



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

Case reference : **LON/00AP/HMF/2021/0093**

HMCTS code : **V: CVPREMOTE**

Property : **Flat 3, 337-339 Archway Road, London
N6 4AA**

Applicant : **Terez Osztafi**

Representative : **In person**

Respondent : **Atra Investments Limited**

Representative : **Wendy Mathers of counsel**

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

**Tribunal
member(s)** : **Judge D Brandler
J Mann MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **18th October 2021**

Date of decision : **26th October 2021**

DECISION

Decision of the tribunal

(1) The Application is dismissed.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. On 28/03/2021 the tribunal received an application dated 11/02/2020 under section 41 of the Housing and Planning Act 2016 from the Applicant for a rent repayment order (“RRO”).
2. On 26/05/2021 the Tribunal wrote to Ms Oszafi (“the Applicant”) asking for clarification on the amount sought by her and for what period. The Applicant then submitted an updated application form dated 23/03/2020 which was received by the Tribunal on 30/04/2021. The sum claimed by her is £7000 for the last 12 months of her tenancy.
3. Directions were issued on 17/05/2021.
4. The Applicant seeks a RRO in respect of her occupation of Flat 3, 337-339 Archway Road, London N6 4AA (“the flat”) against her previous landlord, Atra Investments Limited (“The Respondent”) on three alleged grounds:
 - (i) Control or management of an unlicensed HMO
 - (ii) Failure to comply with improvement notices
 - (iii) Harassment.

The tenancy history

5. The Applicant and her previous partner were granted an assured shorthold tenancy (“AST”) of the flat on 10/02/2004. More recently she has lived in the flat with her daughter. On 11/02/2021 the County Court at Clerkenwell and Shoreditch made an outright possession order against the Applicant and 1 other, on mandatory grounds of a s.21 notice under the Housing Act 1988. She was ordered to give possession by 25/03/2021 and ordered to pay the Respondents costs summarily assessed in the sum of £6000 by 08/04/2021. [R51].
6. By an agreement between the parties, the Applicant vacated the property on 26/03/2021 without the requirement to instruct bailiffs, on the proviso that the Respondents would not enforce the costs order.
7. The rent charged was £200 per week since the start of the tenancy until the Respondent issued a Notice of increase of Rent in accordance with s.13 Housing Act 1988 in or around February 2020 seeking an increased rent of £275 per week. The Notice was referred to the First Tier Tribunal who determined a rent of £255 per week effective from

around February 2020. Despite that order, the Applicant has taken the view that she is not obliged to pay the full rent, and has been paying a reduced rent since approximately February 2020, such that the arrears of rent when she left the property were in excess of £6000. She has made no payment at all since 13/01/2021.

8. In October 2019, having obtained planning permission to renovate the building, s.21 Notices were served on the tenants in the building. The occupants of Flat 4 left on 01/11/2019 and the occupants of flat 2 left on 14/11/2019. The only remaining occupants in the building were the Applicant and her daughter until 19/02/2021. She fought the s.21 notice on the basis that her deposit had not been protected. This is not in dispute, as in December 2019, her deposit was returned, and a new s.21 notice was served.
9. On 27/05/2019 the Council's requirement to licence HMOs came into force. The building has never been licenced as HMO.

THE HEARING

10. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
11. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the Tribunal. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The Respondent has provided a combined bundle of 124 pages, which includes some of the documents submitted by the Applicant. The Tribunal also had the benefit of three bundles from the Applicant: the Application bundle of 9 pages, the Applicant's bundle for determination of 48 pages and the Applicant's reply bundle containing 30 pages. Any reference to a page in the Respondent's bundle is prefixed [R]. Any reference to a page in one of the Applicant's bundles will be prefixed [A].
12. The Applicant joined remotely by video connection and was in person. Ms Mathers, counsel for the Respondent joined by video and was accompanied by Mr Fluss and Mr Connolly. Mr Fluss is one of the directors responsible for management and he signed the Respondent's statement of case [R43].
13. In oral evidence the Applicant confirmed that she had submitted her application to the Tribunal on or around 28/03/2021. She could not explain the 2020 dates in the application forms which she thought was just a mistake. She must prove that an offence was committed in the 12 months prior to the receipt of her application.

14. She obtained confirmation from the Council in October 2019 by email that the building did not have an HMO Licence, and similarly in February 2021 she received confirmation from the Council that the building did not have an HMO Licence.
15. The Respondent also relies on email correspondence from the Council which confirms that an HMO licence for the building is not required as all but one of the flats is unoccupied [R56,102,94]. Mr Fluss's position is that the renovation works are compliant with Building regulations and as such there is no requirement to licence the building. He referred the Tribunal to the email from his architect dated 13/10/2021 [R120] confirming building regulation compliance. He further relies on the fact that the s.21 Housing Act 1988 notice was accepted by the County Court on 11/02/2021 as valid, which he says could not have been valid if there was a breach of HMO licencing. No building regulations certificate or fire safety inspection report was produced. He explained that he was not in charge of works, having instructed architects and project managers to manage the builders and any documentation, which he was sure had been carried out in compliance with the rules.
16. From around 14/11/2019, clearing and renovation works were carried out in the building causing the Applicant disruption. The contents of the flat above her had been thrown out of the window into the back yard. That included white goods and furniture. In order to exit the building, there was a period when the Applicant and her daughter had to walk across a plank on muddy ground due to the works, that was around November 2019. In addition to external works, which made getting in and out of the building difficult, there were also internal works, which carried on during Covid lockdown and caused the Applicant anxiety in relation to social distancing. She made reports to the Police and the Council, but no enforcement action was taken in relation to these reports. Some very abusive emails written by the Applicant to the Respondent were included in the bundle, indicating her upset over issues of noise, as well as photographs of abusive messages written by the Applicant in the communal areas [R58-60].
17. By March 2020, the front door access was completed, which is evidenced by an email from the Applicant to the Respondent thanking them for the new entrance [R65].
18. However, issues of works causing nuisance occurred after that. The bathroom ceiling collapsed into her bathtub on two occasions in July and then in August 2020 because the builder managed to put his foot through the ceiling. This caused the Applicant upset and anxiety as to whether it would happen again when she was taking a bath [R28-32]
19. In November 2020 there was a leak into her living room which caused some damage to books and magazines. There was no damage to electrics [R33].

20. The applicant claims that the boxing in of the staircase at the ceiling in her daughter's room was a nuisance, although she was prepared to admit in oral evidence that this had been done to protect her from dust and debris coming from the upper flat renovations. [R34]
21. It is common ground that in February 2021 new tenants took occupation of the other flats in the building. Both parties sought confirmation from the Council as to whether at that time an HMO licence was required. Neither of the emails from the Council around that time are very helpful, as the emails to the Council do not appear to clarify the position in the building at the time, or whether building regulations had been complied with. Although the Respondent's architect in their email dated 13/10/2021 asserts that all building regulations were complied with and that they were awaiting the final certificate. [R120].
22. In relation to the claimed failure to comply with an Improvement Notice, the Applicant had misunderstood the term. When she could not produce such a Notice, she explained that she thought that it was sufficient to ask a landlord to carry out improvements, and for them to fail to do so, for her to rely on this term.
23. In relation to the claim for harassment, the Applicant bases this claim on the condition of the property whilst development works were being carried out, the two incidents of the bathroom ceiling collapsing into the bath tub in July and August 2020, one incident of water leaking into the living room, an incident when she could not open her door when she thought the Respondent had changed the locks, and incidents when she says the Respondent entered the flat without providing 24 hour notice. Taking each of these in turn:
24. The condition of the communal areas. The photographs show that there was considerable disruption around the building when works commenced. After the tenants in the upstairs flat had vacated the property, the contractors disposed of the white goods and furniture by throwing them out of the window into the back yard. That rubbish and furniture had been removed after some weeks. There had been difficulty with access to the building, at times having to walk through mud to get to either the front or rear access. At times during 2019, access appears to have been via a plank. All of this made the Applicant feel stressed. The incidents of the bathroom ceiling collapsing and water ingress added to her anxiety.
25. By March 2020 the entrance to the property had been completed, and the Applicant wrote to the Respondent by email to thank them for the nice new entrance [R65]
26. In oral evidence she complained that although she had written that email, there had been further disruption in the property. Builders in the communal staircase, on ladders, doing works, blocking her way. Although she admitted that since March 2020 when she asked the

builders to move to allow her to pass, they would do so. There had been more difficulties with the previous builders who she said were rude and noisy.

27. The photographs demonstrate that living in a building when works are being carried out cannot have been pleasant, especially when using the communal staircase.
28. On one occasion the Applicant and her daughter returned home to find that their keys would not open the flat door. They assumed that the Respondent had changed the lock, and contacted him immediately. The Respondent tried immediately to arrange a locksmith, but that would have taken too long, and so they sent their builder round. The Builder was able to open the door immediately with the Applicant's key, confirming that the lock had not been changed.
29. In relation to the allegation that the Landlord had entered the property without 24 hours' notice. In oral evidence it transpired that while they may have attended when the ceiling collapsed in the bath, they did not enter the flat as the Applicant would not permit them entry, and they talked to her from the communal corridor. On one occasion when the Applicant came home from work, she found Mrs Fluss from the Respondent company in her flat. On that occasion Mrs Fluss had been given access by the Applicant's ex-partner, and so she had not forced entry in to the property.

FINDINGS

30. The Tribunal are not satisfied beyond a reasonable doubt that there has been an offence in relation to licencing of an HMO for the building for the purposes of s.257 of the Housing Act 2004 in the relevant period from 29/03/2020 to 28/03/2021.
31. Although no building regulation certificate or fire inspection report were provided by the Respondent to dispute the allegation that the building required a licence by virtue of section 257 of the 2004 Act, he did provide evidence that raised significant doubt in the Tribunal's minds that the building did require a licence. Firstly, he asserts that the correct certification has been obtained by his architects, although it is a shame that he failed to provide these to the Tribunal for the hearing which would have assisted to clarify the issue; Secondly, he has provided evidence from the Local Authority on various dates to confirm that the building does not require a licence while all but one of the flats were unoccupied. The emails are dated July 2020 [56], February 2021 [102] and April 2021 [94]. Although all of those refer to periods when all but one of the flats were unoccupied. The Third piece of evidence is that at the hearing in the County Court, the Learned District Judge relied on a s.21 Housing Act 1988 Notice upon which to base a

mandatory possession order. Such a s.21 Notice could not have been valid had the building required an HMO Licence.

32. In any event, even if there was a requirement to licence the building from 19/02/2021 when new tenants moved into the building, the Applicant failed to pay any rent at all since 13/01/2021 and prior to that had paid only partial rent, such that she is in arrears of rental payment in excess of £6000. There would therefore be no rent to repay for that period.
33. There has been no failure by the Respondent to comply with an Improvement Notice, as there has been none issued by the Council.
34. Whilst the period of Covid-19 must have been difficult for the Applicant and her daughter, with the added concern of the daughter's diagnosis of Type I Diabetes, combined with the added difficulty of building works going on around them, the Tribunal found that the building nuisance described by the Applicant, could not be described as a course of conduct, or other conduct required by the Protection from Eviction Act 1977.
35. The Tribunal found that the Respondent had not sought to enter the property without the requisite 24 hours' notice, having entered only with the permission of the Applicant or her ex-partner.
36. The application in relation to harassment is not made out.
37. Accordingly, the application is dismissed on all grounds.

Name: Judge D Brandler

Date: 26th October 2021

ANNEX - 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.

Appendix of relevant legislation

Housing Act 2004

Section 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.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

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

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(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,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(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.

(2) 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 by that landlord.

Act	section	general description of offence
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).

Section 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.

Section 43 Making of 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 has 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 in accordance 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).

Section 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 the table.

If the order is made on the ground that the landlord has committed

the amount must relate to rent paid by the tenant in respect of

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 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.
- (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.