



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

Case Reference : **NAT/LON/00AF/HMG/2021/0004**

HMCTS : **V: CVPREMOTE**

Property : **162 Lambourne House, Apple Yard,
London SE20 8FX**

Applicants : **Ms Melanie Ann Bannon**

Representative : **In Person**

Respondent : **Mr Sergio Pereira**

Representative : **In Person**

Type of Application : **Application for a Rent Repayment
Order by Tenant**

Tribunal Members : **Anthony Harris LLM FRICS FCI Arb
Christopher Gowman**

**Date and Venue of
Hearing** : **5 May 2021 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **6 May 2021**

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: CVPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant telephoned into the hearing and the Respondent attended by video. The Applicant has filed a Bundle of Documents which totals 142 pages and the Respondent files a bundle of 52 pages.

Decision of the Tribunal

1. The Tribunal does not make a rent repayment order against the Respondents.
2. The Tribunal makes no order in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

3. By an application, dated 28 January 2021, the Applicant seeks a Rent Repayment Order (“RRO”) against the Respondents pursuant to Chapter 4 of Part 2 of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the leaseholder 162 Lambourne House, Apple Yard, London SE20 8FX.
4. On 23 February 2021, the tribunal gave Directions. Pursuant to the Directions, the Applicant and Respondent have filed Bundles of Documents.
5. A hearing was set for 5 May 2021 attended by both parties. No witnesses were called.

The Hearing

6. Both parties appeared in person at the hearing and gave evidence.

The Law

The Housing and Planning Act 2016 (“the 2016 Act”)

7. Section 40 provides (emphasis added):

“(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.”

8. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include the offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed HMO.
9. Section 41 deals with applications for RROs. The material parts provide:
 - “(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.
10. Section 43 provides for the making of RROs (emphasis added):
 - “(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).”
11. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):
 - “(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.
12. Section 44(4) provides (emphasis added):
 - “(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.”

13. Section 56 is the definition section. This provides that “tenancy” includes a licence.

The Housing Act 2004 (“the 2004 Act”)

14. Part 2 of the 2004 Act relates to the designation of areas subject to licensing of Houses in Multiple Occupation (HMO).

15. Section 72 specifies a number of offences in relation to the licencing of houses. The material parts provide (emphasis added):

“(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.

16. The London Borough of Bromley state that an HMO will require a licence if it is occupied by 5 or more tenants, or 4 or more if there is a live-in landlord, in 2 or more households and there is at least one kitchen bathroom or toilet shared by the tenants.

17. Under section 254 (2)(c) of the Housing Act 2004 the living accommodation must be occupied by those persons as their only or main residence...

The issues

18. In this case the issue is whether the flat was occupied by 4 persons or 5 persons as their only or main residence. It was common ground between the parties as to occupation by 4 persons with the status of a 5th person being in dispute. There was no dispute as to the licensing requirements for an HMO or as to the amount of rent which had been paid.

19. It was not in dispute that the Respondent did not live at the property and that the property did not have an HMO licence. The question was whether it was required to be licensed. The applicant must prove, beyond reasonable doubt, that the property was required to be licensed by reference to the number of occupiers for whom it was their only or main residence.

The Evidence

20. It is not in dispute that the Applicant, Tessa Martin and Serena Fray were tenants and had tenancy agreements. The 4th tenant is Sofia Pereira, who is the sister of the respondent, and who, according to the Applicant lived at the property with her fiancé, Marc Redl. The Respondent denies that Mr Redl lived at the property as his sole or main residence and that he visited from time to time.
21. Under clause 3 of the tenancy agreement between the Respondent and Ms Pereira the tenant agreed that no other persons will live at the property without the prior written permission of the landlord and under clause 4 no guests of the tenant may occupy the property for longer than one week without the prior written consent of the landlord. The Respondent gave evidence that he had given no permissions under clause 3 or clause 4. It was accepted that in September 2020 there was a period of 2 weeks when Mr Redl was living with Ms Pereira at the property during a period of quarantining following their return from holiday in Portugal.
22. The Applicant gave evidence that Mr Redl was living at the property and she said she had been told that Ms Pereira and Mr Redl had sold their flat and were living temporarily at the property while they arranged to get married and buy a house. These plans were interfered with by the Covid lockdown starting in March 2020.
23. The Applicant also produced various chains of social media messages with other tenants and also a group dealing with management issues within the flat. These messages are said to support the claim that Mr Redl was living permanently at the flat. In particular there is an exchange of messages concerning cleaning arrangements and the engaging of a new cleaner with the 4 tenants and Mr Redl all contributing. Some of the evidence is circumstantial or open to interpretation and some is hearsay.
24. In reply, the Respondent said that Mr Redl lived elsewhere and visited Ms Pereira mainly at weekends and at some other times. He produced an analysis of the messages to which Mr Redl was party and showed that these were all dated at weekends. The offer to contribute to cleaning was a gesture of goodwill.
25. The Respondent also produced documentary evidence that Mr Redl was a tenant of the respondent's father at another property which was more convenient for his work. The address is 34 Bartholomew Close, Wandsworth. The evidence consisted of a tenancy agreement dated 1 April 2019 on a rolling basis, a P60 to the end of the tax year April 2020 sent to Bartholomew Close, a copy of his driving licence at the

same address which had the date of issue redacted and a Notice of Coding from HMRC sent to Bartholomew Close. Lastly, an email from the London Borough of Wandsworth was produced showing that Mr Redl was on the electoral roll throughout 2020 at Bartholomew Close.

26. None of the tenants was on the electoral roll for 162 Lambourne Street.

The Tribunal's Decision

27. The tribunal has considered all of the evidence presented by both parties. The tribunal considers there are gaps in the evidence from both parties and notes that neither called any witnesses to support their version of events. However, the decision for the tribunal is whether it has been proved beyond reasonable doubt that Mr Redl occupied the property as his only or main residence.
28. The tribunal considers there is strong evidence that Mr Redl was in occupation for longer periods than the Respondent suggests. However, in weighing the evidence against the standard of proof required, the tribunal considers there is sufficient doubt raised by the documentary evidence submitted by the Respondent, unsatisfactory as it is in some regards, and by the analysis of the dates of messages relating to Mr Redl that it is not satisfied, beyond reasonable doubt that this was Mr Redl's only or main residence.
29. The tribunal therefore finds that the property is not an HMO required to be licensed within the London Borough of Bromley's licensing scheme, The Respondent is not in control of, or managing an unlicensed HMO and therefore the tribunal does not make a rent repayment order.

**A Harris LLM FRICS FCIArb
Valuer Chair
6 May 2021**

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.