



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

Case reference : **LON/00AJ/HMG/2020/0014**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **37 Greenend Road, London W4 1 AH**

Applicant : **Ms Hannah Watson**

Representative : **Justice for Tenants**

Respondent : **Mr Rafal Szeliga (1)
Mr Haitham Tamimi and Mrs Clare
Tamimi (2)**

Representative : **Not represented**

Type of application : **Application for a Rent Repayment
Order**

Tribunal members : **Judge Carr
Mr P Roberts DipArch RIBA**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **9th December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was **V: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in a bundle from the Applicant comprising 108 pages, the contents of which I have noted and a statement from the first Respondent which I have read, together with correspondence between the first Respondent and the local housing authority. The order made is described at the end of these reasons. The first Respondent was only able to participate via telephone.

Decision of the Tribunal

- 1. The Tribunal makes a Rent Repayment Order of £8,340 against both of the Respondents to be paid within 14 days of the date of this decision.**
- 2. The Respondents are ordered to reimburse the Applicant her application fee of £100 and the hearing fee of £200 within 14 days of this decision.**
- 3. The reasons for the decision are set out below.**

The application and procedural history

- 4. The Tribunal received an application under section 41 of the Housing and Planning Act 2016 ('the 2016 Act') dated 13th January 2020. It concerns 37 Greenend Road, London W4 1AH which is a three storey property with five rooms let to tenants on ASTs and shared facilities.**
- 5. The Applicant alleges that the landlord committed the offence of control or management of an unlicensed HMO.**
- 6. The Applicant seeks a maximum RRO of £9,300 which comprises rent of £775 per calendar month for a period of 12 months from 1st August 2018 – 31st July 2019**
- 7. The Tribunal issued directions on 3rd September 2020. The directions made it clear that the Tribunal has to be satisfied beyond reasonable doubt that the landlord has committed the alleged offence.**
- 8. The application and the directions named two Respondents: Mr Rafal Szeliga as Respondent 1 and Mr Haitham Tamimi and Mrs Clare Tamimi as Respondent 2.**

9. The relevant legal provisions are set out in the appendix to this decision.

The background

10. The premises comprises a three storey house with a shared kitchen, 5 bedrooms one shared living room, 1 communal bathroom and 1 communal cloakroom with a WC and basin. One of the bedrooms has the benefit of an en-suite bathroom. The parties agreed that the premises were occupied by at least 5 people at all points during the relevant period. Each tenant occupied their own room on a permanent basis with a separate occupation agreement.
11. Mr Szeliga was named as the landlord of the property on the AST agreements and accepts full responsibility on behalf of himself and the freeholders for the management of the property.
12. The Applicant signed an AST on 3rd December 2016. The agreed rent was £775.00 per calendar month. The agreement was for an initial fixed term of six months. After that term the tenancy became a monthly periodic tenancy. All bills were included in the rent, ie gas, electricity, broadband, council tax and water.
13. The tenancy was terminated by the Applicant on 30th August 2019.
14. Mr Szeliga applied for a mandatory HMO licence on 24th September 2019. The licence was granted on 19 March 2020. Mr Szeliga had to comply with certain conditions before the licence was granted. Mr Szeliga made the correspondence between himself and the local council relating to the licence available to the tribunal during the hearing.

The hearing

15. The hearing took place via video on 3rd December 2020. The Applicant was represented by Mr Alasdair McClenahan from Justice for Tenants and the Applicant also attended. Mr Szeliga attended and gave evidence and made submissions. There was no attendance from the freeholder Respondent (2). Nor had Respondent (2) taken any part in the proceedings, serving no statement of case, nor any defence.
16. The issues that require to be decided by the tribunal are:
 - (1) Who is the appropriate Respondent in this application?
 - (2) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (3) Did the offence relate to housing that, at the time of the offence, was let to the tenant?
 - (4) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

- (5) What is the applicable 12 month period?
- (6) What is the maximum amount that can be ordered under s.44(3) of the Act?
- (7) What account must be taken of:
 1. The conduct of the landlord?
 2. The financial circumstances of the landlord?
 3. Whether the landlord has at any time been convicted of an offence under the Act?
 4. The conduct of the tenant?
 5. Any other factors.

The issues

Who is the appropriate Respondent?

17. The Applicant's representative argued as a preliminary point that both Respondents should be named in the decision and that any RRO made by the tribunal should be made against both Respondents.
18. Mr. McClenahan noted that Mr Szeliga had, in his statement of case, acknowledged his responsibility as manager of the property for legal compliance, including compliance with licensing requirements. However Mr McClenahan argued that the freeholders Mr and Mrs Taminini in their role as superior landlords should also be named as Respondents. Simply entering into an agreement with Mr. Szeliga that he should manage the property and take responsibility for legal compliance and all outgoings should not be sufficient to enable them to evade their responsibilities.
19. He pointed out to the tribunal the growing problem of rent to rent agreements and how these enable freeholders and other superior landlords to evade their legal responsibilities. This is particularly problematic when the manager of the property is inexperienced, as in this case, and has no assets, as in this case, matters which may reduce the amount of the RRO, if one is awarded. If the tribunal do not name the freeholders as Respondents, this enables them to hide behind the inexperience and impecuniosity of Mr Szeliga, and this would, he argued, defeat the purpose of the legislation.
20. Mr McClenahan referred the tribunal to a very recent decision of the Upper Tribunal – Re: Flat 9, Mandeville Court, Finchley Road, London NW3 6HB (UT Neutral citation number: [2020] UKUT 0298 (LC) UTLC Case Number: RRO/3/2020). In this case the issue was whether an application for a RRO made against a landlord who is not the immediate landlord of the Applicant should be struck out.

- 21.** Mr. Szeliga did not provide the tribunal with the details of the agreement between him and the 2nd Respondents. He said it was an oral agreement. It involved him paying a monthly rent for the property to the 2nd Respondents and taking responsibility for the outgoings and the maintenance. In return he was able to rent the property out to tenants and retain the rental income.

The decision of the tribunal

- 22.** The tribunal determines that both the freeholders and Mr Szeliga are appropriate Respondents for the purposes of this application.
- 23.** The tribunal agreed with the argument of the Applicant and in any event were bound by the decision of the Upper Tribunal in Flat 9, Mandeville Court.
- 24.** In that case, following a careful review of the relevant legislation the Deputy Chamber President determined that the FTT has jurisdiction to make a rent repayment order against any landlord who has committed an offence to which Chapter 4 of the Housing Act 2004 applies, including a superior landlord. He noted that there is no additional requirement that the landlord be the immediate landlord of the tenant in whose favour the order is sought.
- 25.** The Deputy Chamber President also noted (at para 69) that, ‘if only the immediate landlord may be the subject of an order, the grant of a short-term tenancy to an insubstantial intermediary through which the premises would then be sublet would remain a route for avoidance of the enforcement of rent repayment orders. A company with no assets other than a short-term lease, which may be not much longer than that granted to the occupational sub-tenants, is not likely to be a promising target for enforcement of a substantial rent repayment order’. That observation appeared to the tribunal to be particularly relevant to the circumstances of this case.

Matters not in dispute

- 26.** The tribunal is very grateful to the parties who attended the hearing that they were able to agree the following:
- (1)** The Respondents had committed the offence of controlling/managing an unlicensed HMO
 - (2)** This offence related to housing that at the time of the offence was let to the Applicant
 - (3)** The offence was committed by the Respondents in the period of 12 months ending with the date the application was made.

(4) The relevant period is from 1st August 2018 – 31st July 2019

27. The amount of rent paid by the Applicant to Mr Szeliga during the relevant period is £9,300.
28. The tribunal also noted that there was no evidence that a criminal offence had been committed by any of the Respondents in relation to the property
29. The tribunal heard evidence on the outstanding issues. These issues go to the amount of the RRO.

The conduct of the landlord

30. The Applicant's representative raised two issues of concern about Mr Szeliga's conduct. The first issue was that by failing to obtain a licence Mr Szeliga put the lives of the tenants at risk. The council required works to be carried out to ensure that doors were of the appropriate fire safety standard, that there was safe and easy exit from the property via the back door in the event of a fire, and that an integrated fire alarm was provided. The second issue was that Mr Szeliga had failed to protect the Applicant's deposit after the initial fixed term of the tenancy had expired.
31. Mr Szeliga said that his failure to protect the deposit was inadvertent; he had provided protection for the first 6 months but then failed to renew it. ~~he was not aware that this had to be done.~~ He has since learned that he has that responsibility. Whilst at the moment there is only one tenant in the property, that tenant has his deposit appropriately protected.
32. Mr Szeliga also informed the tribunal that his failure to obtain an HMO licence was because he was unaware that this was required. This is the only property he manages/is the immediate landlord of. As soon as he learned of the requirement he fully cooperated with the local authority. He provided to the tribunal the full correspondence between himself and the local authority indicating that he had done everything required of him in order to obtain a licence.
33. The Applicant also raised the conduct of the Respondent (2). They had taken no part in the proceedings which the Applicant considered to be reprehensible. In his opinion they were avoiding their legal responsibilities.

The decision of the tribunal

34. The tribunal notes that Mr Szeliga did take steps to remedy the lack of a licence as soon as he was aware of his legal responsibilities; he had overlooked the renewal of the deposit protection. It accepts that Mr Szeliga had no intention to operate an HMO illegally and that he was very inexperienced.

35. The tribunal considers however that the 2nd Respondents had a responsibility, when they entered into the agreement with Mr Szeliga to ensure that he was fully aware of the legal regime covering private renting and that he was sufficiently experienced to manage the property.
36. As the 2nd Respondents have not participated at all in these proceedings, the tribunal has not had the benefit of any explanation of their conduct.

The financial circumstances of the landlord

37. Mr Szeliga explained to the tribunal that he owns no property. In fact he rents his family home from the 2nd Respondents. He is a handy man and because he is self employed he has had a very difficult year financially because of Covid-19. His wife has lost her job because of the pandemic. He told the tribunal he had no savings. The pandemic has also reduced the number of tenants in the property.
38. As the 2nd Respondents have not participated in the proceedings the tribunal did not have the benefit of any information about their financial circumstances. What it does know is that they own at least two properties: the property which is the subject of these proceedings and the property that the first Respondent occupies with his family.
39. The first Respondent made it clear that the Applicant's rent included all utilities and council tax had been paid during the course of the Applicant's tenancy.

The decision of the tribunal

40. The first Respondent provided no evidence to support his claim of financial hardship, nor evidence to substantiate the amount of the Applicant's rent that covered outgoings. This was despite the fact that the directions made clear that evidence of outgoings and hardship should be substantiated through documentation.
41. The tribunal did however find the first Respondent credible. He has been honest with the tribunal throughout the proceedings, for instance disclosing the extent of the fire works that had to be carried out in order for him to obtain a licence. He has also expressed regret for failure to comply with his legal responsibilities earlier.
42. There is no doubt that all landlords will have suffered loss as a result of the pandemic. It is also clear that the Applicant has had the benefit of electricity, heating broadband etc during the period of her tenancy.
43. The tribunal is concerned that the 2nd Respondents have not participated in the proceedings and it has no evidence of their financial circumstances.

44. Taking these factors into account the tribunal determined to deduct £80 per calendar month from the maximum RRO payable in recognition that the first Respondent will have been obligated to discharge certain outgoings from the rent.

The conduct of the tenant

45. The first Respondent's only comment on the behaviour of the tenant was that he wished that she had come to him to point out the problems rather than going for independent advice.

The decision of the tribunal

46. The tribunal concluded that there was no evidence to support any further reductions from the amount of the RRO. Therefore the amount of the RRO ordered by the tribunal is £9,300 minus £960 for outgoings which equals £8,340.

The hearing fee

47. In the light of the evidence before it the tribunal also determines that the Respondent reimburse the application fee of £200 and the hearing fee of £100 to the Applicant.

Name: Tribunal Judge Carr

Date:
9th December
2020

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.

