



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

Case reference : **LON/00BG/HMG/2021/0011**

Property : **44b Morris Street, Shadwell E1 2NP**

Applicant : **Anton Milan Zaric (1) Evelyn Melisa Paucar Sanchez (2) Andreea-Evelyn Scripcariu (3) Elena Wischnewski (4)**

Representative : **Represent Law Limited**

Respondent : **J & G Home Share Limited (1)
Abdul Hamid (2)
Ataur Rahman (3)**

Representative : **N/A**

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
Ms J.Mann MCIEH**

Date and venue of hearing : **27th August 2021**

Date of decision : **31st August 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: 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 202 pages. No bundle was received from the respondent. The determination below takes account of the documentation received.

Decisions of the tribunal

- (1) The tribunal strikes out the application against the second and third Respondent.
- (2) The tribunal determines to make a Rent Repayment Order against the first Respondent in the sum of £24,073.69
- (3) The tribunal determines that the first Respondent reimburse the Applicants for their application and hearing fees, totalling £300.
- (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 applicants seek RROs as follows:
 - (i) The first applicant – Anton Milan Zaric lived in the property from 30th September 2019 until 18th

March 2020 when he had to leave the country. He paid a monthly rent of £585 (which is £19.23 per day) from 30th September 2019 until 3rd April 2020. He seeks an RRO for the sum of £3,567.69 which represents 6 months and three days rent

(ii) The second applicant - Evelyn Melisa Paucar Sanchez - lived at the property from 3rd May 2019 until 3rd April 2020. She paid a monthly rent of £542 and seeks an RRO for the sum of £5962.00 for the period of her occupation which is 11 months rent.

(iii) The third applicant - Andreea-Evelyn Scripcariu lived in the property from 27th June 2018 until 3rd April 2020. In her statement she mistakenly stated that her occupancy ended on 3rd March 2020. She confused the last rent payment with her last day in the property. She paid a monthly rent of £606 and seeks an RRO for the sum of £7,272 for the final 12 months of her occupancy.

(iv) The fourth applicant - Elena Wischnewski - lived in the property from 27th June 2018 until 3rd April 2020. She paid a monthly rent of £606 and seeks an RRO in the sum of £7,272 for the final 12 months of her occupancy.

3. The applicants made their application on 16th March 2021. The application was received by the tribunal on 17 March 2021.

4. The applicants allege 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.

The hearing

5. The applicants attended the hearing together with their representative Ms Adele Rainsford paralegal with Represent Law. There was no attendance from the respondents.

6. The tribunal was required to determine two preliminary issues.

7. The first is whether following the Court of Appeal decision in *Rakussen v Jepson* (2021) EWCA Civ 1150 the application against the 2nd and 3rd Respondent should be struck out.
8. The Applicants agreed that the applications against the 2nd and 3rd Respondent should be struck out.
9. The second issue relates to the non-attendance of the Respondents. The tribunal requires evidence that the Respondents have been properly served with the proceedings.
10. The applicants provided the following information
 - (i) The documents accompanying the application made up the hearing bundle other than directions which were sent to the first Respondent by the tribunal.
 - (ii) The hearing bundle was served on the first respondent by email on 18th August 2021 and by first class post on the same date at the First Respondent's address which it checked was still the current registered address at Companies House
11. The tribunal determined
 - (1) that the application against the 2nd and 3rd Respondents be struck out.
 - (2) That the applicants had carried out the necessary steps to serve the respondents with the proceedings.

The reasons for the determination of the tribunal

12. The Court of Appeal decision in *Rakussen v Jepson* (2021) EWCA Civ 1150 determined that the appropriate respondent is the applicant's immediate landlord. In this case the First Respondent is the immediate landlord and the appropriate respondent. The second and third Respondents are the freeholders and therefore are not appropriate respondents.
13. The tribunal is persuaded by the evidence of the applicants that the respondents have been properly served. It also notes that the tribunal

has sent the application, the accompanying documents and the directions by post and email to all of the respondents named in the application.

The background

14. The property is a 6 bedroom flat over the upper two floors of a converted house. The first floor comprises the kitchen, a bathroom with a toilet and a shower and sink, and three bedrooms. The second floor has a further three bedrooms and a bathroom with a bath, sink and toilet. There is a terrace to the second floor. The ground floor is commercial premises currently used as a fast food outlet.
15. The applicants had licence agreements in which the landlord was named as J and G Home Share Limited. The Freeholder of the property was Mr Abdul Hamid and Mr Ataur Rahman.
16. The applicants say that at any one time there were six people in total living at the property.
17. The property is located in the Shadwell ward in the London Borough of Tower Hamlets. From 1st April 2019 LB Tower Hamlets have required that all properties located in the Shadwell ward occupied by three or more persons and two or more households be licensed under an additional HMO licensing scheme.

The issues

18. 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?

19. The applicants assert the following
 - (i) That at all material times three or more persons occupied the property at any one time and the tenants were not a single household, therefore the property was subject to the additional HMO licensing requirements.
 - (ii) At no time was the property licensed as an HMO by Tower Hamlets Council.
 - (iii) The first respondent is a letting agent engaged by the freeholders to manage the property and the tenancies. The applicants all paid rent to the first respondent as required by their rental agreement. The rent was paid into a bank account the details of which were given to them by the first respondent.
 - (iv) The applicants occupied the property as their only or main residence
 - (v) None of the applicants were in receipt of the housing element of Universal Credit

20. There was email evidence dated 23rd October 2020 from Olu Balogun an Environmental Health Officer in the Health and Housing Team, of LB Tower Hamlets that confirms the property location, the requirement for a licence and the lack of a licence for the property

The decision of the tribunal

21. The tribunal determines that the first Respondent has committed the alleged offence.

The reasons for the decision of the tribunal

22. The tribunal relies on the evidence from the applicants and the information provided from the local authority.
23. The tribunal found the Applicants to be credible. They gave clear and consistent evidence throughout the hearing.

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

24. Each of the applicants provided evidence of payment of rent for the period of their tenancy. The tribunal checked the figures for the periods of claim very carefully. The evidence correlated to the amount of the claim.
25. The tribunal notes that at various times a tenant of the property would top up the gas account and then deduct that sum from the monthly rent.
26. 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

27. The tribunal asked the applicants about the fire precautions in the property. The applicants explained the layout of the property, and that the kitchen provided the access to the rest of the flat. There was one battery powered smoke alarm to the property. The applicants said that the doors were not fire doors, but standard wooden doors. The Applicants were unaware of any gas safety or other safety inspections.
28. There was some evidence of mould and some evidence of regular blockages to the bath. There was also a bed bug infestation.

29. The Applicants said that on average the First Respondents visited once a month, to collect cash payments for rent, or in response to any complaints. There was no regular systematic inspection of the property.
30. The tribunal notes that the 1st respondent used a licence agreement which specifically excludes the Housing Act 1988. The tribunal notes that the applicants each had exclusive possession of their own room. Although the rooms did not have individual locks there was a hook that would have enabled them to lock their rooms if they provided their own locks. The First Respondent made individual arrangements with each of the applicants and each applicant signed their own individual agreement.
31. The applicants told the tribunal that they were given notice of termination on 5th March 2020 by email from the First Respondent.

The conduct of the applicant

32. The applicants provided evidence that they had paid their rent regularly and on time.

The decision of the tribunal

33. The tribunal determines to make a RRO of £24,073.69p

34. **The reasons for the decision of the tribunal**

35. The tribunal has made no deductions from the maximum RRO. There was no evidence that pointed to the RRO being reduced. There was no evidence of the financial circumstances of the first Respondent, no evidence relating to utilities and nothing to suggest that the conduct of the Applicants was anything but good.
36. In addition, the tribunal has serious concerns about the conduct of the first Respondent.
37. The property had the most minimum fire safety equipment – only one battery smoke alarm in the kitchen. Access to the property was via the kitchen. There was no external fire escape. There was therefore no safe escape route out of the property if a fire had broken out in the kitchen which is the most likely location for a fire. There also appeared to be no fire doors. There is little doubt in the tribunal's mind that if a fire had broken out there would have been serious consequence.

38. If the property had been licensed the first Respondent and the Applicants would have had the benefit of expert advice from the local authority on the necessary fire safety works.
39. The tribunal notes that the landlord used a licence agreement which in the opinion of the tribunal was not appropriate. If the property had been licensed the first Respondent would have been obligated to use an assured shorthold tenancy.
40. The failure of the respondent to provide an assured shorthold tenancy had consequences. It meant that the deposit was not protected when it should have been. It also meant that the applicants thought they had very limited security of tenure. The tribunal notes that the applicants were given less than one month to vacate the property.
41. The tribunal considers that the first Respondent was a reactive landlord with regards to repairs and conditions and failed to take the important management responsibilities involved in running an HMO seriously. The tribunal was concerned about the bedbug infestation as it notes that the property was furnished.
42. The tribunal notes the failure of the first Respondent to engage with these proceedings.
43. 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.
44. The tribunal notes the definition of rent set out in s.52(2) of the Housing and Planning Act 2016.

‘For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.’

45. It determines that rent reductions agreed between the landlord and the tenant for gas were deductions in lieu of rent and therefore the full contractual rent is to be repaid.
46. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr

Date: 31st 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).