



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

Case reference : **LON/00AM/HMF/2021/0083**

Property : **121 Ridley Road, London, E8 2NH**

Applicant : **Anna Young (1) Leila al-Mitwally (2)
Max Thomas (3)**

Representative : **In person**

Respondent : **Helen Parke**

Representative : **In person**

Type of application : **Application for a rent repayment order
by tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016**

**Tribunal
member(s)** : **Judge H. Carr
Ms Alison Flynn**

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

Date of hearing : **31st August 2021**

Date of decision : **6th September 2021**

DECISION

Covid-19 pandemic: description of hearing

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum £28,946.46.
- (2) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees, totalling £300.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).
2. The applicants seek an RRO of £29,379.96 which comprises 12 monthly rent payments of £2448.33 per calendar month for the period 17th September 2019 to 16th September 2020.
3. The applicants allege that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s,72(1) of the Housing Act 2004.
4. The applicants made their application on 23rd March 2021 and directions were issued on 19th April 2021.

The hearing

5. Ms Young and Ms al-Mitwally attended the hearing. Mr Thomas had indicated that he would not attend but that he was to be represented by Ms Young.
6. The respondent landlord Ms Helen Parke also attended the hearing.
7. The respondent made an application for an adjournment. She said that she needed an adjournment because all of her papers were with the TDS adjudicator and had not been returned. Without those papers she was not able to provide a response to the application.
8. The applicants said that they would shortly be leaving the country, that the respondent had had sufficient time to get her papers together and that she had frequently delayed during the TDS adjudication.

9. The tribunal determined not to allow an adjournment. It did however allow the respondent to put her case.
10. The reasons for its determination are as follows:
 - (i) The tribunal avoids delay other than where it is in the interests of justice to allow a delay.
 - (ii) The respondent has failed to engage in the tribunal process prior to asking for an adjournment.
 - (iii) The respondent has had sufficient time to have her papers returned from the TDS adjudication.
 - (iv) The tribunal considers that the respondent should have kept copies of any papers she submitted.
 - (v) The applicants will be leaving the country shortly and a delay will be inconvenient to them.
 - (vi) The tribunal does not in any event consider that the respondent's papers submitted to the TDS will be of assistance to her. The TDS dispute is quite distinct and the tribunal notes that the applicants received their deposit back in full minus 2 days rent.

The background

11. The property is a three-bedroom maisonette over two floors of a converted terraced house which also includes a separate basement flat. There is a communal kitchen, living room and bathroom.
12. The property is situated in the London Borough of Hackney, which operates an additional licensing scheme that requires any property with

3 or more unrelated sharers to be licensed. The scheme came into force on 1st October 2018 and is ongoing.

13. The applicants lived in the property as a group of unrelated individuals and formed 3 separate households. The applicants had the benefit of a joint assured shorthold tenancy. The tenancy began on 17th September 2019. It was for a fixed period of 12 months with provision for it to continue on a monthly periodic basis. .
14. The applicants paid rent of £2448.33 per calendar month. They paid a deposit of £2448.33.
15. The respondent is named on the tenancy agreement as the landlord and is stated to be in receipt of the rent.
16. The tenancy agreement indicated that the property was managed by London People Property Services although an email from the agency dated August 21st 2020 stated that the agency did not manage the property and that all rent payments are made directly to the landlord's account.
17. Mr Thomas, on behalf of the applicants, emailed the agents with documents to renew the tenancy, repair requests and a request for a rent reduction due to Covid 19 on 18th August 2020. The following day, in a phone call the landlord informed the tenants that they were expected to vacate the property by the end date of their initial AST.
18. The property was advertised on Rightmove as available with a move in date of 17th September 2021.
19. On 4th September 2020 the applicants agreed voluntarily to leave by 16th October 2020 and confirmed this via an email to the agents. They vacated the property on 17th October 2020.

The issues

20. The issues that the tribunal must determine are:
 - Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - Does the landlord have a defence of a reasonable excuse?
 - What amount of RRO, if any, should the tribunal order?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of
 - The conduct of the landlord
 - The financial circumstances of the landlord:

- The conduct of the tenant?
- Should the tribunal refund the applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

- (4) The applicants provided confirmation from the London Borough of Hackney that the property was not licensed and that no application for a licence had been received. That email is dated 22nd October 2020, and was sent by the Business and Technical Support Team for Private Sector Housing.
- (5) The applicants asserted that they occupied the property as three individual households and that it was their only or main residence.
- (6) The respondent conceded that the property required licensing and it was not licenced.

The decision of the tribunal

21. The tribunal determines that the respondent has committed the alleged offence.

The reasons for the decision of the tribunal

22. The tribunal relies on the evidence from the applicants, the information from the local authority and the concessions of the respondent.

Does the respondent have a reasonable excuse defence?

23. The respondent said only that she did not know that the property required licensing.

The decision of the tribunal

24. The tribunal determines that the respondent has failed to establish a defence of reasonable excuse.

The reasons for the decision of the tribunal

25. A lack of knowledge of licensing does not constitute a reasonable excuse. It is incumbent upon a landlord to find out his legal responsibilities. The respondent is not a new entrant to the sector

Should the tribunal make an award of a RRO? If so, for what amount?

26. The applicants told the tribunal that their claim is for the 12 month period from 17th September 2019 to 16th September 2020.
27. The applicants provided evidence that rent had been paid over the relevant period. The whole of the first month's rent was paid from Ms Young's bank account but the other two applicants contributed their share and from October 2019 onwards the individual applicants had evidence of their rent payments made directly to the respondent.
28. Ms Young received Universal Credit from 23rd August to 22nd September 2020 This included £593.13 pence for housing costs which was received on 29th September 2020 and used for the final rent payment which falls outside of the period claimed.
29. The parties agreed that the respondent was responsible for council tax and the water charges. The applicants paid the other outgoings. The respondent provided evidence of water charges of £433.50. The respondent provided a copy of an invoice dated 26/4/21.
30. She was not able to provide evidence of payment of council tax during the period in question.

Quantum

31. In determining the amount of the award the tribunal heard evidence about
- (i) The conduct of the landlord
 - (ii) The conduct of the tenants
 - (iii) The financial circumstances of the landlord.

The conduct of the landlord

32. The applicants argue that the respondent's failure to get an HMO license demonstrates a wider disregard for HMO licensing regulation and private rental regulation in general. This is despite the fact that the landlord owns several properties in Hackney, including the property in question and the basement flat in the house and can therefore be considered a professional landlord.
33. The tribunal asked the respondent how many properties she owned. She said that she owned the maisonette and the lower ground floor flat as well as a further property in Dalston. She said that her other property holdings were personal and she would not disclose them.
34. The applicants allege that they were not provided with a copy of the Gas Safety Certificate on or before the start of their tenancy and that they have not seen evidence of an Electrical Installation Condition Report, nor a Fire Risk Assessment.
35. The respondent said that she had a Home Care contract with British Gas which included Gas Safety Certification. She provided a copy of the Home Care contract but could not provide a copy of the Gas Safety Certificate for the period in question.
36. The applicants asserted that they had not seen the Gas Safety Certificate. The respondent said she had left it on the work surface in the kitchen.
37. The respondent said that there were battery smoke alarms in the property a fire extinguisher and a fire blanket. She was unclear about whether the doors were fire doors.
38. The applicants agreed there were three smoke alarms. They did not know of other fire safety equipment in the property.
39. The applicants also highlight the following in relation to the landlord's conduct:
 - (i) The attempt by the respondent to evict the applicants in breach of the tenancy agreement, without a section 21 Notice and in breach of the government's 2020 coronavirus regulations. The respondent denied that she had sought to evict the applicants but also made reference to scaffolding for repairs.

- (ii) The lack of upkeep, repairs and maintenance carried out by the respondent despite frequent requests from the applicants. The applicants say that during the tenancy they repeatedly requested various repairs which were ignored or not carried out. The vast majority of the requests were made via phone call with the respondent but some were made via emails to the agents.

- (iii) The lack of accessibility of the respondent who could not be contacted by email and which meant that making requests in relation to the property was difficult.

The conduct of the tenants

- 40. The applicants state that their conduct was exemplary. The tenants have complied with all of their tenancy terms. They paid all rent required. They were polite and helpful when necessary.

- 41. The landlord gave evidence about the conduct of the tenants. The evidence was neither concise nor coherent. The respondent appeared to make allegations about the state that the applicants left the property. her main concern was rubbish in the back garden , what she called a swimming pool, and fairy lights which she said were sharp and constituted a danger.

- 42. The applicants said that the garden was in the same condition that it had been when they entered the tenancy. They point out that the TDS did not reduce the amount of the deposit returned to them because of conditions. They had not signed an inventory/condition check when they moved in and there was no checks when they moved out.

- 43. The respondent made further allegations regarding noise, insistence on humane trapping of mice and of threatening behaviour by the applicants.

- 44. The applicants said that whilst they had initially wanted to try to trap the mice in the property humanely they conceded that this was not working and agreed to pest control. The allegations of noise were made by them and not about them, and they had never threatened the respondent.

45. The respondent produced a note from the applicants about repair work. The tribunal considered that it was very polite and noted it told the respondent to help herself to tea and biscuits.

The financial circumstances of the landlord

46. The applicants say that the tribunal should not take any financial circumstances into account as these have not been disclosed prior to the hearing in accordance with the directions.

Submissions on quantum

47. The applicants ask the tribunal to award them the maximum RRO. They say that the additional licensing scheme has been running in Hackney for some years,
48. The respondent says if money was to be awarded against her she would rather it went to charity.

The decision of the tribunal

49. The tribunal determines to make a RRO of £28,946.46 which is the amount claimed less the water costs, i.e. £29,379.96 minus £433.50.

The reasons for the decision of the tribunal

50. The tribunal takes as its starting point that 100% of the rent paid is repayable under a RRO. It also notes that the Upper Tribunal has indicated that it should exercise its discretion with care particularly when only one offence has been committed under the Act.
51. The respondent has only committed one offence – a failure to licence the property. The tribunal has therefore taken great care exercising its discretion and considering whether a lesser penalty is appropriate. In this case it has decided that there is no reason to reduce the level of the penalty from 100% other than to deduct the water costs.
52. Its starting point is the general context and importance of licensing. In setting the level of penalty the tribunal has taken into account the length of the failure to licence. Additional licensing has been a feature of Hackney's private rented strategy since 2018. The respondent is an experienced landlord with a portfolio of properties. The tribunal notes that she declined to reveal the extent of her portfolio.
53. The respondent appears to have had a disregard for other responsibilities. It appears she carried out some repairs but there were repairs outstanding at the end of the tenancy. She admitted that she

had not served a s.21 notice on the tenants. The tribunal has thought carefully about the conflicting evidence provided about the termination of the tenancy. It finds as a fact that the respondent wanted the applicants to leave. In its opinion she decided not to renew the tenancy when she discovered that Ms Young was on Universal Credit. Although the respondent made reference to scaffolding and repairs she provided no details of the works she was proposing, no estimates, and no explanation for how the works may have affected the tenants.

54. The tribunal also takes into account the respondent's failure to engage with the proceedings at the tribunal.
55. The management of the property was unclear. It appears that the respondent took responsibility for management when it suited her. At other times she relied on the managing agents. The tribunal considers that she did not provide the level of professional management required for an HMO. The applicants needed clarity on how repairs for instance were to be handled. There should have been regular inspections. Instead everything appears to have been very haphazard.
56. The tribunal also notes that there was obscurity around the ownership of the property. It appears to the tribunal that the respondent is the freehold owner of the house, but this was only revealed because of a letter the respondent showed the tribunal addressed to her matrimonial name. The reluctance of the respondent to talk about these matters again suggests that she did not want there to be any clarity about her position.
57. The respondent said that there had been four visits to the property by British Gas. It does appear that the respondent had put in place arrangements for Gas Safety certification, but she was not able to provide a copy of the relevant certificate. That information is important for the peace of mind of occupiers of property.
58. The tribunal finds as a fact that the applicants did not threaten the respondent. The respondent's evidence to the tribunal indicated that she considered that the applicants asserting their rights was a threat.
59. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr

Date: 6th September 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).