



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

Case reference	:	LON/00AK/HMF/2019/0002 & 0011
Property	:	24 Cowper Gardens, N14 4NR
Applicants	:	1. Keith Goldsbrough 2. Robert Swart 3. Javan Nixon
Respondent	:	1. CA Property Management Ltd 2. Akinyele Latunji 3. Rebekah Latunji (in relation to Mr Goldsbrough only) 4. Timothy Gardner 5. Alik Gardner
Tribunal member	:	Deputy Regional Judge Martyński Ms S Coughlin MCIEH Mr C Piarroux JP
Date of hearing	:	30 April 2021 - By video
Date of decision	:	14 May 2021

CORRECTED DECISION

Decision summary

1. Mr Goldsbrough's application against the 1st, 2nd & 3rd Respondents is dismissed.
2. Rent Repayment Orders are made against Timothy and Alik Gardner (jointly and severally) as follows;

Goldsbrough - £5918.58
Swart - £5995.75
Nixon - £2,344.00

3. Mr & Mrs Gardner must additionally pay to the Applicants the fees that they have paid to the tribunal in respect of their applications which amount to £400.00.

These sums are payable within 28 days from the date of this decision.

Background

4. 24 Cowper Gardens ('the Property') was constructed as a two-storey, semi-detached, double-fronted house. It probably consisted of; a reception room and kitchen/diner on the ground floor with two bedrooms and a bathroom on the first floor. The Property has since been converted to include a bedroom in the attic, so that it is now three storeys, and to change the living room into two further bedrooms.
5. The freehold title to the Property is owned by Mr & Mrs Gardner. The Land Registry title document for the Property shows that the Gardners were registered as the proprietors on 2 November 2017.
6. On 7 November 2017, the Gardners entered into an agreement with CA Property Management Limited ('CAPM') by which they let the property to CAPM for a term of five years from 1 December 2017. We highlight the following terms important terms of that agreement;
 - (a) The Landlord agrees to be responsible for and bear the cost of insuring the premises in respect of buildings, and that the insurance covers is the appropriate cover to the letting of the property. [clause 1]
 - (b) The premises asked to be used for subletting as residential accommodation. The subletting will create easy and shorthold tenancy as defined in section 20 of the Housing act 1988 or license in accordance with occupation by licensing residents. [clause 2]
 - (c) The tenant is not permitted to make any structural or internal modifications to the premises without prior written consent of the landlord. [clause 3]
 - (d) The landlord will be liable for maintenance of the internal and external structure, gas, electrical systems and heating. [clause 6]
 - (e) The landlord shall provide a copy of the buildings insurance schedule. [clause 7]
 - (f) The landlord is responsible for the safety of the electrical and gas supply to the property. The landlord is liable for the cost of obtaining a valid gas safety certificate (CPD12), A satisfactory NICEIC certificate and energy performance certificate EPC including any necessary remedial works required. The tenant will carry out these tests and invoiced the landlord accordingly if the above is not done within one week of letting the property. [clause 9]

- (g) The landlord agrees to provide fittings and furniture as per furniture and fitting schedule. [clause 11]
- (h) Any vacant period that the property is deemed uninhabitable, all rents will be suspended until all of the major works; Gas Electricity & Roof identified works/repairs have been carried out. [clause 14]
- (i) All emergency maintenance works which are not carried out by the landlord within a specified timescale will be carried out by the tenant and will then be invoiced accordingly for those works. NB: Gas, Electricity & Roof Structure.

The applications

Mr Goldsbrough

7. Mr Goldsbrough's application for a Rent Repayment Order ('RRO') was submitted to the tribunal in January 2019. The application for an RRO was made on the following grounds;
 - (a) Operation/control of an unlicensed House in Multiple Occupation ('HMO') by the Gardners [s.40 Housing Act 2016 & s.72(1) Housing Act 2004
 - (b) Harassment and illegal eviction by CAPM [s.40 Housing Act 2016 & section 1(2), (3) or (3A) Protection from Eviction Act 1977.
8. Following the tribunal's decision to restrict Mr Goldsbrough's application based on Operation/control of an unlicensed HMO to a claim against only CAPM, the matter went to the Upper Tribunal which decided that the claim could be pursued against the Gardners in addition to CAPM. The proceedings were remitted to the tribunal to determine the case.
9. Akinyele & Rebekah Latunji were later added as Respondents to the application in their capacity as Director/Secretary of CAPM on the alleged grounds that they were responsible for the Harassment/Eviction carried out by CAPM and pursuant to section 251 Housing Act 2004. During the hearing Mr Penny, representing the Applicants, accepted that this should in fact refer to S1.(6) Protection from Eviction Act 1977.

Mr Swart

10. Mr Swart's application was submitted to the tribunal in February 2019. He sought an RRO against the Gardners on the same grounds as Mr Goldsbrough and his application was joined with Mr Goldsbrough's and dealt with at the same time by the Upper Tribunal.

Mr Nixon

11. Mr Nixon's application was made in December 2019. He sought an RRO against the Gardners on the same grounds as Messrs Goldsbrough and

Swart and this application was subsequently joined to the other applications.

The proceedings and the claims

12. The final hearing of these applications was somewhat delayed by a combination of the appeal to the Upper Tribunal and the difficulties caused by the Covid-19 pandemic.

13. At the final hearing, the Applicants' claims stood as follows;

Goldsbrough (failure to licence) – 12 months @ £550 per month (08.12.17-07.12.18) = £6,600 less arrears of £131.42 – total £6468.58

Goldsbrough (harassment) – 08.12.17-20.06.18 @ £550 per month – total £3516.96

At the final hearing, Mr Penny, representing the Applicants, made it clear that he was not seeking double recovery of these sums.

Swart – 12 months @ £550 per month (5.12.17-4.12.18) = £6600.00

Nixon – 3 months and 10 days (20.9.18-31.12.18) – total £2,344.00

Evidence

14. For the Applicants, we had evidence by way of the Applicants' application forms, two witness statements from Mr Goldsbrough plus various documents from all three Applicants. In addition, all of the Applicants gave evidence to the tribunal at the final hearing.

15. Witness statements were made by Mr Latunji, Timothy Gardner and Aliko Gardner who, in addition, gave evidence at the hearing. Various documents were supplied in support of the Respondents' case.

Issues contested between the parties

16. There was no dispute regarding the following matters;

(a) That if there were five or more occupants in the Property (not forming a single household), the Property would require a license from the local authority

(b) If the Property required licensing and was not licensed, an offence would be committed

(c) The Property was occupied by the Applicants for the durations set out above at the rents set out above

Summary of the Applicants' evidence

17. Mr Goldsbrough first of all claimed that he was harassed by text from Mr Latunji. There is an exchange of texts (which Mr Goldsbrough said dated from November or December 2018) where Mr Latunji is trying to get

access to Mr Goldsbrough's room to show tenants around. Mr Goldsbrough says his is very ill with flu and says he may not be able to get out of bed. The replies to that from Mr Latunji are; *"I'm sure you are and I understand that. But we need your room for 5 minutes just to show somebody so perhaps you could go to the bathroom or kitchen. We need to re rent the room I'm afraid"*, and; *"Ok just please note that some may come into your room at 10.30 tomorrow. Will knock on the door you"*.

18. It was further claimed that Mr Goldsbrough was harassed by way of failure to deal with a leak of water into his room. The text exchange between Mr Goldsbrough and Mr Latunji starting on 9 June 2018 is as follows;

G: *"Hi, I thought it was a one off but I've come home to a soaking wet bed again due to the roof leaking. It getting worse!"*.

L: *"Ok shall I come over now?"*.

G: *"It's stopped for the moment. I've just got home from work. ASAP will be fine"*.

L: *"On Monday or Tuesday"*

L: *"Maybe ask them upstairs also"*

G: *"Ok thanks. There seems to be more water than last time"*

Then on 19 June;

G: *"Hey, when is someone coming to fix my roof?"*

G: *"It was meant to be last week. I've been staying at a friends house, I'm concerned about it. It needs repainting."*

L: *"I don't know what your talking about"*

G: *"Then go back through our messages!!"*

Then on 20 June;

L: *"Just Move out"*

L: *"Please send an email confirmation"*

G: *"Water is coming through the roof."*

G: *"Why are you being so unprofessional?"*

G: *"Can you send me the landlords number please"*

On 8 July;

G: *"You still haven't sorted this"*

19. Mr Goldsbrough alleges, as a further act of harassment, that Mr Latunji threw some of his clothes out on to the steps of the Property. He assumed that this had been done by Mr Latunji as previously Mr Latunji had seen some of his clothes drying on the radiator and Mr Latunji had told him, rather forcefully, not to dry his clothes in that way.
20. As another act of harassment, Mr Goldsbrough alleges that, whilst Mr Latunji had sent him an email on 2 October 2018 stating that a section 21 Housing Act 1988 notice had been delivered to his room, he had received no such notice.
21. Part of the evidence submitted by the Applicants was a floor plan of the Property showing the various bedrooms on the ground floor, first floor and attic.
22. In his oral evidence to the tribunal, Mr Goldsbrough stated that when he moved into the Property, there were five bedrooms. He was the first to move in and occupied a room on the first floor. He stated that there were five or more people in occupation within 2/3 weeks of him moving in. He later said that the other rooms in the property were definitely occupied within the first month of him moving in. Mr Goldsbrough confirmed that the floor plan of the Property produced by the Applicants was accurate.
23. Mr Swart said in his oral evidence that when he moved in (in early December 2017), there were five or six other people living there. He said that as far as he could recall, during his time in the Property there were five or 6 people living there. Mr Swart described the layout of the Property as per the plan referred to earlier. He occupied one of the rooms on the first floor and described the other occupants who were; individuals occupying the two ground floor rooms and s two Romanians living in the attic room. At one point one of the Romanians moved out for a while but returned later.
24. Mr Nixon, in his application form stated; "*There were a total of 6 tenants in the house, including me.*" In his oral evidence, he confirmed the plan of the Property and stated that, when he moved into the Property on 20 September 2018, there were "five or six" people living there. He did not recall a time when there were fewer than five people in occupation in his time there.

Summary of the Respondents' evidence

25. In his witness statement, Mr Latunji made no comment regarding the number of occupants in the Property. He described the tenancy agreement with the Gardners stating that CAPM operated a 'rent-to-rent' business. He stated;

We consider ourselves to be the landlord and the person having control and managing the property for licensing purposes under Part 2 of the Housing Act 2004. We do not think the owners fall into this definition as they have leased the property to us. We act as the landlord and responsible person with full day to day control over the property.

26. He denied throwing Mr Goldsbrough's clothes out of the Property.

27. As to the leaking issue, Mr Latunji made the point (which was accepted in the hearing) that Mr Goldsbrough's room was under the attic room. Therefore, when Mr Goldsbrough referred to the 'roof', he must have meant the ceiling in his room. There was therefore no leak from the roof, it was from the room upstairs. He said that he went to inspect and suspected that there may have been a leak from the shower but that nothing was ever confirmed.
28. Mr Latunji stated that he regretted his text saying 'just get out'. He explained it was sent in the heat of the moment after he had got 20 or 30 repeated phone calls from Mr Goldsbrough.
29. Mr Latunji denied that the Property required a licence from the local authority as it was not a property let to five or more persons.
30. In his oral evidence, on the subject of the leak into Mr Goldsbrough's room, Mr Latunji added that there was in fact another text from Mr Goldsbrough before his one saying '*Just Move out*' which stated; "*The issue is making my room unfit to stay in...It needs to be sorted or I'm moving out*". This gave context to Mr Latunji's text.
31. Other than this, for the most part, Mr Latunji largely refused to answer questions put to him other than to explain that when he referred to 'the Landlord' when dealing with tenants, he meant CAPM.
32. Mr & Mrs Gardner made witness statements which mirrored each other. In those statements they denied that they were operating or controlling an unlicensed house and that an HMO licence is not required for a property occupied by four or less tenants. They stated that they had no control or operation over the Property.
33. Both Mr & Mrs Gardner largely refused to answer questions put to them in the hearing. However, Mr Gardner confirmed that he had arranged to change the boiler at the property when Mr Goldsbrough had moved in and that he had converted the ground floor room into two.

Decision

34. Mr Goldsbrough alleged that CAPM had committed an offence under s.1(3A) Protection from Eviction Act 1977 which reads;

3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b) he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

35. We do not consider that any offence has been made out on the standard of beyond reasonable doubt.
36. There is no evidence that Mr Latunji or CAPM was responsible for Mr Goldsbrough's clothes being thrown out of the Property.
37. As to the demand for access to Mr Goldsbrough's room when he was unwell, whilst this may have been an act likely to interfere with peace and comfort, there is no evidence that Mr Latunji knew or had reasonable cause to know that this would cause Mr Goldsbrough to give up occupation (he was leaving shortly in any event).
38. So far as the leak is concerned, there is no evidence that this was a failure to repair so as to cause Mr Goldsbrough to leave. Mr Goldsbrough incorrectly referred to a leak from the roof which no doubt confused matters. It seems to us that the problem was more likely than not to be down to the fault of the tenants in the attic. There is clear evidence from the texts that Mr Latunji is, at least at first, willing to investigate the issue. Mr Latunji says that he went to investigate and could not find anything and this could well be correct if it were the fault of the tenants in the attic.
39. It was submitted, on Mr Goldsbrough's behalf that the act of 'sending rude and unhelpful' messages by Mr Latunji was an offence under section 1.(3A). We do not consider that there is sufficient evidence that any of the messages, or a combination of them would amount to an offence.
40. Having made these findings, we do not need to go on to consider whether a Rent Repayment Order can be made against the Latunji's by way of s.1(6) of the Protection from Eviction Act 1977.
41. We are satisfied, beyond all reasonable doubt, that the Property was occupied by five or more persons from at least 8 January 2018 until 31 December 2018. The Applicants all gave clear and credible evidence of occupancy during their tenancies and their evidence as to occupancy was not contested by any of the Respondents.
42. We have taken 8 January 2018 as the starting point given the uncertainty in Mr Goldsbrough's evidence of the occupancy at the start. Whilst Mr Swart gave evidence that there were five or six people living there when he moved in early December, this, to some extent conflicts with Mr

Goldsbrough's evidence. However, on the totality of the evidence of Messrs Goldsbrough and Swort, we are satisfied beyond reasonable doubt that by 8 January 2018, there were five or more occupants.

43. Accordingly, on our findings, the Property was a House in Multiple Occupation and required a licence. There is no dispute that the Property was not licenced nor that it would have required one if occupied by five or more individuals.
44. Section 72(1) Housing Act 2004 provides that a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed.
45. Section 263 of the 2004 Act defines a person having control as the person who receives the rack-rent of the premises, a rack-rent being not less than two-thirds of the full net annual value of the property.
46. Clearly, Mr & Mrs Gardner are in receipt of a rack-rent (as is CAPM). The Upper Tribunal in the case of *Rakusen v Jepsen & Others* [2020] UKUT 0298 (LC) confirmed the established position that more than one landlord could be in receipt of rack rent at the same time. It follows from this, that the Gardners, even as superior landlords, can commit an offence of having control of an unlicensed HMO.
47. We have found that the Property was a licenseable HMO during the majority of the period claimed for by the Applicants. There is no dispute that it was unlicensed. There is no dispute that the Gardners were in receipt of a rent. There is nothing in law to prevent more than one landlord being in receipt of a rack rent. The Gardners were therefore in receipt of a rack rent for the Property and have accordingly committed an offence pursuant to section 72(1) of the 2004 Act.
48. Under the Housing Act 2016, A Rent Repayment Order can be made against a landlord who has committed an offence under section 72(1) of the 2004 Act.
49. The next question therefore is whether a Rent Repayment Order can be made only against a tenant's immediate landlord or whether such an order can be made against a superior landlord in this case, the Gardners.
50. The Upper Tribunal in this case and in the subsequent case of *Rakusen v Jepsen & Others* [2020] UKUT 0298 (LC) has made it clear that a Rent Repayment Order can be made against a superior landlord where that superior landlord has committed an offence under section 72(1) of the 2004 Act.
51. At the hearing, Mr & Mrs Gardner were told by the tribunal that;
 - (a) There were statutory defences to the offence
 - (b) That they were entitled to make representations to the tribunal as to the amount of any Rent Repayment Order made by the tribunal if we found that there were grounds to make such an order and

that these representations could include details of their financial circumstances.

Mr & Mrs Gardner declined to make any submissions or to give any evidence in respect of either of these matters.

52. In deciding the amount of the Rent Repayment Orders, we did not have any starting point that we worked from or to.
53. We do not consider that there was any relevant evidence as to the conduct of the Applicants, as tenants of the Property, or otherwise to affect the amount of the order.
54. We consider that Mr & Mrs Gardner did have some actual control over the Property and are rightly liable in respect of the failure to licence. It is clear from the terms of their contract with CAPM that they were aware of the manner in which the Property was to be used. They followed Mr Latunji's approach in not putting forward any evidence on the question of occupation and simply alleging that the Applicants could not prove their case on this issue.
55. In the circumstances, we conclude that the order should be for the full amount of the rent by the Applicants for the duration of the time that the offence was being committed by the Gardners. The awards have been calculated as follows:

Goldsbrough 11 months x £550 = £6050; less arrears of rent
£131.42 = £5918.58

Swart 11 months x £550 = £6050; less 3 days (5,6 & 7
January 2018) £54.25 = £5995.75

Nixon 3 months and 10 days x £550 = £2344.00

56. The Applicants have been successful in their applications against Mr & Mrs Gardner and therefore are entitled to have their fees paid by the Gardeners.

**Deputy Regional Tribunal
Judge Martyński**

**Date: 14 May 2021
Corrected: 18 May 2021**

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).