



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

Case Reference : **LON/00BG/HMF/2020/0116**

HMCTS : **V: CVPREMOTE**

Property : **Flat 18 Roberta Street, London,
E2 6AW**

Applicants : **Thomas Van Raalte**

Representative : **Muhammed Williams (Health &
Housing Team, London Borough of
Tower Hamlets)**

Respondent : **Niamul Hoque**

Representative : **No appearance**

Type of Application : **Application for a Rent Repayment
Order by Tenant**

Tribunal Member : **Judge Robert Latham
Anthony Harris LLM FRICS FCI Arb**

**Date and Venue of
Hearing** : **12 March 2021 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15 March 2021**

DECISION

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: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant has filed a Bundle of Documents which totals 108 pages and to which page references are made in this decision.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £10,400.04. This is to be paid by 1 April 2021.
2. The Tribunal determines that the Respondent shall also pay the Applicants £300 by 1 April 2021 in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application, dated 8 July 2020, the Applicant seeks a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the leaseholder of Flat 18 Roberta Street, London, E2 6AW (“the Flat”).
2. On 26 November 2020, the Tribunal gave Directions. Pursuant to the Directions, the Applicant has filed a Bundle of Documents. By 11 February 2021, the Respondent was directed to file a Bundle of Documents upon which he relied in opposing the application. The Respondent has not filed a bundle.

The Hearing

3. Mr Muhammed Williams appeared for the Applicants. He is an officer in the Health & Housing Team of the London Borough of Tower Hamlets (“Tower Hamlets”). Section 49 of the 2016 Act permits a local housing authority to help tenants apply for RROs and to conduct proceedings on their behalf. His post is funded by Central Government.
4. Mr Thomas Van Raalte appeared at the hearing and gave evidence. In July 2018, he moved to London from Bath to take up a post at Deutsche Bank as a risk analyst under their graduate programme. He was in urgent need of accommodation. We accept his evidence without hesitation.
5. Mr Hoque, the Respondent, did not appear at the hearing. We are satisfied that he is aware of the application and has made an informed decision not to engage. On 23 September 2020, he contacted Tower Hamlets asserting that Mr Van Raalte had never stayed at the Flat and that this application was a fraud. On 12 December 2020, he returned an “Agreement to Mediate” form to the Tribunal.

The Housing and Planning Act 2016 (“the 2016 Act”)

6. Section 40 provides (emphasis added):

“(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.”

7. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include the offence under section 95(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed house.

8. Section 41 deals with applications for RROs. The material parts provide:

“(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.

9. Section 43 provides for the making of RROs (emphasis added):

“(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).”

10. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

11. Section 44(4) provides (emphasis added):

“(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.”

12. Section 56 is the definition section. This provides that “tenancy” includes a licence.

The Housing Act 2004 (“the 2004 Act”)

13. Part 3 of the 2004 Act relates to the selective licensing of residential accommodation. By section 80, a local housing authority (“LHA”) may designate a selective licencing area.

14. Section 95 specifies a number of offences in relation to the licencing of houses. The material parts provide (emphasis added):

“(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85 (1)) but is not so licensed.

(4) In proceedings against a person for an offence under subsection (1), or (2) 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).

15. It is to be noted that this section does not use the word “landlord”. Section 263 defines the concepts of a person having “control” and/or “managing” premises. These definitions are wide enough to include a number of different people in respect of a property. Where there is a chain of landlords, more than one may be liable. It may also extend to a managing agent.

16. Section 263 provides (emphasis added):

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account

or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

17. Section 263 was recently considered by Martin Rodger QC, the Deputy President, in *Rakusen v Jepson and Others* [2020] UKUT 298 (LC) (“*Rakusen*”). The situation is complex given the range of people, apart from the immediate landlord, who may be deemed to be persons “having control” and/or “managing” premises.
18. The Upper Tribunal (“UT”) noted that Section 263(1) is divided into two limbs: if a house is let at a rack rent the person having control is the person who receives the rack-rent; if the house is not let at a rack rent (for example because the only letting is at a ground rent) the person having control is the person who would receive the rack-rent if the premises were subject to a letting at a rack rent. The formula used in the definition has a considerable history going back at least to 1847 (as Lord Bridge of Harwich explained in *Pollway Nominees Ltd v Croydon LBC* [1987] 1 AC 79). The purpose of the definition is to identify the person (or group of persons who collectively have the relevant interest) who may be made subject to a statutory obligation to undertake work or make a contribution to the cost of public works.
19. In *London Corporation v Cusack-Smith* [1955] AC 337, Lord Reid considered a chain of leases and subleases where several were at a rack

rent and was of the opinion that more than one person could be in receipt of a rack rent at one time. Where a house is let under a single tenancy at its full value, who then sublets the house either as a whole or as individual rooms to different sub-tenants, again at full value, both the superior landlord and the intermediate landlord will be in receipt of the rack rent of the premises and will satisfy the definition in section 263(1) of a person having control.

20. The status of “person managing” is more restrictive. The key qualification is the receipt of rent from the persons who are in occupation (whether directly or through an agent or trustee). Where a superior landlord lets a house to an intermediate landlord who then sublets to tenants or licensees in occupation, ordinarily only the intermediate landlord receives rent from those tenants or licensees. The superior landlord will receive rent from the intermediate landlord, who is not an agent or trustee for the superior landlord, so the superior landlord will not be a “person managing” for the purpose of section 263(3).
21. In *Rakusen*, the UT noted (at [59]) that the policy of the London Borough of Camden is that licences will not be granted to landlords holding less than a five year term (that being the usual duration of a licence) and that Camden considers the most appropriate person to be a licence holder in such situations to be the superior landlord. Similarly, when deciding on whom to serve an improvement notice, a LHA is likely to consider the practicality of the recipient being able to carry out the necessary remedial works. If the intermediate landlord has no significant repairing obligations and no right to carry out major repairs to the building, the LHA may well consider that the appropriate recipient of an improvement notice is the superior landlord.
22. In *Rakusen*, the Deputy President considered the purpose of the 2016 Act before summarising his conclusion:

“64. Finally, I bear in mind that the policy of the whole of Part 2 of the 2016 Act is clearly to deter the commission of housing offences and to discourage the activities of “rogue landlords” in the residential sector by the imposition of stringent penalties. Despite its irregular status, an unlicensed HMO may be a perfectly satisfactory place to live, and the main object of the provisions is deterrence rather than compensation. The scope of the additional jurisdictions conferred on the FTT is defined by reference to the commission of specific offences, with the only qualification identified being that the person committing the offence must be a landlord. I can think of no policy reason why the objective of deterring such offences should extend only to immediate landlords and not to superior landlords. If such a limitation had been intended it could have been made clear, as it was in section 73(1), 2004 Act. The facts of this case are not unusual and the phenomenon of intermediate landlords taking relatively short leases of houses with few repairing responsibilities with a view to subletting them to occupational tenants is sufficiently

commonplace to have acquired the recognised label “rent-to-rent”. The effectiveness of rent repayment orders would be considerably reduced if the “rogue landlords” whom the orders are intended to deter could protect themselves against the risk of rent repayment by letting to an intermediate while themselves retaining responsibility for licencing and for the condition of the accommodation.

65. The conclusion I have reached, therefore, is that the FTT does have jurisdiction to make a rent repayment order against any landlord who has committed an offence to which Chapter 4 applies, including a superior landlord. There is no additional requirement that the landlord be the immediate landlord of the tenant in whose favour the order is sought. That appears to me to be the natural meaning of the statute and is consistent with its legislative purpose. The only jurisdictional filter is that the landlord in question must have committed one of the relevant offences, and before an order may be made the FTT must be satisfied to the criminal standard of proof that that is the case. Although a narrower interpretation is possible it would involve reading the language as prescribing an additional condition which is not clearly stated, and which would detract from the simplicity and effectiveness of the statutory regime.”

The Background

23. In February 2016, the London Borough of Tower Hamlets introduced a Selective Licencing Scheme which extends to privately rented properties in the ward in which the Flat is situated. We are satisfied that the Flat required a licence under the Scheme and that it was not so licensed. On 14 November 2019, Mr Hoque applied for a licence.
24. On 26 March 2008, Mr Hoque was registered at the Land Registry as the leaseholder of the Flat (p.99-101). The Flat is part of a council block in Tower Hamlets. It is situated on the ground and first floors of a four storey block. The Flat initially had three bedrooms. However, the living room is now used as a fourth bedroom. There is a kitchen on the ground floor and a bathroom and toilet on the first floor.
25. In July 2018, Mr Van Raalte came to London from Bath to take up his post with Deutsche Bank. He had an urgent need for accommodation. He contacted Flintons Limited (known to the Applicant as “Flintons”), having seen accommodation advertised on “spare room”. The flat which he saw was not available. He subsequently learnt that this was the model adopted by Flintons. He was rather shown photographs of other flats, including the Flat. He was encouraged to sign an agreement without viewing the Flat. He only signed a four month agreement as he had anticipated that this would be a short term arrangement.
26. Flintons required Mr Van Raalte to sign a licence agreement which extended to 21 pages. The agreement was for a term of four months from 5

July 2018. The rent was £866.66 per month. He was required to pay a deposit of £866.66. The identity of the landlord is not specified. He was required to pay rent to a bank account in the name of “Flatsharing” at Barclays Bank. Any “official communications” should be made to info@flintons.com. No verbal notice would be accepted.

27. We are satisfied that Mr Van Raalte was granted exclusive occupation of one room at the Flat for a term at a rent. The substance and reality of the agreement was to create a tenancy (see *Street v Mountford* [1985] AC 818). The licence agreement was a sham intended to conceal the nature of the agreement and the identity of the landlord.
28. Mr Hoque informed Mr Williams that he had had no dealings with Flintons. He had rather entered into an agreement with Signatures Properties Limited. We accept that Mr Hoque may have had no knowledge of Mr Van Raalte’s occupation.
29. Mr Williams described Flinton’s “rent to rent” business model. Mr Hoque would have been guaranteed a fixed rent each month by Signatures Properties Limited. The agent would be permitted to maximise the rent which they are able to extract by subletting the flat. This model allows a hands-off management approach by the leaseholder, whilst ensuring a regular flow of income. This approach has a negative impact on tenants who often struggle to get repairs executed in a timely manner.
30. When Mr Van Raalte moved into occupation, there were tenants in the three other rooms. The ground floor room was let to a couple. The two upstairs rooms were let to single people. Two of the upstairs bedrooms had double beds and the third a single bed. Throughout his period of occupancy, tenants came and left. The maximum number of residents was six.
31. On 5 November 2018, Mr Van Raalte extended his agreement for a further period. He had been unable to secure alternative accommodation. His second agreement expired on 4 September. Flintons agreed to extend this for a further fortnight until he could move into his new flat. He vacated the Flat on 9 September 2019. His deposit had been placed in a rent deposit scheme, but he delayed in applying for it to be repaid. By the time that he applied for it, the deposit had been returned to Flintons which had been put into liquidation.
32. On 29 October 2019, Mr Van Raalte approached Tower Hamlets to ascertain whether the Flat had been licenced. Thereafter, Mr Williams assisted him to make this application. After he had made this application, he received a telephone call from Mr Hoque accusing him of being a liar and a scammer. A few days later, Mr Hoque’s sister telephoned Mr Williams to apologise. She explained that her brother had been unaware of any arrangement between Signature Properties and Flintons.

33. Mr Williams stated that on 30 April 2020, Flintons had been expelled from the Property Ombudsman Scheme. They had also traded as “Flat Sharing Limited” and “Citicide Limited”. The Trading Standards Services of both Tower Hamlets and Camden have undertaken an investigation into Flintons. It has always resurfaced in different guises. Mr Shamsul Haque is the only registered officer of Flintons.

Our Determination

34. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95(1) of the 2004 Act of control of an unlicensed house. The Flat was a property that required a licence under Tower Hamlet’s Selective Licencing Scheme. At no time during Mr Van Raalte’s period of occupation, was it so licenced. Neither had any application been made for a licence.
35. We are further satisfied that Mr Hoque was is a “person having control” of the Flat as he received a rack-rent for the premises from Signature Properties Limited. He would have ben the appropriate person to hold a licence.
36. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that the Applicant was not in receipt of any state benefits. He paid his rent from his earnings.
37. The Applicant seeks a RRO in the sum of £10,400.04 for the twelve month period from 5 July 2018. Mr Williams has produced a schedule of rent payments during this period. He has also taken us through a number of the Applicant’s bank statements for the relevant period. We are satisfied that this rent was paid.
38. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
- (i) The conduct of the landlord.
 - (ii) The conduct of the tenant. There has been no criticism of the Applicant’s conduct. We reject the landlord’s suggestion that this application is fraudulent.
 - (iii) The financial circumstances of the landlord. We have received no evidence on this.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.

39. Having regard to these factors and our findings above, we have no hesitation in making a RRO in the sum sought. We are satisfied that the sham licence agreement was intended as a smokescreen to conceal the identity of the relevant landlord. Any tenant is entitled to know the identity of their landlord. Whilst Mr Hoque may have been unaware of the involvement of Flintons Limited, we are satisfied that he had entered into a rent-to-rent agreement with Signature Properties Limited. Tower Hamlets require licenced premises to have valid gas certificates, proof that all electrical appliances and furniture are in a safe condition, and proof that fire detection and a smoke alarm system is installed and functioning correctly. The Flat did not have any of these safety devices during the period that Mr Van Raalte resided there.
40. We are also satisfied that the Respondent should refund to the Applicant the tribunal fees of £300 which he has paid in connection with this application.

Judge Robert Latham
15 March 2021

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.