FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AE/HMF/2024/0029**
Property	**:**	**92A Hampton Road, London E7 0NU**
Applicant	**:**	**Anna Jamroz**
Representative	**:**	**Justice for Tenants Ref: 23567**
Respondent	**:**	**Mohammed Javid Tariq Ali**
Representative	**:**	**N/A**
Type of application	**:**	**Application for a rent repayment order by tenant Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge H Carr** **Mr S Mason FRICS**
Date and venue of hearing	**:**	**4th November 2024**
Date of decision	**:**	**3rd December 2024**

DECISION

Decisions of the tribunal

(1) The tribunal determines that it has no jurisdiction to determine the appeal as the application was received out of time.

In the event that the tribunal is wrong on the question of jurisdiction it makes the following determinations

(2) The tribunal determines to make a Rent Repayment Order in the sum of £2790.

(3) The tribunal determines that the Respondent reimburse the Applicant for her application and hearing fees, totalling £320.

(4) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenant seeks a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO). The Applicant alleges that the Respondent landlord has committed the offence of control or management of an unlicensed HMO.

2. The period for which the RRO is sought is from 1st January 2022 – 31st December 2022. The applicant is seeking to recover the sum of £14,043.00 for rent paid during this period.

The hearing

3. The Applicant attended the hearing. She was represented by Brian Leacock of Justice for Tenants. The Applicant's daughter and partner also attended the hearing.

4. The Respondent did not attend.

The background

5. The property is a 3 bedroom self-contained flat on the first floor of a terraced house.

6. The Applicant occupied the property from July 2006 to 10th April 2023. She became a tenant of the property in 2015, taking over the tenancy from her ex-husband who had left the family home in 2014.

7. The respondent, Mr Mohammed Javid Tariq Ali is named as proprietor on the proprietorship register. He purchased the property on 8th March 2004.

8. He is named as the landlord on the tenancy agreement. His address is shown on the tenancy agreement as C/O H & Co Property Services Limited Humphrey and Co Estates, 125 Hoe Street, London Greater London E17 4RX.

9. The Applicant informed the tribunal that correspondence relating to the application had been sent to an email address provided by the Respondent to the Applicant for all communications. It also said, and this was confirmed by the tribunal clerk, that there was no indication that the email communications had not been received.

The issues

1. The issues that the tribunal must determine are;

    (i) Was the application received in time for the tribunal to have jurisdiction?

    (ii) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?

    (iii) Does the Respondent have a 'reasonable excuse' defence?

    (iv) What amount of RRO, if any, should the tribunal order?

        (a) What is the maximum amount that can be ordered under s.44(3) of the Act?

        (b) What account must be taken of

            (1) The conduct of the landlord

(2) The financial circumstances of the landlord:

(3) The conduct of the tenant?

(v) Should the tribunal refund the Applicants' application and hearing fees?

The determination

Was the application received in time?

10. As the selective licensing scheme run by the London Borough of Newham terminated on 28th February 2023 for the tribunal to have jurisdiction the application had to be received by it by the 27th February 2024.

11. The application is dated 19th December 2023. However, it was not sent to the tribunal on that date. The tribunal sent a letter to the Applicant stating that the application had been received on 28th February 2024. That letter has not been challenged by the Applicant.

12. The tribunal checked its records and found that the application had been sent to the tribunal by email at 1111.15 pm on 27th February 2024.

13. The text of the email is as follows:

From: JFT Justice For Tenants <rro@justicefortenants.org>
Sent: Tuesday, February 27, 2024 11:15 PM
To: London RAP <London.Rap@Justice.gov.uk>
Subject: JFT Ref: 23567; RRO Application for Anna Jamroz in relation to 92a Hampton Road, London, E7 0NU

Dear Sirs,

This email relates to a rent repayment order application for Anna Jamroz in relation to 92a Hampton Road, London, E7 0NU.

Please find attached a copy of the PDF RRO Application and the PDF copies of the tenancy contracts as well as proof of rent documentations.

If there are any issues, please let us know.

Kind regards,

Justice For Tenants

14. The question for the tribunal therefore is whether emailing the application after normal working hours on 27th February 2024 means that the application was received on that date or on the following day, when the tribunal's offices reopened.

15. The tribunal allowed the Applicant a brief adjournment to enable Mr Leacock to prepare submissions on the question.

16. Mr Leacock's starting point was s.41(2) of the Housing Act 2016 which provides that

> A tenant may apply for a rent repayment order only if —
>
> (a)the offence relates to housing that, at the time of the offence, was let to the tenant, and
>
> (b)the offence was committed in the period of 12 months ending with the day on which the application is made

17. Mr Leacock agreed that the application had to be received on 27th February 2024 for the tribunal to have jurisdiction.

18. Mr Leacock's submission was that as long as the application was received before midnight on 27th February 2024 the application was within the 12 month time limit prescribed by the Housing Act.

19. Mr Leacock referred to the recent Upper Tribunal case of *Moh v Rimal Properties Limited* [2024] UKUT 324 (LC) to argue that for the purpose of time limits under the Housing Act 2004 whole days were to be counted and not fractions of days. He therefore argued that the tribunal could not distinguish between an application received during working hours of 27th February 2024 and applications received after working hours.

The tribunal's decision

20. The tribunal determines that the application was received on 28th February 2024 and therefore it has no jurisdiction to hear it as the application was not made within the 12 month period following the commission of the offence.

The reasons for the decision of the tribunal

21. The tribunal notes the decision in *Moh v Rimal*. However, it considers that the question that the Upper Tribunal was determining in that case was quite distinct from the one before it. In *Moh v Rimal* the issue was about when the offence ceased to be committed. The Upper Tribunal said

that because the law ignores fractions of a day, such that whatever time of day a licence was applied for by a landlord, the last day that the offence of failure to licence a property which required a licence was the day before. In other words the decision is about when a defence to the offence arises.

22. In the case before it the tribunal is looking at when an application was received by it. The tribunal does not consider that the argument about whole days being counted and not parts of days is relevant to that issue.

23. What needs to be determined is what day an application received well out of office working hours is deemed to have been received. Can an application sent by email be received by the tribunal when its office is closed? The tribunal considers that the answer to that question is no.

24. In answering the question in the negative, it takes guidance from its procedural rules.

25. The relevant rule is rule 15 which provides as follows:

> 15.—(1) An act required by these Rules, a practice direction or a direction to be done on or by a particular day must be done before 5pm on that day.
>
> (2) If the time specified by these Rules, a practice direction or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.
>
> (3) In this rule "working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971.

26. Whilst the rule is not directly applicable to the situation at hand because it is not an act required by its Rules the tribunal has chosen to apply it to the situation before it as it is a practical, transparent and sensible rule that facilitates the proper working of the tribunal.

27. Rule 2 of the procedural rules states that nothing in those rules overrides any specific provision that is contained in an enactment which confers jurisdiction on the Tribunal. However, the tribunal has not located any provision in the Housing Act 2004 or the Housing Act 2016 which answers the question before it overriding the provision of the rule.

28. The tribunal also notes that the tribunal informed the parties that the application had been received on 28th February 2024 and the Applicant did not respond to that information by saying that the date was incorrect.

29. For these reasons the tribunal determines that it has no jurisdiction to determine the application before it.

30. However, in the event that the tribunal is wrong on this matter, it has decided to determine the other issues before it.

Is the tribunal satisfied beyond reasonable doubt that the Respondent has committed the alleged offence?

31. The Applicant argues that the Respondent committed the offence of having control of or managing an unlicensed HMO in breach of section 72(1) of the HA 2004 from the 1st January 2022 until 31st of December 2022 because the property was situated within a selective licensing area as designated by the London Borough of Newham

32. The selective licensing scheme came into force on 1st March 2018 and ceased to have effect on 28th February 2023. The selective licensing scheme was implemented across almost all of the borough including the ward within which the property is situated – Forest Gate South.

33. The property met the criteria to be licensed under the scheme and was not subject to any exemption.

34. During the relevant period of 1st January 2022 – 31st December 2022 the property was occupied by at lease three persons living in two or more separate households and occupying the property as their main residence. Their occupation of the subject property constituted the only use of the accommodation.

35. Therefore the property met the standard test under s.254(2) of the Housing Act 2004.

36. The Applicant says that during her occupation of the property there was always other people living in it. During the period for which she is claiming a RRO Robert Szwajda lived there from October 2021 until June 2022 and Arkadiusz Ulczynski lived at the property from June 2022 until March 2023.

37. The appropriate HMO licence was not held during the relevant period, no licence application was made at any point during the Applicant's tenancy

38. During the course of the proceedings, it became clear that it was the Applicant who had contracted with the other occupiers of the property and rented them their rooms. She agreed with the tribunal that she was

in fact the landlord of Robert Szwajda and Arkadiusz Ulczynski during the periods they lived at the property. She found the occupiers and contracted with them. She collected their rent.

39. The Applicant explained to the tribunal that when she took over the tenancy from her ex-husband she asked the landlord if she could continue the practice of her ex-husband and rent out rooms in the property. She needed to do this to ensure that she could afford the rent. The landlord agreed to the arrangement.

40. The tribunal raised the issue of whether the Respondent was the appropriate respondent for the purposes of the offence as he was not responsible for letting a room within the property to the other household.

41. The Applicant responded by arguing that the Respondent is the appropriate Respondent because he is a person having control of or managing the HMO as per s.72(1) of the Housing Act 2004. The Respondent received the rent for the property, he is the owner of the property as shown by the land registry deed and is named as the landlord on the tenancy agreement.

The decision of the tribunal

42. The tribunal determines that the Respondent has committed the alleged offence.

The reasons for the decision of the tribunal

43. The tribunal relies on the evidence from the Applicant and the information provided by the local authority.

44. It also accepts that the Applicant is right, that despite the Applicant being responsible for letting out the room to another household, the Respondent remains the appropriate Respondent for the purposes of the application.

Does the Respondent have a 'reasonable excuse' defence?

45. The Respondent has not engaged with the proceedings and therefore has not argued that he has a 'reasonable excuse' for failing to get a licence.

46. However the tribunal decided to consider the particular circumstances of this case, and the fact that it was the Applicant herself who asked that rooms be rented out to enable her to afford the rent of the property.

47. The tribunal asked the Applicant if this might constitute a reasonable defence?

48. The Applicant's representative submitted that it was for the Respondent to raise issues of reasonable defence; moreover, the Applicant argued that the Respondent was not only aware that there was more than one household in the property he gave his consent to that situation.

The decision of the tribunal

49. The tribunal determines that the landlord has not got the benefit of a reasonable excuse defence.

The reasons for the decision of the tribunal

50. The tribunal accepts the argument that it is for the landlord to make out a defence of reasonable excuse and it accepts that Applicant's evidence that the landlord knew of and consented to the arrangement. In those circumstances it determines that a reasonable excuse defence is not available to the Respondent.

Should the tribunal make an award of a RRO? If so, for what amount?

The exercise of its discretion

51. The Applicant urged the tribunal to exercise its discretion and make an award of an RRO. The Applicant argued that it was clear that the Respondent had committed an offence and in those circumstances an award should be made.

The decision of the tribunal

52. The tribunal determined to exercise its discretion and make an award of an RRO.

The reasons for the decision of the tribunal

53. The tribunal thought long and hard about whether to exercise its discretion to make an award of an RRO in this case.

54. It considered

(i) The fact that the landlord had acquiesced to the arrangement for the benefit of the Applicant and did not himself profit from the arrangement

(ii) That fact that the complexities of the case were not evident on the face of the papers provided to the

Respondent, in particular that the Applicant was relying on the fact that the Respondent was fully aware of the fact that there was more than one household in the property and indeed consented to it.

55. Nonetheless it decided to award an RRO. A clear offence had been committed by the Respondent and the evidence is that the Respondent is a professional landlord and fully aware of licensing requirements in Newham.

The maximum amount of the RRO

56. The Applicant provided evidence that she had paid rent of £1,200 pcm during the period of the claim.

57. The Applicant gave evidence that she had not received housing costs through Universal Credit or received Housing Benefit during the period of the claim.

58. In addition to rent the Applicant paid the council tax on the property and all utility bills.

59. Therefore the Applicant argues that the tribunal should exercise its discretion to make an award and that the maximum RRO payable is 14,043.00.

60. The tribunal raised issues in connection with this

(i) Should the money she received from the occupiers be deducted from the maximum RRO available?

(ii) If so, what evidence is there for the periods that rent was paid and the rent that they paid?

61. The Applicant argued that the amount of the RRO must be the amount that the Applicant paid in rent without any deductions. That is what the statute provides for at s.44 of the Housing and Planning Act 2016 and the tribunal should not deviate from this.

62. In response to the question raised by the tribunal about the right of the occupier of the room to claim an RRO from the Applicant he argued that this helped his position. The Applicant required the full amount of rent paid so that if a claim was made against her she would have the resources to pay for it.

The decision of the tribunal

63. The tribunal determines that the maximum award that can be made is the full rent paid during the period.

The reasons for the decision of the tribunal

64. There is no basis in the statute at this stage of quantifying the maximum amount of the award for deducting the rent paid to the Applicant by the occupier of the room in the property.

65. The tribunal determined that it would reconsider whether a deduction was appropriate when it considers the tenant's conduct.

The conduct of the tenant

66. The Applicant argues that she has conducted herself well, carrying out repairs to the property and paying the rent due. She has been a very good tenant.

The conduct of the landlord

67. The complaints of the Applicant are.

(i) The Respondent failed to properly protect her tenancy deposit by placing it in an authorised tenancy deposit scheme.

(ii) The Respondent failed to fix the pathway to the property where there were broken and missing tiles. This led to the Applicant experiencing multiple falls.

(iii) The Respondent failed to ensure that an electrical safety certificate was in place throughout the tenancy and provided to the occupants.

(iv) The property was neglected up until renovations were carried out by the landlord in 2022. Prior to this the Applicant carried out painting, refreshing and even partial wall papering.

(v) She complained about damp in the property and the poor conditions of the widows

(vi) There were breaches of the covenant of quiet enjoyment as a result of the Respondent commencing property renovations on September 20, 2022 without prior notice to the Applicant. The work continued until April, resulting in stripped walls and gaps in the

house which led to heat loss and exposed the Applicant to cold conditions, especially with windows open all day. The work went on seven days a week and exposed the Applicant and her daughter to dust as well as cold. The daughter caught pneumonia which the Applicant considers was as a result the conditions she was forced to live in as a result of the work.

(vii) The landlord failed to engage with Justice for Tenants and the tribunal during the course of the application.

The financial circumstances of the Respondent

68. No evidence was provided by the Respondent to the tribunal about the Respondent's financial circumstances.

69. The tribunal noted that the landlord owns at least one other rental property which suggests that he is a professional landlord with a property portfolio.

Submissions of quantum

70. Justice for Tenants provided submissions on quantum. They argued that the appropriate RRO in this instance was 75% on the basis of the number of breaches of housing laws, their seriousness, the length of time that the breach had continued, and the failure of the landlord to engage with Justice for Tenants and indeed the Tribunal.

The decision of the tribunal

71. The tribunal determines to award a RRO at 20%65% of the maximum RRO payable less the amount the applicant received in rent. This equals £2790.

The reasons for the decision of the tribunal

72. There is extensive case law on how the tribunal should reach a decision on quantum of a rent repayment order. In reaching its decision in this case the tribunal has been guided by the very helpful review of the decisions in the Upper Tribunal decision *Newell v Abbott and Okrojek* [2024] UKUT 181 (LC).

73. *Acheampong v Roman* (2022) UKUT 239 (LC) established a four stage approach which the tribunal must adopt when assessing the amount of any order. The tribunal in this case has already taken the first two steps that the authorities require by ascertaining the whole of the rent for the relevant period and subtracting any element of that sum that represents

payment for utilities that only benefitted the tenant. The figure in this case is £14,043.00

74. Next the tribunal is required to consider the seriousness of the offence in comparison with the other housing offences for which a rent repayment order may be made. The failure to licence a property is one of the less serious offences of the seven offences for which a rent repayment order may be made.

75. However, although generally the failure to licence is a less serious offence, the Upper Tribunal recognises that even within the category of a less serious offence, there may be more serious examples.

76. In this particular case the tribunal considered that the case is a less serious example of one of the less serious offences in which a rent repayment order may be made.

77. The reasons for this are as follows:

(i) Whilst the tenant complains of poor conduct the majority of the problems she provided evidence on at the hearing were as the result of the landlord carrying out works to raise the standard of the property. Although it is clear that the landlord could have carried out these works in a more professional manner, the fact that works were being carried out to improve must impact upon the seriousness of the offence

(ii) The landlord has not profited from the offence; he agreed to a request by the tenant which enabled her to stay in the property and afford the rent.

(iii) The Applicant did not pay the deposit which was not protected. It was paid by her ex-husband.

78. This is not to say that the tribunal condones the failure to protect the deposit, the failure to provide all necessary certificates and the poor state of the property prior to renovations. It does not, but it considers that there are elements of this case which point to it being a less serious example of a less serious offence.

79. At this stage the tribunal considers that a RRO of 65% of the maximum RRO would be appropriate. This would mean an award of approximately £9,130.

80. However a final step needs to be taken; the tribunal has to decide whether any further deduction or addition needs to be made. Whilst the tribunal accepts the Applicant's evidence that she has been a good tenant, the tribunal considered that under the heading conduct of the tenant it would deduct the amount of money that the tenant received in rent from the other occupiers of the property. The tenant did not provide specific details of rents received but said that she had received £520 pcm for the room until December 2022 and then in December 2022 she received £620 pcm. The total of rent she received during the period of claim was therefore £6,340.

81. In deciding to make this deduction the tribunal notes that by the time the application was made there was no possibility of either Robert Szwajda or Arkadiusz Ulczynski making a claim for an RRO against the Applicant as the time period for any application had expired. Therefore the Applicant did not face any risk of having to repay rent paid by either of these occupiers. In these circumstances the tribunal does not consider that it is appropriate for the Applicant to benefit from being reimbursed this element of the rent she paid.

82. The rent of the occupiers included utilities, but as the Applicant could provide no details of how much she spent on utilities and how she apportioned them between her family and the other occupier in the property the tribunal was not able to reduce the deduction by any specific amount paid for utilities.

83. In making this deduction the tribunal has also taken into account as relevant conduct the fact that the Applicant asked the Respondent to put into place the arrangement from which she now seeks to benefit .

84. Taking all of these matters into account the tribunal determines that the appropriate amount of the RRO is 65% of the maximum payable less the amount the Applicant received in rent, i.e. £9,130 - £6340 = £2790.

85. In addition, and in the light of the findings above, the tribunal orders the respondent to repay the application fee and hearing fee of the applicants which total £320.

Name: Judge H Carr **Date:** 3rd December 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).