



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

Case reference : **LON/00BG/HMK/2019/0010**

Property : **158A Commercial Road, London E1 1NL.**

Applicant : **Ms. S. Carlini**

Representative : **In person**

Respondent : **Flat Sharing Ltd T/as Flintons (First Respondent)
Cityside Estates Limited T/as Cityside properties (Second respondent)
Cityside Limited T/as Cityside Properties (Third Respondent)**

Representative : **Huber Law for the First Respondent.**

Type of application : **Application for a Rent Repayment Order by the tenant.**

Tribunal member(s) : **Ms. A. Hamilton-Farey
Mr. T. Sennett MCIEH**

Date and venue of hearing : **20 May 2019 at 10 Alfred Place, London WC1E 7LR**

Date of decision : **28 June 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that Cityside Estates Ltd/Cityside Properties should make a rent repayment order to the applicant of £6,400.00 within 28 days of this decision.
- (2) No rent repayment order is made against Flat Share Limited, T/as Flintons.
- (3) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant seeks a Rent Repayment Order under S.73(5) of the Housing Act 2004, on the basis that the respondent landlords were in the control of or management of an unlicensed property, pursuant to S.95(1) of the Housing Act 2004.
2. A case management hearing was held on 21 February at which the applicant appeared. Neither of the Respondents appeared although apologies were received on behalf of the First Respondent.
3. Directions were issued following the case management hearing requiring the parties to provide documents on which they wished to rely in readiness for the hearing. The applicant produced her bundle of documents, however neither the first or second respondent complied with the directions and the first respondent filed their bundle very late. It transpired during the hearing that the applicant had not received the first respondent's bundle at all. The tribunal arranged a short adjournment of the hearing to enable the applicant to read the first respondent's bundle.

The Hearing:

4. At the hearing the applicant represented herself and was assisted by her partner, Mr. Carl Hampus Berquist. Mr. Zakir Hussain of Hubers Law represented the first respondent, and Mr. Gonzalo Lala, the General Manager of the first respondent gave evidence. Neither the second nor the third respondent were represented or appeared.

The Facts: (Applicant)

5. Ms. Carlini accepts that she took occupation of a studio room known as Flat 1, 158a Commercial Road, London E1 1NL. During the hearing she informed us that the building contained other flats (possibly two) all of

which were located over shops, and which appeared to have been converted from a Public House.

6. The Tribunal was presented with a copy of what purported to be a Licence Agreement for a fixed term of two years, commencing on 17 August 2017 at a rent of £1,280.00 per month. According to that agreement both Council Tax and utility charges were included within the licence fee.
7. It transpired during the hearing and was not denied by the first respondent that the agreement had not been signed by either party. The recitals of that agreement record that the 'Landlord' was Citiside Properties Limited. The document did not contain a S.47/S.48 address for the landlord, presumably on the basis that it was called a 'licence'. However, the tenant paid a holding deposit of £400.00 in a document in which a term 'tenancy' is used. Although we have not been asked to determine the matter finally, we consider that the applicant was a tenant of the dwelling at all material times.
8. Ms. Carlini continued in occupation and received an e-mail on 4 April 2018 from Citiside Management to say: -

"That is why it is hard for us to inform you that, as from today, Citiside will no longer be managing your property. Due to developments a new company named Flintons will be taking over management of your property as of immediate effect and they will now be taking care of you and the property from [sic]. Rest Assured your contract and conditions will remain same and therefore you will not be disadvantaged by this development. Your deposit will be transferred to Flintons along with your license to occupy records"
9. Ms. Carlini says that the original contract was therefore novated to Flintons and they became the landlord for contract purposes.
10. It is accepted that Ms. Carlini made periodic payments to Flintons in the same manner as she had to Citiside.
11. During the term of tenancy, Ms. Carlini says that she had maintenance problems that were not attended to, including an infestation of rats on her balcony, a lack of heating (when she first occupied) and on at least two occasions a lack of hot water or any water at all.
12. When trying to register to vote Ms. Carlini was told that the property did not exist on the local authority database, and although she says her rental payments included both Council Tax and utilities, none were paid by the landlord (a) because the property was not registered for Council Tax and (b) the property was connected to an adjacent property in relation to electricity supplies.

13. It appears that in August 2018 Ms. Carlini wished to vacate the property and contacted Flintons with a new tenant's name, as per Clause 13.2 of the agreement. There was some problem with this going ahead and finally Ms. Carlini approached a Mr. Bhagu of Copehill Estates and agreed the termination of the contract with him. Ms. Carlini informed us that Copehill were estate agents who occupied a shop below the subject premises. It is not entirely clear who Mr. Bhagu is/was, although Mr. Lala informed us that he was the actual landlord.
14. Ms. Carlini was released from her contract and despite some initial difficulties received her deposit back from Flintons.

The Facts (Respondents).

15. The tribunal has not received any submissions from either the second or third respondents.
16. Mr. Lala, the general manager of Flintons had submitted a witness statement and gave evidence to the tribunal. He informed us that he had previously worked in the estate agency business for at least five-years and had worked for City Estates, although not in a supervisory capacity.
17. He informed us that his company had been approached by a Miss. Runa Begum who had asked him whether Flintons wished to manage this and some other buildings. An agency contract was drawn up between Krystal Asset Management as landlord and Flintons as agent with effect from 2 April 2018 for a 24-month period, this was exhibited in the first respondent's bundle.
18. Mr. Lala also informed us that, when the management was taken over, they did not check to see whether the tenant has signed a tenancy agreement; had received the Right to Rent Guide or had received the S.47/48 Notice (Landlord & Tenant Act 1987). He accepted that the deposit was transferred to Flintons as part of this handover, but said that in normal circumstances tenants would approach them directly and they would prepare the necessary documents, but because they, Flintons, had been told by City Estates that a contract already existed, they did not consider it necessary to carry out these checks, and adopted the existing contract documents. Although again we have not been asked to comment on this matter, we find the process to be irregular, and not what would be expected from a professional agent.
19. We were also shown Office Copy Entries showing that the 'Mackworth Arms' 158 Commercial Road East is owned by Aurvinder Singh Sawhney and Rupinder Kaur Sawhney. It is not entirely clear what the relationship between the freeholders and Krystal Management is, although we were told that Krystal occupied their premises under a sub-

lease from the freeholder. No evidence was supplied to us to regarding any leasehold interests and none were recorded against the freehold title.

20. Mr. Lala told the tribunal that it was never the intention that Flintons would be the 'landlord' of the property and that their main obligation was to collect rent, deduct their 10% agents' fees and pass the balance of the rent to Krystal Management.
21. Mr. Lala also said there were problems in arranging repairs and maintenance for the flats because they were only given authority to spend up to £50.00, and this was insufficient, restricting their ability to manage the property as necessary. Mr. Lala said that, due mainly to "communication issues" the agency agreement was terminated, shortly after Ms. Carlini vacated the property.
22. During cross-examination, Mr. Lala confirmed that he knew of the Selective Licensing in the Borough, but that when enquiries were made of the Local Authority, it could not be confirmed whether this property was located within that area of not, and therefore it was considered that no Licence was required. He admitted when questioned that there had been some failures in management but said that these were due to staff absences.
23. He confirmed again that Flat Sharing Ltd (T/as Flintons) was not the landlord and that Krystal Asset Management were, and that all rental payments (less the 10% management fee) were passed onto the Landlord as required by the management agreement. He denied that the tenancy agreement had been novated to Flintons and said that it was not necessary to prepare a new tenancy agreement, because they were managing in accordance with the old agreement.

Our Conclusions:

24. There has been a certain amount of obfuscation on the part of the landlord(s) in this instance. The chain of events as presented to us and confirmed by various Company documents demonstrates that Cityside Properties was incorporated on 9 June 2014 and changed its name with a new certificate of registration issued on 23 October 2014. On 11 November 2015, the company changed its registered address to 222 Bow Common Lane, London E3 4HH and terminated the appointment of Mr Mohammed Moynul Haque as director on 16 December 2016. Ms. R. Begum was appointed director on the same day, and her appointment was terminated on 22 May 2017, when Mr. Haque was re-appointed director. This, latter appointment, was terminated on 8 January 2018. On 10 April 2018 the company was liquidated and changed its address to 27 Church Street, Rickmansworth, Herts WD3 1DE.

25. On 8 March 2018, Citiside Estates changed their address to 1 Ravenscroft Street, London E2 7SH, and on 17 September 2018 changed their name to Redbricks Estate Agent Limited. The latest information provided to the tribunal is that Mr. M. M. Haque applied to have Redbricks struck-off on 15 January 2019, that application has been suspended following an objection.
26. We conclude that, because of the various changes, Flintons were not at any time the landlord of the property, and that Citiside Estates/Cityside Properties were at all material times the organisation that was entitled to receive the rent, and therefore the landlord. There were various defects with the tenancy agreement that may have other consequences for the landlords, but that is not a matter for this tribunal and the parties should seek advice on the matter.
27. Due to this conclusion, the application for a rent repayment order against Flintons is misconceived and the rent repayment order should be made against the second and third respondents. The tribunal acknowledges the difficulties this presents to the applicant given the liquidation of both the second and third respondents, and that it is unlikely that the Order of this tribunal will succeed.

Name: Ms. A. Hamilton-Farey Date: 28 June 2019

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

Housing Act 2004

Part 3 SELECTIVE LICENSING OF OTHER RESIDENTIAL ACCOMMODATION

Section 79 Licensing of houses to which this Part applies

- (1) This Part provides for houses to be licensed by local housing authorities where—
 - (a) they are houses to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 85(1)).
- (2) This Part applies to a house if—
 - (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
 - (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
 - (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).
- (3) A tenancy or licence is an exempt tenancy or licence if —
 - (a) it is granted by a non-profit registered provider of social housing,
 - (b) it is granted by a profit-making registered provider of social housing in respect of social housing (within the meaning of Part 2 of the Housing and Regeneration Act 2008), or
 - (c) it is granted by a body which is registered as a social landlord under Part 1 of the Housing Act 1996 (c. 52).
- (4) In addition, the appropriate national authority may by order provide for a tenancy or licence to be an exempt tenancy or licence—
 - (a) if it falls within any description of tenancy or licence specified in the order; or
 - (b) in any other circumstances so specified.
- (5) Every local housing authority have the following general duties—
 - (a) to make such arrangements as are necessary to secure the effective implementation in their district of the licensing regime provided for by this Part; and
 - (b) to ensure that all applications for licences and other issues falling to be determined by them under this Part are determined within a reasonable time.

Section 85 Requirement for Part 3 houses to be licensed

- (1) Every Part 3 house must be licensed under this Part unless—
 - (a) it is an HMO to which Part 2 applies (see section 55(2)), or
 - (b) a temporary exemption notice is in force in relation to it under section 86, or
 - (c) a management order is in force in relation to it under Chapter 1 or 2 of Part 4.
- (2) A licence under this Part is a licence authorising occupation of the house concerned under one or more tenancies or licences within section 79(2)(b).
- (3) Sections 87 to 90 deal with applications for licences, the granting or refusal of licences and the imposition of licence conditions.
- (4) The local housing authority must take all reasonable steps to secure that applications for licences are made to them in respect of houses in their area which are required to be licensed under this Part but are not so licensed.
- (5) In this Part, unless the context otherwise requires—
 - (a) references to a [Part 3](#) house are to a house to which this Part applies (see [section 79\(2\)](#)),
 - (b) references to a licence are to a licence under this Part,
 - (c) references to a licence holder are to be read accordingly, and
 - (d) references to a house being (or not being) licensed under this Part are to its being (or not being) a house in respect of which a licence is in force under this Part.

Section 87 Applications for licences

- (1) An application for a licence must be made to the local housing authority.
- (2) The application must be made in accordance with such requirements as the authority may specify.
- (3) The authority may, in particular, require the application to be accompanied by a fee fixed by the authority.
- (4) The power of the authority to specify requirements under this section is subject to any regulations made under subsection (5).
- (5) The appropriate national authority may by regulations make provision about the making of applications under this section.
- (6) Such regulations may, in particular—
 - (a) specify the manner and form in which applications are to be made;
 - (b) require the applicant to give copies of the application, or information about it, to particular persons;

- (c) specify the information which is to be supplied in connection with applications;
 - (d) specify the maximum fees which may be charged (whether by specifying amounts or methods for calculating amounts);
 - (e) specify cases in which no fees are to be charged or fees are to be refunded.
- (7) When fixing fees under this section, the local housing authority may (subject to any regulations made under subsection (5)) take into account–
- (a) all costs incurred by the authority in carrying out their functions under this Part, and
 - (b) all costs incurred by them in carrying out their functions under Chapter 1 of Part 4 in relation to Part 3 houses (so far as they are not recoverable under or by virtue of any provision of that Chapter).

Section 95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) 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 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,
- and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
- as the case may be.

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

(6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(6B) 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.

(7) For the purposes of subsection (3) 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 (8) is met.

(8) 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.

(9) In subsection (8) “*relevant decision*” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has 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 by that landlord.

	Act	section	general description of offence
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
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).

Section 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.

Section 43 Making of 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 has 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 in accordance 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).

Section 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 the 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 paid 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, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

...