



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

**Case reference** : **LON/00BB/HMF/2020/0208**

**Property** : **101 Maryland Street E15 1JD**

**Applicant** : **Ms Filomena Merola**

**Representative** : **Law Lane Solicitors**

**Respondent** : **Mr Abdul Matin**

**Representative** : **Mr Ahmed Malik of Counsel**

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

**Tribunal member(s)** : **Judge H Carr  
Mr M Cairns**

**Date and venue of hearing** : **21<sup>st</sup> May 2021**

**Date of decision** : **21st June 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 not been objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held it was not practicable and all issues could be determined in a remote hearing. The tribunal were provided with an electronic bundle prepared by the applicant comprising 166 pages, and electronic bundle prepared by the respondent comprising pages. Further documents were submitted by both parties together with skeleton arguments prior to the hearing. The determination below takes account all the documentation received from the parties.

## **Decisions of the tribunal**

- (1) The tribunal determines to make a Rent Repayment Order in the sum of £6615. 00.
- (2) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees, totalling £300.
- (3) The tribunal does not make an order under Rule 13 of its procedural rules.
- (4) The tribunal makes the determinations as set out under the various headings in this decision.

## **The application**

1. The applicant tenant seeks a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).
2. The applicant seeks a RRO in the sum of £8400. The period for which the RRO is sought is from 21st July 2019 to 20th July 2020. This is a period of 12 months at a monthly rent of £700.

3. The applicant made her application on 1st October 2020.
4. The applicant alleges that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s. 72(1) of the Housing Act 2004.
5. The applicant also made an application under Rule 13 of the Tribunal Procedural Rules 2013.

### **The hearing**

6. Ms Merola attended the hearing together with her representative Mr Henri Felix from Law Lane Solicitors . The respondent landlord Mr Matin attended and was represented by Mr Ahmed Malik of Counsel.

### **The background**

7. The property is a five bedroom 3 storey terrace house occupied at the time of the alleged offence by the applicant and five others. The property had one kitchen one bathroom and a separate shower room/toilet.
8. The respondent is the freehold owner of the property. He owns it jointly with his wife, Aheya Matin.
9. The respondent had obtained a selective licence for the property for the period 21<sup>st</sup> September 2017 – 20<sup>th</sup> September 2022 from Newham Council. This entitled the respondent to let out the property as a single family home or to two unrelated tenants. The respondent did not obtain a licence from the Council for the property to be occupied as an HMO.
10. The tribunal notes that the selective licence refers to an assured shorthold tenancy as a requirement and that any tenancy deposit is protected in a statutory scheme.
11. The applicant occupied the property from 22<sup>nd</sup> February 2019 until 21<sup>st</sup> July 2020.
12. The agreement the respondent had with the applicant was described as a licence and stated that it did not grant exclusive possession or rights under the Housing Act 1988. The tribunal notes that at clause 6.4 of the agreement, the provision that excludes exclusive possession and entitles the respondent to enter at all reasonable times to carry out the agreed services (if any) and carry out repairs has been amended by a handwritten note – 'reasonable notice' initialled by the landlord.

13. The licence purported to give rise to an immediate right of termination in the event of non-payment of rent or breach of conditions. Alternatively, it provided for 1 month notice period from either party.
14. The applicant paid rent of £ 700 per calendar month inclusive of bills from 22nd February 2019 until March 2020. From that date she was furloughed due to the pandemic and she reduced her rent payment for April, May and June to £350. She paid the final month's rent in full - £700 – as she paid it from her deposit.

### **The issues**

15. The issues that the tribunal must determine are:
  - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
  - (ii) Does the landlord have a defence of a reasonable excuse?
  - (iii) What amount of RRO, if any, should the tribunal order?
    - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
    - (b) What account must be taken of
      - (1) The conduct of the landlord
      - (2) The financial circumstances of the landlord:
      - (3) The conduct of the tenant?
  - (iv) Should the tribunal refund the applicants' application and hearing fees?

### **The determination**

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

16. The applicant asserts and the respondent concedes that the property required licensing as an HMO and that it was not so licenced.
17. There was evidence from Newham Council that a licence was required. There was also evidence that there was a breach of planning requirements.

### **The decision of the tribunal**

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

### **The reasons for the decision of the tribunal**

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

### **Does the respondent have a reasonable excuse defence?**

20. The only arguments that counsel made which could possibly be understood as a reasonable excuse defence are that the respondent learned that Newham were unlikely to grant an HMO licence and that he is no longer breaching the law.
21. The applicant points out that the landlord is a professional landlord who had experience of licensing properties

### **The decision of the tribunal**

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

### **The reasons for the decision of the tribunal**

23. Nothing that the tribunal heard would constitute a reasonable excuse defence.

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

24. The applicant is applying for the RRO for 12 month period of her occupancy.
25. In determining the amount of the award, the tribunal heard evidence about

- (i) The conduct of the landlord
- (ii) The conduct of the tenant
- (iii) The financial circumstances of the landlord.

*The conduct of the landlord*

- 26. The applicant notes that the respondent is an experienced landlord, that he failed to consider the health and safety of the applicant and the other residents of the property, and he used intimidation or bullying tactics against the applicant for failure to pay the rent during the pandemic.
- 27. In addition, the applicant alleges that the respondent cut her access to the internet and cancelled the cleaner.
- 28. The respondent says that he behaved properly. There were no issues of management complained of by the applicant at any time during her occupancy. He did not have control of the internet and would have been unable to deny the applicant access. He says that he had to stop the cleaning because of the pandemic. He did not reveal her circumstances to the other occupiers and he denies that he harassed her but was seeking only to ensure that his rent was paid.
- 29. He made an application for a licence as soon as he was aware that he needed one but learned that the council was not issuing HMO licences. He also says that safety measures were in place in the property. He says that the council decided not to take enforcement action against him as long as he returned the property to single family use
- 30. The applicant says that there is no evidence to support these statements. She also pointed out that the cleaner was an occupant and therefore no Covid risk was presented by the continuance of the cleaning. There is no explanation for terminating the cleaning other than the respondent seeking to sow division between the applicant and the other occupiers.

*The conduct of the applicant*

- 31. The respondent argues that the applicant behaved very badly in unilaterally reducing her rent. He suggested that she had more resources than she had revealed. He says that she could have applied for the housing element of universal credit.

32. The applicant says that she did not reveal more of her financial circumstances because she wanted to retain the privacy of those who provided her with money during the pandemic when she had no earnings.

#### *The financial circumstances of the landlord*

33. The landlord says that his financial circumstances have been severely affected by the pandemic. The property is now occupied by a couple and the rent they pay barely covers the mortgage and bills.

#### **The decision of the tribunal**

34. The tribunal determines to make a RRO of £6615.00 which represents 90% of the rent paid by the applicant during the relevant period, ie 90% of £7350.

#### **The reasons for the decision of the tribunal**

35. The tribunal has serious concerns about the conduct of the landlord. This is not a case where the landlord was ignorant of the need to licence the property. He had obtained a selective licence in 2017. This licence clearly set out that the number of occupiers was limited to two or to a single family. However, the terms of that licence do not seem to have been meaningful to him or constrained his commercial behaviour. The tribunal accepts that the respondent may have had difficulty understanding the licensing system. However, it was incumbent upon him to get the advice he needed to ensure he remained within the law.
36. The tribunal also notes that he did not have planning permission for the property to be used as an HMO. The enforcement letters from the Council appear to be referring to the breach of planning rather than the failure to licence. There is no evidence that the HMO licence application was ever submitted nor of Newham's attitude towards his failure to licence the property.
37. There is no evidence to suggest that the property was fully compliant with licensing requirements despite the respondent's assertion to that effect. The photographs provided are not dated and prove nothing about conditions during the occupation of the applicant.
38. The tribunal notes that the landlord used a licence agreement. It was very concerned that even at the hearing when represented by a barrister the respondent, and his representative, appeared to argue that the licence agreement was legitimate. In the opinion of the tribunal, it was not. The applicant told the tribunal that no-one went in her room

without her permission, there was no suggestion that she could be moved from one room to another. The respondent agreed he could only enter on reasonable notice. These facts are indicative of exclusive possession and a tenancy.

39. The failure of the respondent to provide an assured shorthold tenancy for his occupiers had consequences. It meant that the deposit was not protected. It also meant that there was very limited security of tenure for occupiers. The tribunal notes that the occupiers had their occupancies terminated and a single family housed in the property. It is very unlikely that the terminations were lawful as the respondent would not have been able to serve a s.21 notice whilst the property was unlicensed.
40. The applicant also missed out on the additional protection from eviction provided by the government for those on ASTs during the pandemic. This had direct consequences for the applicant as it meant that she did not have any bargaining power when she lost her job due to the pandemic.
41. The tribunal does not consider that the respondent deprived the applicant of access to the internet and does not take that into account in assessing his conduct. However, it does not accept his evidence about the reasons for terminating the cleaning as it was carried out by another occupant. The WhatsApp conversations between the applicant and other occupiers suggest that this led to tensions between the occupiers.
42. The tribunal also has concerns that the respondent appears to suggest that the applicant had some responsibility in this matter as she failed to raise health and safety issues with him and did not raise the issue of the lack of an HMO licence. The respondent should be aware that it is his responsibility to ensure these matters and not the responsibility of the applicant.
43. The tribunal notes that the applicant paid 50% rent for three months. She says this was because she lost her job as a result of the pandemic and she was not entitled to furlough monies as she had only recently been appointed. The respondent says this was a unilateral reduction. The tribunal notes there is no evidence that the respondent was prepared to compromise on the rent at all. He appears to cast doubt on her employment status and suggests that she had the funds to pay the rent in full.
44. The tribunal is concerned that the applicant was not candid about her resources, redacting part of the financial information she provided, and failing to explain credits to her account. On the other hand the tribunal also considers that the applicant's ability to negotiate was severely limited by the fact that she believed she was occupying the property with very limited security. Perhaps if both parties had been fully aware of the applicant's proper legal position a proper negotiation could have been



carried out. The tribunal's position is that the pandemic required some flexibility from landlords whose tenants lost their employment. This does not mean requiring the occupiers to spend all their savings before rent can be reduced or that tenants should go without food and necessities when they have no income.

45. The tribunal does however note that the applicant's action put the respondent under some stress and this may have exacerbated his behaviour. In the light of this it determines to reduce the rent repayment order by a small amount. It also notes that the rent paid was inclusive of bills. The tribunal is surprised that no evidence was provided of the costs of utilities provided to the applicant. Nonetheless, taking into account the reduction of the rent for three months and the cost of utilities the tribunal reduces the amount payable to the applicant by 10%.
46. The tribunal notes the points made by the respondent in connection with his financial circumstances. He says that the rent has been reduced because the property is occupied by a couple rather than multiple occupiers and that his income is reduced because of the pandemic. The tribunal notes that the respondent was never entitled to earn more from the rent than a single household would pay in rent. The respondent has provided no evidence of a reduction in income as a result of the pandemic. The tribunal therefore determines to make no reduction in the rent repayment order as a result of the respondent's financial circumstances.
47. The tribunal has also taken into account, in reaching its decision on quantum, the broader purpose of RROs. Landlords should not profit from evading their responsibilities to licence HMOs nor should those landlords who do comply with the law be disadvantaged.
48. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.
49. The applicant made an argument under Rule 13 the Respondent has generally behaved unreasonably throughout the process by defending himself on spurious, vague grounds and by producing evidence which is bound to fail. The Applicant's view is that the Respondent's conduct is beyond unreasonable.
50. The tribunal does not make an order under Rule 13. Whilst it has serious concerns about the conduct of the landlord this does not equate with him behaving in an unreasonable way in defending these proceedings and the very high threshold required for making a Rule 13 order has not been met in this instance.

**Name:** Judge H Carr

**Date:** 21st June 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).