



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

Case Reference : **LON/00AB/HMF/2019/0012**

Property : **6A Station Parade Heathway,
Dagenham, RM9 5AW**

Applicants : **Mr Sabah Henderson and Mrs Sarah
Louise Henderson**

Representative : **In person (written representations)**

Respondent : **Mr and Mrs Rotimi Oyewole**

Representative : **In person**

Type of Application : **Rent Repayment Order**

Tribunal : **Mr Charles Norman FRICS (Valuer
Chairman)
Mr Mel Cairns MCIEH**

**Date and Venue of
Hearing** : **24 June 2019;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 July 2019**

DECISION

Decision and Order

1. The Tribunal orders that the Respondent pay the Applicants by way of Rent Repayment the sum of **£2,440**.

Reasons

2. The Respondent holds a lease of the subject building which comprises a former basement flat, ground floor shop and first floor flat.
3. The Applicant, Mrs Sarah-Louise Henderson, together with Mr Sebah Henderson entered into an assured shorthold tenancy of the basement flat for a term commencing on the 1 February 2015 at a rent of £800 per calendar month. On 1 February 2018, a further assured shorthold tenancy was entered into at a revised rent of £1,000 per calendar month.
4. On 28 September 2018 the London Borough of Barking and Dagenham served a Prohibition Order on the respondent landlord under the Housing act 2004. The grounds included both category one and two matters. Under category one, the Respondent was required to convert the premises back to its original use for storage or commercial use. Four hazards were cited: fire risk, no provision of natural lighting, an electrical hazard and damp and mould. The Prohibition Order became operative on 28 October 2018. The Applicant vacated the premises shortly before this date.
5. On 5 March 2019, the Applicants applied for a rent repayment order for £11,200 on the grounds that the premises were an unlicensed HMO. Subsequently, the Applicants amended their case to the premises being selectively unlicensed. They also amended their claim to £8,471.19 to reflect housing benefit that the tenants had received.
6. On 4 April 2019 the Tribunal issued directions. These stated (amongst other matters) that the Applicant tenants must provide “full details of the alleged offences, with supporting documents from the local housing authority, if available (Note: the Tribunal will need to be satisfied beyond reasonable doubt that an offence has been committed)”. The directions warned the Respondents about the risk of self-incrimination and advised them to seek legal advice.

The Hearing

7. A hearing took place at the Tribunal hearing rooms at Alfred Place on 24 June 2019 at which the Applicants did not attend and were not represented and the Respondents appeared in person. The Respondents handed up a skeleton argument. The Tribunal reminded the Respondents that they were not required to make statements which might incriminate themselves.

The tenant's case

8. The tenants supplied and referred to a copy document published by the London Borough of Barking and Dagenham entitled "Private rented property licensing making an application a guide for landlords and managing agents" (hereinafter referred to as the "Council Licencing Document"). Page 6 of that document refers to selective licensing of residential accommodation under Part 3 of the Housing act 2004. The Council Licencing Document states that this applies to all private rented properties within the borough that are not a house in multiple occupation ("HMO"). It continues "all landlords who rent out or let residential accommodation that is not an additional or mandatory HMO must have a selective licence".
9. The tenant's case was that the whole of the amount of rent that they had paid in the preceding 12 months should be repaid by the landlord, less housing benefit received by the tenants. The tenants had had conversations with the Respondent's builder and the tenants were given money to furnish the flat as they had no furniture. At no point were they informed that the property was unlicensed. They were both told that the rent was inclusive of all bills including council tax.

The Respondent landlord's case

10. The Respondent landlord provided a defence in which they required strict proof of the Applicant's case. The landlord's case was that they had engaged a builder to carry out the conversion works and relied on him to comply with statutory requirements. They let the premises at a reduced rent to assist the Applicants who were in financial difficulties. They paid utility bills, although the landlord's position was that the tenants were liable for council tax. In addition, the Applicants were involved in decisions in relation to the conversion works. The Respondents through their builder provided funding for furniture to assist the tenants. The Respondents had not received any complaints from the tenants. The Respondents also submitted that the 12 month rent repayment period should be calculated back from the date of application to the Tribunal.

The Law

11. By virtue of section 43, of the Housing and Planning Act 2016 ("the 2016 Act"), the Tribunal must be satisfied beyond reasonable doubt that the landlord has committed a "relevant offence to which this chapter applies" as defined in a table set out at section 40(3) of the 2016 Act, whether or not the landlord has been convicted. In this case, there is no evidence of actual conviction. In determining the amount, the Tribunal must, by virtue of section 44(4) of the 2016 Act 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.”

Findings

12. Having regard to the Council Licensing Document (see above), the documentary evidence of the assured shorthold tenancies, bank statements showing payment of rent and evidence from the Respondents, who do not deny these primary facts, the Tribunal finds beyond reasonable doubt that the landlord is guilty of being in control of an unlicensed house contrary to section 95(1) of the Housing Act 2004. This is a “relevant offence to which this chapter applies” as defined under section 40(3) of the 2016 Act.
13. However, when considering the amount of the rent repayment order, the starting point is not 100% of the rent paid, which is the mandatory amount if there had been an actual conviction: see section 46 of the 2016 Act.
14. Further, in determining the amount to be repaid, the Tribunal has had regard to two decisions of the Upper Tribunal relating to the amount of a rent repayment order under the Housing Act 2004, namely *Parker v Waller* [2012] UKUT 301 (LC) and *Fallon v Wilson* [2014] UKUT 300 (LC).
15. Under the 2004 Act, section 74(4) provided that where there has not been a conviction the Tribunal shall order such amount as it considers reasonable in the circumstances. While sections 44 and 45 of the 2016 Act do not include the word “reasonable”, given the similarities between these provisions and the relevant provisions of the 2004 Act, the Tribunal considers that the guidance provided in those Upper Tribunal decisions remains relevant under the 2016 Act.
16. The Tribunal found that the Respondents were credible witnesses and on the balance of probabilities find that they were seeking to assist the Applicants who were in a difficult financial position. This is particularly evidenced by the provision of furniture and payment of monthly utilities by the Respondents. In addition, the Tribunal accepts the Respondents’ evidence that they relied on their builder to comply with statutory requirements. However, the landlords remained responsible legally for providing accommodation that did meet statutory requirements and was properly licensed. In addition, the hazards identified by the Council were serious.
17. In answer to questions posed by the Tribunal, the Respondents provided information in relation to the property that demonstrates that the income broadly equates to outgoings. There was no evidence of special financial hardship. The Tribunal accepts the Respondents’ oral evidence (and as set out in their skeleton argument) that they paid outgoings in respect of the flat at £300 per month.
18. The Tribunal found that the statutory provisions are clear that the rent repayment period is “a period, not exceeding 12 months, during which the landlord was committing the offence” under section 44(2) of the 2016 Act and not a period of 12 months prior to the date of application to the Tribunal.

19. In all the circumstances, the Tribunal considers that the evidence provided by the Respondents provides significant mitigation such as to reduce the Respondents' liability by one-third. The Tribunal therefore finds that the amount of repayment should be two-thirds of the net amount of rent paid by the tenant, being calculated after deductions for housing benefit and the value of outgoings paid for by the Respondents.
20. The Tribunal accepts the Applicant's evidence that it paid £11,200 rent during the 12 months preceding vacation of the property. However, the amount of housing benefit received was not clearly set out in submissions. The Tribunal calculated the amount as £3,938.71 based on the information contained in pages D15 and D16 of the hearing bundle. The Tribunal caused a letter to be sent to the Applicant in relation to this point who confirmed agreement to the Tribunal's calculation of housing benefit.
21. The calculation by the Tribunal is therefore as follows:

	Rent paid	£ 11,200.00		
less	housing benefit		£ 3,938.71	
less	utilities		£ 3,600.00	
	Net amount			£ 3,661.29
	two-thirds			£ 2,440.86
	say			£ 2,440.00

Mr Charles Norman FRICS

15 July 2019

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.