



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

	: <b>LON/00AP/HMF/2021/0090 &amp; 0073</b>
<b>Property</b>	: 70 Wightman Road, N41RW
<b>Applicants</b>	: Lea Formaux and Katie Bretherick
<b>Representative</b>	: Mr Swirsky
<b>Respondent</b>	: Alice Murphy
<b>Representative</b>	: Mr Evans
<b>Type of Application</b>	: Application for a Rent Repayment Order
<b>Tribunal Members</b>	Judge Shepherd : Appollo Fonka MCIEH
<b>Date of Decision</b>	: 26 <sup>th</sup> January 2022

**DETERMINATION**

1. In this case the Applicants are seeking a Rent Repayment Order pursuant to section 41 (1) of the Housing and Planning Act 2016. It is the Applicants' case that the premises at 70 Wightman Road, London, N4 1RW ("The Premises") were occupied by five tenants from four different households and the Respondent failed to obtain a mandatory HMO licence contrary to section 55 of the Housing Act 2004.

## **Background**

2. The Applicants were assured shorthold tenants of the premises. The First Applicant occupied the premises between 3 October 2016 and 14 May 2020. The Second Applicant occupied the premises between 17 September 2018 and 18 May 2020. They say that the Respondent granted them a tenancy agreement. On their tenancy agreements the landlord is named as Patrick Murry. The Respondent informed the Applicants that Mr Murry was her father. The land register confirms that the premises are owned by a Ms Demirci and that Mr Patrick Murry has no legal interest in the premises. An issue in the case was the degree to which the liable party was the Respondent or Mr Murry. For limitation reasons, Mr Murry could not be joined to these proceedings.
3. The Rent Repayment Order is sought for the period 19th May 2019 to 18 May 2020 ("the relevant period"). During this period the 1<sup>st</sup> Applicant paid the Respondent £9000 and the Second Applicant paid £7700.
4. The premises consist of a four-bedroom house with a communal bathroom, kitchen, breakfast room and living area.
5. It is not in dispute that there was no HMO licence for the relevant period.

## **The law**

6. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) order 2018 confirm that the property is an HMO if the following criteria apply-

- a) it is occupied by five or more persons;
- b) it is occupied by persons living in two or more separate households;
- c) it meets the standard test under section 254 (2) of the Act

7. Section 254 confirms that the property is a House in Multiple Occupation if it meets the standard test as defined in subsection 2. The standard tests says that a building or part of it is an HMO 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;
- 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;
- d) their occupation of the living accommodation constitutes the only use of that accommodation;

- 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) 2 or more of the households who occupied the living accommodation share one or more basic amenities of the living accommodation or the living accommodation is lacking in one or more basic amenities.
8. It is the Applicants' case that the premises meet the standard test. Section 55 (2)(a) of the Housing Act 2004 provides that any property caught by the prescribed description of HMO is to be licensed by the local authority. Section 61 of the Act confirms that every HMO must be licensed unless there is as a temporary exemption notice in force or an interim or final management is in force. Further under section 72(1) of the Act a person commits an offence if he is a person *having control of or managing* an HMO which is required to be licensed but is not so licensed.
9. The meaning of *person having control* is defined in section 263 of the Act as the person who receives the rack rent of the premises (whether on his own account or as agent or trustee of another person), or would so receive it if the premises were let at a rack rent.
10. Under section 41(1) of the Housing and Planning Act 2016 a tenant may apply to the First Tier Tribunal for a rent repayment order against a person who it is alleged has committed an offence. Section 43 of the Act permits the FTT to grant a rent repayment order if satisfied beyond reasonable doubt that a landlord has committed an offence under section 72 one of the Housing Act 2004 by failing to obtain an HMO licence. Section 44 of the Act permits the

FTT to grant a Rent Repayment Order in respect of the rent paid by the tenant for a period not exceeding 12 months.

### **Issues between the parties**

11. The Applicants argue that five people from four different households occupied the premises during the relevant period therefore an HMO licence should have been obtained. As well as the two Applicants they provided witness evidence from the other occupiers at the premises Clare Jones, Charlotte Moore and Kelley Temple. The Applicants said that the evidence consistently showed that there were five people in occupation including a man called Phil Barnes.
  
12. The Respondent argues that the Applicants are not entitled to a Rent Repayment order because Mr Barnes was not in occupation as a resident at the premises and was merely a boyfriend of one of the tenants, Esther Philpotts. She claimed that Mr Barnes had a permanent residence in Leytonstone. In support of this proposition, she relied on the tenancy agreement in which only Esther Philpotts was named as the tenant. Pausing here, it is of course not a requirement for an occupier to be a tenant in order to be counted as an occupier of the premises for the purposes of a house in multiple occupation.
  
13. The Applicants relied upon text messages from the Respondent in which she discussed Mr Barnes' involvement in creating house rules regarding cleaning and the general running of the premises. Further within the text messages the Respondent confirmed that Mr Barnes had registered the premises as his correspondence address at Companies House. In addition, both Applicants filed evidence of payments they made to Mr Barnes' bank account each month for him to purchase cleaning supplies for the premises.

14. It is the Applicants' case that the Respondent was fully aware that Mr Barnes was occupying the premises as his main residence and in denying this she was seeking to avoid liability for a Rent Repayment Order.
  
15. The second substantial issue between the parties is the question of the liable party. It is the Applicants' case that although the named landlord on the tenancy agreements was Patrick Murry (the father of the Respondent allegedly) in actual fact the Respondent was the landlord. In other words, the tenancy agreements were a sham. The Applicants argue this because it was the Respondent that actively granted the tenancy agreements to the tenants, accepted rent payments, was registered to pay council tax and bills at the premises and was heavily involved in the running of each tenant's occupancy. They say she was not a mere agent but in reality, was the landlord and the suggestion otherwise in the tenancy agreements was a falsity. In support of this argument, they say that the Respondent failed to provide any evidence of Mr Murry's involvement in the premises. She failed to provide any evidence to suggest that she sent payments to Mr Murry or that Mr Murray was even aware of the tenancy agreements.
  
16. In relation to the Respondent's credibility the Applicants rely on the fact that the Respondent misled them as to the control of the premises and led them to believe that Mr Murry was the legal owner of the premises when he was not. They also rely on the fact that the Respondent failed to return their deposits at the end of the tenancy. They also say that the Respondent has falsely claimed that they'd removed items from the premises when they left. Finally, they rely on fact that the Respondent has misled the tribunal in relation to the occupation of Mr Barnes.
  
17. The Respondent claims that the Applicants have fallen into error by initiating proceedings against her when she is not the landlord. She says that the

landlord is Patrick Murry. She relies on the name on the tenancy agreement for this proposition. She says quite correctly that although an offence under section 72 (1) of the Housing act 2004 can be committed by a wider group of persons other than a landlord the Rent Repayment Order is only available against the landlord. She, like the Applicants, relies on the recent case of *Rakusen v Jepson* [2021] EW CA Civ 1150. This authority was not of real assistance to the Tribunal because this case was really about a factual dispute concerning the identity of the true landlord at the premises. *Rakusen* is authority for the general proposition that a Rent Repayment Order is available solely in the context of the direct relationship of landlord and tenant. The question here is who is the landlord?

### **The hearing**

18. Mr Swirsky represented the Applicants and Mr Evans the Respondent. At the outset Mr Swirsky said that the Applicants' case was that the tenancy agreements signed by the Applicants were shams to the extent that Mr Murry was named as the landlord when he was not the landlord.
  
19. The Applicants gave evidence and were cross-examined by Mr Evans. They confirmed that they'd never met Mr Murry but accepted that he was named as the landlord. Both Applicants had written to Mr Murry to terminate their tenancies because they were told to do so by the Respondent. They confirmed that Mr Murry had not come to the premises but the Respondent had come to the premises to carry out repairs etc. They confirmed that Phil Barnes collected money from them for the household "kitty". They said that they believed the Respondent when she told them that her father was sick. They said that Mr Barnes had been at the premises for the whole time they were in occupation apart from when he visited his mother in Birmingham. He was not employed but was trying to set up a business. They regularly saw him in his pyjamas making breakfast and saw him going to his bedroom frequently.

20. Lea Formaux said that they found the premises on Spare Room and they met the Respondent at the premises. She visited frequently. Mr Barnes had a key to the premises.
21. Katie Bretherick said that she had signed a tenancy agreement after the Respondent had left it on the table in the hallway. There was no witness present at the time of the signature. She said that the Respondent had told her that Mr Murry was in a care home. The Respondent did not protect the deposit. She said she had had no contact with Mr Murry and was not given his phone number or email or postal address. She confirmed that Mr Barnes had registered a business at the premises.
22. The Applicants relied on evidence from fellow occupiers, Clare Jones, Kelly Temple and Charlotte Moore who corroborated their accounts.
23. The Respondent gave evidence. She said that her father had known the family who owned the premises for 40 years. The family had difficulties financially and her father was a builder and helped them out by improving the premises. She said her father had a stroke and was in North Middlesex Hospital and had stopped carrying out work at the premises. She accepted that no money was sent to the owners by her or her father. She said that once the bills had been taken out there was no real profit. The financial evidence however did not bear this out. She maintained that Phil Barnes was not in occupation initially but later indicated that she did not really know.
24. The Respondent maintained repeatedly that every penny collected in rent went back into the upkeep of the house. There were no bank statements in the bundle to verify this. The Respondent blamed this on her solicitors. There was



a list of money spent on the premises at page 238 of the bundle. The Respondent said it had been prepared by her father.

25. The Respondent confirmed that there were no documents relating to her father, no witness statements and he was not coming to court. She maintained that her father had completed the tenancy agreements and when challenged about the varying signatures she said that he'd had a stroke and had bad days and good days. She said that the witness to the tenancy lived on the same road. She said that her father put the property on Spare Room and gave her mobile number. She said that she did not pay money to her father because there was no surplus money left. As indicated the figures simply did not bear this out.

26. The Respondent said that her father currently was living in Dublin although he lived in Spain during lockdown. She confirmed that the tenants had no means of contacting her father. She said she didn't know about licensing laws.

27. In closing Mr Evans said that the Respondent had a reasonable excuse if she were the landlord of the premises because she was being a good Samaritan for her father trying to do the right thing by the landlord and if anything, she was an unwitting landlord. It was accepted by Mr Swirsky that if a Rent Repayment Order was awarded the cost of utilities could be deducted. No evidence was provided as to the Respondent's financial circumstances.

## **Determination**

28. The tribunal were not impressed by the Respondent's evidence. Her case initially was that Mr Barnes was not in occupation of the premises as his principal home. However, as the case went on and she was confronted with the evidence relied upon by the Applicants she confirmed that she did not

really know whether he was in occupation at all. In contrast the Applicants' evidence in relation to Phil Barnes was compelling as was the evidence of their witnesses. The Tribunal have no hesitation in finding that at all relevant times during the relevant period, Mr Barnes was in occupation of the premises as his principal home. He was seen regularly and there was no evidence of the other property he was said to occupy. He was collecting money for household expenses. The other occupiers' evidence was particularly compelling because they had nothing to gain from the case as it was a case brought by the Applicants alone. They gave clear and honest evidence of the situation at the premises.

29. The Applicants and their witnesses were all consistent in saying that the only person that was involved in their tenancy was the Respondent. They'd had no contact at all with the alleged landlord, Mr Murry. Indeed, the Tribunal were not provided with any evidence either of Mr Murry's existence, his poor health, or any payments being made over to him by the Respondent. The Respondent sought to evade this by saying that no profit was made from renting the premises. This was not borne out by the evidence and in any event, it is eminently unbelievable. Nobody would enter into a venture under which they were letting properties but were gaining no financial benefit at all.

30. The Tribunal finds that during the relevant period and throughout the Applicants' occupation the Respondent was their landlord and not Mr Murry. Further as already indicated the Tribunal finds that Mr Barnes was in occupation during the relevant period. Accordingly, the Respondent is prima facie liable to pay a Rent Repayment Order because there is no dispute that the premises were unlicensed during the relevant period. The Tribunal dismisses any suggestion that the Respondent was merely acting as a "good Samaritan". She let the premises at arms - length and was receiving rent. She must accept the consequences of being a landlord.

31. In light of our findings and in relation to the credibility of the Respondent the Tribunal considers that the starting point should be a maximum Rent Repayment Order. The Tribunal however is willing to deduct certain utilities from the penalty namely the water bill, EDF bill, gas bill and BT bill. These amount to £5700 over the relevant period. This should be divided by 5 reflecting the number of occupiers making £1140 each.

32. Accordingly, the Tribunal orders that the Respondent shall pay within 14 days: to Ms Formaux the sum of **£7860** and to Ms Bretherick **£6560**.

**Judge Shepherd**

**26<sup>th</sup> January 2022**

#### ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

