



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

**Case Reference** : **LON/00BB/HMF/2023/0060**

**Property** : **116 Meath Road, London, E15 3DR**

**Applicant** : **Ida Brandin**

**Representative** : **Mr McGowan, Justice for  
Tenants (Ref: 17095)**

**Respondent** : **Shipon Ahmed**

**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 Gowman, MCIEH**

**Date of Hearing** : **4 November 2024**

**Date of Decision** : **25 November 2024**

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**DECISION**

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## **DECISION**

1. The Tribunal finds that the Respondent has 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 Applicant can be made. The Tribunal makes a rent repayment order of £2,520.41 for the period 15 July 2021 to 29 April 2022 and this must be paid by the Respondent to the Applicant within 28 days of the date of this decision.
2. The Tribunal also orders the reimbursement of the Tribunal fees (application and hearing fee) and this amount must be paid by the Respondent to the Applicant within 28 days of the date of this decision.

## **Background**

3. The Applicant made an application for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) in relation to 116 Meath Road, London, E15 3DR (the Property).
4. The Applicant alleged that the Property was required to be licensed under the London Borough of Newham Additional Licensing Scheme which came into force on 1 January 2018 and ceased on 1 December 2022. It was the Applicant's position that at least three separate households were living at the Property, sharing basic facilities, and therefore the Respondent 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.
5. The Applicant confirmed that the relevant period was 15 July 2021 to 29 April 2022 (the Relevant Period) and that this was made up of two separate periods namely between 15 July 2021 and 31 August 2021 and 6 September 2021 and 29 April 2021, that the total amount of rent sought by way of a rent repayment order was £4,650.69.

6. Tribunal directions made on 17 April 2023 and amended on 26 April 2023 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.
7. The Tribunal had before it a bundle of documents prepared by the Applicant which consisted of 295 pages, as well as a response to the Respondent's submissions, which consisted of 10 pages. The Respondent had provided the Tribunal with a bundle and a second witness statement, but these had been submitted after the date set in the directions.

### **The Hearing**

8. The Hearing was held on 4 November 2024 via Cloud Video Platform (CVP) as it was anticipated that the Applicant would seek to give evidence from abroad. However, the Applicant confirmed that she had travelled to England for the hearing. She was represented by Jamie McGowan, on behalf of Justice for Tenants.

### **Respondent Debarring**

9. The Respondent had been sent a notice on 27 June 2024 warning him that he may be debarred; however, the Respondent had not responded to this. Therefore, on 23 July 2024, an order had been made by the Tribunal debarring the Respondent from contesting the application.
10. The Respondent had not made an application to lift the debarring. Rule 9(8) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that if a Respondent has been barred from taking any further part in the proceedings, the Tribunal need not consider any response or other submission made by the Respondent and may summarily determine any or all of the issues against the respondent.
11. The Respondent attended the hearing by telephone and confirmed that he understood that he was debarred from proceedings.

## **Late Submission of Evidence**

12. Whilst the Applicant had produced a copy of the London Borough of Newham’s additional licensing scheme (page 173 of the bundle), the map showing the area subject to the additional licensing scheme was not part of the bundle. Mr McGowan on behalf of the Applicant applied to the Tribunal at the hearing for permission to adduce the map that showed the area subject to the additional licensing scheme (referred to as “Map 1 c” in the scheme). The Applicant sought to introduce a document showing the designation of the area, as well as the report and minutes from the Cabinet meeting held by the London Borough of Newham on 15 June 2017 which detailed the scheme.
13. The Tribunal allowed this late evidence to be adduced. In reaching this decision the Tribunal found that there was no prejudice to the Respondent because the Applicant had made their case on the basis that the Property was within the additional licensing. This was set out in the Applicant’s initial application form where in the “Grounds for Application section”, the Applicant confirmed that the additional licensing scheme had applied borough wide except for properties with postcode “E20”. Additionally, this was stated within the grounds of application at page 2 paragraph 5 of the Applicant’s bundle. The Respondent had not disputed that the Property fell within the additional licensing area.
14. The additional documents therefore served to confirm what had already been set out by the Applicants. In reaching this decision, the Tribunal considered rule 3 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and in particular rule 3(b) to allow unnecessary formality and seek flexibility in the proceedings and (c) ensure that parties are able to participate fully in proceedings.

## **Offence Under Section 72(1) Housing Act 2004**

### **The Law**

15. 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.

16. 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 licenced under this Part but is not so licenced.”

17. The additional licensing scheme provided that houses in multiple occupation that were not subject to mandatory licensing were required to be licensed under the additional scheme.

Finally, section 254 Housing Act 2004 defines the standard test, self-contained test and the converted building test:

Section 254 provides:

(1)“For the purposes of this Act a building or part of a building is a “house in multiple occupation” if

- (a) it meets the conditions in subsection (2) (“the standard test”)
- (b) it meets the condition in subsection (3) (“the self-contained flat test”)
- (c) it meets the conditions in subsection (4) (“the converted building test”).

The standard test is defined as:

A building or a part of a building meets the standard test if

- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household;
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it;
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation;
- and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

### **Section 72(1) Offence**

18. The first issue for the Tribunal to determine was the occupancy of the Property. The Applicant’s case was that there were two distinct periods that the Tribunal needed to consider, firstly, 15 July 2021 to 31 August 2021 and then 9 September 2021 to 29 April 2022.
19. The Applicant’s evidence was that the Property was a two storey four bedroom terraced house with a shared kitchen and bathroom. The Applicant stated that the Property was occupied by at least three separate households at all points during the relevant period. The Applicant

further confirmed that the people occupying the Property were unrelated and occupying their rooms as their only place to live.

20. In terms of occupancy, although the Applicant's statement of case gave details of several occupants, at the hearing the Applicant asked the Tribunal to consider the evidence that at least three separate households lived at the Property during the period 15 July 2021 to 31 August 2021 as follows:

Room Number	Name	Occupancy Period
1	Jay Hada	15 July 2021 to 29 April 2022
2	Ida Brandin	15 July 2021 to 29 April 2022
3	Annika Ulrich	15 July to 31 August 2021

21. The Applicant's evidence was that during the period 6 September 2021 to 29 April 2022 at least three separate households lived at the Property as follows:

Room Number	Name	Occupancy Period
1	Jay Hada	15 July 2021 to 29 April 2022
2	Ida Brandin	15 July 2021 to 29 April 2022
3	Mark Robinson	6 September 2021 to 28 February 2022
4	Antonia	1 October 2021 to 29 April 2022

22. The Applicant's evidence was that Jay Hada moved into the Property on 15 July 2021, and the Applicant produced a text message at page 227 of the bundle which stated that "today [15 July 2021] Jay will move in to the room". Additionally, at page 59 of the bundle, the Applicant produced a download of a conversation between the Applicant and Jay which commenced on 22 July 2021. The Applicant confirmed that the conversation was a download of the conversation and she had not altered the text of the conversation or indeed any other conversations within the bundle. The Applicant also referred to conversations between the Applicant and Jay Hada and in particular at page 59 of the Applicant's bundle a message sent on 22 July 2021 Jay referred to being "home". The Applicant told the Tribunal that this conversation related to the Property. The Applicant therefore submitted to the Tribunal that Jay Hada lived at the Property throughout the Relevant Period.
  
23. With regard to Annika's occupation, the Applicant's evidence was that Annika was already at the Property when the Applicant moved in and that she left the Property on 31 August 2021. The Applicant's evidence, therefore, was that Annika was living at the Property during the first part of the Relevant Period.
  
24. Turning to Mark's occupation, the Applicant's evidence was that Mark moved into the Property on 6 September 2021 and left on 28 February 2022. The Applicant produced a group chat at page 45 of the Applicant's bundle which showed that on 12 October 2021 a group chat for the house was started. This group chat was entitled "House 116" and the first message from the Applicant stated that the group chat was set up for the whole house in case the participants needed to inform or ask each other about something. The members of the chat were Ida, Mark, Antonia and Jay. The entry at 11:02 on 03/03/2022 at page 53 of the bundle records that "Mark Robinson left". It was therefore the Applicant's evidence that Mark left the group chat as he had moved out of the Property.



25. The Applicant's evidence regarding Antonia's occupation was that on 1 October 2021 Antonia moved in. The Applicant produced a message at page 67 of the bundle which was dated 1 October 2021 and sent at 17:56 between the Applicant and Antonia which read "Hi just to let you know I'm gonna move in this evening" and the reply from the Applicant "You are so welcome so!" The Applicant stated that Antonio moved out of Room 4 on 29 April 2022 and produced messages at page 233 of the Applicant's bundle which confirmed that.

### **Tribunal Decision - Occupancy**

26. The Tribunal accepts the evidence of the Applicant that the Property was occupied by at least three separate households, sharing a kitchen and bathroom, and was an HMO under the standard test for the Relevant Period which was made up of two distinct periods namely 15 July 2021 to 31 August 2021 and 6 September 2021 until 29 April 2022. The Property was therefore required to be licensed under the London Borough of Newham's additional licensing scheme. The Tribunal found the Applicant to be a credible witness who gave a detailed account of the periods that the relevant people were occupying the Property and the Tribunal accepts the evidence as set out above of the periods each person was occupying the Property. The Tribunal accepts the evidence the Applicant produced of group chats between the occupants of the house and in particular the conversation at page 45 of the bundle which showed the participation of all occupiers.
27. The Tribunal is therefore satisfied beyond reasonable doubt that the Property was required to be licensed under the additional licensing scheme as the Property met the standard test, namely that there were at least three people forming separate households occupying the Property and were occupying the Property as their only or main residence and that the living accommodation constituted the only use of that accommodation. The kitchen and bathroom were shared.

28. The Applicant paid rent and the Tribunal accepts the evidence of rent payments made at pages 70 to 159 of the Applicant's bundle and the schedule at page 69 of the bundle.
29. The Tribunal accepts the evidence of the Applicant that the Property did not have a licence granted under the additional licensing scheme. The Applicant told the Tribunal that the Property had a selective licence for the period from 28 November 2018 which was valid until 09 January 2024, however the Tribunal accepts the evidence of the Applicant that this was not the correct licence for the Property and therefore the Property was not licensed.

### **Person having Control of or Managing**

30. The section 72(1) offence is committed by the person having control/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.
31. The Tribunal has considered the evidence and finds that the Respondent was the person managing the Property. The Tribunal reaches this decision because the land registry document at pages 159 to 161 of the Applicant's bundle showed Shipon Ahmed as the proprietor and at paragraph 1, page 1 of the Respondent's bundle he stated that he owned the Property.

### **Statutory Defence/Reasonable Excuse**

32. The Respondent was debarred from the proceedings, however the Tribunal has still considered whether the Respondent had a defence.

The Tribunal is satisfied that the Respondent had not applied for an additional licence and a defence under section 72(4) therefore does not arise.

33. The Tribunal has considered whether the Respondent had a reasonable excuse. It is for the Respondent to show, on a balance of probabilities, a reasonable excuse. The Tribunal does not have before it any evidence that would amount to a reasonable excuse. The Tribunal has already set out its findings in relation to occupancy and therefore does not find, on a balance of probabilities, that the Respondent had a reasonable excuse.

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

34. 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 finds 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**

35. The Applicant confirmed that the whole rent that she was claiming for the Relevant Period was £4,650.69. The Tribunal accepts the schedule at page 69 of the Applicant's bundle which set out the amount and date payments were made and calculated the total amount of rent claimed.

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

36. The Applicant confirmed that utility payments were made by the Respondent and the Tribunal accepts this evidence.
37. 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.

38. The Tribunal does not have before it any evidence to show the amount the Respondent paid for utility payments bills. The Tribunal has therefore used its own expertise and calculates that it would expect that approximately £50 per month per person would represent a reasonable amount that the Respondent would pay for utilities. The Tribunal has therefore considered the whole of the payment claimed by the Respondent and has deducted £450 for utilities for the relevant period.

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

39. The Tribunal has 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.
40. In determining the seriousness of the offence, the Tribunal has 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 has to consider the circumstances of this particular case as compared to other examples of the same offence.

### **Conduct of Landlord and Tenant**

41. The Applicant confirmed that there were three areas that the Tribunal was being asked to consider, namely the hot water/heating at the Property, the lack of fire alarms, and gas and electricity certificates not being provided.
42. Turning to the hot water and heating, the Applicant's evidence was that the shower was reported to the Respondent as not working on 1 February 2022 (page 210 of the Applicant's bundle). The Applicant also stated that the heating did not work properly.

43. Whilst the Tribunal accepts this evidence from the Applicant, the Tribunal notes, in mitigation, that the Respondent had made arrangements for people to attend the Property to mend the heating and hot water.
44. The Applicant stated that there was a smoke alarm installed in the kitchen but there were no other smoke alarms and that no carbon monoxide alarm was installed.
45. Further, the Applicant told the Tribunal that she was not provided with a gas safety certificate and electricity certificate. Whilst the Tribunal accepts the evidence of the Applicant, the Tribunal does not find this to be a significant factor and notes that the Property did have a selective licence and so would have had to have relevant safety certificates in place.
46. With regard to the conduct of the Applicant, she confirmed that only once had the Respondent contacted her about a party being held at the Property. The Applicant was able to confirm that she was in Sweden at the time and therefore did not know about a party being held. Regarding the allegations of damage and rubbish left at the Property, the Applicant confirmed that she did not accept that she had caused damage or left rubbish at the Property.
47. The Applicant told the Tribunal that she considered herself to have been a good tenant, acting appropriately and paying her rent.

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

48. The Tribunal does not have before it any evidence of the Respondent's financial position and therefore does not have any evidence that he would not be able to meet any financial award the Tribunal makes.

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

49. The Tribunal does not have any evidence before it of any convictions identified in the table at section 45 Housing and Planning Act 2016.

## **Respondent as a Professional Landlord**

50. Further, the Tribunal does not have any evidence before it that the Respondent was a professional landlord. The Tribunal therefore has not treated him as such.

## **Quantum Decision**

51. Taking all of the factors outlined above in account, the Tribunal finds that this licensing offence is not the most serious under the 2016 Act. Taking the factors of this particular case into account as outlined above, the Tribunal finds that a RRO of 60% is in line with the findings made above.

52. The Tribunal therefore orders that the Respondent pay 60% of the amount claimed, a deduction having been made for utilities.

Total Claim - £4,650.69

Less utilities - £ 450.00

60% of which gives a **total amount of £2,520.41**

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

## **Application Fees**

53. The Applicant asked the Tribunal to make an order that the Respondent reimburse the Applicant for their application fee (£100) and hearing fee (£200).

54. Given that the Tribunal has made a RRO, the Tribunal exercises its discretion to order that the Respondent must pay the Applicant's application and hearing fee. This amount shall be paid within 28 days.

**Judge Bernadette MacQueen**

**Date: 25 November 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.