



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

Case reference : **LON/OOAP/HMF/2024/0149**

Property : **16 Dawlish Road, London N17 9HP**

Applicant : **Joseph Alani Akinremi**

Representative : **In person**

Respondent : **Glorell-Marie Bannister**

Representative : **In person**

Tribunal members : **Tribunal Judge I Mohabir
Mr A Fonka, FCIEH**

Date of hearing : **22 November 2024**

Date of decision : **27 January 2025**

DECISION

Introduction

1. This is an application made by the Applicant under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondent in respect of 16 Dawlish Road, London N17 9HP (“the property”).
2. The property is described as a 6 bedroom house with shared living room, kitchen and bathroom facilities. Each of the bedrooms was let separately to tenants as living accommodation. The Respondent occupied one of the bedrooms.
3. The freehold of the property is owned by a Mrs Ramdoo. However, on her own case, the Respondent would relet the rooms from time to time, collect the rent and deposit (if any) from the tenants and arrange for any repairs to be carried out. She said that she had done so since 2017 and asserted that she did so on behalf of Mrs Ramdoo and did not benefit financially from the arrangement.
4. At all material times, the Applicant only dealt with the Respondent. On or about 28 April 2023, she granted him a verbal monthly periodic tenancy of one of the bedrooms in the property at a monthly rent of £590 including the cost of utility bills. On 7 April 2023, the Applicant paid a deposit of £590 to the Respondent, which was not protected under a tenancy deposit scheme. Throughout his tenancy, the Applicant also paid his rent directly to the Respondent.
5. It was common ground that the property was an HMO and was not licensed as was required by the London Borough of Haringey under its mandatory licensing scheme. At no time during the Applicant’s occupation was the property licensed.
6. It seems that on 6 March 2024, a heated discussion took place between the Applicant and various other tenants. This resulted in the Respondent purporting to give a written notice dated the same day terminating his tenancy on 6 April 2024.
7. On 2 April 2024, the Applicant had a violent altercation with another resident at the property, which resulted in him being charged with ABH. As part of his bail conditions, the Applicant could not return to the property unless he was escorted by a police officer. As at the date of this hearing, the Applicant was waiting on the date for his Crown Court trial in relation to this charge. The Applicant’s tenancy ended on 30 April 2024 when he attended the property with a police officer to collect his belongings and, effectively, surrendered his tenancy on that date.
8. Subsequently, the Applicant made this application dated 2 April 2024 for rent repayment order limited to the 11 month period in respect of which he paid rent in the sum of £6,490 plus the deposit of £590.

Relevant Law

Requirement for a Licence

9. Section 72 of the Act provides:

(1) 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 (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) ...

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

10. The Housing Act 2004 Part 2 s.95(1) provides:

(1) A person commits an offence if he is a person having control of or managing an house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.

Section 263 of the Act defines a person having control or managing as:

(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.

Making of rent repayment order

11. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers) and 5 (control or management of unlicensed house) of the table.

12. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(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).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) ...

(c) ...

Amount of order: tenants

13. Section 44 of the Act provides:

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

***the amount must relate to the rent paid
by the tenant in respect of***

the period of 12 months ending with the date of
the offence

a period not exceeding 12 months, during which
the landlord was committing the offence

(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.

(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.”

Hearing

14. The hearing in this case took place on 22 November 2024. Both the Applicant and the Respondent appeared in person.

Was the Property an HMO?

15. The was not disputed by the Respondent.

16. Based on the evidence before it, the Tribunal made the following findings of fact beyond reasonable doubt:

(a) that the property was a house occupied by 5 or more unrelated persons who shared relevant amenities and was therefore, required to be licensed under a mandatory licensing scheme pursuant to sections 61(1) and 55 respectively in the Housing Act 2004.

(b) that the property was not licensed during the Applicants’ occupation. Therefore, the Tribunal was satisfied that the Respondent had committed an offence under section 72(1) of the Act.

17. In addition, on balance, the Tribunal found that the Respondent was a person having control of the property within the meaning of sections 263(1) of the

Housing Act even if she was doing so on behalf of Mrs Ramdoo. This was based on the Respondent's admission that she let the rooms in the property from time to time, collected the rents and deposits (if any), arranged for repairs to be carried out and, indeed, purported terminate the Applicant's tenancy by serving a written notice in her own name. The Tribunal was satisfied that these were all the acts of someone who was clearly in control of the property, albeit on behalf of Mrs Ramdoo.

Amount of RRO?

18. In the exercise of its discretion under section 44(4)(a) and (b) of the Act, the Tribunal had regard to the following facts:

- (a) The Tribunal considered that, given that the property was subject to a mandatory licence and remained unlicensed for the duration of the Applicant's tenancy, placed this offence at the more serious end of the scale. NO attempt was made to obtain a licence despite, it seems, the Respondent and Mrs Ramdoo being on notice about the requirement to do so since 2022.
- (b) In relation to the Respondent's conduct, the Applicant made a series of wide-ranging allegations which included minor disrepair to his door, fraud, misrepresentation, negligence and breach of duty, libel and emotional abuse. Arguably, these are civil claims and, therefore, not "conduct" within the meaning of section 44(4)(a) Act to which the Tribunal should have regard to. In any event, they remained as no more than unproven allegations against the Respondent and the Tribunal attached no weight to them.
- (c) However, the Tribunal did attach weight to the Respondent's failure to protect the Applicant's deposit and the failure to provide relevant safety certificates. In addition, the Tribunal was satisfied that the Witten notice given by the Respondent purporting to terminate his tenancy was of no legal effect and invalid and was an attempt to unlawfully evict him.
- (d) In relation to the Applicant's conduct, the Tribunal noted that he had been charged with the offence of ABH as a result of the incident that occurred on 2 April 2024. The inference to be drawn is that the police were satisfied that there was sufficient evidence of an assault having been carried out by the Applicant to meet the threshold of charging him with the offence. Therefore, the Tribunal attached a degree of weight to this allegation.
- (e) There was no evidence of the actual cost of the utility bills for the Applicant that should be discounted from the award.
- (f) Similarly, there had been no disclosure in relation to the Respondent's actual financial circumstances save for her assertion that she was not a person of substance. However, the complete lack of financial

disclosure by the Respondent meant that her assertions could not be substantiated and, therefore, the Tribunal disregarded this.

19. The Tribunal then turned to assess the quantum of the rent repayment order that should be made against the Respondent.
20. Guidance was given by the Upper Tribunal in **Vadamalayan v Stewart** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matters set out in section 43(4).
21. This decision was followed by the Upper Tribunal decision in the case of **Williams v Parmar** [2021] UKUT 244 (LC) where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.
22. The Upper Tribunal held that "*there is no presumption in favour of the maximum amount of rent paid during the period*". It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be "*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*". Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.
23. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord comprise part of the "*conduct of the landlord*" and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating "*meritorious conduct of the landlord may justify a deduction from the starting point*". It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the "*scale of seriousness, by reason of mitigating circumstances or otherwise*".
24. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.
25. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.

26. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the “starting point” that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.
27. Further guidance has been given by Judge Cook in the Upper Tribunal at paragraph 20 in *Acheampong v Roman* [2022] UKUT 239 about determining the amount of an RRO. Adopting that approach, the Tribunal determined:
- (i) the starting figure for the assessment of the RRO was the sums claimed by the Applicant set out application for the periods of time in respect of which the property was unlicensed;
 - (ii) the relevant conduct on the part of both parties has already been considered above.
 - (iii) the financial circumstances of the Respondent are unknown. As the Tribunal understands it, the Respondent has not been convicted of any offence.
28. Accordingly, taking these considerations into account, the Tribunal made a rent repayment order in favour of the Applicant for the total rent paid by him for the 11-month period in respect of which the property was unlicensed during his occupation of 50% of the total rent paid by the Applicant.
29. The total rent paid by the Applicant for the claim period was £6940 and the RRO is therefore 50% of this figure, being £3,470.
30. The total amount of the rent repayment order is payable by the Respondent within 28 days of this decision being issued to the parties.
31. In addition, the Respondent is ordered to reimburse the Applicants the fees of £320 paid to the Tribunal to have the application issued and heard on the basis that the application has succeeded. This sum is also to be paid by the Respondent within 28 days of this decision being issued to the parties.

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).