



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

Case Reference : **LON/00AB/HMG/2024/0041**

Property : **113 Heath Road, Chadwell Heath, Essex
RM6 6LD**

Applicants : **Ms Iliyana Drobenova (1)
Mr Ivan Drobenov (2)
Ms Ana Vantova (3)**

Representative : **Mr Jamie McGowan of Justice for
Tenants**

Respondents : **Mr Viktorov Petrovski (1)
Ms Ivelina Petrova Andreeva (2)**

Representative : **Ms Ivelina Petrova Andreeva**

**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 N Hawkes
Mr S Wheeler MCIEH, CEnvH**

**Venue and date of
hearing &
reconvene** : **14 January 2025 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **23 January 2025**

DECISION

Decisions of the Tribunal

1. The Tribunal dismisses the Applicants' application for a rent repayment order.
2. The Tribunal dismisses the Applicants' application for an order for the reimbursement of Tribunal fees.

The background

1. By an application dated 2 May 2024 ("the application"), the Applicants applied for a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act") against the Respondents.
2. The Applicants assert that the Respondents have committed an offence under section 95(1) of the Housing Act 2004 (control or management of an unlicensed house). The Applicants seek a RRO in the sum of £19,473.59 for the period 9 May 2022 and 8 May 2023 ("the relevant period").
3. It is common ground that the Respondents let 113 Heath Road, Chadwell Heath, Essex RM6 6LD ("the Property") to the First and Second Applicants and that the Third Applicant was also in occupation. There may be a dispute of fact concerning the precise date on which the Applicants left in 2024 but it is agreed that they occupied the Property for approximately 8 years as the Respondents' tenants.
4. On 11 July 2024, the Tribunal issued Directions (which were amended on 6 September 2024) leading up to a final hearing.

The hearing

5. The final hearing took place at 10 Alfred Place, London WC1E 7LR on 14 January 2024.
6. The Applicants attended the hearing in person and were represented by Mr Jamie McGowan of Justice for Tenants. The Respondents attended the hearing in person and were represented by the Second Respondent, Ms Ivelina Petrova Andreeva.
7. The Tribunal heard oral evidence of fact from Ms Ana Vanlova and from both of the Respondents.

The issues in dispute

8. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.
9. Statutory guidance for Local Housing Authorities concerning RROs under the 2016 Act was published on 6 April 2017 (“the Statutory Guidance”). The Tribunal has had regard to the Statutory Guidance in determining this application.
10. Section 41 of the 2016 Act provides:
 - (1) *A tenant ... 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.”*
11. The Respondents question whether the Applicants’ application is out of time because although the application was made, at the latest, on 8 May 2024, the application fee was not paid until some weeks later. The Applicants accept that any offence ceased to be committed on 10 May 2023 when a valid application for a licence was made.
12. Section 43 of the 2016 Act provides:

43 Making of rent repayment order

 - (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.*

13. The relevant offences are set out at section 40 of the 2016 Act. They include an offence under section 95(1) of the Housing Act 2004 (“the 2004 Act”) which provides:

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

14. Section 85(1) of the 2004 Act provides:

Requirement for Part 3 houses to be licensed

(1) Every Part 3 house must be licensed under this Part unless—

(a) it is an HMO to which Part 2 applies (see section 55(2)), or

(b) a temporary exemption notice is in force in relation to it under section 86, or

(c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.

15. Part 3 of the 2004 Act concerns selective licensing areas. It is common ground that the Property should have been, but was not, licensed under the local housing authority's selective licensing scheme during the relevant period. The Respondents accept that the criteria contained in section 95(1) of the 2004 Act are met but submit that they have a “reasonable excuse” pursuant to section 95(4) of the 2004 Act which provides:

(4) In proceedings against a person for an offence under subsection (1) or (2) 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)...

16. At the commencement of the hearing, it was agreed that the Tribunal would hear, as a preliminary issue, evidence and closing submissions on the issue of whether or not the Respondents have a reasonable excuse defence. The Tribunal later determined (when the issue was raised) that it would also hear, as a preliminary issue, submissions on the issue of whether or not the Applicants’ application is out of time.

17. The Tribunal adjourned for a requested period of 45 minutes between the Applicants' closing submissions and the Respondents' reply in order to give the Respondents time to read the legal authorities which were referred to by Mr McGowan.
18. This hearing had a three hour time estimate and hearing the evidence and submissions on these two preliminary issues took up the entirety of the time which had been allocated for the hearing. Further, the Second Respondent informed the Tribunal that she had a medical appointment the following day which was an urgent referral concerning suspected cancer.
19. Accordingly, in all the circumstances, the Tribunal did not consider that it would be appropriate to continue the hearing to hear evidence and argument concerning the level of the rent repayment order which the Tribunal would have made if the Tribunal had not been satisfied that the Respondents had a reasonable excuse defence.

The Tribunal's determinations

Whether the Applicants' application is within time

20. As stated above, the Applicants accept that any offence ceased to be committed on 10 May 2023, when a valid application for a licence was made.
21. It is common ground that the Applicants' application is within time if it was made when it was sent to the Tribunal but out of time if it was made at the later date on which the Applicants paid the application fee.
22. The Tribunal was informed by Mr McGowan that the application was sent to the Tribunal by email at 11.44 pm on 7 May 2024, so well outside normal working hours. It is unnecessary for the Tribunal to decide whether in these circumstances the application was made on 7 May 2024 or 8 May 2024 because, in either case, it is common ground that the application would be within time.
23. In *Jevan v Athansiadi* [2024] UKUT 358 (LC), the Upper Tribunal determined that proceedings are started by sending an application notice to the Tribunal, whether or not the application fee is paid at the same time. Accordingly, because it is common ground that the application notice was sent to the Tribunal on or before 8 May 2024, the application is within time.

The “reasonable excuse” defence

24. The Second Respondent is aware of the selective licencing requirements and it appears from her evidence that, prior the matters on which the Respondents rely in support of their reasonable excuse defence, she was both diligent and proactive.
25. The Second Respondent gave oral evidence which included the following matters.
26. The Respondents have rented the Property since 2015. The Property was their first rental property and they now have two others. The Second Respondent dealt with all matters concerning the couple’s rental properties.
27. The Second Respondent applied for a licence for the Property on 17 July 2017 and a licence was granted in 2018 which was valid until 9 May 2019.
28. The Second Respondent contacted the local authority in April 2019 to enquire about any new licensing requirements and she was informed that “the new scheme was still in consultation”.
29. The Second Respondent then contacted the Applicants, in July 2019, seeking to obtain supplementary documentation for a new licence.
30. The Second Respondent contacted the local authority again in August 2019 to enquire about the new licensing scheme. She was told that the new licencing scheme was still not in place and that the local authority would write to landlords when it came into force. She then made several further attempts to contact the local authority in 2020, but to no avail due to Covid lockdown.
31. Following a period of ill health which started in about June 2021, in late August 2021, the Second Respondent’s mother was diagnosed with cancer. Her father had passed away due to cancer in 2019. The Second Respondent’s mother lived in Bulgaria which meant that the Second Respondent travelled to Bulgaria, very often for extended periods of time, while her mother was undergoing operations and chemotherapy treatment.
32. The Second Respondent worked full time, remotely, while travelling to Bulgaria and looking after her mother. Her husband, the First

Respondent, stayed in the UK with the couples' two children who were aged four and eight at the time.

33. The First Respondent looked after the children while also working full time with no external help. This situation continued for over a year and a half. After the Second Respondent's mother passed away, in September 2022, the Second Respondent continued to have to travel to Bulgaria in order to resolve her mother's estate there. There was no one available in Bulgaria to assist the Second Respondent with this.
34. In the middle of October 2021, following the lifting of covid lockdown restrictions, the Second Respondent received a letter from the local authority, dated 28 September 2021, concerning the selective licensing scheme. She submitted a selective licence application to the local authority on 21 October 2021 and believed that she had paid the relevant application fee. She did not receive any information to the contrary until 10 May 2023 when the First Applicant told her that she had received an email in April 2023 from the local authority with regard to the Property not having a valid licence.
35. Following receipt of this email, the Second Respondent contacted the local authority and was told that the application she had submitted on 21 October 2021 was visible on the system but that it was "still active" because the payment for the licence fee had not gone through. She resubmitted the application together with the licence fee that same day, so within a matter of hours.
36. The Second Respondent was referred to an email which she sent to the local authority on 15 May 2018 stating that she had not received the licence certificate and chasing this up. When asked why she did not also chase the matter up in 2021, when she did not receive a certificate, she explained that she had never been through the process of renewing a licence before and in her eyes a renewal was not a new licence. The local authority had all the documents, they had inspected and there had been no change to the occupants of the Property or to the Property itself.
37. On being referred to a message she sent in December 2021 asking for a gas certificate and to a message sent on 2 January 2022 asking for the rental agreement to "file for the permit", the Second Respondent stated that she cannot recall if she was gathering more information. She said that from August 2021 until now "she did not know whether she was coming or going or what planet she was on". However, she had felt

certain throughout that she had successfully completed the licence application.

38. When asked why she did not check the position again in October 2022, a year after she thought that the renewal had gone through, she said that, due to the situation she was in, it did not occur to her and that if she had checked she would not be facing these Tribunal proceedings. She also stated that she did not notice that the licence fee had not left her bank account.
39. On being asked to provide information regarding her job, the Second Respondent gave evidence that she works as a self-employed mortgage advisor. During the relevant period, in addition to dealing with the extreme distress and with the practical matters arising from her mother's illness and then the need to deal with the estate over an extended period of time, the Second Respondent was answerable to her clients. She was working very long hours and, at times, she was working at 3am and 4am because there was work which needed to be finished. She said that there was no one who could support the family unit either in Bulgaria or in the UK.
40. With hindsight she wished that she had instructed a professional managing agent at this time. However, she had very long standing tenants at all three rental properties with whom she considered, at the time, she had a good relationship. She was still able to respond quickly to matters raised by the tenants and, so far as she was concerned, the licensing requirements had been complied with. She was also aware that, if she instructed an agent, the "buck would stop" with the Respondents and she thought that bringing in an external agent might make the tenants uneasy. Accordingly, she did not instruct an external managing agent during this period.
41. The Second Respondent gave evidence that her personal health and wellbeing had suffered, due to the family's personal circumstances, throughout the relevant period.
42. The First Respondent also gave oral evidence. He confirmed that the Second Respondent dealt with all matters concerning all three rental properties. When asked whether a point ever came when he had discussions with the Second Respondent concerning her limited ability to manage the rental properties, he stated that with everything going on their "mindset was completely elsewhere". He described having to work

and look after the two young children when his wife was in Bulgaria and said it was hard for him to think of anything other than work.

43. The First Respondent explained that he is also self-employed and that his work involves shift patterns. At the material time he was commuting to Cambridge and back every day as well as being the sole carer for the children aged four and eight years old.
44. We find the Respondents to be credible witnesses and we accept their evidence on the balance of probabilities. They were measured in their evidence and the full extent of the strain which they were under at the material time was not volunteered but rather it was brought out through sensitive questioning.
45. The fact that the Second Respondent was clearly extremely diligent before her personal circumstances changed supports her credibility as a witness. Although there is some evidence which post-dates October 2021 which could be interpreted as the Second Respondent gathering evidence for a licence application, having seen and heard the Second Respondent give evidence, we accept on the balance of probabilities her oral evidence that she nonetheless genuinely believed that she had already made a valid licence application.
46. Applying an objective test, we find that the Second Respondent had a reasonable excuse for having control of or managing the Property without a licence when the extreme and unusual facts of this case are taken into account. We remind ourselves that this is not a case concerning a landlord who failed to remember to take steps to apply for a licence due to a family emergency but rather it is a case concerning a landlord who took steps to apply for a licence and then mistakenly thought that the application had been successfully made.
47. Applying an objective test, we find that it was reasonable for Second Respondent not to revisit the situation and therefore to maintain this belief when she was dealing with her mother's terminal illness, death and estate, regularly travelling to Bulgaria leaving young children to be cared for by the First Respondent who was simultaneously commuting on a daily basis to Cambridge and working in irregular shift patterns. As stated above, whilst the family unit was split, the Second Respondent was working long hours including at 3am and 4 am in the morning.
48. As the Second Respondent accepts, it would have been preferable to have instructed managing agents at the material time. However, we accept on

the balance of probabilities her evidence that, due to the intense personal strain she was under, she did not to have the skill to think this through clearly when, so far as she was aware, there were no problems either concerning the rental properties or concerning the licensing of the subject Property.

49. In reaching these findings, we have taken into account the fact that the Respondents were the landlords of three rental properties and we have also taken into account the extent of their experience as landlords. However, in our judgment, omitting to notice that the payment which was submitted at the time of the licence application had not gone through and then omitting to review the situation a year later or at any other material time was objectively reasonable in these very unusual circumstances of prolonged and extreme personal strain. We are satisfied on the balance of probabilities that this factor was operative throughout the period during which the Applicants contend that an offence was committed.
50. Having considered all of the circumstances of this case, we are satisfied on the balance of probabilities on the evidence before us that the Respondents have made out their defence.

Conclusion

51. The Tribunal is not satisfied beyond reasonable doubt that a relevant offence has been committed. The Tribunal therefore dismisses the Applicants' application for a rent repayment order.
52. In all the circumstances and having regard, in particular, to the fact that the Applicants' application has been dismissed, the Tribunal does not exercise its discretion pursuant to rule 13(2) of the 2013 Rules to make an order for the reimbursement of Tribunal fees.

Name: Judge Hawkes

Date: 23 January 2025

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).