants' bundle which showed a commencement date of 15 August 2021 to 15 March 2022, and a further agreement with a rental start date of 1 September 2022 to 31 March 2023 (pages 77 to 82). The Tribunal accepted the evidence of rent paid throughout the period as set out at page 83 and 85 to 107 of the Applicants' bundle.
29. For the period 22 May 2022 to 18 January 2023 the Tribunal was therefore satisfied that Wen Jing Yin and Jen ni Liang lived at the Property.
30. It was also not disputed that Dory signed her tenancy agreement on the same day as Jen ni Liang, namely 15 August 2021, and paid the same amount of rent as Jen ni Liang. The Tribunal accepted the written evidence of Jen ni Liang that Dory moved out of the Property on 28 April 2023. In reaching this finding, the Tribunal also took into account Exhibit 13 of the Applicants' response bundle which was a text conversation between Shin Yi Lin, Jeni ni Liang and Dory, dated 13 February 2023. In this conversation, Dory confirmed that she was

leaving on “28 April”. This exchange having taken place after 18 January 2023, the Tribunal therefore found that Dory lived at the Property at least between 15 August 2021 and 18 January 2023.

31. The Respondent Shin-Yi Lin had remained at the Property throughout the relevant period.
32. The Tribunal therefore found the occupancy as follows:

Jen ni Liang had occupied the Property from 15 August 2021 to 18 January 2023, and Yu Chieh Yang and Dory lived at the Property between 15 August 2021 until 8 March 2022. From 18 May 2022 until 18 January 2023, the Tribunal found on the evidence it was asked to consider that the occupancy had been as follows:

Relevant Period - 18 May 2022 to 18 January 2023

| Occupant | Room | Period |
|--------------|--------|---|
| Wen Jing Yin | Room C | 18 May 2022 to 18 January 2023 |
| Jen ni Liang | Room D | At Property from 15 August 2021 to 12 March 2023 – so in occupation for period 18 May 2022 to 18 January 2023 |
| Dory | Room E | At Property from 15 August 2021 to 28 April 2023 – so in occupation for period 18 May 2022 to 18 January 2023 |

33. For completeness, it was accepted that Shin-yi Lin also lived at the Property throughout this period as spouse of Qui Bao.
34. The Tribunal therefore found that during the relevant periods claimed, namely 15 August 2021 to 18 January 2023 and 18 May 2022 to 18 January 2023, the Property had been occupied by at least three people, sharing a kitchen and bathrooms, occupying this as their main residence and that this was the only use of the Property. The Tribunal therefore found the Property had been required to be licensed under the additional licensing scheme and was not so licensed.

Person having Control of or Managing the Property

35. A section 72(1) offence is committed by the person having control of/managing the Property. Section 263(1) Housing Act 2004 defines “person having control” in relation to the premises as “the person who received the rack-rent of the premises (whether on his own account or as agent or trustee of another person). Section 263 (2) defines “person managing” as the person who, being an owner or lessee of the premises (a) received (whether directly or through an agent or trustee) rents or other payments (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises.
36. The Applicants submitted that Shin-yi Lin was the appropriate Respondent because she was stated as the immediate landlord in the tenancy agreements and therefore the person having control of the premises as the person who received or would so receive the rank-rent if the premises were let.
37. Further, the Applicants submitted that Qin Bao and Jianhua Xu were the appropriate Respondents because they were the beneficial owners of the Property as shown on the Land Registry record (page 124 of the Applicants’ bundle). They were the “person having control” as they were the person who received or would so receive the rack-rent if the premises were let.

38. Further, the Applicants submitted that Shin-yi Lin was also the person managing the Property. Qin Bao and Jianhua Xu were also managing the Property as they were the owners of the Property who received or would so receive rent from the tenants.
39. The Tribunal was satisfied that Qui Bao and Jianhua Xu were the joint legal owners of the Premises and were the persons entitled to receive the rack-rent. In addition, Shin-yi Lin was the named landlord on the tenancy agreements and was the person rent payments were made to. The Tribunal was therefore satisfied that all Respondents had control of an unlicensed house in multiple occupation.

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

40. The Respondents did not raise a statutory defence and the Tribunal was satisfied that a statutory defence was not relevant in this case, particularly because it was agreed that the Respondents had not made an application for an HMO licence.
41. The Tribunal considered whether or not the Respondents had a reasonable excuse. The Respondents told the Tribunal that they had thought that a licence was not needed as there were fewer than five occupants. Their evidence to the Tribunal was that they had understood that was the position and that other Councils required a licence if there were five or more occupants.
42. Additionally, it was the Respondent's position that they had known the occupants as friends and acquaintances before they moved into the Property. Shin-yi Lin told the Tribunal that she had tried to be generous and kind by offering rooms to people who needed them, particularly during COVID-19. She further confirmed that she saw the tenants as family.

43. The Respondents stated that they did not rent out any other property, and accepted in cross examination that they had not taken any specific professional advice regarding housing regulations.

Tribunal Findings – Reasonable Excuse

44. The Tribunal did not find, on a balance of probabilities that the Respondents had a reasonable excuse. The additional licensing scheme required the Property to be licensed and it was not a reasonable excuse for the Respondents to state that they were unaware of this.
45. Further, the Tribunal did not find that the claim that the occupiers were friends or acquaintances of the Respondents relevant. The Tribunal was satisfied that the occupiers were separate households and it therefore was not relevant that the occupiers knew each other before they moved into the Property.
46. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondents had committed an offence under section 72(1).

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

47. 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

48. The Applicants' initial application was to seek to recover rent paid of £13,292.32 for the period between 15 August 2021 and 12 March 2023, however, as set out above, the Applicants amended this so that the relevant period ended on 18 January 2023.
49. The Tribunal noted that the payments claimed by Jen ni Liang at page 83 of the Applicant's bundle were now amended to include 365 days when the Property was occupied by three or more people in breach of the additional licensing scheme. In particular, this meant that the last two payments on 2 February 2023 and 3 March 2023 were no longer applicable given that the relevant period now ended on 18 January 2023.
50. During the hearing, the representative for the Applicants recalculated the amount of total rent claimed, in light of the evidence presented to the Tribunal. Based on the amended relevant period, he found that the total rent claimed would actually be £7,182.57, which was higher than the amount claimed at page 83 of the bundle (£6,480.65). So as to be fair to the Respondents, the representative for the Applicants asked that the Tribunal calculate any repayment on the basis of the amount set out in the bundle, namely £6,480.65.
51. The Tribunal accepted this position and therefore took as the total rent for the period when the Property was occupied by three or more people in two or more separate households between the period 15 August 2021 and 31 March 2023 as £6,480.65.
52. With regard to the amount of rent claimed by Wen Jing Yin the Tribunal accepted that the total rent was as set out at page 84 of the Applicants' bundle, namely £6,811.67 for the period 18 May 2022 to 18 January 2023.

Deductions for Utility Payments that Benefit the Tenant

53. It was accepted by both parties that the only payment that the Applicants made was for rent; the Respondents made payments for utilities.
54. 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.
55. The Respondents did not provide the Tribunal with any evidence as to the amount they paid for utilities. In the absence of any information, the Tribunal made an informed estimate and calculated that an average monthly payment for utilities would be £212.57 per month. As the number of occupiers varied but the Applicants relied on the additional licensing scheme, the Tribunal divided this figure by four to take account of the number of occupants. This gave a monthly deduction for utilities of £53.14 per person per month. The Tribunal found that that amount represented what the Tribunal considered to be the amount that the Respondents would have paid from the rent to cover utility bills.

Determining the Seriousness of the Offence to Ascertain the Starting Point

56. 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.
57. 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

58. In the Applicants' written evidence they submitted that the Respondents failed to meet a number of requirements and that post was opened by the Respondents and that boxes blocked the hallway. However, after hearing the Respondents evidence, and with the Applicants not being present at the hearing, Mr McGowan on behalf of the Applicants conceded that the only conduct issues the Applicants sought to rely on were (1) that a gas safety certificate was not in place and provided to tenants and (2) the Respondents did not provide the tenants with the "How to Rent" guide.
59. The Respondents stated that they had ensured that gas safety certificates were available. However, the only gas safety certificate provided to the Tribunal was the gas safety record for 6 March 2023 (page 24 of the Respondents' bundle).

Tribunal Decision – Conduct of the Landlord and Tenant

60. The Tribunal accepted the written evidence of the Applicants and found that the "How to Rent guide" and gas safety certificates had not been provided to the tenants.

Financial Circumstances of Respondents

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

Whether Respondents have been convicted of offence

62. The Respondents confirmed that they 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.

Quantum Decision

61. The Tribunal noted that the period that the Property remained unlicensed was significant and that no application for a licence had been made at any point during the Applicants' occupation of the Property. Additionally, taking into consideration the Tribunal's finding that the Applicants were not provided with gas safety certificates or the How to Rent Guide, the Tribunal found a RRO at 60% was appropriate. The amounts payable were as follows:

Jen ni Liang

Total rent claimed £6,480.65 for the period 15 August 2021 to 18 January 2023.

Total Claim - £6,480.65

Less utilities - £ 637.68

60% of which gives a **total amount of £ 3,505.78**

62. Wen Jing Yin and Feng Chi Lee total rent £6,811.67 for the period 18 May 2022 to 18 January 2023.

Total Claim - £6,811.67

Less utilities - £ 850.24

60% of which gives a **total amount of £3,576.86**

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

Application Fees

67. Given that the Tribunal had made a RRO, the Tribunal exercised its discretion to order that the Respondents must pay the applicant £330 in respect of Tribunal fees. This amount must be paid within 28 days.

Judge Bernadette MacQueen

Date: 30 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.