



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

Case reference : **NT/LON/00AH/HMF/2020/0160**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Room C, 9A The Bridle Road, Purley
CR8 3JB**

Applicant : **Denise Nunes Ribeiro**

Representative : **Justice for Tenants (Mr McClenehan)**

Respondents : **(1) Charlene Haley
(2) Josephine Mae Dixon**

Representative : **Lawson S Stone (Managing Agents) –
Mr Daniel Gayle**

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 SHAW
Mr S WHEELER MCIEH**

Venue : **VIDEO HEARING**

Date of decision : **7th April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVPEREMOTE . A face-to-face hearing was not held because of the Covid-19 Pandemic, and all parties were agreeable to a remote hearing. It was practicable to resolve all issues with a remote hearing. The documents referred to by the Tribunal are in digital bundles, submitted by the parties respectively., and supplemented by some further documents produced shortly before the hearing. All of the documents produced have been carefully considered by the tribunal.

Introduction

1. This case involves an application by the Applicant tenant (Ms Denise Ribeiro), for a Rent Repayment Order in respect of the Property at Room C, 9A The Bridle Road, Purley CR8 3JB ('the Property'). Mrs Josephine Dixon, the Second Respondent, is the registered proprietor of the Property, and her daughter, the First Respondent, Ms Charlene Haley, deals with the Property on her behalf, through managing agents Lawson S Stone. The application is made because it is contended that the Property was within the area designated by the London Borough of Croydon for Selective Licencing (since October 2015) but neither Respondent held such a licence at the time of the relevant letting to the Applicant. Accordingly, the Respondents had control of, or managed, an unlicensed house, under Part 3 s.95(1) Housing Act 2004 which is an offence under s40(3) of the Housing and Planning Act 2016.
2. By virtue of a Tenancy Agreement dated 24th September 2019, the First Respondent let the property to the Applicant for a term of twelve months from two years from 27th September 2019. The Property is a self-contained flat in a semi-detached house which has been converted into flats. The rent payable was £550 per month, payable on the 27th of each month. The Selective Licencing System was in force from 1st October 2015 until 30th September 2020, thus covering the period of the letting. Indeed, the system had been in force for some 4 years at the time the tenancy was granted.

3. The Application to the tribunal was made on 14th July 2020, and an RRO was sought from the start of the tenancy up until 19th March 2020 in the sum of £3,147.77.

4. Directions were given by the Tribunal on 6th November 2020, and a hearing date fixed for 18th February 2021. The Applicant was required to submit her documents by 9th December 2020, and the Respondents to supply theirs' in reply by 8th January 2021. The Respondents failed to supply any documents or Statement of Case, in breach of the Directions.

5. On 18 January 2021, Judge Sheftel directed that by 4pm on 22 January 2021, the Respondents must explain to the Tribunal and to the Applicant why they had failed to comply with paragraphs 9-10 of the directions of 6 November 2020. He warned that a failure to comply might result in the Tribunal barring them from taking any further part in all or part of these proceedings and may determine all issues against them pursuant to rules 9(7) and (8) of the of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

6. No response was received from the Respondents, whether to comply with the Directions of 6 November 2020 or to explain why they had been unable to comply, and to request an extension of time. Given that the Respondents had failed to comply with both the Directions of 6 November 2020 and the further Direction of 18 January 2021, by order of Judge Carr, dated 2nd February 2021, the Respondents were debarred from participating in the proceedings pursuant to rule 9(3)(a), (b) and (d) and rule 9(7) of the Tribunal Procedure (First-tier Tribunal) (Property

Chamber) Rules 2013, and it was directed the Tribunal will go on to determine the issues against them pursuant to rule 9(8).

The Hearing

7. A video hearing of this matter took place on 8th March 2021, attended by the Applicant (speaking from Barcelona) and Mr. McClenahan of Justice for Tenants on her behalf. The First Respondent also attended together with Mr Daniel Gayle of the Managing Agents, Lawson Stone. Mr Gayle invited the Tribunal to adjourn the hearing. He told the Tribunal that he had had insufficient time to prepare for the case. He contended that there had been delays in the post, occasioned by the pandemic, and that correspondence had been sent to a business address now no longer used by his firm. He did however accept that he (or his firm) had had the original Directions since mid-December 2020 (a period of 12 weeks before the hearing). He pleaded that his office had been badly hit by the pandemic and that everyone in the office had contracted Covid, and that the continuation of business had been “*a massive struggle*”. He said that he “*held his hands up*” for not having been more supportive to the Respondents in this matter, and for having been insufficiently proactive, but that he was not a lawyer, and was in effect holding the file and making an appearance to request more time. When asked what the Respondents’ stance and action would be if more time were granted, he said that he would try to negotiate a settlement. He did not seek to contradict any of the salient parts of the Applicant’s case. The First Respondent confirmed that her mother (the Second Respondent) had received the Directions and passed them onto her, though the Directions of 6 November 2020 were not received until December 2020. The First Respondent then sent them on to Lawson Stone.
8. Mr McClenahan for the Applicant opposed any further delays in this case, the hearing of which had already been deferred once, and which related to an application made in July 2020. He said that the Directions must have been received in or about December 2020 (indeed, this was not

denied) because there had been e-mail correspondence with Lawson Stone at this time, and for the avoidance of doubt, he had forwarded all papers in the case to the agents both by e-mail and post on 9th February 2021 – a full month before the hearing.

9. Although not strictly entitled to address the Tribunal at all, given the Barring Order, the Tribunal was not persuaded that there were good grounds for granting an adjournment of the hearing. The relevant Directions had been received in mid-December and there had been a failure to comply either with those directions, or the subsequent Direction from Judge Sheftel. No good explanation had been given for the breaches, nor any matter of substance supporting the granting of an adjournment. The Tribunal was satisfied that it was not in the interests of the administration of justice, for the determination of this case to be delayed any further. The application for an adjournment was refused, and the case proceeded with the Applicant formally proving her case, and with the Respondent and her representative as observers only.

The Applicant's Case and the Tribunal's Findings

10. The Applicant gave evidence in accordance with her statement of case, as signed by her in the bundle. The Tribunal was taken to page 167 in the bundle confirming the Notice which had in effect designated the whole borough to be subject to selective licencing as from 1st October 2015. The Tenancy Agreement was produced at page 25, for the term and at the rent as set out above. At page 77 of the bundle was confirmation of the fact on 19th March 2020, application was in fact made for the requisite licence, which explains why the Rent repayment Order is not made for the usual 12month period, but only up until that date. All the necessary bank statements were produced to confirm payment of the rent in the sum claimed. It was argued for the Applicant (and accepted by the Tribunal)

that both Respondents were liable to have the order made against them, the First Respondent as agent for her mother and the named landlord on the Tenancy Agreement, and the Second Respondent as registered proprietor and the person ultimately entitled to receive the rent – both Respondents thus having “*control or management*” for the purposes of the Act. There had been a failure to obtain or apply for a licence until the application was made on 19 March 2020 and no evidence of a ‘reasonable excuse’ defence.

11. The Tribunal also accepted that there were no circumstances under section 44(4) of the Act supportive of a reduction in the quantum of the order (of course, none had in any event been argued). There was some evidence that the Respondents or their agents had been dilatory in attending to some repairs and maintenance (which was how this case initially came to the attention of the local authority) as contrasted with the conduct of the Applicant, who had been courteous and a diligent and regular payer of her rent. Suffice it to say that none of the matters set out in section 44(4) availed the Respondents to the extent of requiring a reduction of the sum requested.

Conclusion and Costs

12. For the reasons set out above, the Tribunal was satisfied that the Applicant had formally proved her case, justifying a Rent Repayment Order in the sum claimed. A Rent Repayment Order is made in the sum of £3147.77 payable by the Respondents. The Applicant also applied for reimbursement of her application and hearing fees, in the total sum of £300. Given the background as set out above and the order made, the Tribunal is satisfied that she is entitled to such recovery, and the sum of £300 should be added to the order, producing a total payable of 3447.77.

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).