



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

Case reference : **LON/00AP/HMF/2021/0107**

HMCTS code : **V: Video Hearing Services**

Property : **695 Lordship Lane, London N22 5JY**

Applicant : **Patricia Sanchez Roman (1)
Cristina Garcia Carrasco (2)
Laura Garcia Carrasco (3)
Olga Ortega Jurado (4)**

Representative : **Elizabeth Dwomoh of Counsel
(Lamb Chambers)**

Respondent : **Edward Acheampong (1)
Emmanuel Acheampong (2)**

Representative : **Emmanuel Acheampong**

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
Mr S Wheeler MCIEH, CEnvH**

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

Dates of hearing : **19th August 2021 &
23rd September 2021**

Date of decision : **4th October 2021**

DECISION

Decision of the tribunal

- (1) R1 shall pay to the Applicants a Rent Repayment Order in the total sum of £9147.60. This sum to be paid in the following proportions to the Applicants:**
 - (a) To Patricia Sanchez Roman (A1) the sum of £3049.20**
 - (b) To Cristina Garcia Carrasco(A2) the sum of £3049.20**
 - (c) To Laura Garcia Carrasco (A3) the sum of £3049.20**
 - (d) To Olga Ortega Jurado (A4) no award is made**

- (2) The R1 is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application.**

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

Reasons for the tribunal's decision

Background

1. The tribunal received an application dated 9th April 2021 under section 41 of the Housing and Planning Act 2016 from the Applicant tenants for a rent repayment order (“RRO”).
2. Directions were issued on 26th May 2021.
3. The application alleged that Edward Acheampong (“R1”) and Emmanuel Acheampong (“R2”) who hold the leasehold interest in 695 Lordship Lane, London N22 5JY (“the property”) are both landlords of the property and had failed to obtain a licence for the property in breach of the additional HMO licensing requirements operated by the London Borough of Haringey (“The Council”). The additional licensing which became operative on 27/05/2019 required all properties, borough wide, occupied by three or more persons, to be licenced under an additional HMO licensing scheme.
4. The property is a four-room flat with the benefit of a shared kitchen, bathroom and a small balcony. It is located in brick-built purpose-built block of flats.
5. The history of the occupancy is briefly as follows. The Applicants entered into various tenancy agreements with R1, on various dates. They occupied the property for different and overlapping periods from March 2018 until April 2020. It is alleged that the R1 and R2 were their landlords. The periods claimed by each applicant for a rent repayment order are detailed below:

6. Patricia Sanchez Roman (“A1”) occupied a room in the property from 29/03/2018 until 25/04/2020 at a weekly rent of £125.00. In the application form she claimed a rent repayment order for 12 months. At the hearing this was reduced to a claim for 45 weeks at £125 per week (£5670).
7. Cristina Garcia Carrasco (“A2”) occupied a room in the property from 14/09/2019 until 25/04/2020 at a weekly rent of £125. She claims a rent repayment order for 31 weeks at £125 per week (£3875.00).
8. Laura Garcia Carrasco (“A3”) occupied a room in the property from 11/10/2019 until 25/04/2020 at a weekly rent of £125. She claims a rent repayment order for 28 weeks (£3500).
9. Olga Ortega Jurado (“A4”) occupied a room in the property from 18/01/2020 until 17/04/2020 at a weekly rent of £140. She claims a rent repayment order for 14 weeks (£1960).
10. On the morning of the hearing the tribunal were provided with skeleton arguments from both parties.
11. The hearing on 19th August 2021 was part heard and reconvened on 24th September 2021.

THE HEARING

12. 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.
13. 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. A combined bundle was provided containing both the Applicants’ and the Respondents’ bundles consisted of 482 pages.
14. The Applicants, their legal representatives Ms Alvarez and Mr Barrett, and their Counsel Elizabeth Dwomoh all joined remotely by video connection. R1 and R2 also joined remotely by video.

PRELIMINARY ISSUES

15. The Respondents assert that the case is not correctly made out in terms of statutory provisions. Further they say that R2 is not a landlord and should not have been named as such. Further they complain that at the last minute an amended trial bundle was submitted by the Applicant

which has caused the Respondents a great amount of work at the last minute. They also complain that the Applicants' skeleton argument was provided at the last minute.

16. In response to the issue of the amended Applicant bundle, it transpired that this was a combined bundle provided to assist the Tribunal, although the Applicants' representatives appear not to have made this clear to the Respondents. The issue of late skeleton arguments is not unusual. The issues of whether the case is made out and whether R2 is a landlord are issues for the Tribunal to consider during the course of the hearing.

THE EVIDENCE

17. Mr Barrett from Represent Law Ltd was called to give evidence at the start of the hearing. His evidence dealt with the correspondence received from the Council confirming that no licence had been applied for in relation to the property, and that a licence was required.
18. Next to provide evidence was A1. She confirmed that her tenancy began on 29/03/2018 and that she moved out on 25/4/2020. She was referred to her witness statement [21] which on the face of it was prepared for proceedings relating to a breach under s.214 Housing Act 2004 in the Edmonton County Court and is dated 11/03/2021. A1 could not explain why that statement had been produced in these proceedings or the reference to s.214. All of the Applicants relied on very similar witness statements and none of them could explain why their statements referred to s.214, a matter that was not in issue for this Tribunal.
19. In A1's witness statement the first mention of difficulties with her landlord appears at paragraph 12 which mentions wasps and messages on 'WhatsApp' but makes no reference to dates. At paragraph 14 it goes on to state that she believes that "*the landlords have used my lack of knowledge about my legal rights to take advantage of me. The landlords constantly laughed at my level of English*" [22]. No detail of how they are alleged to have taken advantage was provided. Indeed, in evidence it became clear that the Applicants were aware of the Coronavirus Act 2020 which they brought to the landlord's attention.
20. No detail is provided in A1's witness statement about the occupation of the property prior to A2 and A3 moving in with her.
21. In oral evidence A1 confirmed that she had paid all the rent due and has not been in receipt of Universal Credit. R1 confirmed that she was not in arrears of rent, although he thought she might owe some £50. When pressed on the sum owed, R1 was not sure.
22. No evidence was orally adduced in relation to occupation at the property prior to A2 and A3 moving in, and the Tribunal investigated this with A1. Her responses were vague. She provided some names, Pauline, Sebil and

another person whose name she could not remember, but no dates of occupation. In response R1 stated that one of those named had been his girlfriend at the time, and he had stayed at the property on occasions. He also stated that his girlfriend, now an ex-girlfriend, had left belongings at the property but had not been there for a long time.

23. A1 could not remember which room she occupied, although she stated that she had moved rooms at one stage, nor could she recall when there were gaps in occupation such that there were less than 3 people occupying the property.
24. In short, no one could provide identities of other occupants or periods of occupation. The Application clearly relies upon the overlap between the Applicants only, although they claim a longer period.
25. In cross examination it was suggested to A1 that the property was not her principal home, but no documentary evidence was produced to support this assertion and A1 responded that it was her principal home. She was asked about the other people she claimed she had lived with in the property. In response A1 stated that she was in touch with only one of those people and did not want to identify who that person was.
26. Also in cross examination A1 was asked why she had put in her statement that the landlords had taken advantage of her lack of knowledge of English. She could not elaborate on this assertion in her statement.
27. In relation to her assertion that R1 had laughed at her level of understanding in English, the only thing she could say about this was that when she first moved in, she had not always understood R1. She also seemed to suggest that R1 had turned up at the property unannounced, but her oral evidence did not produce any detail about this allegation. When asked by R2 if she had ever met him before or had any dealings with him, she confirmed she had not.
28. From her oral evidence it appeared that there were no problems with her relationship with R1 until around April 2020 when the Applicants had complained about wasps in the property and around that time A4 upset R1 and made allegations about him to the police.
29. She confirmed that her bills were included in the rent but at the beginning when she moved in, she had paid electricity of £20 per week, which had been credited to her rent.
30. It was put to all of the Applicants in cross examination that they had damaged the property prior to leaving, specifically the boiler wasn't working and the battery from the smoke alarm had been taken. All of the Applicants denied these allegations.
31. A2's witness statement was almost identical to that of A1. Also drafted in respect of s.214 Housing Act 2004 in the Edmonton County Court [106]. She was unable to explain why her witness statement mentioned that

statutory provision. She could not explain why she said that the landlords had taken advantage of her.

32. Her statement provided no evidence about other occupants at the property when she moved in. The Tribunal investigated this with her, and she told the Tribunal that Sebil was there when she moved in and someone called Tisem. She said that when Sebil moved out, Olga took her room but there had been a gap of about a month in either November and/or December 2019. No detail of any of this was provided in the application.
33. In cross examination A2 confirmed she did not know R2 and that there was no mechanism to contact him if there were issues at the property.
34. R1 confirmed that there were no rent arrears in relation to A2. However, he denies the occupation as reported by A2. R1 says that two rooms were empty during the period from July to the middle of September when A2 moved in.
35. A3's witness statement was again very similar to those of the other Applicants. Having been prepared in relation not to a Rent Repayment Order, but in relation to s.214 of the Housing Act 2004 in the Edmonton County Court [175]. She could not explain why. Nor could she explain why she stated that the landlord had taken advantage of her.
36. In cross examination A3 was taken through her bank statements which indicated payments that she had made to someone else in an attempt to suggest that she was paying rent elsewhere. Issue was also taken to some annotation she had made on her bank statements, which appeared to seek to clarify amounts and dates and nothing more.
37. A4's oral evidence was somewhat more controversial. She alleged concern about making her address known to the Respondents, stating that she did not feel safe sharing her address with R1, based on him having turned up unannounced at the property when she lived there. She referred to the report she made to the police. That police report was available to the Tribunal [217]. It repeats the contents of 'WhatsApp' messages between her and R1 but does not communicate her feeling unsafe or any apparent reason to contact the police. The report was made on 22/4/2020 only a few days prior to the applicants finally vacating the property. There was no follow up by the Police. It was put to her in cross examination that she had tried to suggest that R1 was a criminal by making a report to the police.
38. A4's witness statement is also brought under s.214 Housing Act 2004 in the Edmonton County Court. She could not explain why that was. Nor could she explain in what way the Landlord had taken advantage of her, as claimed in her statement.
39. In oral evidence A4 told the Tribunal that she had only one bank account [235]. She was asked about an entry on one of the statements indicating

that she had transferred money from another account. She then admitted that she did in fact have another bank account.

40. When asked by the Tribunal about her claim to Universal Credit, A4 could not remember in which month she made a claim, and provided no documentary evidence about payments received from that benefit.
41. Some considerable time was spent in cross examining A4 in relation to R1's allegation that she had been racially abusive to him by sending monkey emojis. A4 denied ever sending monkey emojis, although it appeared from the evidence available that messages had been deleted. One picture was still available for the Tribunal to see. That was what R1 referred to as a picture of white monkey. A4 denied that it was a monkey, and described it as a picture of a white cat [359]. She did not explain why she would have sent a picture of a white cat, that looked like a white monkey.
42. In response to R1's allegations, A4 responded by saying that she would "*never treat you differently because of the colour of your skin*", that the picture of the white monkey was in fact a humorous picture of a white cat.
43. R1 says that when the racial abuse from A4 started, he was very upset and for that reason he told the applicants that they would have to leave upon 2 weeks notice. When they pointed out to him that he could not ask them to leave during Covid, he retracted his request.

FINDINGS

44. The Tribunal were not satisfied that R2 was a landlord of the property because he had not signed the tenancy agreement, he was not known by the tenants, nor was there any mechanism for them to contact him in relation to issues arising at the property. Whilst he acknowledged that he was a legal owner of the property, he denied a beneficial ownership.
45. R1 however was without doubt the landlord of the property, and this is not denied by him. He signed the tenancy agreements and was the Applicants' contact for any issues at the property as well as being the person who received the rental payments.
46. The Tribunal found that R1 did not have a reasonable excuse for not licensing the property as required by the Council. Even if he was not aware of the requirement for additional licencing, he should have been aware. He had a duty as a landlord to keep up to date with a landlord's requirement to manage his property and he failed to do so.
47. The Tribunal find beyond reasonable doubt that R1 was in breach of his requirement to licence the property under the HMO licensing scheme operated by the Council, the requirement for additional licensing having been effective from 27/05/2019.

48. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.
49. The Tribunal find that the only period during which a breach occurred, is from 11/10/2019, the date when A3 moved into the property, until 25/04/2020 when the applicants vacated the property.
50. The Tribunal were not satisfied beyond a reasonable doubt that there had been a breach of the requirement to licence the property prior to the occupation of A3. The evidence about other occupants in the property was vague and unconvincing.
51. No Universal Credit was received by A1,A2,A3.
52. The Tribunal found that A4 may well have been in receipt of Universal Credit from the date she moved into the property on 18/01/2020 until she moved out. Her evidence about UC payments was extremely vague and when asked directly in what month she applied for UC, her response was that she could not remember. Although the 'WhatsApp' messages in which she asks R1 about the amount of CT included in the rent were only in either March or April 2020, that does not support an assumption that an award was only made at that time.
53. The Tribunal found A4 to be an unreliable witness. She had been economical with the truth in relation to her bank statements as well as her lack of provision of evidence in relation to Universal Credit.
54. In relation to the allegations by R1 about A4's racial abuse by sending monkey emojis to him, the Tribunal were satisfied from her evasive and unconvincing answers that she did send such messages and that R1 was very upset by these messages.
55. A4's spurious report to the police appeared to be nothing more than an attempt to sully R1's reputation with the police. The report had no substance, made no allegation by her of being afraid, and the Police appear to have found no reason to follow this up. The timing of that report is concerning, given that the property was vacated some three days later. It did seem to the Tribunal that R1's relationship with A1,A2,A3 had been amiable until A4 had begun to try to aggravate him in around March 2020.
56. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted. The Tribunal has no information about R1's financial circumstances, other than knowing that he co-owns two properties with R2. There is no evidence that R1 has been prosecuted.

57. There is no evidence before the Tribunal to question the conduct of A1, A2 or A3. The Tribunal accepted that they had paid their rent, and R1 confirmed that there were no rent arrears.
58. However, the Tribunal found that A4's conduct had caused a serious disruption to the previously harmonious relationship between R1 and A1, A2, A3, by using a monkey emoji in messages and having made a spurious police report.
59. While R1 had wrongly given two weeks notice to the Applicants, the Tribunal took the view that the deep upset caused to him by racial slurs had instigated this action. In any event this notice was retracted. His conduct as a landlord appeared to the Tribunal to have previously been good until A4 upset the relationship.
60. On the basis of R1's good conduct, the Tribunal make a 10% deduction from any award of a RRO.
61. In addition to that deduction, the Tribunal deducts £4 per person per week for gas and electricity, as bills were included in the weekly rent. Whilst the evidence of utility payment produced by R1 was not comprehensive, there was no evidence that these services had not been provided, which suggests that utilities were paid.
62. In coming to the figure of £4 per person per week for utilities, the Tribunal noted the information [435-6, 441-2] providing annual figures for utilities.
63. No deductions are made in relation to council tax, service charges, or mortgage payments. All these liabilities would be the responsibility of the Respondents whether or not tenants were in occupation.
64. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account, the evidence of the landlord's previous good conduct and the very poor conduct of A4, we consider that the maximum award permissible should be reduced by 10%. Accordingly, we find that an RRO should be made against the R1 in the sum of £9147.60. This reflects the net rent of £121 per week, for 28 weeks, for the period of 11/10/2019-25/4/2020. This should be paid to the Applicants in the following proportions:
- (i) To Patricia Sanchez Roman (A1) the sum of 3049.20
 - (ii) To Cristina Garcia Carrasco (A2) the sum of £3049.20
 - (iii) To Laura Garcia Carrasco (A3) the sum of £3049.20
 - (iv) No award is to be made to Olga Ortega Jurado (A4)
65. R1 is also ordered to pay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Rule 13 Costs Applications

66. Both parties seek an order for costs. The Respondents have provided no evidence of their legal costs, having represented themselves. The Applicants have filed and served a schedule of costs prior to the 1st hearing. The schedule of costs in relation to the 2nd day of the hearing had neither been filed or served.
67. The Tribunal makes no order for costs in favour of either party, neither party having demonstrated that the other party had acted unreasonably as is required by Willow Court Management (1985) Ltd v Alexander [2016] 0290 UKUT (LC).
68. Although the hearing was extended for a further day, in part because the matter was being conducted by the Respondents in person, they cannot be criticised for testing the Applicants' evidence and putting forward their legal arguments. Indeed, the Tribunal finds that they were right to do so as the evidence shows that the original application miscalculated the amount of RRO claimed, as well as failing to provide evidence to support the claim prior to A3 moving into the property.

Name: Judge D. Brandler **Date:** 4th 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.

(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 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.

<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 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.