



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

**Case Reference** : **LON/00AL/HMK/2018/0016**

**Property** : **26 Harraden Road, London SE3  
8BZ**

**Applicants** : **Alejandra Bacelar Pereira and  
Leopoldo Alvarez Fojo (tenants)**

**Representatives** : **In person**

**Respondent** : **Stress Free Estates Limited  
(landlord)**

**Representative** : **Not known**

**Type of Application** : **Application for a rent repayment  
order: sections 40,41, 43 & 44 of  
the Housing and Planning Act 2016**

**Tribunal Members** : **Judge N Hawkes  
Mr M Cairns MCIEH**

**Date and venue of  
hearing** : **9 August 2018 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **29 August 2018**

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**DECISION**

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## **Decisions of the Tribunal**

The Tribunal grants the applicants' application and makes a rent repayment order against the respondent landlord in the sum of £2,460.

### **The application**

1. By an application dated 28 March 2018, the applicants applied for a rent repayment order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act").
2. Directions were issued on 12 April 2018 leading up to a final hearing which took place on 9 August 2018.
3. The property which forms the subject matter of this application is situated within the Royal Borough of Greenwich.
4. On 19 April 2017, the Royal Borough of Greenwich ("the Council") designated for additional licensing houses in multiple occupation ("HMOs") in the area within which the property is located. This designation took effect from 1 October 2017.
5. The applicants seek a rent repayment order for the period from 1 October 2017 until 15 February 2018 ("the relevant period").
6. The applicants supplied the Tribunal with an email from the Council dated 27 March 2018 which states "a valid application to licence the property was received on 15 February 2018".

### **The hearing**

7. The applicants attended the hearing and they both gave oral evidence.
8. The respondent did not attend the hearing and did not supply the Tribunal or the applicants with any documents or written submissions. No reason was given for the respondent's failure to attend.

### **The Tribunal's determinations**

9. Section 41 of the 2016 Act provides:

*(1) A tenant ... 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.”*

10. Paragraph 5.3 of the statutory guidance issued by the Department for Communities and Local Government provides that “a rent repayment order can only cover the period during which the offence was committed, up to a maximum of 12 months.”

11. Section 43(1) of the 2016 Act 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).*

12. Having carefully considered the Council’s designation and the applicants’ oral evidence, the Tribunal is satisfied that, throughout the relevant period (which is within the period of 12 months ending with the day on which the application was made), the applicants were tenants of an unlicensed HMO which was required to be licenced pursuant to the Council’s “Designation of an Area for Additional Licensing of Houses in Multiple Occupation 2017”.

13. In particular, for the purposes of the Council’s designation, an HMO is a building which is occupied by three or more persons in two or more households and the Tribunal is satisfied that this test is met. The Tribunal heard oral evidence, which it accepts, that the property was occupied by at least four tenants in two or more households throughout the relevant period.

14. In all the circumstances, the Tribunal is satisfied beyond reasonable doubt that, during the relevant period, the landlord committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”), namely, the landlord has had control or management of an HMO which was required to be licenced under Part 2 of the 2004 Act but which was not so licenced.

15. The applicants confirmed that they did not receive any housing benefit or universal credit during the relevant period. The applicants then referred the Tribunal to documentary evidence supporting their oral evidence that they paid the landlord:

- (i) on 28 September 2017, the sum £675 in respect the rent for October 2017;
  - (ii) on 31 October 2017, the sum of £675 in respect of the rent for November 2017;
  - (iii) on 30 November 2017, the sum of £675 in respect of the rent for December 2017;
  - (iv) on 11 January 2018, the sum £700 in respect of the rent for January 2018 (there having been a rent increase);
  - (v) On 31 January 2018, the sum of £700 in respect of the rent for February 2018 (the applicants seek to reclaim up to £350 of this sum on the basis that the relevant period ends on 15 February 2018).
16. Accordingly, the applicants agreed that the maximum amount of rent which the Tribunal can potentially order to be re-paid is £3,075.
17. Subsection 44(4) of the 2016 Act provides:
- (4) In determining the amount the tribunal must, in particular, 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.*
18. 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 2004 Act, namely *Parker v Waller [2012] UKUT 301 (LC)* and *Fallon v Wilson [2014] UKUT 0300 (LC)*.
19. 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.
20. Whilst 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 these Upper Tribunal decisions remains relevant under the 2016 Act.

21. Accordingly, the Tribunal has proceeded (with the applicants' agreement) on the basis that (i) there is no presumption that there will be a 100% refund of payments made and (ii) the benefit obtained by the tenants in having had the accommodation is not a material consideration. Submissions were invited from the applicants who agreed that these principles should be applied.
22. The Tribunal heard extensive oral evidence from the applicants. The Tribunal found both of the applicants to be very credible witnesses who gave carefully considered, clear and straightforward evidence. The Tribunal accepts the entirety of the applicants' evidence and will summarise the aspects of that evidence upon which it has placed reliance below.
23. In determining the amount of the rent repayment order, the Tribunal has taken into account the following matters:
  - (i) Stress Free Estates Limited is a professional landlord.
  - (ii) By clause 3.2 of the applicants' tenancy agreement, the landlord covenanted "Not to interrupt or interfere with the tenant's lawful occupation, enjoyment or use of the premises other than in an emergency or in the normal and lawful processes of exercising or implementing the landlord's rights and obligations under this agreement and having provided at least a minimum of 24 hours' prior written notice."
  - (iii) The Tribunal accepts the applicants' evidence that, in breach of this term, the landlord's agents and contractors regularly let themselves into the property unannounced (and in the absence of any emergency).
  - (iv) For example, the applicants would unexpectedly find that the front door had been left open; that there were unknown men in the living room and other common areas; and that unknown people were being shown around the property. They understandably found this conduct intrusive and were concerned that it potentially compromised their safety and security.
  - (v) Further, the landlord did not notify the applicants when other tenants of the HMO were moving in or leaving. Accordingly, it was difficult for the

applicants to be sure who was or was not at the property legitimately.

- (vi) At times, a man resided in a very small room which appears likely to be a former larder in the kitchen. This man was seen by the applicants speaking to the landlord's agent. However, when the applicants made enquiries as to who the other tenants were (upon their post going missing) this man did not appear on the list of tenants.
- (vii) Ian, an agent of the landlord, signed for a recorded delivery parcel in Ms Pereira's name and then delayed in providing the parcel to her.
- (viii) There are two boilers at the property, one serving the lower bathroom and one serving the upper bathroom. Despite being notified when these boilers were not working, in November/December 2017, the landlord took over a week to repair the lower boiler and, in 2018, the landlord took over a month to repair the upper boiler.
- (ix) The landlord took over a month to repair a leaking pipe in the kitchen and this leak caused the kitchen floor to start to disintegrate.
- (x) One of the other tenants had to repair a defect to the front door in around November 2017 when the landlord failed to deal with it.
- (xi) On occasions, the applicants had to ring the landlord dozens of times before the phone was answered. They then resorted to using "WhatsApp" in order to contact the landlord so that they could see whether or not their messages had been read.
- (xii) The landlord left rubbish in front of the property and in the back garden throughout the applicants' tenancy.
- (xiii) The landlord informed the Tribunal Case Officer by telephone that a bundle would be submitted on its behalf in advance of the Tribunal hearing. Notwithstanding this, the landlord failed to submit any hearing bundle. The Tribunal Case Officer unsuccessfully attempted to contact the landlord on

several occasions concerning the lodging of the landlord's bundle.

(xiv) The applicants provided the Tribunal with evidence that, when they sent a copy of their hearing bundle to the landlord (to be signed for on receipt), it was returned to sender. They then sent a further copy of their hearing bundle to the landlord and it was again returned to sender.

(xv) Accordingly, the respondent has taken no steps in these proceedings to demonstrate that it takes seriously its obligations as landlord and has wholly failed to participate in the hearing of this matter.

24. Taking all of these factors into account, the Tribunal makes a rent repayment order in the sum of £2,460, representing 80% of the rent paid by the applicants during the relevant period.

**Name:** Judge Hawkes

**Date:** 29 August 2018

### **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).