



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

**Case Reference** : **LON/00AM/HMF/2021/0031**

**HMCTS** : **V: CVPREMOTE**

**Property** : **Flat 22, Catherwood Court, Murray Grove, London N1 7NN**

**Applicant** : **Hari-Vamsa Patel**

**Representative** : **In person**

**Respondent** : **Waat Properties Limited**

**Representative** : **Mrs Xin Wang and Mr Yoann Franck Turpin (directors)**

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

**Tribunal Member** : **Judge Robert Latham  
Steve Wheeler MCIEH**

**Date and Venue of Hearing** : **19 July 2021 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **26 July 2021**

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**DECISION**

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**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: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The papers which the Tribunal has considered are specified at paragraph 2 below.

## **Decision of the Tribunal**

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £5,085.72. The said sum is to be paid by 13 August 2021.
2. The Tribunal determines that the Respondent shall also pay the Applicants £300 in respect of the reimbursement of the tribunal fees paid by the Applicant. The said sum is to be paid by 13 August 2021.

## **The Application**

1. By an application, dated 29 January 2021, the Applicant seeks a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the leasehold owner of Flat 22, Catherwood Court, Murray Grove, London N1 7NN (“the Flat”). The Applicant seeks a RRO of £5,085.72 which is 100% of the rent which he paid during the period of his tenancy, namely 29 February to 3 September 2020.
2. On 8 February 2021, the Tribunal gave Directions. Pursuant to the Directions:
  - (i) The Applicant has filed a Bundle of Documents (100 pages) and a Reply to The Respondent’s Case (14 pages). Reference to the first bundle are prefixed by “A1.\_\_\_\_” and to the second bundle by “A2.\_\_\_\_”.
  - (ii) The Respondent has filed a Bundle of Documents and a Response to the Applicant’s Reply (31 pages). The Respondent has also filed witness statements from Mr Steven Chang and Mr Amine Hamida who were tenants at the material time. The Respondent also filed a Response to the Applicant’s Reply (p.5). Reference to the first bundle are prefixed by “R1.\_\_\_\_” and to the second bundle by “R2.\_\_\_\_”.

## **The Hearing**

3. The Applicant, Mr Hari-Vamsa Patel, appeared in person. He gave evidence. He is aged 30 and is a self-employed programmer working with start-up businesses. At 10.50, his internet connection failed. With the agreement of all the parties, he then joined by telephone. Mr Patel initially objected to the tribunal having regard to the Respondent’s Response to his Reply which had only been filed on 16 July and for which no provision had been made in the Directions. We were satisfied that the Respondents would have been able to give evidence on the matters raised in this document in any event. Mr Patel had also sought the costs of making the application in the sum of £5,730.72. We informed him that this is a no costs jurisdiction, and that penal costs could only be sought pursuant to Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property

Chamber) Rules 2013. There was no evidence of unreasonable conduct on the part of any party in respect of their conduct of this application.

4. The Respondent landlord company was represented by Mr Yoann Franck Turpin and his wife, Mrs Xin Wang. They are the two directors of the Respondent landlord. Mrs Wang was born in China. She moved to Holland in 2006 and arrived in the UK in 2011. She is a financial analyst for a bank. She has been on sick leave suffering from stress since May 2019. The Covid-19 pandemic has been extremely difficult for her. She has found the current proceedings stressful and her evidence was confused. Mr Turpin is French. He describes himself as an “entrepreneur” working with start-up businesses. His evidence was much clearer. However, Mrs Wang has taken the primary responsibility for managing the Flat. They have two children aged 3 and 5.

5. The Respondents adduced evidence from Mr Hamida and Mr Chang:

(i) Mr Chang rented Room 2 between 4 November 2019 and 3 September 2020 paying a rent of £900 pm. He is aged 37 and is a product designer for a health tech company. His recollection was not good. He was unsure about the rent that he paid and the precise date on which he vacated his room. He stated that Mr Patel’s conduct became intolerable and referred to an incident on 13 August 2020 when someone, who he believed to be Mr Patel, kicked on his door at 4am. The Tribunal accepted that living conditions became strained towards the end of the tenancy. He considered it to be “unbelievable” that Mr Patel should be seeking a RRO.

(ii) Mr Hamida rented Room 1 between 9 November 2019 and 3 September 2020 paying a rent of £1,000 pm. Between 12 March and 27 August 2020, he was locked down in Tunisia. He is aged 37 and is an IT engineer. Mrs Wang agreed to reduce the rent for two months. He described Mrs Wang as being very understanding, reasonable and helpful. He had no desire to apply for a RRO.

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

6. Section 40 provides:

“(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.”

7. 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 95(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed house.

8. 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.

9. Section 43 provides for the making of RROs:

“(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).”

10. 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.

11. Section 44(4) provides:

“(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.”

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

**The Housing Act 2004 (“the 2004 Act”)**

13. Part 3 of the 2004 Act relates to the selective licensing of residential accommodation. By section 80, a local housing authority (“LHA”) may designate a selective licencing area.

14. Section 95 specifies a number of offences in relation to the licencing of houses. The material parts provide:

“(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.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time -

(b) an application for a licence had been duly made in respect of the house under section 87,

and that ... application was still effective (see subsection 7).

15. Section 263 provides:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

### **The Background**

16. Mrs Wang and Mr Turpin live in Islington. They own a property in Ecclesbourne Road. Their first experience of letting property arose in April 2018. They moved into temporary rented accommodation so that they would fall within the catchment area of the preferred school for their children. They let out their home using letting agents who both let and managed the property. It was let to a number of tenants.
17. On 29 October 2019, they purchased the Flat at 32 Catherwood Road. The Flat is on the top floor of a four storey purpose built block of flats which is owned by the London Borough of Hackney (“Hackney”). At some stage the flat has been reconfigured. It initially had two bedrooms, but the living room has been used as a third bedroom. They purchased it in the name of the Respondent Company because it was financially expedient to do so.
18. Mrs Wang and Mr Turpin arranged for Aads Property Management Services to find tenants. However, this was a letting only arrangement. They arranged for a new boiler to be installed. On 4 November 2019, Mr Chang was granted a tenancy of Room 2. On 9 November, Mr Hamida was granted a tenancy of Room 1. There was a third tenant who left in February 2020.
19. Mr Patel’s tenancy started on 29 February 2020. It was for a term of 6 months and five days at a rent of £825pm. The tenancy ended on 3 September 2020, the same date upon which the tenancies granted to Mr Chang and Mr Hamida were due to come to an end. Mr Patel also paid a deposit of £825. Mr Patel was required to pay the total rent of £5,085.72 up front because he was self-employed.
20. The letting was arranged by Aads Property Management. Mr Patel was provided with a tenancy agreement with a number of unusual aspects (at A1.50-59). It is dated 8 November 2019. It names Mr Patel, Mr Chang and Mr Hamida as tenants. However, it is clear they are each granted separate tenancies of their respective rooms at different rents. The parties signed

the agreement on different dates: Mr Turpin: 8 November 2019; Mr Chang: 13 November 2019; Mr Hamida: 14 November and Mr Patel: 23 February 2020. The “Tenant Witness” was “Summ” from Aads Management Services, who signed the document on 15 November 2019.

21. Mr Patel was required to pay a deposit of £825 which was not placed in a tenant deposit scheme. The Respondent suggested that the deposit was not placed in a rent deposit scheme because of Covid-19. However, the first lockdown did not start until 23 March 2020.
22. Mr Patel became increasingly concerned that the Respondent was not complying with its statutory obligations as landlord. On 18 June 2020 (at A1.85), He wrote to Mr Turpin complaining that his deposit had not been deposited in an authorised scheme. He sought the maximum financial penalty of three times the deposit. On 7 July, the parties reached an agreement (at A1.86) whereby the Respondent agreed to pay Mr Patel £1,500 in respect of this breach.
23. Having resolved this concern. Mr Patel wrote a number of emails relating to the gas and electrical installations and the fire precautions. On 11 July 2020 (at A1.31), he raised concerns about the gas installations and the fire precautions. On 24 June, he took a photo of the unsatisfactory wiring above the gas hob in the kitchen. He wrote again on 14 July 2020 (at A1.32). On 25 July, he wrote about the need for an HMO licence (at A1.37).
24. Mrs Wang did not respond kindly to these complaints. She took the view that the payment of £1,500 should have satisfied all his complaints. She accused Mr Patel of being a “difficult tenant” and being “greedy”. She offered Mr Patel the opportunity to surrender his tenancy. Mr Patel felt that he was hitting a brick wall. The Respondent only arranged the checks after he had left.
25. We accept that Mr Patel had raised legitimate matters of concern. There is an electrical report at A1.90-98 dated 29 August 2020. Seven defects were identified which were “potentially dangerous” and required urgent remedial action. This included the incorrect polarity on a 13 amp socket outlet.
26. Mr Chang referred to an incident on 13 August 2020 when someone, whom he believed to be Mr Patel, kicked on his door at 4 am. He stated that he reported it to the police and the council. A footprint was left on the door. He says that he feared violence from Mr Patel and left after a few days. The landlord waived rent of £100. In response to the Tribunal, Mr Chang stated that he could not be sure that it was Mr Patel. Mr Patel denied this incident. He stated that there had been occasions when Mr Chang had had showers after midnight and had used his hair dryer. The Tribunal accepts that relationships became strained towards the end of the tenancy. We are not satisfied that Mr Patel was responsible for the alleged incident on 13 August.

27. All the tenants left on or about 3 September 2020. In anticipation of them leaving, the Respondent advertised the rooms for three separate lettings (see A2.11-12). Whilst the landlord made inquiries about an HMO licence, no application was made until 21 February 2021.

### **Our Determination**

28. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95(1) of the 2004 Act, having both “control of” and “managing” an unlicensed HMO. The offence has been committed throughout the period that the Mr Patel was a tenant. In October 2018, Hackney introduced an additional licencing scheme requiring all premises to be licenced if there are three or more unrelated tenants living in the property.
29. The Respondent offered a number of explanations as to why the property had not been licenced. Mrs Wang suggested that it did not require a licence whilst Mr Hamida was self-isolating in Tunisia. We do not accept this. Throughout the period November 2019 to September 2020, the Flat was let to three people all of whom were unrelated. Mr Turpin suggested that he had done a search of the Islington website and had not realised that Hackney had its own additional licencing scheme. On 25 July 2020, Mr Patel warned the Respondent that it needed a licence. No application for a licence was made until February 2021. On 1 September 2020, the Respondent was advertising separately the three rooms in the Flat.
30. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that the Applicant was not in receipt of any state benefits and paid £5,085.72 up front at the commencement of the tenancy.
31. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
- (i) The conduct of the landlord.
  - (ii) The conduct of the tenant.
  - (iii) The financial circumstances of the landlord.
  - (iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.
32. The Tribunal has had regard to the recent decisions of the Upper Tribunal, and in particular *Vadamalayan v Stewart* [2020] UKUT 183(LC); [2020]



HLR 38 and *Ficcara v James* [2021] UKUT 38 (LC) Having regard to all relevant factors and our findings above, we have concluded, that we should make a RRO in the sum of £5,085.72, namely 100% of the rent paid.

33. We have had particular regard to the following matters:

(i) The conduct of the landlord. We accept that two of the tenants had no complaints about the landlord. The Respondent landlord is owned and run by two professional people. They have taken an informed decision to put the leasehold title in the name of a limited company. They had previously let their own property. A simple search of the government's website would have alerted them to their obligations as landlord. They should have provided their tenants with the "How to Rent" booklet. This gives details of the relevant licencing schemes. They should have provided an Energy Performance Certificate. They should have ensured that the deposit was placed in a government-approved scheme. The landlord should also have checked the fire precautions and that the gas and electrical equipment was safely installed and maintained. The fact that a new boiler had been installed did not absolve the duty on the landlord to check the gas cooker. There were a number of defects to the electrical installations. This was a commercial letting. The Respondent was collecting £2,750 per month in respect of a former two bedroom council flat in Hackney. The legislation is intended to penalise landlords who do not comply with their statutory responsibilities.

(ii) The conduct of the tenant. We do not make any adverse finding relating to the conduct of the tenant. He was entitled to enforce his rights as a tenant. Mrs Wang and Mr Turpin should not have treated him as a trouble maker. He was entitled to remain in occupation until his tenancy expired. The attitude of Mrs Wang, namely "if you don't like it, then leave" was not acceptable.

(iii) The financial circumstances of the landlord. The Respondent is a limited Company. Its sole asset is this valuable flat which has appreciated in value.

34. The Applicant has paid tribunal fees of £300. We are satisfied that he should be able to recover these. His claim has been successful.

### **The Next Steps**

35. The Tribunal has made a RRO in the sum of £5,085.72 and has ordered the reimbursement of tribunal fees of £300. The total sum payable is £5,385.72.

**Judge Robert Latham**  
**26 July 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.