



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

Case reference : **LON/00BG/HMG/2024/0030**

Property : **Flat 15 Rushcutters Court 2 Boat Lifter
Way London SE16 7WJ**

Applicant : **Ho Ching Shum (known as Jonathan
Shum)**

Representative : **Represent Law Limited**

Respondent : **Peter Alpha (1)
RFL Limited (2)**

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
Ms Rachael Kershaw BSc**

**Date and venue of
hearing** : **9th December 2024**

Date of decision : **11th December 2024**

DECISION

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum of £7,938.00
- (2) The tribunal determines that the Respondent reimburse the Applicant for his application and hearing fees, totalling £320.
- (3) 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 original period for which the RRO is sought is from 18 September 2022 – 17th September 2023. During the course of the hearing the applicant asked, and the tribunal agreed that the period of claim could be changed to 18th August 2022 to 17 August 2023.
3. The applicant is seeking to recover the sum of £11,340 for rent paid during this period.

The hearing

4. The Applicant attended the hearing. He was represented by Ms Arjona Hoxta of Represent Law.
5. The Respondent did not attend.

The background

6. The property is a 2 bedroomed purpose built flat, the living room of which has been converted into a further bedroom. The property has two bathrooms and a shared kitchen.
7. The Applicant occupied the property from 25th May 2022 for a term commencing on 9th June 2022 and ending on 31st January 2023. After the end of the term the agreement continued on a rolling periodic basis until the Applicant left the property on 17th September 2023.
8. The agreement describes itself as a licence agreement. The tribunal notes that the Applicant had a room with a lock. During the hearing the Applicant said that no one in the property had access to the room.
9. The first Respondent is named as the landlord on the agreement. The rent was paid into an account operated by the second Respondent. The Applicant stated that the first Respondent was a director and person of significant control of the second respondent until 10th November 2022.
10. The tribunal notes that neither the first nor the second Respondent are the registered owner of the property.
11. The first Respondent's address is stated on the agreement as the address of the property. The Applicant says that the Respondent did not live there but he believes that he lived at Flat 1 Enversham Court Pearfield Road SE23 2LS.
12. The Applicant informed the tribunal that Represent Law had communicated with both Respondents via the emails provided on the licence form.

The issues

1. The issues that the tribunal must determine are;
 - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) Do the Respondents have a 'reasonable excuse' defence?
 - (iii) 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?

(iv) Should the tribunal refund the Applicant's application and hearing fees?

The determination

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

13. The Applicant argues that the first 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 18th August 2022 to 17th August 2023 because the property was situated within an additional licensing area as designated by the London Borough of Southwark.
14. The property met the criteria to be licensed under the scheme and was not subject to any exemption.
15. During the relevant period of 18th August 2022 – 17th August 2023 the property was occupied by at least 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.
16. Therefore the property required to be licensed as an additional HMO licence as Surrey Docks, the ward in which the property is located is designated by the London Borough of Southwark as an area requiring additional licensing.
17. The designation by the London Borough of Southwark commenced on 1st March 2022 and, unless revoked, expires on 28th February 2027.
18. The Applicant says that during his occupation of the property there was always other people living in it. During the period for which he is claiming a RRO Chalon Bucher and King Yan Chan who shared a room were living there. They were resident in the property when he moved in and were there when he moved out.
19. The third bedroom was variously occupied during the Applicant's period of residence. First by Mohammed Rashid who was there when the

Applicant moved in and moved out the end of June 2022 then by YongJie Lee who moved out around August 2022 and finally by Erwin Michalec who was resident when the Applicant left the property

20. The London Borough of Southwark provided confirmation to the Applicant that it had at no time received an application to licence the property as an additional HMO.
21. The Applicant argues 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. He is the owner of the property as shown by the land registry deed and is named as the landlord on the tenancy agreement. Whilst the second Respondent received the rent for the property, the second Respondent was controlled by the 1st Respondent

The decision of the tribunal

22. The tribunal determines that the first Respondent has committed the alleged offence.

The reasons for the decision of the tribunal

23. The tribunal relies on the evidence from the Applicant that the property was occupied by at least two other people in another household throughout the period he was in occupation and the information provided by the local authority that the property required licensing and was not licensed.
24. From the documentation provided by the Applicant it appears that the first Respondent was the landlord, as he was named as landlord on the occupation agreement, whereas the 2nd Respondent was the landlord's agent, responsible for collecting the rents.

Does the Respondent have a 'reasonable excuse' defence?

25. Neither Respondent has not engaged with the proceedings and therefore has not argued that they have a 'reasonable excuse' for failing to get a licence.

The decision of the tribunal

26. The tribunal determines that the first Respondent, who it has determined is the appropriate Respondent for the purposes of the RRO application, has not got the benefit of a reasonable excuse defence.

The reasons for the decision of the tribunal

27. The tribunal received no evidence or argument from the 1st Respondent to suggest that he had a reasonable excuse.

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

The exercise of its discretion

28. 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

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

The reasons for the decision of the tribunal

30. The tribunal considered that this was an appropriate case for it to exercise its discretion and make an award of an RRO

The maximum amount of the RRO

31. The Applicant provided evidence that he had paid rent of £945 pcm during the period of the claim. This totals £11,340.
32. He explained that the rent was not paid for January 2023 because he was exercising clause 5 of the contract, which provided that for the last month of the term the deposit he paid would be used as rent.
33. The Applicant gave evidence that he had not received housing costs through Universal Credit or received Housing Benefit during the period of the claim.

34. The Applicant's rent included amounts for council tax and utilities. No evidence has been provided by the Respondents about how much of the £945 pcm contributed to council tax and utilities.
35. Therefore the Applicant argues that the tribunal should exercise its discretion to make an award and that the maximum RRO payable is £11,340.

The decision of the tribunal

36. 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

37. No evidence relating to the amount of council tax or utilities included in the rent has been provided by either of the Respondents.
38. In the light of that lack of evidence, and some evidence from the Applicant that council tax had not been paid, the tribunal determined that the maximum award is the amount of rent paid ie £11,340.

The conduct of the tenant

39. The Applicant argues that he has conducted himself well, complied with the terms of the agreement and paid his rent on time and in full.

The conduct of the landlord

40. The complaints of the Applicant are.
 - (i) The Respondent provided a licence agreement when the Applicant was entitled to an AST.
 - (ii) The Respondent failed to properly protect his tenancy deposit by placing it in an authorised tenancy deposit scheme.
 - (iii) The Respondent took 6 weeks rent instead of 5 weeks and charged an illegal commission fee.
 - (iv) The Respondent failed to provide a how to rent guide or the EPC for the property.
 - (v) Bailiffs attended the property because the Respondent had failed to pay council tax.

- (vi) An incorrect rent increase notice was served on 25th May 2023.
- (vii) The landlord failed to engage with the Applicant and the tribunal during the course of the application.

The financial circumstances of the Respondent

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

Submissions of quantum

- 42. Represent Law provided submissions on quantum. They argued for an RRO of all the rent paid.

The decision of the tribunal

- 43. The tribunal determines to award a RRO at 70% of the maximum RRO payable ie £7,938.

The reasons for the decision of the tribunal

- 44. 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).
- 45. *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 £11,340.
- 46. 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.

47. 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.
48. In this particular case the tribunal considered that the case is a moderately serious example of one of the less serious offences in which a rent repayment order may be made.
49. The reasons for this are as follows:
- (i) The landlord has shown a blatant disregard for the law, providing a sham licence, attempting to raise the rent unlawfully, failing to protect the deposit, taking unlawful payments as part of the deposit and failing to engage with the legal process at all.
 - (ii) The evidence from the Applicant is that the property was not in a poor condition.
50. At this stage the tribunal considers that a RRO of 70% of the maximum RRO is appropriate and does not consider that any further deductions should be made.
51. The tribunal also orders that the application and hearing fees paid by the Applicant are refunded.

Name: Judge H Carr

Date: 11 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).