



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

Case reference : **LON/00AN/HMK/2020/0013**

HMCTS code : **V: VIDEO**

Property : **56 Rosaline Road, London SW6 7QT.**
Ms. Olivia Salisbury;
Ms. Olivia Spiller;

Applicants : **Ms. Camilla Purves;**
Ms. Iona Nicholl.

Representative : **Ms. Olivia Spiller.**

Respondent : **Ms. A. M. Bryan**
Ms. M. A. Bryan

Representative : **Ms. A. M. Bryan.**

Type of application : **Application for a Rent Repayment Order (“RRO”) by tenant Sections 41 of the Housing and Planning Act 2016**

Tribunal members : **Tribunal Judge Hamilton-Farey**
Tribunal Member Mr. A. Parkinson

Date of Hearing : **25 February 2021**

Date of decision : **3 March 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents before the tribunal at the hearing were the applicants' and respondents' bundles of documents, including the witness statement of Mr. Armel Collard of London Borough of Hammersmith and Fulham.

The tribunal has noted the contents of these documents and the submissions of the parties at the hearing when making its decision.

Decisions of the tribunal

1. The tribunal determines that the applicants are entitled to a Rent Repayment Order in the sum of £9,664.00.
2. The tribunal determines that the respondent shall pay the applicants £300 in reimbursement of the tribunal fees paid by the applicants.

The background

3. The tribunal received an application dated 23 April 2020 under section 41 of the Housing and Planning Act 2016 (“**the 2016 Act**”) for a rent repayment order (**‘RRO’**) in respect of 56 Rosaline Road, London, SW6 7QT (**‘the Property’**). The London Borough of Hammersmith and Fulham is the local housing authority.
4. The application has been brought by the applicants jointly. They allege that in respect of the period 1 November 2018 to 27 April 2019 the respondent committed an offence under section 72(1) of the Housing Act 2004 (the **‘2004 Act’**) in controlling or managing a House in Multiple Occupation without a licence. They seek repayment of the rent paid in that five months, three weeks, and five-day period in the sum of £19,328.00.
5. The applicants also seek repayment of their application fee of £100 and their hearing fee of £200.
6. In their application the applicants named Camilla Purves as their representative, however Ms. Spiller represented them at the hearing.

7. On 1 December 2020, the Tribunal issued directions.
8. The directions set out the issues which the Tribunal would need to consider. The respondent, having been sent the application and supporting documents by the tribunal, was advised to seek independent legal advice. The applicants were directed to file a bundle of documents for use by the tribunal by 8 January 2021, and the respondent to file a bundle of documents by 29 January. The applicants were given the right to send a brief reply to the issues raised by the respondent by 12 February 2021.

The Property

9. The Property is described in the application as a 4-bedroom terraced house.

The tribunal's decision and reasons

10. Ms. Spiller presented her case at the hearing. She said that they, (the applicants), had been told by the previous tenants that the house did not have an HMO licence, and that the landlord was being prosecuted for that offence. The tribunal has not received any details of any prosecution and therefore cannot take that statement into consideration.
11. She said that they tenants had contacted the local authority and Mr. Armel Collard visited the property, carried out an inspection, and confirmed to them that the property was not licensed and that it was possible for the tenants to make an application for a Rent Repayment Order.
12. She cited various dates when the landlord failed to repair the property, despite requests, and said that the tenants felt the landlord was not communicating with them despite them resorting to e-mail correspondence. She said there was damp in the property, notably in the hallway and kitchen that had not been remedied by the landlord, and that Mr. Collard had identified dangerous electrics in the basement. She also said that some of the radiators did not work, and the drain had been blocked and not cleared quickly. She cited S.11 of the Landlord and Tenant Act 1985 that contains a landlord's obligations to main the structure of a building, including the drainage, and she felt that the landlord had failed to comply with this section.
13. She also said that the landlord had accessed the property on several occasions without consent, even though they tried to accommodate as frequently as possible. The tenants had also raised a dispute with TDS for the return of their deposit, and that adjudication has now taken place, and is not within the jurisdiction of this tribunal.
14. On being questioned by the tribunal she said that the tenants should have the maximum rent repayment order because of the landlord's failure to communicate and the lack of care to the tenants' wellbeing. She said the

landlord's failures in relation to the property management regulations should lead to a maximum award

15. She called Mr. Collard to give evidence on the tenants' behalf.
16. Mr. Collard confirmed that he was employed by the Local Authority. He spoke to his witness statement of 8 January 2021. He confirmed that in 2017 the landlord had attempted to obtain a licence for the property, but had not completed the application process, and a licence had not been granted. He said that on 2 April 2019 he met with Ms. Olivia Salisbury who gave him access. During that inspection he noted that two light switches were loose; that there were no details of the person(s) responsible for the management of the property visible anywhere and that in the cellar a light fitting had not been fitted to the ceiling, that copper pipes were not properly earthed, and the front of the consumer unit was loose, and fell off in his hand.
17. On his return to the office, he checked the Land Registry to obtain details of the owners and noted that the respondents were noted on the Register as joint owners of the property.
18. He then e-mailed the tenants asking them for details of how, when, and how much they paid in rental, and requested a copy of the tenancy agreement. The tenants confirmed that the rent of £3,300 was paid to Chard monthly by direct debit. He also confirmed that Chard is the trading name of London Resi Limited. It transpired during the hearing that the agents were employed on a tenant find basis only.
19. He confirmed that the respondent had completed an application for an HMO licence on 27 April 2019, and that on 3 June 2019 he served some notices on the respondent requiring her to provide a copy of the latest gas and electrical safety test certificates. On his return to work on 12 June he had received an e-mail from the respondent that attached the EICR that indicated there were no dangerous faults in the premises as of 8 June 2019. From this he presumed that the landlord had employed an electrician to make good any defects, including those he had identified in April.
20. He also confirmed that he was satisfied that the property was being operated as an unlicensed HMO for the period from 29th October 2017 and 28 October 2018, and 1 November 2018 and 27 April 2019.
21. Ms. Bryan gave evidence to the tribunal. She confirmed that due to her own administrative errors she had not completed the licence application in 2017 but had resubmitted her application on 27 April 2019 and was granted the licence on 19 September 2019.
22. With respect to the alleged defects in the property, she stated that she had never entered the property without permission, and that there was a lack of communication between the tenants in this regard. That repairs were carried

out as quickly as possible, with delays sometimes being caused by the tenants themselves, not getting back to her. With respect to the shower screen repair, these delays were caused by the tenants themselves because they wanted to repair the screen at their own cost and did not want to use the landlord's contractor. In our view this was a matter beyond the landlord's control for which she cannot be blamed. With respect to the damp, she said that a specialist damp proofing contractor had visited the property, with access granted by one of the tenants, and had carried out a mini destructive survey which found no dampness. With the blocked drain, which had occurred about 4 or 5 months into the tenancy, the respondent said that this was due to inappropriate items being flushed down the toilets, and that the tenancy agreement contained a clause that required the tenants to refrain from causing any drains to be blocked.

23. She said that she was not a rogue landlord; that this was her only property and that the local authority when granting the HMO Licence made no conditions or required any works to the property to bring it up to the required standard.
24. Having heard the parties, the tribunal has made its decision based on the evidence in the bundles, the statement of Mr. Collard and the verbal submissions by the parties.
25. The relevant legal provisions referred to in the tribunal's decision and reasons are set out in the Appendix to this decision. In addition, the tribunal has had regard to the decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) (**'Vadamalayan'**).
26. It was accepted by the parties that
 - the property was one which required a selective HMO licence during the period the subject of the application, being a property in multiple occupation ('HMO'). and
 - That the applicants had paid their rent during the relevant period.
27. The issue before the tribunal to determine was the quantum of any RRO, taking into account any reasonable excuse, the conduct of the landlord and her financial circumstances.

Quantum

28. Having regard to the decision in *Vadamalayan* the starting point for the tribunal in calculating the RRO is the 'rent itself for the relevant period of up to twelve months' (paragraph 12).
29. The tenants say that they should receive the full amount for the period in question, and the landlord says that this is unfair.

30. Insofar as the quantum of the RRO the tribunal is bound by the decision in *Vadamalayan*. Accordingly, the starting point for the calculation of the quantum is the rent paid during the relevant period (to a maximum of 12 months) less the deductions permitted by that decision. Following the decision in *Vadamalayan* the tribunal are not able to deduct dilapidation costs from the rent paid for the period. Accordingly, the maximum amount the tribunal may order in repayment is £19,328.00.

Factors that may be taken into account in assessing quantum

31. Section 72(5) of the 2004 Act contains a statutory defence of ‘reasonable excuse’ to the offence of being in control/management of an unlicensed HMO.
32. Section 44(4) of the 2016 Act provides that in determining the amount of any RRO the tribunal must, in particular, take into account
- (a) The conduct of the landlord and tenant,
 - (b) The financial circumstances of the landlord
33. In this instance, we find no fault with the conduct of the tenants but are of the opinion that some of the accusations levelled at the landlord have been blown out of proportion. For example, we have no evidence that the property suffered from dampness, or that the tenants communicated with each sufficiently to ensure that repairs could be carried out in a timely manner. The broken shower screen was the fault of the tenants, and because they could get a replacement fitted for free, they caused the delay in the repair. With respect to the drain, we are not persuaded that a blocked drain 4 -5 months into the tenancy can be used to demonstrate a landlord’s lack of compliance with the statutory requirements under S.11 and prefer the landlord’s argument in this respect.
34. In respect of the landlord’s conduct, we do not find this to be in any way within the definition of ‘rogue’. We are satisfied the landlord carried out repairs as and when necessary, and that from the tenant’s own evidence some of them were prepared to renew the tenancy. This does not demonstrate that they were really dissatisfied with the management or maintenance of the building.
35. The landlord also confirmed that this was her only property and we do not consider her therefore to be ‘professional landlords’, and as such we consider that the penalty for not having a licence should be reduced.
36. In the circumstances, we make a rent repayment order, but that it would be unfair for the tenants to have the full amount returned to them, given the fact that the property was in good condition and required no improvements to obtain a licence, and the status of the landlord as an ‘amateur’ landlord.
37. We find that the landlord should make a payment to the tenants of 50% of the amount sought, a total of £9,664.00 to the tenant.

Fees

38. As the tribunal has made an RRO in favour of the applicants it is appropriate that they should have their fees refunded.

Name: Judge Hamilton-Farey **Date:** 3 March 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).

Appendix of Relevant Legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—

- (a) they are HMOs to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

- (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
- (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

- (a) the area of their district, or
- (b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

- (a) a temporary exemption notice is in force in relation to it under section 62, or
- (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(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.

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
- (b) for permitting the person to occupy the house, or
- (c) for failing to comply with the condition,

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (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.

- (3) A local housing authority may apply for a rent repayment order only if –
 - (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a rent repayment order

- (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 had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
 - (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed –
 - (a) the rent 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.
- (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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

