



FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference : LON/00/BK/HMF/2024/0204

Property : 103 St Mary's Mansion, St Mary's Terrace London W2 1SY

Applicant : Ms Henna Seher

Representative : n/a

Respondent : The Hon Mr Frederick Wellesley

Representative : Helen Williams of Wellington Estates

Type of application : Application for a rent repayment order by tenant
Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016.

Tribunal : Judge N O'Brien, Professional Member S Coughlin MCIEH

Date of Decision : 15 May 2025

DECISION

Decision of the Tribunal

(1) The application for a Rent Repayment Order is dismissed.

Background

1. On 4 June 2024 the tribunal received an application under section 41 of the Housing and Planning Act 2016 (HPA 2016) from the Applicant for a rent

repayment order (RRO). The Applicant asserts that the Respondent, her former landlord, committed an offence of managing or operating a dwelling required to be licensed pursuant to the additional licencing scheme introduced throughout the borough of Westminster on 21 August 2021, but which was not so licensed. The Applicant's case is that the Respondent committed the offence from 1 December 2022 to approximately the end of August 2024 and seeks a Rent Repayment Order (RRO) in the sum of £5640.00 this being the 100% of the rent she paid during the period December 2022 to May 2023.

The Hearing

2. The matter was listed for a final hearing on 7 May 2025. The Applicant attended in person. The Respondent did not attend and was represented by Ms Helen Williams of Wellington Estates, the Respondent's managing agent. We were provided with the following documents for use at the hearing;
 - (i) The Applicant's bundle of 64 pages;
 - (ii) The Respondent's bundle of 44 pages;
 - (iii) The Applicant's skeleton argument; and
 - (iv) The Respondent's skeleton argument.
3. The Applicant told us that she had additionally filed and served a reply to the Respondent's case in accordance with the directions of the tribunal dated 28 October 2024. Unfortunately it appears that she did not attach the correct document to the relevant email and the reply bundle was not before the tribunal nor had it been served. With the consent of the Respondent's representative we heard evidence regarding the contents of an email exchange from December 2022 between Ms Parris and Miss Williams, both of Wellington Estates, which the Applicant told us had been included in the reply.
4. We heard oral evidence from the Applicant and from Mr Willetts MCIEH of Westminster City Council. For the Respondent we heard oral evidence from Ms Helen Williams, and Mr George Peck and Ms Debbie Parris who are also employed by Wellington Estates.
5. At the start of the hearing we asked the Applicant to clarify what her case was as regards the occupancy of the flat between December 2022 to 30 October 2024 when a warrant for possession was executed by county court bailiffs following a possession order made against the Applicant in the Mayor's and City of London County Court. We explained that in order to make a rent repayment order we would have to be satisfied to the criminal standard that the flat was occupied as a HMO at some point during the 12 months prior to the application being sent to the tribunal i.e. occupied by three or more persons consisting of 2 or more households. The Applicant informed the tribunal that her case was that she occupied the flat together with a Ms Abigail Daniel and her mother, a Mrs Leonora Daniel, from December 2022 until August 2024 when the Applicant moved out. She told us that she believed that both mother and daughter were occupying one of the three bedrooms in the property. She told us that she

moved out of the property in August 2024. In addition she told us that another occupant, a Ms Maebh Rafferty, moved into the property in September 2023 and was still in occupation as at the date the Applicant says she ceased residing in the premises.

6. It is the Respondent's case that the property was initially occupied from about April 2021 by the Applicant, Ms Abigail Daniel and a Ms Lisa Jones. Ms Jones moved out of the flat on 26th September 2022. The applicant accepts this. It is the Respondent's case that Ms Abigail Daniel moved out of the property in or about November 2022, and that her mother Mrs Leonara Daniel never lived there at any stage. The Respondent's case is that the only person residing in the flat in the period November 2022 to September 2023 was the Applicant. He accepts that a Ms Meabh Rafferty moved into the property in or about September 2023. The Respondent is not sure when the Applicant ceased residing in the premises but Ms Williams, Ms Parris and Mr Peck are adamant it was some time before August 2024.
7. Having clarified that it was the Applicant's case that the flat was occupied by three or more persons from December 2022 to August 2024 forming two or more households we proceeded to hear the application.

Background

8. The property which is the subject of the application is a 3-bedroomed flat in a large purpose-built mansion block situated in the City of Westminster. On 21 August 2021 Westminster City Council (WCC) introduced an additional licencing scheme for houses in multiple occupation (HMOs) which were not subject to mandatory licencing pursuant to s.55 of the Housing Act 2004.
9. The following matters are not in dispute;
 - (i) the property was required to be licenced under WCC's additional licencing scheme if it was occupied by 3 or more persons who did not form one household;
 - (ii) A licence was applied for by a Mr Andrew Speed of Wellington Estates on 7th July 2022 and was granted on 1 September 2022.
 - (iii) Mr Speed ceased working for Wellington Estates on or about 30 November 2022
 - (iv) No further licence was applied for in respect of the premises pursuant to WCC's additional licencing scheme
10. This is the second application which the Applicant has made for a RRO. The first application was struck out by the FTT on 26 April 2024 because the Applicant brought proceedings against the Duke of Wellington, the present Respondent's father. While her written tenancy agreement on its face purported to be entered into on behalf of the Duke and his wife as joint landlords, it was and is the Respondent's case that this was an error on the part of the managing agent, that the property is owned by the present Respondent, that he had the benefit of all rental payments and that the Duke of Westminster had no legal or beneficial interest in the flat or entitlement to receive the rent. At that hearing

the tribunal considered that, as that the offence ceased on 24 July 2022 when Mr Speed made an application for a licence, Mr Frederick Wellesley could not at that stage be substituted as Respondent as the relevant offence ceased more than 12 months before that application was made to substitute him as Respondent (see *Gurusinghe v Drumlin [2021] UKUT 268 (LC)*). Consequently it had no jurisdiction to make a RRO and the case was struck out.

11. This application was sent to the tribunal on 5 June 2024. Again it named the Duke of Westminster as Respondent. The matter was listed for a video case management hearing on 28 October 2024 which was attended by the Applicant only. The order records after the hearing Ms Williams notified the tribunal that she had been unable to join the video hearing. At that hearing the tribunal substituted Mr Frederick Wellesley as Respondent. In its reasons given for the order the tribunal recorded that Mr Wellesley was the correct Respondent. Judge Percival recorded that the Applicant's case essentially was that the licence holder, Mr Speed, was, from 1 December 2022, no longer a person in control of or managing the HMO in question and consequently the property was not properly licenced.

The Relevant Law

12. The power of local authorities to designate particular areas as being subject to an additional licencing regime is contained in sections 56 to 60 of the 2004 Act. By virtue of s.72(1) of the 2004 Act a person commits an offence if they are in control of or manage a HMO which is required to be licenced by virtue of Part 2 of the Act but is not so licenced.
13. Section 40 of the HPA 2016 provides;
 - (1) *This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.*
 - (2) *A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—*
 - (a) *repay an amount of rent paid by a tenant, or...*
 - (3) *A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.*
14. Section 41 of the HPA 2016 provides
 - (1) *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.*
 - (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.

15. Section 43 of the HPA 2016 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.*
16. A RRO can only be made in this case if the tribunal is satisfied beyond reasonable doubt that that the respondent committed a relevant offence of being in control of or managing an unlicensed HMO. Leaving aside the question as to the identity of the licence holder, the Respondent in this case cannot have committed any offence unless the premises fulfilled the definition of a HMO set out in s.245 and paragraph 7 of schedule 14 of the Housing Act 2004; i.e. occupied by 3 or more persons consisting of two or more households as their main residence. We have to be satisfied that the offence was being committed at some point in the 12-month period prior to the application (see *Williams v Paramar* [2021] UKUT 244 (LC) at para 29).
17. The Respondent's case is that Ms Abigail Daniels moved out of the property in November 2022 due to a breakdown in her relationship with the Applicant. Mr Peck has managed this property since March 2023. He told us he believed that Ms Daniels moved back to her mother's house. He did not know where precisely this was but believed it was near Milton Keynes. He had extensive contact with Mrs Leonora Daniels who it would appear was heavily involved in her daughter's living arrangements due to the fact she suffers from serious health conditions including diabetes. He exhibited a WhatsApp message from Mrs Leonora Daniel in which she denies having ever resided in the flat with her daughter. He told us that that this WhatsApp message was sent to his work mobile in March 2025. Both Mr Peck and Mrs Williams explained as far as they were aware it was Ms Daniel's intention to move back into the flat once the Applicant had vacated. Mr Peck attended the property in July 2023. From his observations he concluded that the only occupant at that time was the Applicant. At some point in the summer of 2023 he gained access to Abigail Daniel's room and concluded that it was not occupied. Ms Williams told us that Ms Davies stopped her regular rent payments from October 2022 and paid 50% of the rent for her room between October 2022 and 29th November 2024. She told the Tribunal that this was paid as a 'room reservation fee'. From that date she paid full rent but Mr Peck was not sure if Ms Davies had actually moved back in.
18. We also heard evidence from Ms Parris who also had extensive personal involvement with the property and was responsible for overseeing repairs to the block. She told us that it was her understanding that Ms Abigail Daniel moved out of the flat in late 2022 due to disagreements with the Applicant. She told us

that at some point between late 2022 and July 2023 she had entered Ms Daniel's old room and found that it contained nothing apart from a bed, two bedside tables and a lamp.

19. The Respondent has exhibited a typed letter dated 11 September 2023 which it says was supplied by Ms Abigail Daniel and which is addressed 'to whom it may concern'. The letter states that she moved out of the property in early November 2022.
20. The Applicant maintains that the flat was occupied by both Ms and Mrs Daniel from late 2022 and they were still in occupation as at the date the Applicant vacated. She told us that she believed this to be the case because she observed that there were items in the fridge and in the bathroom which she believed belonged to one or both of them. In addition she told us that she had seen both of them coming and going to and from the flat. She exhibited a transcript of a telephone conversation which took place on 11 January 2023 between E.on's billing department and someone who described themselves as Ms Abigail Daniel. E.on is the electricity supplier for the flat. The Applicant was adamant that the person who made the call was not Abigail Daniel but was in fact her mother Leonora. Be that as it may the person who made the call to E.on clearly said that Abigail Daniel had moved out of the flat in October 2022 and was calling to have her name removed from the account.
21. Ms Seher told us that she got married in August 2023 but chose not to live with her husband. She told us that he lived in a one-bedroom flat in West Hamstead but she continued to occupy her room in the premises as her main residence until August 2024. She gave birth to a baby boy in September 2024 and thereafter resided with her husband. Ms Williams asked the Applicant questions regarding a limited company of which Ms Seher is the sole director. She accepted that in August 2023 she changed the registered address of the company from the address of the premises to her husband's West Hamstead address. When the panel suggested to the Applicant that her description of her living arrangements prior to the birth of her first child were unusual she replied that this was a matter of choice. She accepted that she had not paid any rent after May 2023 and told us that this was because she was dissatisfied with the condition of the property. She told the tribunal that the Respondent was very slow to carry out repairs. She accepted that as at the date on which the warrant for possession was executed she was in rent arrears. She was unsure of the precise amount.

Determination

22. We are not satisfied to the criminal standard of proof, i.e. beyond reasonable doubt, that the flat was occupied as a main residence by three or more persons at any time after September 2022 when Miss Lisa Jones moved out. In particular we are not so satisfied in respect of either the 12-month period prior to the application being sent to the tribunal (5 June 2023 to 4 June 2024) or the 12-month period prior to the substitution of the present respondent (29

October 2023 to 28 October 2024). We did not find the Applicant's evidence on this point to be credible. Firstly we do not accept that Mrs Leonora Daniel ever resided in the premises with her daughter. Such an arrangement would be unusual. We accept Mr Peck's evidence in relation to the WhatsApp message which he says were sent by Mrs Daniel. Furthermore the available evidence indicates that Ms Abigail Daniel ceased occupying the flat as her main residence in or around late October 2022, albeit she may well have maintained some kind of presence there and may have attended the flat on occasion. This conclusion is based on the letter from Ms Daniel included in the Respondent's bundle, and the transcript of the telephone call between either Mrs or Ms Daniel and E.on. We consider that Ms Williams had limited direct involvement with the flat, however we considered that Mr Peck and Ms Parris were credible witnesses and we accept their evidence as to what they both saw when they entered Ms Daniels' old room in 2023.

23. It follows that we are not satisfied that the premises were occupied as a HMO at any time after September 2022. Consequently the grounds for making a RRO are not made out and we dismiss the application.

Name : Judge N O'Brien

Date of Decision 15 May 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).