



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

Case reference : **LON/00BG/HMF/2020/0237**

Property : **96a Brick Lane, London E1 6RL.**

Applicant : **Ms. A. Gutkowska
Mr. A. Visan
Mr. K. Kirtchhoof.**

Representative : **Mr. M. Williams, Environmental
Health and Trading Standards –
London Borough of Tower
Hamlets.**

Respondent : **Mr. A. Hai Khalique;
Mr. A. Quayum Khalique;
Mr. A. Muith.**

Representative : **Mr. Miah.**

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

Tribunal : **Judge Mullin
Mrs Louise Crane MCIEH**

Venue : **Remote.**

Date of Decision : **9th June 2021**

DECISION

Covid-19 pandemic: description of hearing

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

Decisions of the Tribunal

- (1) The Application is dismissed.

The hearing

1. The hearing took place via the Cloud Video Platform on 9th June 2021. The Applicants were represented by Mr. Williams at the hearing and the Respondents were represented by Mr. Miah. The Tribunal is grateful to the Parties for the helpful and courteous way they conducted the hearing.

Background

- A. The tribunal has received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the applicants for a rent repayment order (RRO).
- B. It is asserted that the landlord committed an offence by failing to license the property. The applicant claims for periods between 17 September 2019 and 3 April 2020. The total sum claimed is £14,609.00.

Reasons

2. At the hearing the Tribunal decided it would dismiss the application as it could not be satisfied beyond a reasonable doubt that the Respondents had committed a criminal offence as alleged. This was indicated to the parties at the time. These are the Tribunal's reasons for that decision.
3. In order to obtain an RRO the Applicants need to prove beyond a reasonable doubt that the Respondents committed one of the offences set out in s.40 of the Act.
4. In this case it is alleged by the Applicants that the relevant property is a so-called 'Mandatory HMO', i.e. it was required to be licensed under s.55 of the Housing Act 2004, that it was not so licensed, and that the Respondents are therefore guilty of an offence under s.72 of the Housing Act 2004.

5. It is, of course, for the Applicant to prove beyond a reasonable doubt that the relevant offence has been committed. This would necessarily include proving that the property required an HMO licence from the local authority.
6. In order to prove that the property required an HMO license the Tribunal would have expected some evidence describing the property, its occupants, the nature of their occupation and an explanation as to why it is said the property required a license with reference to the statutory definition. Whether or not a property requires a licence is not always a straightforward matter.
7. What is striking about this application is that there is no witness evidence whatsoever from the Applicants. Mr. Williams signed the application, the “expanded statement of reasons” and the “full details of the alleged offence” on behalf of the Applicants but none of them have seen fit to produce a witness statement or indeed to attend this remote hearing.
8. Any problems with language or the Applicant’s being abroad would have been surmounted by the deployment of an interpreter and the fact that this was a remote hearing accessible from a wide range of commonly held devices.
9. There is no evidence at all about the property, its layout, its size, the number of rooms it contained.
10. The only evidence the Applicant’s have put before the tribunal is:
 - a. A series of emails between the Local Authority and Ms. Gutkowska (the 1st Applicant).
 - b. Documents entitled ‘Booking Summaries’ for each of the three Applicants.
 - c. Bank statements and other documents which are said to establish the payment of rent.
 - d. An official copy of the register of title.
11. This application is hamstrung by a lack of evidence. The Tribunal cannot be satisfied on the thin material provided that the Respondents have committed the offence alleged. There is insufficient evidence to prove beyond a reasonable doubt that the property required an HMO licence.
12. In the absence of any from the Applicants setting out: who occupied which room, for what rent, for what period, that they paid rent as alleged, whether it was their principle home, whether they considered themselves tenants or licensees, or, any evidence as to the nature and layout of the property, the Applicants have failed to establish that the property was an HMO within the meaning of the Housing Act 2004 and

therefore have also failed to make out a prima facie case that the offence was committed.

13. In any event, even if we are wrong about the lack of a prima facie case, it seemed to us that Mr. Williams was not in a position to meaningfully challenge what was said by the Respondents. The Respondents have filed a detailed statement of case and a joint witness statement verified by a statement of truth.
14. In short, their position is that they are the victim of a fraudulent rent to rent scheme. The Respondent entered into a management agreement/lease with “Simple Properties Management Ltd” on 9th January 2019. The Respondents are said to be familiar with the law around HMOs and therefore made sure that it was an express term of the management agreement that the Property was not to be used as an HMO.
15. Unbeknownst to the Respondents the property was converted in some way (we do not have any details in evidence) and then let out in breach of that agreement.
16. The Respondents have also incurred considerable expense, some £15,000, in re-instating the property following them regaining possession of it.
17. There is no evidence from the Applicants to gainsay any of what the Respondents say in their evidence. It seems to the Tribunal in those circumstances that even if the Applicant had made out a case that the property was required to be licensed and was not so licensed that the Respondents would have had a reasonable excuse on the basis of the evidence which was before it.
18. They had no knowledge of what was going on at the property a relatively short time after it was let and they were entitled to expect that the terms of their agreement with Simple Properties Management Ltd would be complied with.
19. For all these reasons the application is dismissed.
20. The Tribunal also respectfully echoes the observations of the Upper Tribunal at paragraph 48 of the judgement in D’Costa v D’Andrea & Ors (2021) UKUT 144 (LC).
21. In this application it seems that Mr. Williams suggested to the applicants that they seek an RRO, that he then drafted and issued the application on their behalf and then appeared at the hearing as the sole representative in the absence of any other witnesses. There is nothing improper about that *per se*, but whilst a Local Authority can assist and support occupiers in making an RRO Application, the Application remains one made by the Applicant and requires their active involvement.

22. It is commendable that Mr. Williams and the Local Authority seek to assist people in vindicating their rights in a housing context, but as the Upper Tribunal states, they should ensure that where the Local Authority enters the fray it should do so in a way that is fair to all the parties. That should include, in our view, ensuring so far as they can that applications are properly evidenced and pursued with the active involvement of the applicants themselves.

Name: Tribunal Judge Mullin

Date:19th July 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). **9(7) and (8) of the 2013 Rules.**