FIRST-TIER TRIBUNAL

PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOBH/HMG/2024/0040**
Property	**:**	**115 Sturge Avenue,E17 4LF**
Applicants	**:**	**(1) Anita Summan and (2) Yazmin Noor Summan**
Representative	**:**	**Jamie Macgowan**
Respondent	**:**	**Gloria Nolte**
Representative	**:**	**Kingsford Johnson**
Type of Application	**:**	**Application for a Rent Repayment Order by Tenant – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Member	**:**	**Judge Shepherd** **Steve Wheeler MCIEH CEnvH**
Venue of Hearing	**:**	**10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**23rd December 2024**

DECISION

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1. In this case the Applicants, Anita Summan and Yaasmin Summan (The Applicants) are seeking a Rent Repayment Order against the Respondent, Gloria Nolte (The Respondent).

2. The Applicants were in occupation of premises at 115 Sturge Avenue E17 4LF (The premises).

3. It was the Applicants' case that the Respondent had failed to license the premises when she was required to do so. Specifically, they claim Rent Repayment Orders as follows:

   Rent for the period between 24/04/2022 and 23/04/2023 - £16850

4. The applicants also apply for the award of the fees we have paid under rule 13(2) of the Tribunal rules 2013, namely £100 application fee and £200 hearing fee, totalling £300.

5. The Rent Repayment Order application was made pursuant to section 41 of the Housing and Planning Act 2016. The property is a mid traced 2 bed property, with ground floor living room kitchen and bathroom and 2 bedrooms upstairs The property also has a large garden with shed and pound.

6. The Applicants moved into property on 24th April 2021 on a 6-month contract of a monthly rent of £1400 (no bills included), they paid £1400 advance rent (1 month), and £1400 Deposit Total £2800. The property was unfurnished, apart from the fridge, cooker and washing machine. No other documents were provided. The Applicants moved into the property after answering an advert on Gumtree. The Applicants remained living in the property until 31st March 2024.

7. The premises were situated within a selective licensing area as designated by the London Borough of Waltham Forest. The selective licensing scheme came into force on 1st May 2020 and will cease to be operative on 30th April 2025 .

The selective licensing scheme applies to 18 out of 20 wards in the London Borough of Waltham Forest (excluding Hatch Lane and Endlebury). The premises is situated in the ward of Chapel End, within the designated area. The premises met criteria to be licensed under the scheme and was not subject to any exemption. The appropriate licence was not held during the relevant period, and the Respondent's application for a licence was made on 26th April 2023.

8. The Applicants allege various matters with regard to the Respondent's conduct.

    - That a power outage at the premises was caused deliberately by the Respondent

    - That neighbours intimidated them at the instruction of the Respondent.

    - That they were illegally evicted by the Respondent between March 31, 2024 and 10th April 2024 when the locks were changed at a time when they were absent from the premises.

    - That they were subjected to verbal abuse from the Respondent and her husband over unpaid rent.

    - That the premises suffered from various items of disrepair including mice infestation, noisy boiler and an electricity supply that could be accessed by the neighbour.

The law on Rent Repayment Orders

The Housing Act 2004 ("the 2004 Act")

9. The 2004 Act introduced a new system of assessing housing conditions and enforcing housing standards. Part 2 of the Act relates to the licencing of Houses in Multiple Occupation ("HMOs") whilst Part 3 relates to the selective licensing

of other residential accommodation. The Act creates offences under section 72(1) of having control and management of an unlicenced HMO and under section 95(1) of having control or management of an licenced house. On summary conviction, a person who commits an offence is liable to a fine. An additional reedy was that either a local housing authority ("LHA") or an occupier could apply to a FTT for a RRO.

10. Section 263 provides:

"(1) In this Act "person having control", in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act "person managing" means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with

another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person."

The Housing and Planning Act 2016 ("the 2016 Act")

11. Part 2 of the 2016 Act introduced a raft of new measures to deal with "rogue landlords and property agents in England". Chapter 2 allows a banning order to be made against a landlord who has been convicted of a banning order offence and Chapter 3 for a data base of rogue landlords and property agents to be established. Section 126 amended the 2004 Act by adding new provisions permitting LHAs to impose Financial Penalties of up to £30,000 for a number of offences as an alternative to prosecution.

12. Chapter 4 introduces a new set of provisions relating to RROs. An additional five offences have been added in respect of which a RRO may now be sought. The maximum award that can be made is the rent paid over a period of 12 months during which the landlord was committing the offence. However, section 46 provides that a tribunal must make the maximum award in specified circumstances. Further, the phrase "such amount as the tribunal considers reasonable in the circumstances" which had appeared in section 74(5) of the 2004 Act, does not appear in the new provisions. It has therefore been accepted that the case law relating to the assessment of a RRO under the 2004 Act is no longer relevant to the 2016 Act.

13. In the Upper Tribunal (reported at [2012] UKUT 298 (LC)), Martin Rodger KC, the Deputy President, had considered the policy of Part 2 of the 2016. He noted (at [64]) that "the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of "rogue

landlords" in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live. The "main object of the provisions is deterrence rather than compensation."

14. Section 40 provides (emphasis added):

"(1) This Chapter confers power on the First-Tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy."

15. Section 40(3) lists seven offences "committed by a landlord in relation to housing in England let by that landlord". The five additional offences are: (i) violence for securing entry contrary to section 6(1) of the Criminal Law Act; (ii) eviction or harassment of occupiers contrary to sections 1(2), (3) or (3A) of the Protection from Eviction Act 1977; (iii) failure to comply with an improvement notice contrary to section 30(1) of the 2004 Act; (iv) failure to comply with prohibition order etc contrary to section 32(1) of the Act; and (v) breach of a banning order contrary to section 21 of the 2004 Act. There is a criminal sanction in respect of some of these offences which may result in imprisonment. In other cases, the local housing authority might be expected to take action in the more serious case. However, recognising that the enforcement action taken

by local authorities was been too low, the 2016 Act was enacted to provide additional protection for vulnerable tenants against rogue landlords.

16. Section 41 deals with applications for RROs. The material parts provide:

"(1) 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.

(2) 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. Section 43 provides for the making of RROs:

"(1) 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 has been convicted)."

18. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount "must relate to rent paid during the period mentioned" in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

"(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

19. Section 44(4) provides:

"(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies."

20. Section 46 specifies a number of situations in which a FTT is required, subject to exceptional circumstances, to make a RRO in the maximum sum. These relate to the five additional offences which have been added by the 2016 Act where the landlord has been convicted of the offence or where the LHA has imposed a Financial Penalty.

24. In Williams v Parmar [2021] UKUT 244 (LC); [2022] HLR 8, the Chamber President, Fancourt J, gave guidance on the approach that should be adopted by FTTs in applying section 44:

> (i) A RRO is not limited to the amount of the profit derived by the unlawful activity during the period in question (at [26]);
>
> (ii) Whilst a FTT may make an award of the maximum amount, there is no presumption that it should do so (at [40]);
>
> (iii) The factors that a FTT may take into account are not limited by those mentioned in section 44(4), though these are the main factors which are likely to be relevant in the majority of cases (at [40]).

(iv) A FTT may in an appropriate case order a sum lower than the maximum sum, if what the landlord did or failed to do in committing the offence is relatively low in the scale of seriousness ([41]).

(v) In determining the reduction that should be made, a FTT should have regard to the "purposes intended to be served by the jurisdiction to make a RRO" (at [41] and [43]).

25. The Deputy Chamber President, Martin Rodger KC, has subsequently given guidance of the level of award in his decisions Simpson House 3 Ltd v Osserman [2022] UKUT 164 (LC); [2022] HLR 37 and Hallett v Parker [2022] UKUT 165 (LC); [2022] HLR 46. Thus, a FTT should distinguish between the professional "rogue" landlord, against whom a RRO should be made at the higher end of the scale (80%) and the landlord whose failure was to take sufficient steps to inform himself of the regulatory requirements (the lower end of the scale being 25%).

26. In Acheampong v Roman [2022] HLR 44, Judge Cooke has now stated that FTTs should adopt the following approach:

"20. The following approach will ensure consistency with the authorities:

a. Ascertain the whole of the rent for the relevant period;

b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available an experienced tribunal will be able to make an informed estimate.

c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment order may be made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same type of offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the

absence of any other factors but it may be higher or lower in light of the final step:

d. Consider whether any deduction from, or addition to, that figure should be made in the light of the other factors set out in section 44(4).

21. I would add that step (c) above is part of what is required under section 44(4)(a). It is an assessment of the conduct of the landlord specifically in the context of the offence itself; how badly has this landlord behaved in committing the offence? I have set it out as a separate step because it is the matter that has most frequently been overlooked."

The hearing

27. The Respondent raised the Applicants' rent arrears and sought to set off the arrears against any penalty. This was not possible as different jurisdictions were involved. The arrears were recoverable in the County Court. The arrears were however relevant to the issue of conduct**.** The Applicants had accrued arrears of over £17000. The Respondent had obtained a possession order and money judgment based on these arrears. The Respondent also sought to raise her financial circumstances. In effect the main issue in the case was the level of the penalty. There was no issue as to liability.

28. Anita Summan was cross examined about the rent arrears. She said that harassment by the landlord and ill health had caused her to stop paying the rent. She stopped work in November 2023 and family and friends helped meet bills. She did not receive any universal credit. She reported the loose sockets a few days after she moved in. There had been a big argument between her and the Respondent's husband when he asked her to move out. She reported the repair to the council. Her neighbour said horrible things to her and she believed she was acting on behalf of the Respondent. She said they withheld rent because she needed money to pay rent somewhere else. She maintained that they had been unlawfully evicted. Possessions had been left behind.

29. Yasmin Suman was cross examined. She was a graphic designer. She had suffered ill health and had a cyst removed. She was unable to assist with the rent.

30. The Respondent's husband said that they had formed the view that the Applicants were not at the premises in March 2024. Neighbours had told him they had moved out. There was nothing in the property when he went on 5th April.

31. Mr Macgowan made submissions. He said the offence ended on 26th April 2023. The rent was paid in the relevant period. There was no deductions for utilities. The arrears were accepted. His clients had been illegally evicted. He said the Applicants were in effect bringing the offence on behalf of the state. He referred to several cases on rent arrears and Rent Repayment orders reflecting well known principles.

32. The Respondent's brother submitted that the penalty should be zero. He said when the rent was not paid the Respondent had to pay the mortgage with a credit card. They had other property in Clacton but had a mortgage on it.

33. The parties were invited to make submissions on the Respondent's financial circumstances.

34. On 18 November 2024 the Respondent filed an 87 page document containing various bank statements and other financial information. The disclosure was not accompanied by any explanation or summary. She had received universal credit. She provided recent valuations in respect of the two residential properties she owns, amounting to £772,681.00; 10 Dunthorpe Road, valued at £372,681.00 on 1 October 2024 and the premises, valued at £400,000.00 on 4 November 2024. The Credit Report produced on 12 November 2024 suggests

that the Respondent has a total of £606,319.00 outstanding mortgage balance. This leaves equity of £166,362.00. She also produced bank statements which showed a modest credit.

35. Overall, despite the best efforts of Mr Macgowan to present the Respondent as being in a prosperous position most of her capital is in property that is heavily mortgaged and her bank statements only show a modest income.

Determination

36. The Applicants provided evidence of the rent that they had paid during the relevant period and satisfied the Tribunal that for the relevant period the premises should have been licensed but were not.

37. This was a serious offence of failure to license. Applying the criteria in Acheampong above:

- The total rent paid for the relevant period was £16850

- There was no evidence of the cost of utilities paid for by the landlord.

- As already indicated, this was a serious licensing breach although a lesser offence compared to other types of offence such as unlawful eviction.

38. Applying the other criteria under the Act there was evidence of poor conduct by the Respondent. We consider that the premises were in disrepair and there probably was an unlawful eviction in April 2024. However, we also consider that the substantial arrears incurred by the Applicants after the relevant period

demonstrated very poor conduct on their part. If the Respondent did change the locks before the bailiffs were involved this was probably borne out of desperation. The tenant was living at the premises rent free. This cannot be justified. A tenancy is a contract that both sides are expected to comply with. Neither side behaved properly in this case. We do consider that it is appropriate to award a penalty but it would be artificial not to reflect the Applicants' appalling failure to comply with the terms of the tenancy.

39. In light of all of these matters we consider that an 30% award is appropriate which equates to **£5055**. We make no award in relation to the application and hearing fee.

Judge Shepherd

23rd December 2024

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 Tribunal 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 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.

4. 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.