



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

Case Reference : **LON/00AL/HMK/2019/0008
LON/00AL/HMK/2019/0026**

Property : **242 Panfield Road, London, SE2
9BX**

Applicants : **Paul Hyder
Gabriel Sisu**

Representative : **Guy Morris (Flat Justice)**

Respondents : **Mark Shoebridge**

Representative : **In person**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Robert Latham
Sarah Redmond, MRICS**

**Date and Venue of
Hearing** : **29 May 2019 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **18 June 2019**

DECISION

Decision of the Tribunal

1. The Tribunal makes the following rent repayment orders ('RROs'):
 - (i) The Respondent shall refund the sum of £722 to Mr Paul Hyder;
and
 - (ii) The Respondent shall refund the sum of £777 to Mr Gabriel Sisu.
2. The said sums, which total £1,499, are to be paid to the Applicants by 16 July 2019.
3. The Tribunal determines that the Respondent shall also pay the Applicants £200 by 16 July 2019, in respect of the reimbursement of 50% of the tribunal fees paid by the Applicants.

The Applications

1. The Tribunal is required to determine two applications under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for RROs in respect of 242 Panfield Road, Abbey Wood, London, SE2 9BX ("the property"):
 - (i) On 14 January 2019, Mr Paul Hyder issued application LON/00AL/HMK/2019/0008. The application is attested by a statement of truth signed by Mr Hyder, dated 30 December 2018. By the date that the application was issued, Mr Hyder was living in the Philippines. On 16 January 2019, the Tribunal gave Directions.
 - (ii) On 25 March 2019, Mr Gabriel Sisu issued application LON/00AL/HMK/2019/0026. The application is attested by a statement of truth signed by Mr Sisu, dated 6 March 2019. By the date that the application was issued, Mr Sisu had returned to Romanian, his country of birth. On 9 April, the Tribunal gave Directions. It directed that the two matters should be heard together.
2. Both applicants gave their representative, Flat Justice, as their contact address. Flat Justice is a Community Interest Company. They charge a contingency fee of 20%.
3. Directions are given to enable the Tribunal to determine such applications fairly by indicating to the parties how they should present their cases. The Respondent was directed to file a bundle of documents including:
 - (i) A full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advanced by the applicant, and dealing with the issues identified in the Directions;

- (ii) A copy of the tenancy agreements;
 - (iii) Evidence of the amount of rent received in the period (less any universal credit/housing benefit paid to any person), with details of the occupancy by the tenant on a weekly/monthly basis;
 - (iv) A copy of all correspondence relating to any application for a licence and any licence that has now been granted;
 - (v) The name(s) of any witnesses who will give evidence at any hearing, with a signed and dated statement/summary of their evidence, stating that it is true;
 - (vi) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order;
 - (vii) Evidence of any outgoings, such as utility bills, paid by the landlord for the let property;
 - (viii) Any other documents to be relied upon at the hearing.
4. The Respondent has failed to comply with these Directions. He finally sent in a mass of documents in a single bundle in 21 plastic dividers. Within these dividers, three copies of various documents could be found. There was no index. The documents were not numbered. The manner in which these documents were provided seem to reflect the chaotic manner in which Mr Shoebridge conducts his affairs. The Tribunal was greatly assisted by Mr Morris who had had put the Respondent's documents into a single paginated Bundle. We prefix any reference to this bundle by "R__".
5. Flat Justice have filed a bundle on behalf of the Applicants, reference to which is prefixed by "A__").

The Hearing

6. Mr Guy Morris, from Flat Justice, appeared on behalf of the Applicants. He was assisted by Mr Daniel Herm-Morris, his son. Both Applicants were abroad. Neither Mr Morris nor his son have inspected the property. Mr Hyder is a lecturer, his subject being English as a second language. Mr Sisu was a semi-professional footballer, but more recently has worked as a waiter. Neither Applicant has made a witness statement, albeit that both signed their application forms. Both application forms assert that the property was severely overcrowded. This was not correct.
7. Mr Shoebridge appeared in person. He is a member of the Residential Landlords Association. He runs three care homes which are licenced by the Care Quality Commission. He is assisted by his brother who is disabled. He also owns properties at 53, 57 and 59 Panfield Road. He lives at 59 Panfield Road. He has given the tribunal 53 Panfield Road as the address which should be used for the purpose of these proceedings. His presentation was as chaotic and his preparation of his case.

8. Mr Shoebridge has provided statements from six tenants, Mr Holman (at R35); Mr Scott Rowson (at R42), Mr Paul Tilbury (R50), Mr Jamie Mansfield (at R55), Mr Hassan Hassan (R56) and Mr Ion Matel (R59). None of them criticise him as their landlord.
9. The Tribunal heard evidence from Mr Shoebridge and Mr Rowson. Mr Rowson is a retired military officer. We found him to be a credible witness. He described Mr Hyder as being “manipulative”. He was someone who wanted to get his own way. There came a time when the other tenants were no longer willing to actively support him. He stated that Mr Hyder was a Buddhist who regularly had a candle burning in his room. Mr Shoebridge complained that the smoke caused damage to the decorations in the two rooms that he occupied.

The Background

10. The property at 242 Panfield Road was a Children’s home operated by Greenwich. There is a plan at R127. There are eight bedrooms. There are two bathrooms with toilets on the first floor. There is a shower room and a separate toilet on the ground floor. There is a kitchen on the ground floor and a kitchenette on the first floor.
11. On 10 January 2008, Mr Shoebridge was registered as the freeholder of the property (A36). In 2012, Mr Hyder was first granted an assured shorthold tenancy (“AST”). Mr Hyder initially occupied Room 7 on the first floor. In February 2018, he moved down to Room 3 on the ground floor. On 1 June 2016, Mr Hyder was granted an AST at a rent of £400 per month (see A16), On 1 April 2018, he was granted a further AST at a rent of £430 per month. Mr Hyder left the property on 31 December 2018.
12. On 8 July 2018, Mr Sisu was granted a six-month AST at a rent of £450 per month (at A50). He left the property on 15 January 2019. There has been no criticism of Mr Sisu as a tenant.
13. On 1 October 2017, Greenwich introduced an additional licencing scheme (see A59). Mr Shoebridge stated that he only became aware that the property needed to be licenced in October 2018. We find this surprising, given Mr Shoebridge’s involvement in a number of properties in Greenwich. However, we accept his evidence on this as this seems to be indicative of his chaotic management style.
14. Mr Shoebridge stated that he did not immediately make an application for a licence as he needed to raise the application fee. He approached Greenwich in December and finally made an application on 20 February 2019 (see A59). On 1 May 2019, Greenwich issued a Notice stating that it was minded to grant a licence being satisfied that the property is suitable for 8 single households to occupy 8 rooms.
15. In his application form, Mr Hyder stated that he stopped paying rent when he discovered that the property was not licenced as an HMO. We do not

accept this. It rather seems that he was in financial difficulties in October and stopped paying his rent. Mr Shoebridge only learnt of this in early December. He was willing to let Mr Hyder use his deposit against the arrears. It was rather Mr Shoebridge who first contacted the council, apparently because he was planning to serve a Section 21 Notice. On 20 December 2018, the London Borough of Greenwich (“Greenwich”) first learnt that the property was unlicensed HMO (see A59).

Our Determination

16. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) On 1 October 2017, Greenwich introduced an additional licencing scheme for HMOs. Under this scheme all HMOs in the borough are required to be licenced.

(ii) The flat is an HMO falling within the definition falling within the “standard test” as defined by section 254(ii) of the 2004 Act. In particular:

(a) it consists of eight units of living accommodation not consisting of self-contained flats;

(b) the living accommodation is occupied by persons who do not form a single household;

(c) the living accommodation is occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable in respect of the living accommodation; and

(f) the households who occupy the living accommodation share the living room, kitchen, a bathroom and a toilet.

(iii) The Respondent failed to licence the HMO as required by section 61(2) of the 2004 Act. This is an offence under section 72(1).

(iv) The offence was committed over the period of 1 October 2017 to date.

(v) The offence was committed in the period of 12 months ending on 31 December 2018 (in respect of Mr Hyder) and 15 January 2019 in respect of Mr Sis. These are the relevant periods identified by Mr Morris for the assessment of RROs.

17. The 2016 Act gives the Tribunal a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenants during this period, less any award of universal credit paid to any of the tenants. We are satisfied that the Applicants were not in receipt of any state benefits and that they paid the rents from their earnings.
18. The Applicants have paid the following rent during the relevant period:
 - (i) Mr Hayder paid £4,210 during the period 1 January to 31 December 2018 (see A22). He paid £400 pm for three months (January to March) and £430pm for seven months (April to October).
 - (i) Mr Sisu paid £2,915 during the period 8 July 2018 to 15 January 2019, namely 6 months at £450 pm.
19. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
 - (i) The conduct of the landlord.
 - (ii) The conduct of the tenants.
 - (iii) The financial circumstances of the landlord.
 - (iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.
20. In determining the amount of any RRO, we have had regard to the guidance given by the George Bartlett QC, the President of the Upper Tribunal (“UT”) in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the 2004 Act where the wording of section 74(6) is similar, but not identical, to the current provisions. The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. A landlord who is engaged professionally in

letting is likely to be dealt with more harshly than the non-professional landlord.

21. The UT went on to consider the RRO that was appropriate in that case. In considering the profit made by the landlord during the relevant period, the UT considered it appropriate to make deductions for the costs of insurance, gas, electricity, water, council tax and cleaning. No account was taken of the mortgage payments.
22. Mr Morris argued that unlike the 2004 Act, the 2016 Act does not use the phrase “reasonable in the circumstances”. He therefore argued that no deduction should be made for the landlord’s expenses. We asked Mr Morris whether the omission of these works meant that we should make an order that was “not reasonable in the circumstances”. He readily conceded that a tribunal must act reasonably, having regard to the intention of the legislation. We are satisfied that the legislative intention of the two Acts is similar.
23. The expenses which the landlord has incurred are at R133. We are satisfied that the relevant costs are in the fourth column, namely the utilities and council tax bills. We do not take into account either the mortgage interest or the insurance which relate to the acquisition and protection of the landlord’s capital asset. We compute the costs to be some £4,800 per annum, or £600 for each of the eight flats.
24. Our starting point is therefore as follows:
 - (i) Mr Hayder paid £4,210 during the period 1 January to 31 December 2018. We deduct £600 in respect of the landlord’s expenses. The net figure is £3,610.
 - (i) Mr Sisu paid £2,915 during the period 8 July 2018 to 15 January 2019, namely 6 months at £450 pm. He occupied his flat for 6.5 months, so we deduct £325, The net figure is £2,590.
25. We must then have regard to the conduct of the parties. In their application forms, the Applicants make a number of serious allegations relating to the condition of the property. The property was seriously overcrowded. The fire alarms were not checked. There was no gas-safety certificate. The deposits were not placed in a rent deposit scheme. Neither Applicant attended the hearing to support these allegations.
26. Mr Shoebridge disputes these allegations. He has made detailed statements at R100 and R102. This is confirmed by the witness statements of the other tenants and by the evidence of Mr Rowson. The property was not overcrowded. In addition to the shower room, there were two bathrooms. Mr Shoebridge checked the fire alarms weekly. A log book was kept at the property. Electrical and gas safety certificates are provided at

R109-R122. The deposits were placed in a rent deposit scheme (see R31). The Tribunal accepts this evidence.

27. Mr Hyder states that he stopped paying rent because he discovered that the property was unlicensed. We do not accept this. We accept Mr Shoebridge's evidence that he stopped paying rent because he was in financial difficulties. He only learnt that the property was unlicensed when he was told this by Mr Shoebridge.
28. No criticism is made of the conduct of Mr Sisu. However, we accept the evidence adduced by the landlord that Mr Hayder was not a satisfactory tenant. He burnt candles in his room which caused damage to the decorations. He occupied two rooms. The first room was redecorated in February 2018 at a cost of £500 (see R99) and the second room in January 2019 at a similar cost (R98). We accept the evidence of Mr Rowson that he was manipulative and difficult.
29. Taking all these factors into account, the Tribunal makes RROs at the lower end of the scale in the following sums:
 - (i) Mr Hayder: £722, namely 20% of the net figure of £3,610.
 - (ii) Mr Sisu: £777, namely 30% of the net figure is £2,590.
30. The Tribunal further orders that the Respondent should refund 50% of the tribunal fees of £400 paid by the Applicants pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. We only award 50% because each of the Applicants has overstated their cases making allegations which they were unable to substantiate.

Judge Robert Latham
18 June 2019

RIGHTS OF APPEAL

1. 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.
2. 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.

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 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.

Appendix of Relevant Legislation
Housing Act 2004

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless-

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

254 Meaning of “house in multiple occupation”

(1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if-

- (a) it meets the conditions in subsection (2) (“the standard test”);
- (b) it meets the conditions in subsection (3) (“the self-contained flat test”);
- (c) it meets the conditions in subsection (4) (“the converted building test”);
- (d) an HMO declaration is in force in respect of it under section 255; or
- (e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test 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 (see section 258);

(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 (see section 259);

(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) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a rent repayment order

- (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 had been convicted).

- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
 - (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
 - (a) the rent in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.