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

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| **Case reference** | **:** | **LON/00AZ/HMF/2020/0244** |
| **HMCTS code** | **:** | **P: CVPREMOTE** |
| **Property** | **:** | **15 Campshill Road, London, SE13 6QU** |
| **Applicants** | **:** | **Hanna Kahlert (1)**<br>**Nellina Bogilova (2)**<br>**Lisa Okusu (3)**<br>**Karoliina Ranne (4)**<br>**Oliver Grassby (5)**<br>**Daniel Nyamekess (6)** |
| **Representative** | **:** | **In person** |
| **Respondents** | **:** | **Kush Wijesinghe (1)**<br>**Geetha Wijesinghe (2)** |
| **Representative** | **:** | **In person** |
| **Tribunal members** | **:** | **Tribunal Judge I Mohabir**<br>**Mrs J Mann MCIEH** |
| **Date of hearing** | **:** | **7 May 2021** |
| **Date of decision** | **:** | **21 May 2021**<br>**amended 18 August 2021** |

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**DECISION**

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## Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

### *Introduction*

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 ("the Act") for a rent repayment order against the Respondent in respect of 15 Campshill Road, London, SE13 6QU ("the property").

2. The property is described as being a converted house with 5 bedrooms with communal cooking facilities for the occupiers.

3. The First Respondent is the registered proprietor of the property.

4. The First Respondent and his partner purchased the property in November 2018 as their residential home which they intended to occupy with the First Respondent's mother. However due to his partner's ill health and the hospital treatment this required, the First Respondent vacated the property because he did not wish to reside there on his own. He granted the Second Respondent, his mother, an assured shorthold tenancy of the property with a view to assisting with the mortgage and other household outgoings.

5. On 26 December 2018, the Second Respondent decided to sub-let a couple of rooms at the property, which the First Respondent consented to.

6. What happened thereafter is a matter of common ground.

7. On 2 January 2019, Lisa Okusu moved into the property under a lodger agreement. Under the agreement, she rented room 4 at the property, had access to the shared areas and was required to pay £155 per week (with bills included).

8. On 6 January 2019, Oliver Grassby moved into the property under a lodger agreement. Under the agreement, he rented Room 1 at the property, had access to the shared areas and was required to pay £155 per week (with bills included).

9. On 7 January 2019, Nelly Bogilova moved into the property under a lodger agreement. Under the agreement, she rented Room 2 at the property, had access to the shared area and was required to pay £165 per week (with bills included).

10. On 10 January 2019, Hanna Kelhart moved into the property under a lodger agreement. Under the agreement, she rented Room 3 at the property, had access to the shared area and was required to pay £155 per week (with bills included).

11. On 3 January 2019, Myla Maddison moved into the property under a lodger agreement. Under the agreement, she rented Room 5 at the Property, had access to the shared area and was required to pay £145 per week (with bills included).

12. At this point in time, the property was rented to 5 or more people who form more than 1 household and as such became a large house in Multiple Occupation ('HMO') within the meaning of section 254 of the Act. This is accepted by the Respondents, who also accept that it was not licensed during this period and the periods of time that follow below.

13. On 16 February 2019, Myla Maddison vacated the property. At this point, the property was rented to only 4 people. Both parties accept that it stopped being an unlicensed HMO at this date.

14. On 25 May 2019 Lisa's sister Lila Okosu occupied the spare room for short period until she completed her educational course, and she vacated the premises on 19 July 2019.

15. At this time, the property was again rented to 5 or more people who formed more than 1 household without a licence.

16. On 3 August 2019, Oliver Grassby moved out of the property.

17. On 19 August 2019, Karoliina Ranne moved into the property under a lodger agreement. Under the agreement, she rented Room 1 at the property, had access to the shared facilities and was required to pay £155 per week (with bills included).

18. On 24 August 2019, Daniel Nyamekesse moved into the property under a lodger agreement. Under the agreement, he rented Room 5 at the Property, had access to the shared facilities and was required to pay £600 per month (with bills included) £300 due on 2nd and 15th of each month.

19. At this point the property was again rented to 5 or more people who form more than 1 household without a licence.

20. From beginning of January 2020, Lisa Okasu stopped paying her rent and except for the 2 occasions which she paid rent of £400 in March and £400 in April, she did not pay rent during the remainder of her occupation at the property.

21. In January 2020, Karoliina Ranne, Hanna Kahlert and Nellina Bogilova informed the First Respondent of their intention to vacate the property.

22. On 15 January 2020, Karoliina Ranne vacated the property. At this point, the property was rented to only 4 people. As such, it stopped being an unlicenced HMO at this date.

23. On 29 January 2020, Hanna Kahlert vacated the property.

24. On 1 March 2020, Nellina Bogilova vacated the property.

25. On 4 June 2020, Lisa Okusu made a complaint to the Local Authority that the Second Respondent was harassing her. A Housing Officer attended the property, and meditated an agreement with the First Respondent in which he would pay Lisa Okosu £1,160 to surrender her tenancy and vacate the property. On 26 July

2020, she accepted the offer and she vacated the property on the following day.

26. On 18 July 2020, Daniel Nyamekesse left the Property.

27. On 5 November 2020, Lewisham Borough Council issued a Notice of Intent to the Second Respondent relating to managing an unlicenced HMO. The Notice stated that a Civil Penalty Notice had been calculated at lower scale in the sum of £750. The Council assessed the level of culpability to be low and the harm as lesser, stating:

> "*I calculate that the culpability is Low. This is on the basis that The landlord has a good explanation for the offence that falls short of a reasonable excuse, this being that they did not know that a licence was required, this being only property that they let. I would characterise the level of harm as Lesser. This is on the basis that there was no potential or potential or actual harm caused".*

28. Subsequently, the Applicants made this application for a rent repayment order for the periods of time in which the property was let as an unlicensed HMO.

***Relevant Law***

***Making of rent repayment order***

29. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers) and 5 (control or management of unlicensed HMO) of the table.

30. Section 43 of the Housing and Planning Act 2016 ("the Act ") provides:

> "(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.
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> (3) The amount of a rent repayment order under this section is to be determined in accordance with—
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> (a)section 44 (where the application is made by a tenant);
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> (b)section 45 (where the application is made by a local housing authority);
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> (c)section 46 (in certain cases where the landlord has been convicted etc).

**Amount of order: tenants**

31. Section 44 of the Act provides:

> (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 the 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—
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> (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
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> (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies."

***Hearing***

32. The remote video hearing in this case took place on 7 May 2021. The First to Fourth Applicants and the First Respondent appeared in person and the Tribunal heard submissions from both parties.

33. As stated earlier, it was conceded on behalf of the Respondents that the property was an unlicensed HMO during the periods when it was let to five of the Applicants. Therefore, the issues before the Tribunal were whether:

    (a) the Respondents had committed the offences of either eviction or harassment of the occupiers and/or were in control of an unlicensed HMO; and

    (b) if so, whether it should make a rent repayment order and the amount of any such order.

34. As stated earlier, it was conceded by the Respondents that the property was unlicensed during the periods when, in law, it was an HMO. The First Respondent also conceded that he was the person having control of or managing an HMO within the meaning of section 263 of the Housing Act 2004 because he alone had received the rent for the property. Therefore, the Tribunal was satisfied that the First Respondent (only) had committed the offence of being in control or management of an unlicensed HMO at the relevant times.

35. The allegation of harassment was made by Lisa Okusu against the Second Respondent only. The allegations are set out in her witness statement and need not be set out here again. The various assertions made be her as to the Second Respondent's conduct were not corroborated by any other evidence. Although the Tribunal noted that a mediated settlement resulted from the intervention of a Housing Officer from the local authority. However, no evidence was presented about the terms of the settlement and whether any findings of fact were made about the allegations of harassment by the Second Respondent. She did not attend to give evidence to the Tribunal and, therefore, could not be cross-examined on this matter. In the absence of any clear evidence, the Tribunal concluded that it was unable to find beyond reasonable doubt that the allegations of harassment made by Miss Okusu against the Second Respondent had occurred.

36. The Tribunal was satisfied that it was appropriate to make a rent repayment order under section 43 of the Act because liability is strict and that any order should only be made against the First Respondent.

37. The Tribunal accepted the submission made by the Respondents that the application made by Oliver Grassby was brought out of time. Section 41(2) of the Act provides that any application has to be brought in the period of 12 months ending with the day on which the application was made. Mr Grassby vacated the property on 3 August 2109 and this application is dated 11 October 2020. Any award can only be made in respect of the remaining 5 Applicants.

38. However, the Tribunal did not accept the submission made that section 41(2) also prevented the Applicants were out of time to make an application prior to 19 July 2019. The effect of section 41(2) is that if an offence within the meaning of

section 40(3) occurs in the 12 months preceding an application, then section 44(2) is engaged. This means that a Tribunal can then go on to consider what offences were committed by the landlord during the tenant's period of occupation albeit limiting the award to the rent paid not exceeding 12 months ending with the date of the offence. It follows from this that all of the periods of time in respect of which this application has been made fall to be considered.

39. The Tribunal also accepted the Respondents' submission that section 46 of the Act stipulates the circumstances where a Tribunal must award the maximum amount. In general terms, these circumstances are where the landlord has been convicted or received a financial penalty for referenced offences. However, the section does not apply to licencing offences, such as control or management of unlicensed HMO (see section 46(3)(a).

40. As to the amount of the order, the Tribunal must regard to the criteria set out in section 43(4) of the Act above. The allegations of conduct made in relation to the Second Respondent have already been considered above.

41. The First Respondent made a number of allegations of conduct regarding the Applicants' occupation of the property. The cost paid to the furniture hire company for damaged items of furniture, for electrical repairs, for the replacement of window curtains, for the damage to a freezer and pest control treatment.

42. However, the (limited) photographic evidence did not establish whether the damage observed had been caused by one or more of the Applicants (or a third party) and when given that no inventory was taken before their occupation began. Arguably, an element of this could be attributed to fair wear and tear. In addition, no pest control report or invoice(s) had been provided by the Respondents.

43. Miss Bogilova accepted that she had rented parking space on the driveway at the property to a builder in November 2019 for a period of approximately 3 months. The money received was paid into an account held by Miss Okusu for payment of the rent. She conceded that the rental agreement was a mistake on her part.

44. The First Respondent contended that the driveway was damaged as a result of the vehicle being parked there and he incurred costs in the sum of £6,516 in having the driveway resurfaced. However, the evidence at pages 68-71 in the Respondent's bundle of documents would appear to establish that since 2016 the driveway was in some disrepair. This is confirmed by the photographic evidence at page 113. Furthermore, there was no evidence of what damage was caused to the driveway and when by the builder's vehicle.

45. Having regard to all of these matters, the Tribunal was satisfied that the allegations of conduct made by the First Respondent against the Applicants were not proved.

46. Guidance was given by the Upper Tribunal in ***Vadamalayan v Stewart*** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. The starting point is that any order should be for the whole amount of the rent for the relevant period, which can

then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matter set in section 43(4).

47. The mitigating factors to which the Tribunal had regard to were:

    (a) this was the First Respondent's first offence and it was satisfied that he was genuinely unaware of the HMO regulatory regime. There was no deliberate attempt on his part to evade this.

    (b) the First Respondent had very difficult personal circumstances to deal with arising from the serious ill-health of his partner.

    (c) the material allegations of misconduct were made against the Second Respondent.

    (d) the Applicants accepted that the First Respondent did respond to complaints about disrepair, albeit perhaps not by appropriate means, for example, by providing any or adequate notice of the attendance of a workman.

    (e) the Applicants had the benefit of the utility services provided, the cost of which is annexed to this decision.

    (f) based on the financial disclosure made, the Tribunal was satisfied that the First Respondent is of limited financial means. However, this did not mean that a rent repayment order should not be imposed. The Act simply states that a landlord's financial circumstances should be considered. There is no express or implied presumption that, because a landlord is impecunious, a rent repayment order should not be made.

    (g) the First Respondent was already subject to a financial penalty by the local authority, which considered his offence to be at the lesser end of the scale.

48. Annexed to the original decision is a calculation representing the total rent paid by the Applicants when the property was let as an unlicensed HMO in the sum of £21,245.71. This was calculated by reference to the rent paid by the Applicants individually as shown in the breakdown. However, in error, the Tribunal failed to deduct the total cost of the utilities provided by the Respondents in the sum of £4,421.35. The net total rent paid by the Applicants was, therefore, £16,723.96. For the mitigating reasons set out above, the Tribunal was satisfied that the total net rent paid by the Applicants should be discounted by 50%.

49. Accordingly, the Tribunal made a rent repayment order in favour of the Applicants in the total sum of £8,361.98, which represents 50% of the rent paid by each of them and is to be apportioned in this way. The total amount of the rent repayment order is payable by the First Respondent within 28 days of this decision being issued to the parties.

Tribunal Judge I Mohabir

21 May 2021

amended 18 August 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).