



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

Case reference : **LON/00BE/HMG/2024/0042**

Property : **38 Slade Walk, London SE17 3HW**

Applicants : **(1) Michele Gasperoni
(2) Mattia Melone**

Representative : **Justice for Tenants**

Respondents : **(1) John Anthony Hulse
(2) Charlotte Olivia Hulse (known as Aurelie Hulse)**

Representative : **In person**

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 Tagliavini
Mr Appollo Fonka**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **21 February 2025**
Date of correction : **27 February 2025**

**DECISION
CORRECTED PURSUANT TO RULE 50 OF THE TRIBUNAL
PROCEDURE (FIRST-TIER TRIBUNAL) (PROPERTY CHAMBER)
RULES 2013**

Decisions of the tribunal

- (1) The tribunal determines that a rent repayment order in the sum of ~~£3,999.20~~ **£3,999.20** is payable by the respondents to each applicant within 14 days of this decision being sent to the parties.
- (2) The tribunal determines that a total of ~~£200~~ **£220** by way of a 50% reimbursement of fees paid to the tribunal by the applicants should be paid by the respondents within 14 days of this decision being sent to the parties.

The application

1. The Tribunal has received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the applicant tenant for a rent repayment order (RRO).

The hearing

2. The applicants were represented by Mr McGowan from Justice for Tenants at the hearing and the respondents appeared in person.
3. The applicants relied on a hearing bundle of 139 electronic pages and a reply of 7 electronic pages which included the relevant tenancy agreements. The respondents relied on an electronic bundle of 118 electronic pages.

The background

4. By a lease dated 1st March the first applicant was granted an assured shorthold tenancy of a two bedroom flat in a purpose built block at **38 Slade Walk, London SE17 3HW** ('the Property'), for a term of 12 months with effect from 1st March 2022 at a rent of £800 per month exclusive of utilities, with a service charge of £78 per month as a contribution towards service charges and specifically the supply of heating and hot water. Similar tenancy terms applied to the second applicant during the relevant periods for which the RRO is claimed.
5. It is asserted that the respondent landlords committed an offence of having control of, or managing 38 Slade Walk, London SE17 3HW ('the premises') between 1 March 2022 and 4 September 2023, a property that was required to be licensed but was not so licensed under the London Borough of Southwark's selective licensing scheme. This scheme came into effect on 1 March 2022. Consequently, the applicants seek a RRO in the following amounts:

- (a) The applicant Mattia Melone seeks to recover the sum of £10,603.00 for the rental period between 31/04/2022 and 30/05/2023.
- (b) The applicant Michele Gasperon seeks to recover the sum of £10,603.00 for the rent period between 15/06/2022 and 14/06/2023.

The issues

- 6. The respondents accepted that they were the long leaseholders and landlords of the Property during the relevant period and admitted they had the control and management of it throughout the periods for which the applicants seek a RRO.
- 7. The respondents also admitted they did not have the required additional licence at the relevant time. They asserted that they had become 'accidental' landlords as their original plan to occupy the Property was not implemented, as they were able to remain in their home, due to plans for compulsory purchase being abandoned by the London Borough of Lambeth.
- 8. The respondents asserted that before they had first let the Property, they had familiarised themselves with the requirements of a landlord by looking on the Government website and sought legal advice in drawing up the tenancy agreements.
- 9. The respondents stated they were unaware of the newly introduced Local Authority selective licensing scheme, which was not made known to them despite having regularly accessed the Local Authority website. However, when it became known to the respondents that a selective licence was required at around end May 2023 they applied for one on 14 June 2023. The application was subsequently granted unconditionally for a period of five years.
- 10. The respondents told the tribunal that from 2016, they had consistently let the Property to NHS workers at a below market rent. Currently a market rent would be in the region of £2,300 per month and significant less than the rent charged to the applicants.
- 11. The respondents also asserted in their Statement opposing the application that a total sum no higher than £5,285 should be paid by way of a RRO and asserted the applicants' fees paid to the tribunal should not be repaid to them. Further, the respondents submitted that if a RRO was made it should adopt a starting point of 25% of the 12 months' rent claimed by each applicant as the circumstances of this case differed significantly from those in *Newell v Abbott & Anor* [2024] UKUT 181

(LC) where a starting point of 60% was said to be appropriate in respect of a RRO.

12. Mr McGowan submitted that the offence had been accepted by the respondents and therefore the applicants were not required to prove it had been committed and therefore, the only issue for the tribunal was one of quantum.

The tribunal's decision and reasons

13. In reaching its decision, the tribunal considered whether the respondents has on the balance of probabilities, successfully raised a defence of 'reasonable excuse' to the offence alleged and accepted by the respondent had been committed.
14. The tribunal accepts that the respondents had, when the Property had been first let in 2016, they demonstrated diligence in seeking to familiarise themselves as to the obligations of a landlord and that the selective licensing scheme was not in effect at that time and although they were aware of the term 'HMO', they correctly assumed it did not apply to the Property at that time.
15. However, the tribunal finds there was an ongoing duty on the respondents to keep themselves up to date on the obligations of a landlord and could reasonably have made periodic enquiries or online searches of the Local Authority website to keep themselves up to date about licensing arrangements. Further, the tribunal has regard to the wide range of steps usually taken by local authorities to advertise licensing schemes and finds the respondent has failed to demonstrate LBS did not take such or similar steps.
16. Therefore the tribunal finds that the respondents have failed to establish a defence of 'reasonable excuse' to the admitted offence and that it is reasonable and appropriate to make an RRO.
17. The tribunal then went on to consider the amount of any RRO having regard to s.44(4) of the Housing Act 2004 which states:

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.”

18. The tribunal finds that the respondents were responsible landlords and when a complaint was made they acted quickly to remedy it or have an item repaired. The tribunal finds the flat was not connected to a gas supply and that the applicant's assertions of the respondent having failed to obtain a gas safety certificate as a breach of their obligations are without foundation.
19. The tribunal finds and the respondents accepted that the applicants paid their rent on time and in full as required under the terms of the tenancy agreement and that no payments were received by the applicants by way of Universal Credit (Housing Costs).
20. The tribunal finds there was a valid EPC in effect during the initial letting of the Property but this subsequently expired. The tribunal accepts that the expiry date was not made clear on the EPC and that it was renewed when the respondents at the same time as they applied for a selective licence and an increase in rating from D to B was awarded.
21. The tribunal finds that the respondents were responsive to the applicants' complaints of a lack of heating and hot water in February 2023. The tribunal accepts that the respondents immediately contacted their landlord, the London Borough of Southwark to ascertain the problem with the communal heating and hot water supply to the block of flats in which the Property was located and over which, the respondents had no control.
22. The tribunal finds the respondents offered to provide the applicants with oil/fan heaters and to reduce the rental payments pro rata to reflect any increased electricity costs during the period 16/02/2023 to 06/03/2023 when the supply of heating and water to the Property was affected. The tribunal finds the respondents also arranged with a neighbour for the applicants to be able to shower during the period there was no hot water. However, the tribunal finds the applicants unreasonably refused the offer of oil/electric heaters, the pro rata reduction in rent and the alternative showering arrangements.
23. The respondents expressly stated they did not require the tribunal to take into account their financial circumstances and therefore, the tribunal did not do so. The tribunal also had regard to the fact the respondents do not have any criminal conviction in respect of this or any other similar offence.
24. Mr McGowan told the tribunal he accepted that a deduction of £55 per month should be made in respect of each applicant to reflect the cost of the utilities from which they solely benefitted, i.e. £660 per applicant. However, the tribunal takes into account that the applicants were without heating and hot water for nearly a month and therefore reduces the amount sought by 11 months x £55 i.e. £605 per applicant. This leaves a maximum 12 months' rent at £9,998.00 per applicant.

25. The tribunal also took into account the seriousness of the offence committed by the respondents. The tribunal finds that in all the circumstances that the unlicensed letting of a flat in good condition at a rent significantly below market rent with landlords responsive and proactive to tenants' complaints and an increase in the EPC rating on renewal, did not amount to the most serious of offences particularly where the requirement for a selective licence only started in March 2022 and where the respondents immediately applied for one on discovery a licence was required.
26. The tribunal also had regard to the fact the respondents had become 'accidental' landlords and that the Property represented the sum of their letting portfolio and were not and could not be considered to 'professional' landlords. The tribunal also has regard to the short duration of the offence and the respondents immediate application for a licence on it being made known to them.
27. Therefore, in all the circumstances and on these particular facts of this the tribunal finds the appropriate RRO is 40% of the rent paid (less utilities) over 12 months by each applicant ie. £3,999.20 per applicant.
28. The tribunal therefore makes a RRO in the sum of £3,999.20 in respect of each applicant.

Application under s.20C and refund of fees

28. At the end of the hearing, the applicant made an application for a refund of the fees that they had paid in respect of the application/ hearing¹. Having heard the submissions from the parties and the respondents' objections on the grounds that the applicants had failed to correspond with the respondents before issuing this application. Therefore taking all the circumstances into account and determinations above, the tribunal orders the respondents to refund 50% of the ~~£400~~ **£440** fees paid by the applicants within 14 days of the date of this decision **being sent to the parties**, is appropriate in all the circumstances.

Name: Judge Tagliavini

Date: 21 February 2025
Corrected 27 February 2025

Rights of appeal

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

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 should be made on Form RP PTA available at <https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber>

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. **Please note that if you are seeking permission to appeal against a decision made by the Tribunal under the Rent Act 1977, the Housing Act 1988 or the Local Government and Housing Act 1989, this can only be on a point of law.**

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).