



FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)

Case reference	:	MAN/00BY/HMF/2023/0008
Property	:	11 Highgate Street, Liverpool, L7 3ET
Applicant	:	Hannah London, Annabelle Bradley, Lucy Kenyon, John Owen Hicks, Georgia Cowell
Representative	:	Cameron Neilson (Advocate) Justice for Tenants
Respondent	:	(1) West Village Liverpool Ltd (2) Trophy Homes Ltd
Representative	:	
Type of application	:	Section 41 (1) Housing and Planning Act: Rent Repayment Order
Tribunal member(s)	:	Judge J White Valuer J Gittus
Venue	:	Video hearing Northern residential Property First-tier Tribunal, 1 floor, Piccadilly Exchange, 2 Piccadilly Plaza, Manchester, M1 4AH
Date of decision	:	15 July 2024

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DECISION

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## The Decision

1. It has not been established beyond reasonable doubt that West Village Liverpool Ltd is a person having control and so has not committed the offence of failure to obtain a HMO licence.
2. Trophy Homes Ltd has committed an offence of failure to obtain a licence for a licensable HMO for the periods 20 July 2021 to 24 February 2022.
3. Within 28 days of issue of this decision Trophy Homes Ltd is to pay the following Rent Repayment Orders
  - (i) £3,692.34 to Hannah London for the period 20 July 2021 to 24 February 2022.
  - (ii) £3,692.34 to Annabelle Bradley 20/07/2021 to 29/06/2022 for the period 20 July 2021 to 24 February 2022.
  - (iii) £3,692.34 to John Owen Hicks for the period 20 July 2021 to 24 February 2022.
  - (iv) £3,692.34 to Lucy Kenyon for the period 20 July 2021 to 24 February 2022.
  - (v) £3,692.34 to Georgia Cowell for the period 20 July 2021 to 24 February 2022.
4. Within 28 days Trophy Homes Ltd is to repay tribunal fees of £320 to Lucy Kenyon.

## The Application

5. On 10 February 2023 Hannah London, Annabelle Bradley, Lucy Kenyon, John Owen Hicks and Georgia Cowell made an application under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a Rent Repayment order (RRO) in respect of 11 Highgate Street, Liverpool, L7 3ET ("the Property").
6. On 15 May 2023, the Tribunal gave Directions. The purpose of such Directions is to identify the relevant issues that the Tribunal will need to consider to determine the application fairly and in a proportionate manner.
7. On 28 July 2023, the Tribunal reminded the Respondents that they had not complied with the directions and requested that they do so within

14 days. The Respondents were advised that they would be barred from the proceedings unless they complied with the Tribunal's directions within this time. They failed to do so. On 30 October 2023 they were barred from taking further part in the proceedings.

8. The Applicants have provided a bundle of documents, including a statement of case, and witness statements supported by evidence. All 5 Applicants attended the video hearing. They were represented by Cameron Neilson of Justice for Tenants. We are grateful to him for his very able representations and concessions.

### The Findings

9. The Property is a 6 bedroomed terraced house over 3 floors. There is a shared kitchen, dining room, shower room, bathroom.
10. Hannah London, Annabelle Bradley, Lucy Kenyon, John Owen Hicks and Georgia Cowell, along with one other person, become the joint tenants of the Property on 12 July 2021. They are students and signed the tenancy agreement during January and February 2021. Lucy Kenyon had not signed the original agreement but did so in around March 2021 when another tenant dropped out. They each paid £118 rent a week. They were informed that before they moved in a conservatory would be built that they could use as a living room.
11. The tenants occupied the Property for different periods;
  - (i) Hannah London occupied Room 1 from 18/07/2021 to 30/06/2022.
  - (ii) Annabelle Bradley occupied Room 2 from 20/07/2021 to 29/06/2022.
  - (iii) John Owen Hicks occupied Room 3 from 13/09/2021 to 27/06/2022.
  - (iv) Lucy Kenyon occupied Room 4 from 18/07/2021 to 30/06/2022.
  - (v) Georgia Cowell occupied Room 5 from 12/07/2021 to 30/06/2022.
  - (vi) Room 6 was occupied by a sixth tenant from 19/07/2021 to 30/06/2022. They have not made an application.

12. In October or November 2021 work started to add a living room onto the back of the kitchen. This was completed on 8 January 2022. On completion the Respondent did not provide keys to lock the new back door and so the house could be accessed directly from the street, through an unlockable back gate.

### The Offence

13. The Tribunal is satisfied beyond reasonable doubt that the second Respondent has committed the offence under section 72(1) of the Housing Act 2004 (the "2004 Act") of managing and being in control of the premises which required an HMO licence and did not have one, and that they had no reasonable excuse for not having one. In the case of each individual tenant the offence had been committed within the twelve months prior to the application made on 10 February 2023.
14. The Applicants conceded that they could not establish beyond reasonable doubt that the first Respondent is a person managing or being in control and so has not committed the offence

### Reasons

15. *The 2004 Act Part 2 s.72(1) provides that 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.*
16. S.55(2)(a)) provides that Mandatory HMO Licensing only applies to those HMO's which fall within "*any prescribed description of HMO*".
17. Regulation 4 of the 2018 Prescribed Description Order provides that an HMO is of the prescribed description for the purposes of section 55(2)(a) if it:
- (i) is occupied by five or more persons,
  - (ii) is occupied by persons living in two or more separate households, and
  - (iii) meets the Standard test contained in s254(2)
18. It meets the Standard test in accordance with s254(2) if:
- (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 (see section 258);*

*(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 (see section 259);*

*(d) their occupation of the living accommodation constitutes the only use of that accommodation (see presumption in section 260)*

*(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 (toilet, personal washing facilities and cooking facilities see section 254(8)).*

19. The Property clearly meets the test as the six tenants being student friends, do not form a single household, and are living together in one house with shared cooking and washing facilities.
20. As five out of the six tenants were occupying the Property from 20 July 2021, that is the date of the start of the offence.
21. S72(4)(b) provides that it a defence if an application has been duly made under s63. An email from the Local Authority confirms that the offence was committed until 24 February 2022 when the application was made. It confirmed that the application was granted in June 2022 [140]. No exemption or reasonable excuse defence is claimed or applies. As this application was made on 10 February 2023 it was made in time.

*Person having control*

22. S263 (1) of the 2004 Act provides that:

*"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."*

23. S263 (3) provides that *"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 tenants or licensees...; 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".(our emphasis).*

24. Trophy Homes is named as the Landlord and the tenants all paid rent to them. They were the point of contact for the tenants. It is clear, therefore that they are a person managing and having control.
25. West Village Liverpool Ltd (West village) are the first Respondent and have not responded to the application. The Applicants state that neither have they responded to a Rule 20 application for disclosure of evidence relating to their connection with Trophy Homes and receipt of rent. The Applicants representative now accept that since Rakusen v Jepson (2023) UKSC 9 only the immediate Landlord comes within the definition of a Landlord and though they are the owner, they do not have evidence that they receive the rent and so s263 does not apply. They submit that Cabo v Dezotti [2022] UKUT 240 (LC) makes it clear that money must come into the hands of the person who has control and for 263(3)(b) there must be a causal connection between an arrangement and non-receipt of rent. Nor is their sufficient evidence to show beyond reasonable that West Village is an undisclosed principal.
26. The Tribunal considered the evidence provided by the Applicants. Both companies have the same address and same directors in Robert and Sean Broadhurst as set out in a FTT decision (MAN/00BY/HMF/2020/0026) that decided that West Village were a person having control [302]. However, that decision was decided before Rakusen v Jepson and Cabo v Dezotti. The Applicants clearly stated in oral submissions that they do not have a case against West Village and the evidence does not establish beyond reasonable doubt that Trophy Homes let the Property on behalf of West Village. The Applicants did not provide evidence that there was a connection between West Village and Trophy Homes sufficient to establish West Village as the Landlord. West Village is not the landlord as required by s40, as they are not the landlord under the tenancy agreement which generates the rent which is to be repaid. Nor is their sufficient evidence that they are an undisclosed principal that would enable them to be subject to a RRO. Global Guardians v LB Hounslow [2022] UKUT 259 (LC)\_confirmed that inferences should not be drawn simply due to the intertwined nature of the companies, and lack of evidence produced.

## The Penalty

### Stage 1: Rent Paid

27. In accordance with s44 of the 2016 Act the amount of the RRO *"must relate to rent paid the period"* not exceeding 12 months, during which the landlord was committing the offence.
28. The whole of the rent for the relevant period is £118 a week from 20 July 2021 until 24 February 2022 for each tenant for the reasons set out above.
29. All of the Applicants paid their rent in full as evidenced by their witness statements and supporting bank statements.
30. An email from Liverpool City Council confirms that the Respondents applied for a Licence on 25 February 2022

### Stage 2: Elements that represents payments for utilities that only benefit the tenants

31. Cameron Neilson accepted that a 4-stage approach as set out in Acheampong v Roman [2022] UKUT 239 (LC) is required and after ascertaining the rent for the relevant period a tribunal should *"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"* (paragraph 20b Acheampong referred to Hancher v David [2022] UKUT 277 (LC) at paragraph 20). However, *"Ms Hancher has not provided any information about the amount she actually paid in respect of utilities, if any. Therefore, the Tribunal is unable to make any adjustment for the payment of utilities."* This supports Cameron Neilson's submission that it is for the Respondent to provide evidence of the cost of utilities and they have not done so in this case.
32. In this case the Applicants say the tenancy agreement included an unspecified amount for utilities (gas, electricity, internet and water rates). They made a payment of £98 at the start of the tenancy for utilities.
33. The Tenancy Agreement sets out
  - (i) 4.3 *"Utilities Included: The rent shall include Utilities (Water, Gas (where applicable) and Electricity) subject to the energy allowance as detailed in the Tenants Guide, for a one-off payment of £98 utilities fee. [79]*

- (ii) *A Landlords Obligations: "A3. Landlord's payments etc: The Landlord will pay for any charges arising from the use of: - Standard Internet Access as well as: Electricity, Gas, Water,*
- (iii) *B Tenants Obligations: B1. Payment of Energy Contribution Should the energy allowance be exceeded the tenant will pay the landlord any costs over this. This is not a deposit."*
- (iv) *B4. Outgoings: ...Tenants agree to use all utilities within the premises in accordance with the tenant's occupation as a private dwelling house. An allowance for energy is included in the rental payment equivalent to 10% of the annual rent; this allowance will enable the tenant to utilise the premises and the fittings reasonable within the term. The landlord reserves the right to charge the tenant over and above this allowance where usage is deemed to be exceptionally unreasonable.*

- 34. In oral evidence the tenants said they were not provided with a Tenants Guide and had no discussions about this on signing the tenancy agreement. They did not pay the Landlord any additional costs.
- 35. The Tribunal finds that the tenancy agreement, without the tenants guide is contradictory and lacks clarity. Is it a £98 one off payment per tenant or 10% of the rent. In addition, there is evidence that the landlord was not always paying or providing utilities.
- 36. The Tribunal accepts the tenants' evidence that near the start of the tenancy bailiffs attempted to enter the Property due to non-payment of fuel bills. They had prepayment meters installed and throughout the tenancy they were regularly without any electricity or gas as set out below. From 1 February until 15 March 2022 the gas boiler did not work at all.
- 37. The Tribunal finds that these factors, without an explanation on the amount paid in respect of usage, it is unable to make adjustments for the payment of utilities.

### Stage 3: Seriousness of the offence

- 38. *"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?*

39. *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:" (paragraph 20 Acheampong v Roman*
40. The offence of failure to obtain a licence is not the most serious of offences, though the Applicants have correctly set out the importance of licencing to protect often vulnerable tenants against rogue landlords. As was said at paragraph 30 of Hallett UT [2022] UKUT 165 (LC) *"I therefore agree with Mr Hart's submission that where section 46 does not apply, an order requiring repayment of the full amount of the rent received by a landlord should be reserved for the most serious offences justifying the most exemplary sanction. Where the offence concerned is a failure to licence an HMO, or an individual house, section 46 indicates that it was not Parliament's intention that the maximum penalty should usually be imposed. Circumstances may exist where such an order may be appropriate (for repeat offending, for example) but they will be the exception, not the rule."*
41. Additional factors the Tribunal has considered are:
- (i) Sentencing Guidelines.
  - (ii) RRO made for the same offence.
  - (iii) The tenants all had a friendship and signed a joint tenancy agreement and so were not so at risk as tenants with no connection.
  - (iv) Safety issues as there were no gas or electricity safety certificate, no carbon monoxide alarm, no checks on the safety of the boiler when it broke down 1 February 2022 and 15 March 2022. A leaking boiler causing significant damage to a bedroom ceiling and necessitating the tenants having to regularly empty large containers of water.
42. Taking the above into account then a starting point of 75% is reasonable.

Stage 4: Consider whether any deduction from, or addition to, that in the light of the other factors set out in section 44(4).

#### *Conduct*

43. There are no tenant conduct issues found. They were not in rent arrears.

44. Conduct of the Landlord is significant in this case and is exceptional.

- (i) The landlord has shown a persistent disregard for the requirement to obtain a licence. The Applicants have provided copies of 5 previous RRO FTT decisions involving Trophy Homes ranging from 2019 to 2022 [293 onwards]. In each case, they chose not to respond at all, or it was found that the conduct was found wanting.  
In MAN/30UK/HMF/2020/0013,0014,0020,0021,0064,0070 it was said at 49. "*Mr Broadhurst did not appear to take seriously the need for HMO licencing. He was aware it was needed and had apparently employed someone to obtain it; but this property had been occupied for several months and no licence was ever obtained. He did not appear to show a great deal of contrition for the fire which could have had extremely serious consequences*" [299].
- (ii) The Property was let with a living room in an extension that was said would be completed by the start of the tenancy. The tenants had to suffer the noise of building works from October 2021 until early January 2022. Following completion, the Property was left unsecured, with easy access from the street creating personal safety issues as well as risk of burglary.
- (iii) At the start of the tenancy bailiffs visited due to nonpayment of fuel bills and meters were installed. There were frequent power outages as the Respondent failed to keep the meters topped up, causing the heating and hot water to go off and food to ruin in the freezer or fridge.
- (iv) There were other more minor defects in the Property.

#### *Convictions*

- 45. The landlord has had three past known convictions for the same or similar offence. In MAN/30UK/HMF/2020/0013 a link to a newspaper report was produced showing that Trophy Homes had been convicted after operating without an HMO Licence on multiple properties in Liverpool and fined up to £50,000[293].
- 46. More recently in this case the Applicants have produced an article showing a further conviction and fine of £82,000 and that this was a third offence [253]

#### *Financial circumstances of the landlord*

- (i) The landlord is known to be landlord of multiple properties. Otherwise, their circumstances are unknown.

- 47. The Tribunal makes no adjustments for the landlords' financial circumstances.

### Conclusion

- 48. Taking into account the above factors, particularly the above previous convictions and the number of previous RROs, and the purpose of RRO being a deterrent, the Tribunal considers that the RRO should be 100%.
- 49. Trophy Homes has committed an offence of failure to obtain a licence for a licensable HMO for the periods 20 July 2021 to 24 February 2022. This represents 219 days of occupation at a rate of £16.86 per day. Trophy Homes are to pay £3,692.34 Rent Repayment Orders to each of the Applicants.
- 50. In addition, the Tribunal orders the return of the Application fee of £100 and the Hearing fee of £220 made payable to Lucy Kenyon.

Judge J White  
5 August 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.