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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/OOBD/HMK/2019/0044**
Property	:	**276 Nelson Road Twickenham TW2 7BW**
Applicant	:	**Khandice Taylor (1) and Veronique Mbonimana (2)**
Representative	:	**In person**
Respondent	:	**Mr Steven Sehajpal**
Representative	:	**Non-attendance**
Interested person	:	**-**
Type of application	:	**Application by Tenant for a rent repayment order under the Housing and Planning Act 2016**
Tribunal members	:	**Judge Professor Robert Abbey** **Ms Sue Coughlin MCIEH**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**2 September 2019**

DECISION

<u>Decision of the tribunal</u>

(1) The tribunal finds that rent repayment orders be made in the sum of £6700.50 in favour of the first applicant and £4394.50 in favour of the second applicant, the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.72 of

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the Housing Act 2004, namely that a person commits an offence if he is a person having control of or managing a House in Multiple Occupation (HMO)which is required to be licensed under Part two of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act "house" means a building or part of a building consisting of one or more dwellings.

Reasons for the tribunal's decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **276 Nelson Road Twickenham TW2 7BW**.

2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.

3. The hearing of the application took place on Thursday 29 August 2019. Ms Mbonimana represented herself and the first applicant Ms Taylor who was not in attendance. The second applicant confirmed she had been authorised to appear on behalf of the first applicant. Mr Sehajpal the respondent did not attend. Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 says that if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and considers that it is in the interests of justice to proceed with the hearing. The Tribunal was indeed satisfied that appropriate written notice of the hearing date had been posted to the respondent on 25 June 2019 addressed to the respondent at the address specified in the relevant tenancy agreements as being the address for service of notices for the purposes of ss. 47 and 48 of the Landlord and Tenant Act 1987. The Tribunal also considered that it was in the interests of justice to proceed particularly bearing in mind that the second applicant was in attendance with a witness. The Tribunal also noted that the day before the hearing an application made by the respondent to adjourn was rejected by Judge A. Vance. At the time of the rejection the Tribunal informed the respondent that the hearing would proceed as originally fixed, namely on 29 August 2019.

4. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

The law

5. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence described in Part two of the Act and in that regard section 72 of the 2004 Act states

> *72 Offences in relation to licensing of HMO's under this Part*
>
> *(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.*

6. Under section 41 (2) (a) and (b) of the 2016 Act 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. The application to the Tribunal was made 21 May 2019. The applicants produced a copy letter issued by the London Borough of Richmond Upon Thames dated 12 June 2019 and written by Nicola Hurst an Environmental Health Practitioner in which it was confirmed that the respondent had applied for an HMO, (House in Multiple Occupation), license on 19th June 2018. The second applicant was able to show to the Tribunal tenancy agreements of the subject property granted in favour of the two applicants. From the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.

7. Therefore, the offence relates to the absence of an HMO license of residential accommodation.

Background

8. The property is covered by the legislation that requires a mandatory license under the Housing Act 2004. Indeed, the property was licensed but that license was not issued until 22 October 2018 following the application that was made on 19 June 2018. Accordingly, it would appear that the property was unlicensed for a significant period of both tenancies. (For the second applicant her tenancy started on 15 September 2017 and ended in June 2019 and for the first applicant her tenancy started on 1 August 2017 and ended well beyond the date when the licence was issued by Richmond Council).

The Offence

9. There being an HMO as defined by statute, then a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under Part two of the Act but is not so

licensed. The letter from the local authority mentioned above and dated 12 June 2018 clearly confirmed that there was no HMO license for this property until 22 October 2018. The applicants provided evidence from a witness to confirm that the property was indeed in multiple occupation prior to the 21 June 2018.

10. The witness for the applicants, Ms Chantelle Awere, told the Tribunal that she had lived at the property during the period in question and that there were six or more people in occupation in various rooms within the property. The second applicant confirmed that for most of the time there were nine people in occupation, there being 6 rooms for rental. (These were two bedrooms on the ground floor, two double bedrooms on the first floor and a small box room and a converted loft room above.)

The tribunal's determination

11. The Tribunal took time to carefully consider the evidence regarding the absence of a license but came to the inescapable conclusion that none had been issued by the Council until 22 October 2018 after the respondent made an application on 19 June 2018. Therefore, the Tribunal concluded that this was an unlicensed HMO prior to that date. Accordingly, the tribunal had no alternative other than to find that the respondent was guilty of the criminal offence contrary to s.72 of the Housing Act 2004.

12. The applicants also said that the rent deposits paid by them had not been placed in an account under the deposit protection scheme but that on requests to the respondent the deposits had been refunded.

13. The amount of the rent repayment order was extracted from the amount of rent paid by the applicants during the following two periods. For Ms Mbonimana her tenancy started on 15 September 2017 and ended in June 2019 but the rent claim period ends on the 18 June 2018 the day prior to the HMO licence application mentioned above. For Ms Taylor her tenancy started on 1 August 2017 and the rent claim period ends on the same date as above namely 18 June 2018. In both cases the applicants were able to prove payment by reference to copy bank statements produced to the Tribunal.

14. Furthermore, the tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the tribunal consider a reasonable order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. From the evidence before it provided by the applicants the Tribunal took the view that the respondent was a professional landlord. It was also clear that other issues had arisen

between the applicants and their landlord over such matters as the maintenance of pre-paid meters for the services at the property and the provision of appropriate fire precautions including fire extinguishers. The applicants also had to make deductions from their rent to cover payments made by them for outgoings at the property that the landlord had in the tenancy agreement contracted to pay.

15. It is noteworthy that there is no presumption of a starting point of a 100% refund being made. (In the above case an award at 75% was considered reasonable). In *Fallon v Wilson and Others* [2014] UKUT 300 (LC) it was confirmed that the tribunal must take an overall view of the circumstances in determining what amount should be reasonable and so this is the approach that this Tribunal has implemented in this case thus taking into account the issues set out above.

16. Consequently, the Tribunal concluded that rent repayment orders be made in the sums of £6700.50 and £4394.50 the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.72 of the Housing Act 2004, namely that a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under Part two of the 2004 Act but is not so licensed.

17. Taking into account all this guidance and the circumstances of the claim and the non-attendance of the respondent, the tribunal considered that for the above period a reasonable amount should be 75% of the amounts involved. The tribunal was satisfied with the paper based evidence as to the rental payments made by the applicants. With regard to the claim by the first applicant, her tenancy commenced on 1 August 2017 and there were therefore ten whole months' rent to consider amounting in total to £8430. Then a further 18 days in June needed to be added to that total giving a grand total of £8934. Thus at 75 % the sum to be determined is £6700.50. With regard to the claim by the second applicant, her tenancy commenced on 15 September 2017 and there were therefore nine whole months' rent to consider amounting in total to £5774. Then a further 4 days in June needed to be added to that total giving a grand total of £5859.33. Thus at 75 % the sum to be determined is £4394.50.

18. Accordingly, it is these amounts of £6700.50 and £4394.50 that the tribunal considers reasonable and appropriate and they should be the amounts of the rent repayment orders. These rent repayment monies are to be paid by the respondent to each applicant within 28 days of the date of this decision.

Name:	Judge Professor Robert Abbey	Date:	2 September 2019

Annex

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).

Appendix of relevant legislation

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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

s41 Housing and Planning Act 2016

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.