FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/HMF/2020/0016**
HMCTS Code	**:**	**P: Paper remote**
Property	**:**	**28 Afghan Road, London SW11 2QD**
Applicants	**:**	**1. Kishan Parmar** **2. Phaedra Susans** **3. Emma Haldane** **4. Alison Ostry** **5. Shruti Sinha** **6. Jordan Spashett**
Representative	**:**	**In person**
Respondent:	**:**	**Amanda Williams**
Representative	**:**	**In person**
Type of application	**:**	**Application for a Rent Repayment Order – section 40 of the Housing and Planning Act 2016**
Tribunal members	**:**	**Judge Angus Andrew**
Date of decision	**:**	**20 October 2020**

DECISION

Covid-19 pandemic: description of hearing

This was a remote hearing on the papers (P: PAPER REMOTE) that was consented to by the applicants and not objected to by the respondent. A face-to-face hearing was not held because it was not practicable and no-one requested the same.

Decisions

1. I make the following rent repayment orders against the respondent to be paid within 28 days:

    a. £5,394 to be paid to Kishan Parmar

    b. £4,460 to be paid to Phaedra Susans

    c. £4,832 to be paid to Emma Haldane

    d. £4,945 to be paid to Alison Ostry

    e. £4,832 to be paid to Shruti Sinha

    f. £4,668 to be paid to Jordan Spashett.

The application and determination

2. By an application made on 27 January 2020 the applicants sought a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 ("the 2016 Act"). The applicants relied on the respondent having committed an offence under section 72 (1) of the Housing Act 2004, namely being the landlord of a house in multiple occupation (HMO) without the necessary licence.

3. Directions were given by Judge Professor Abbey on 6 February 2020. The directions provided for an oral hearing between 4 May 2020 and 19 June 2020, the case to be listed on receipt of listing questionnaires. However upon the respondent failing to comply with the directions Judge Martynski directed that the case should be decided on the basis of the papers alone. The applicants subsequently agreed to a remote hearing on the papers and the respondent did not object to Judge Martynski's direction.

4. Digital bundles were provided by both parties. I have now reviewed all the documents received from the parties and the tribunal directions and I am satisfied that the case is suitable for a paper determination. It is on the basis of those documents that I find the facts recorded in the following sections of this decision.

The law

5. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence: in this instance the offence set out in section 72(1) of the Housing Act 2004, the control or management of an unlicensed HMO. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.

6. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO must relate to rent paid by the tenant in respect of a period not exceeding 12 months, during which the landlord was committing the offence. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:

    - the conduct of the landlord and the tenant;
    - the financial circumstances of the landlord and
    - whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

7. Guidance was given by the Upper Tribunal in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC). That decision, which is binding on this tribunal, sets out how applications under the 2016 Act are to be considered. In particular, Judge Elizabeth Cooke held that the starting point is the rent itself for the relevant period of up to 12 months. The previous practice of deducting landlord's expenditure should not be followed (apart from payment for utilities) and the only basis for deduction is section 44 itself, as set out above.

Background

8. The property was purchased by the respondent in July 2019 for £850,000. The property was then converted to include six bedrooms with communal bathroom, kitchen, living room and garden. Between 12th and 26th September 2019 the respondent let the six bedrooms to the individual applicants under six assured shorthold tenancies for terms of six months. The tenancies do not include an express right to use the communal facilities but that right is implicit in the wording of the tenancies. Thus the property was used as a shared house. The rent was to be paid every four weeks in advance: Kishan Parmar £960, Phaedra Susans £860, Emma Haldane £860, Alison Ostry £880, Shruti Sinha £860 and to Jordan Spashett £900.

9. It is not entirely clear when the applicants finally vacated the property. In a letter to the tribunal of 8 June 2020 the respondent says that the property had been

empty for 10 weeks indicating that the applicants vacated at the end of March. In their rent payment schedule the applicants limit their rental claims to periods ending on 10 March 2020.

10. It is apparent from the exhibited emails that not all the conversion work had been completed when the applicants took possession of their rooms. They raised a number of concerns with the respondent in particular relating to the inadequacy of the central heating. The heating issues were not resolved and on 6 December 2019 they contacted Wandsworth Council and an Environmental Health Officer inspected the property on 6 January 2020. He informed the applicants that the property lacked an HMO licence and also pointed out that one of the bedrooms did not meet the minimum size requirements.

11. On 3 February 2020 Wandsworth Council served a Preliminary Improvement Notice on the respondent and gave her 14 days to confirm that the work required by the notice would be completed by 28 May 2020. The notice identified 8 deficiencies including 2 category 1 deficiencies in respect of Fire and Excess Cold.

12. In her statement in reply of 29 April 2020 the respondent admits that she did not hold an HMO licence. She states that she did not apply for an HMO licence until February 2020. However the application was rejected because one of the bedrooms did not meet the minimum room size requirements. When she gave her statement on 29 April 2020 she had still not obtained an HMO licence although she confirmed her intention to deal with the undersized room and renew her application. By that time the applicants had all vacated the property.

Reasons for my decision

13. 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).*

14. On the basis of the respondent's admissions I am satisfied beyond reasonable doubt that she has committed an offence under section 72(1) of the 2004 Act (which is an offence to which Chapter 4 of the 2016 Act applies). That is, for the duration of the tenancies she was a person having control of or management of an HMO which is required to be licenced but was not so licenced.

15. Consequently any RRO would be limited to the rent paid from the commencement of the individual tenancies to 10 March 2020, periods of just under six months. Following the Upper Tribunal guidance in *Vadamalayan v Stewart* the starting point is the rent paid by each of the applicants: Kishan Parmar paid £6,240, Phaedra Susans £5,160, Emma Haldane £5,590, Alison Ostry £5,720, Shruti Sinha £5,590 and Jordan Spashett £5,400. £33,700 in total. These sums are not disputed by the respondent and are evidenced by the documents included in the applicants' bundle.

16. I must first deduct any payments for utilities made by the respondent. The respondent has helpfully included a schedule of her annual outgoings in respect of the property. Apportioning the annual costs, the six monthly cost of electricity, gas, council tax, water, TV Licence, telephone line rental amounts to £4,569. The applicants have had the benefit of those services that would more normally be paid by a tenant. That cost falls to be deducted from the rent paid by the applicants.

17. It seems to me that the sum of £4,569 should be deducted in proportion to the rents paid by each of the applicants. Consequently the adjusted starting point for each of the applicants is: Kishan Parmar £5,394, Phaedra Susans £4,460, Emma Haldane £4,832, Alison Ostry £4,945, Shruti Sinha £4,832 and Jordan Spashett £4,668. £29,131 in total.

18. The respondent suggests that I should deduct £900 from Mr Spashett's rent because the first rental payment was paid by his *"manager"*. However the first payment was for £2,025 because it included a deposit in addition to the £900 rent. Mr Spashett's explanation is that the payment was made by on his behalf by his manager because his banking app has a daily limit of £750. The explanation is logical: I accept it and decline to make the suggested deduction.

19. Turning to the criteria set out in section 44 of the 2016 Act it is not suggested that the applicant has at any time been convicted of an offence to which that part of the 2016 Act applies. Consequently I can only take into account the conduct of the parties and the financial circumstances of the respondent.

20. The decision in *Vadamalayan v Stewart* effectively deprives me of any discretion to increase the orders to take into account the respondent's conduct in letting the property with the serious deficiencies identified in the Preliminary Improvement Notice. The respondent regrets her oversight in failing to obtain a licence. That regret however is made with hindsight and does not amount to meritorious conduct that might justify a deduction from the starting point.

21. Although the respondent makes rather generalised complaints about the applicants' conduct and Mr Parmar's conduct in particular the complaints are not substantiated by the exhibited contemporaneous email correspondence. Indeed it is apparent from the correspondence that the respondent's irritation stemmed from the involvement of Wandsworth Council and the applicants' decision to enforce their legal remedies granted by Parliament. I can find nothing in the documents before me that would justify reducing the orders on the grounds of the applicants' conduct.

22. I finally turn to the respondent's financial circumstances. The directions required the respondent to give details of any circumstances that could justify a reduction in the maximum amount of any rent repayment order whilst an annexe to the tribunal directions made it clear that I would take into account the applicant's financial circumstances.

23. The respondent relies mainly on the annual cost of running the property which she put at £36,378 including mortgage repayments of £26,628. That compares

with the annualised rent of £69,160 received by the applicant when the six bedrooms were let. Consequently even using the applicant's approach she was making a substantial profit that would not justify a reduction from the starting point.

24. However the decision in *Vadamalayan v Stewart* makes it clear that that approach should not be followed and that one must have regard to the landlord's financial circumstances as a whole. The applicant accepts that she is *"a professional landlord providing high quality accommodation in Wandsworth"*. Unfortunately she does not explain the extent of her property portfolio. The nearest that she comes to an explanation is when she writes that *"It is incorrect that I have 30+ properties: perhaps the Tenant is confused and meant to suggest 30 bedrooms"*. However even 30 bedrooms would indicate that the applicant owns between 5 and 8 properties in Wandsworth.

25. The applicant also refers to her debt when she writes: *"As the property has remained empty for 10 weeks and I have been paying a high mortgage of over £2,500 plus bills, I am now experiencing significant debt in excess of £100,000+"*. However that debt is not substantiated and in any event it appears to relate to the property alone.

26. The applicant also relies on the Covid pandemic in asserting that the rental market is at a standstill and that there is reduced demand for rental properties of this type in Wandsworth. Although I accept that the pandemic will have had an adverse impact on demand it seems more than likely that the market will eventually recover.

27. In her own words the applicant is a professional landlord and it is clear that she has a significant property portfolio. I am not persuaded that she suffers from financial hardship in the real sense. In those circumstances and in the light of the very clear steer of the Upper Tribunal in *Vadamalayan v Stewart* I do not consider that the respondent's financial circumstances justify a reduction from the starting point.

28. Consequently and for each and all of the above reasons I make the rent repayment orders set out in paragraph 1 of this decision. Those sums are to be paid to him within 28 days, the tribunal having no power to order payment by instalments.

Name: Judge Angus Andrew Date: 20 October 2020

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).