



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

Case Reference : **LON/00AP/HMF/2024/0175**

Property : **(x2) Flat 20, Mansfield Heights, Great North Road, London, N2 0NY**

Applicants : **Aleksei Glazkov (1)
Kristopher Millar (2)**

Representative : **Aleksei Glazkov**

Respondent : **Mark Gishen**

Representative : **In person**

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 S Mason, BSc, FRICS**

Date of Hearing : **11 December 2024**

Date of Decision : **16 January 2025**

DECISION

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 Applicants can be made. The Tribunal makes a rent repayment order of £5,390 in respect of Aleksei Glazkov and £3,146.50 for Kristopher Millar. These amounts must be paid by the Respondent to the Applicants within 28 days of the date of this decision.
2. The Tribunal also orders the reimbursement of the Tribunal fees (application and hearing fee) paid by the Applicants and this amount must be paid by the Respondent to the Applicants within 28 days of the date of this decision.

Background

3. On 15 May 2024 the Applicants made an application for a Rent Repayment Order (RRO) under section 41 of the Housing and Planning Act 2016 (the Act) in relation to Flat 20, Mansfield Heights, Great North Road, London, N2 0NY (the Property).
4. The Applicants alleged that the Property was required to be licensed under the London Borough of Haringey's Additional Licensing Scheme but that the Property was not so licensed 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. Aleksei Glazkov (the first Applicant) sought a RRO for a 12 month period namely 9 October 2021 to 30 June 2022 and 7 November 2022 to 16 February 2023 in which he had paid rent of £700 per month.
6. Kristopher Millar (the second Applicant) sought a RRO for the period of 7 November 2022 to 21 May 2023. In the application form submitted to the Tribunal, the period the second Applicant had sought an order for was 7 November 2022 to 7 July 2023; however, at the start of the hearing, the Applicants sought the Tribunal's permission to amend the end date to 21 May 2023.
7. The Tribunal accepted this change and noted that there was no issue with the application being brought in time, as the application had been made to the Tribunal on 15 May 2024 and therefore the alleged offence had been committed in the period 12 months ending with the day on which the application was made (section 41(2)(b) Housing and Planning Act 2016).
8. The Tribunal had made Directions on 5 July 2024 which had 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.
9. The Applicants had provided a bundle of documents that consisted of 159 pages, as well as a Response to the Respondent's bundle, which consisted of 9 pages. The Respondent had provided a bundle that consisted of 31 pages.

The Hearing

10. The hearing took place on 11 December 2024. The Applicants attended the hearing, with Aleksei Glazkov acting as the lead Applicant. The Respondent attended the hearing in person.

Preliminary Application

11. The Respondent made an application for the Applicants' case to be struck out because the Applicants had provided their bundle after the date specified in the Directions. It was accepted that the Applicants had provided their bundle on 10 September 2024 rather than by 30 August 2024. Aleksei Glazkov told the Tribunal that he had been abroad in August 2024 and when he had returned to the UK, he had been unwell and so had been unable to submit the bundle.
12. The Tribunal found that the Applicants' bundle should not be excluded. The bundles had been provided on 10 September 2024, and whilst they had been late, this did not cause any prejudice to the Respondent; the Respondent had had time to prepare a bundle of documents. Further, the Tribunal noted that no application had been made previously for strike out or for any extension of time for the Respondent to provide their bundle. In reaching this decision, the Tribunal considered rule 3 of the First-tier Tribunal (Property Chamber) Rules 2013, the overriding objective, and found that there was no prejudice to the Respondent by the Applicants' late filing. The Rules permitted the Tribunal to be flexible within proceedings, so as to allow parties to participate fully.

Applicants' Position

13. The Applicants had produced the Haringey Council Additional HMO Designation (page 6 to 11 of the Applicants' bundle) and had also produced email correspondence from the Council dated 13 May 2024 which stated that the Property did not have a House in Multiple Occupation licence.
14. The Applicants' position was that three people lived at the Property as their main residence, living in separate households, sharing basic facilities. Living accommodation constituted the only use of the Property and therefore the Property was required to be licensed under the Additional Licensing Scheme.

15. Aleksei Glazkov sought a RRO in the total sum of £8,400 (which is 12 months at £700 rent per month) and Kristopher Millar sought a RRO of £4,845 (which is 6 months and 14 days' rent).

The Respondent's Position

16. With regards to the alleged HMO licensing offence, the Respondent disputed that three people had occupied the Property. Whilst the Respondent did not dispute that the Applicants had lived at the Property, the Respondent did dispute that Alkesh had occupied the property as his only or main residence. It was the Respondent's position that Alkesh had worked remotely from Leicester and his Leicester residence had been his principal residence.

The Law

17. 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”

18. 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)”

19. 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

20. 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.”

An HMO required to be licensed, is defined in Section 55(2)(a) Housing Act 2004 as:

“any HMO in the [local housing] authority’s district which falls within any prescribed description of HMO”.

The Haringey Additional Licensing Scheme designation applied to all Houses in Multiple Occupation that were not required to be licensed under mandatory licensing.

It was therefore the Applicants’ position that the Property was not required to be licensed under the mandatory scheme but because there had been three separate households living at the Property it met the standard test (Annex B of the scheme) namely:

- (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.

Tribunal's Findings

21. The Tribunal finds that the Property was subject to the Additional Licensing requirements under the London Borough of Haringey Council Designation of area for additional licensing of houses in multiple occupation no 3, 2019. The scheme came into effect on 27 May 2019 and will cease on 26 May 2025 and therefore the Property was subject to this scheme throughout the relevant period. It was not disputed by the Respondent that the Property fell within the area covered by the Additional Licensing requirement.
22. The Tribunal accepts the evidence of the Applicants and the email dated 13 May 2024 at page 12 of the bundle from the Team Leader (Private Sector Housing) of Haringey Council which confirmed that no House in Multiple Occupation licence had been applied for in relation to the Property.
23. The issue in dispute was whether Alkesh lived at the Property as his only or main residence.

Occupation of the Property

24. In terms of the occupation of the Property for the period 9 October 2021 to 30 June 2022, the Applicants' position was that the first Applicant lived at the Property with two other tenants namely Charlotte and Alkesh.
25. Regarding Charlotte's occupancy, the Tribunal accepts the Applicants' evidence that Charlotte had moved into the Property on 17 September

2021 and was still living there at the end of the relevant period (21 May 2023). In reaching this decision the Tribunal accepted the evidence of the Whatsapp messages at page 85 of the Applicants' bundle, and in particular the message of 15 September 2021 sent from Mark (the Respondent) to Alex (the first Applicant) which stated "Hi Alex Charlotte is moving in tomorrow...". In terms of when Charlotte had left the Property, the Tribunal accepts the evidence of the email that was within the Respondent's bundle (page 24) that the Respondent sent to haringey.gov.uk dated 7 September 2023 which stated that "Charlotte moved out today...".

26. The Tribunal therefore accepts the Applicants' evidence that Charlotte lived at the Property from 9 October 2021 to 7 September 2023. It was not disputed by the Respondent that she lived as a separate household, and lived at the Property as her main residence.
27. Regarding Alkesh's occupancy, it was the Respondent's position that Alekesh had moved back to Leicester during the Covid lockdown and therefore did not occupy the Property as his main residence.
28. The Tribunal accepts the evidence of the Applicants and finds that Alkesh lived at the Property as his only or main residence. At page 75 of the Applicants' bundle was a message dated 11 July 2019 which referred to Alkesh as an occupier of the Property. The Applicants confirmed in their response to the Respondent's bundle that Alkesh did live away for some points during the Covid lockdowns, however they confirmed that he returned to the Property shortly after the lockdowns were over. Further, Aleksei Glazkov told the Tribunal that the Covid restrictions were lifted in July 2021 and enclosed government information at page 5 of the Applicants' response bundle to confirm this. Aleksei Glazkov told the Tribunal that Alkesh worked at a university and was required to be back at the university in time for the new academic year in September 2021. Aleksei Glazkov confirmed that the Alkesh lived at the Property as his main residence.

29. At page 88 of the Applicants' bundle was a Whatsapp message from Mark (Respondent) to Alex (first Applicant) stating "I am doing a few viewings this week for Alkesh's room" and this message was dated 29 August 2022.
30. The Tribunal accepts the evidence of the Applicants with regard to Alkesh's occupancy. Whilst Alkesh lived away from the Property during lockdown the Tribunal finds that he had returned by 9 October 2021 (the start of the relevant period the Applicants' claim) and remained at the Property until 30 June 2022 living there as his only or main residence.
31. Further the Tribunal accepts the Applicants' evidence, which was not challenged by the Respondent, that Alkesh lived as a separate household.
32. The Tribunal therefore finds that for the period 9 October 2021 to 30 June 2022, Aleksei Glazkov, Charlotte and Alkesh lived at the Property as separate households, living at the Property as their only or main residence and that living accommodation constituted the only use of that accommodation.
33. For the reasons set out above, the Tribunal also finds that for the period 7 November 2022 to 21 May 2023 Charlotte lived at the Property with Aleksei Glazkov (first Applicant) and Kristopher Millar (second Applicant). These people lived at the Property living in separate households, as their main residence, and their occupation constituted the only use of the Property.
34. Whilst the occupiers of the Property were given a "licence agreement", the Tribunal accepts the evidence of the Applicants that the Respondent did not live at the Property and each occupier had the exclusive use of their own room.

Rent Payments

35. With regards to the rent paid, the Tribunal accepts the evidence of the Applicants as to the rent paid. Aleksei Glazkov produced bank statements at pages 18 to 38 of the Applicants' bundle which confirmed the rent payments made and the payments made by Kristopher Millar were at pages 44 to 50. The payments were also confirmed in both Applicants' witness statements. Rents were therefore payable in respect of at least one of those persons' occupation of the living accommodation.

Shared Basic Amenities

36. The Applicants confirmed that the residents shared cooking, personal washing and toilet facilities. This was not disputed by the Respondent. The Tribunal therefore finds that the occupiers shared a kitchen and bathroom.

Tribunal Findings

37. The Tribunal accepts the evidence of the Applicants and finds that the Property consisted of one or more units of living accommodation not consisting of a self-contained flat or flats and that the occupiers did not form a single household. Additionally, the occupiers were occupying the Premises as their only or main residence, rent was payable, and there were two or more households occupying the Property who were sharing toilet, personal washing and cooking facilities. The Property was therefore required to be licensed under the Additional Licensing Scheme.
38. The Tribunal therefore finds beyond reasonable doubt that for the relevant periods, namely 9 October 2021 to 30 June 2022 and 7 November 2022 to 21 May 2023, the Property was therefore required to be licensed.

Person having Control of or Managing

39. 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.

40. The Respondent was the registered owner of the Property held under title number AGL125798 (pages 1 to 5 of the Applicants’ bundle). The Respondent was also the person receiving the rent for the Property. The Tribunal therefore finds that the Respondent was the person having control/managing the Property.

Statutory Defence - Reasonable Excuse

41. It is for the Respondent to show, on a balance of probabilities, that he had a reasonable excuse.

42. The Respondent told the Tribunal that he had offered accommodation at below market rent and was not aware of the need to license the Property.

43. In terms of a statutory defence, Haringey Council confirmed that no licence application had been made and this was not disputed by the Respondent.

44. The Tribunal does not find on a balance of probabilities that the Respondent had a reasonable excuse. He was acting as a landlord and therefore should have been aware of the licensing requirements.

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

45. 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

46. The first Applicant, Aleksei Glazkov, was seeking to recover rent paid of £8,400 for the period 9 October 2021 to 30 June 2022 and 7 November 2022 to 16 February 2023. The second Applicant, Kristopher Millar, was seeking to recover rent paid of £4,845 for the period 7 November 2022 to 16 February 2023. The Applicants produced bank statements to show that these payments were made and the Tribunal accepts this evidence.
47. The Tribunal therefore accepts that the total rent paid for the relevant period claimed by Aleksei Glazkov was £8,400 and for Kristopher Millar was £4,845.

Deductions for Utility Payments that Benefit the Tenant

48. 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.
49. It was accepted by both parties that the Respondent made payments for utilities. In his witness statement the Respondent confirmed that he had paid £30 per month for broadband. The Respondent did not provide any additional evidence as to the cost of utilities.

50. The Applicants included within their bundle letters from utility companies showing unpaid amounts. Despite this, the Tribunal continues to make a deduction for utility payments because the liability to pay these amounts rested with the Respondent.
51. The Tribunal used its expertise and has found that utility payments for a three bedroom flat occupied by three people would be approximately £2,100 per year, which equates to £700 per person per year.

Determining the Seriousness of the Offence to Ascertain the Starting Point

52. 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.
53. 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

Tenancy Agreement Documentation

54. The Applicants stated that the Respondent had used the wrong type of tenancy agreement and suspected that the Respondent had done this deliberately to take advantage of tenants' lack of knowledge. The

Respondent told the Tribunal that he had used what he thought was a standard contract from Spareroom.

55. Additionally, the Respondent told the Tribunal that on 3 September 2022 the Respondent had sent an email to Aleksei Glazkov purporting to increase the rent, however Aleksei Glazkov had not paid the increased rent as, in his view, the Respondent had not sent the correct notice of rent increase. The Tribunal heard that on 18 October 2022 the Respondent gave Aleksei one month's notice to terminate the agreement as the increased rent was not paid. Aleksei confirmed that he told the Respondent that he would not pay the increased rent as it had not been validly demanded and he remained at the Property.
56. The Respondent told the Tribunal that it was his position that the Applicants received good quality housing in exchange for rent being paid at below market rent. The Respondent also confirmed that he had purchased a new oven and shower for the Property.
57. The Tribunal finds that the Respondent did incorrectly provide the tenants with a licence agreement rather than a tenancy agreement and then attempted to increase the rent and give notice to leave incorrectly.

Condition of the Property

58. The Respondent told the Tribunal that the Property was left in a poor state of repair at the end of the tenancies and that he had to spend significant money on cleaning and redecoration, while mattresses had to be replaced.
59. The Applicants told the Tribunal that this was not the position and that the Property was left in no worse condition that it was at the beginning of the tenancy.

60. Aleksei Glazkov confirmed that he had lived in his room for four years and it had not been decorated during that time and Kristopher Millar confirmed that his room had not been decorated prior to him moving in. The Tribunal was not presented with any further detail as to the condition of the Property and accepts the Applicants' position that the Property was left in reasonable condition. It would not be unusual for a landlord to clean, redecorate and replace mattresses after tenants have left.

Thames Water Bills

61. Aleksei Glazkov told the Tribunal that Thames Water had sent him payment demands for the Property (an example of which was at page 103 of the Applicants' bundle). Alekesi Glazkov confirmed that when his name initially appeared on the letters from Thames Water he had telephoned the company to ask for an explanation and was told that the bill was not being paid. Aleksei Glazkov's name was used by Thames Water as the company had used the electoral register to find that he was living at the Property. Aleksei Glazkov told the Tribunal that he had spoken to the Respondent and asked that he remove his name.
62. The Respondent told the Tribunal that he had contacted the water company and asked that Aleksei Glazkov's name was removed, however Aleksei Glazkov told the Tribunal that he had continued to receive payment demands and now his credit score was affected. Additionally, he was afraid that the water company could issue proceedings against him.
63. The Tribunal finds that, because the Respondent did not pay the water bills, this has caused additional stress and affected the credit score of Aleksei Glazkov, which the Tribunal finds to be an aggravating factor.

Documentation Not Provided to the Tenants

64. The Applicants told the Tribunal that they had not been provided with the How to Rent booklet or current EPC certificate at the start of the tenancy and that the Respondent had failed to ensure that the Property had a valid gas safety certificate.
65. The Respondent provided gas and electrical certificates with an EPC certificate for the Property at pages 5 to 23 of his bundle. The Respondent included two Gas Safety certificates with inspection dates of 14 July 2021 and 29 July 2024. The electrical installation condition report at page 6 was dated 28 July 2023, which was after the Applicants had moved out of the Property. The document at pages 18 to 22 was an EPC that expired on 2 October 2024.
66. The Respondent's position was that the certificates were in a drawer at the Property and available for the Applicants to see. However, the Tribunal accepts the Applicants' position that these certificates were not provided to them when their tenancy began. The Tribunal also finds that the Applicants had not been provided with a copy of the "How to Rent" booklet at the start of the tenancy.
67. The Applicants further asserted that the Respondent did not protect their deposit. This is not disputed by the Respondent.

Financial Circumstances of Respondent Landlord

68. The Respondent did not include within his bundle any accounts or financial records, however he did tell the Tribunal that he was suffering serious financial hardship through tenants not paying rent and also included details of financial arrangements that he had come to with Haringey Council. At page 29 of the Respondent's bundle he included details of bank accounts; however, it was not possible for the Tribunal to understand the Respondent's financial position from these as there were

no dates provided and the document did not show income and expenditure.

69. The Tribunal was therefore not presented with any evidence that the Respondent would not be able to meet any financial award the Tribunal made.

Whether Respondent Landlord has been convicted of offence

70. The Respondent confirmed that he 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.

Respondent as a Professional Landlord

71. The Respondent stated that he was not a professional landlord. He did, however, confirm that he owned another property but told the Tribunal that this had been vacant and he had sold it in February 2023.
72. The Tribunal accepted the evidence of the Respondent that he was not a professional landlord.

Quantum Decision

73. Taking all of the factors outlined above into account, the Tribunal finds that this licensing offence is not the most serious under the 2016 Act. The Tribunal concludes that the starting point for an offence of this nature would be 60%. Taking the factors of this particular case into account, the Tribunal increases this amount to 70% in line with the findings made above.
74. The Tribunal makes a reduction for utilities and determines the quantum amount as follows:

First Applicant:

Total Claim - £8,400

Less utilities - £ 700

70% of which gives a **total amount of £ 5,390**

Second Applicant:

Total Claim - £4,845

Less Utilities £350

70% of which gives a total amount of £3,146.50

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

Application Fees

76. The Tribunal invited the parties to make representations as to whether or not the Respondent should refund the Applicants for the application fee paid to the Tribunal. The Applicants asked the Tribunal to make such an order, whereas the Respondent requested that this order was not made.

77. Given that the Tribunal has made a RRO, the Tribunal exercises its discretion to order that the Respondent must pay the Applicants the amount they paid in Tribunal fees. This amount is to be paid within 28 days.

Judge Bernadette MacQueen

Date: 16 January 2025

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.

