



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

Case reference : **LON/00BJ/HMF/2021/0098**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **44 Aliwal Road, Battersea London SW11 1RD**

Applicant : **Adam Wakefield, Sophie Langton, Camilla Budd**

Representative : **Ms Clara Sheratt**

Respondent : **Theran Bhatia and Veenesa Bhatia**

Representative : **Justin Shale of Counsel**

Type of application : **Application for a Rent Repayment Order by tenant. Sections 40,41, & 44 of the Housing and Planning Act 2016**

Tribunal members : **Judge H Carr
Mr Fonka MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **20th December 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: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in a bundle from the Applicant comprising 135 pages, plus a response and a bundle from the Respondents comprising 41 pages the contents of which have been noted.

Decision of the Tribunal

- 1. The Tribunal determines to make a Rent Repayment Order of £22,051.**
- 2. The Tribunal determines to order the Respondent to reimburse the Applicants the application and hearing fees of £300 within 14 days of receipt of this decision.**

The application and procedural history

3. The applicants made an application for a Rent Repayment Order on 31st March 2021. The applicants allege that the landlord has committed the offence of controlling or managing an unlicensed HMO.
4. The applicants seek a RRO for the period 29th April 2019 to 28th April 2020 in the sum of £27,564
5. The Tribunal issued directions on 18th May 2021.

The hearing

6. The hearing took place via video on 17th September 2021. The applicants attended the hearing with their representative Ms Sherratt.
7. The respondents were represented by Mr Justin Shale of Counsel and Mr Mr Kashif Ali Malik from Cribs Estate Agents, the agents for the

respondents, attended and gave evidence. Mr Ismaeel Malik Solicitor also attended on behalf of the respondents. The respondents were not in attendance.

The issues

8. The issues that require to be decided by the Tribunal are:
 - (a) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of being someone in control of or managing an HMO which is required to be licensed and is not so licensed?
 - (b) If the tribunal determines to make a Rent Repayment Order:-
 - What is the applicable 12-month period?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of the respective conduct of the applicants and the respondent and of the financial circumstances of the respondent?

The background and chronology

9. 44 Aliwal Road is a four storey 4 bedroomed terraced house with 2 reception rooms two bathrooms and a separate WC a kitchen and a patio rear garden,
10. The property was rented as a house from 31st October 2016. At that stage all three of the applicants occupied the property along with others. At the commencement of the tenancy the rent was £3750 pcm. It was subsequently raised to £3,800.
11. Each tenant occupied their own room on a permanent basis with one tenancy agreement for the property.
12. The tribunal was shown a tenancy agreement (dated 17th January 2019) which is an assured shorthold tenancy with a monthly rent of £3800.00 per

month. The term was for 12 months commencing 28th January 2019. This agreement covers the period of the claim. Once the fixed term expired the tenants held over as periodic tenants.

13. There are four tenants named on the tenancy agreement at that date, – Mr Adam Wakefield, Miss Camilla Budd, Miss Sophie Langton (the third applicant) and Mr Lewis Foster.
14. The applicants say that one of the ground floor reception rooms was let as a fifth double bedroom. The applicants say that the fifth tenant was never named on any tenancy agreement at the request of the respondents' agent. The respondent says that it was unaware of there ever being any more than four occupiers. It reminded the tenants that the property was not to be occupied by more than four persons on 20th July 2020. This matter is further considered below.
15. The tenants took responsibility for finding replacement tenants and managing the deposit. The agents treated Mr Wakefield as lead tenant. This meant he took responsibility for communicating with the agents and paying the rent.
16. The agreement names Theran Bhatia and Veenesaa Bhatia as the landlord. They are the beneficial owners of the property as shown by the land registry documentation . They were also in receipt of the rent.
17. The property is situated within the London Borough of Merton. Ms Lola Adepoju confirmed that the property does not have an HMO licence and that no application for an HMO licence has ever been submitted.
18. The property was not licensed during the period of the applicants' occupation and no licence application was made during this period. A copy of the management agreement was provided to the tribunal by the respondent with the permission of the tribunal after the hearing. This appeared to provide no reference to licensing.

Did the Respondent commit the offence of controlling or managing an unlicensed HMO?

19. The applicants assert that:

- the property was an HMO
- the applicants lived in the property as their only or principal home
- the tenants did not form a single household, they were not related to each other nor were any of them in a relationship
- they did not receive the housing element of universal credit during the period of their claim
- the property required mandatory licensing and no licence has been granted in relation to the property

20. They produced evidence from the London Borough of Merton to demonstrate that the property was not licensed.

21. The tenants say that the property was occupied by at least five people at all points during the relevant period. They produced a list of occupiers and a chronology.

22. The applicants gave evidence about the occupation of the property as follows:

Room 1: Jack Hesketh lived at the Premises from 31st October 2016 to 13th July 2018. Jack was replaced by Ollie Woodford who lived at the Premises from 13th July 2018 to 4th April 2020. Ollie was replaced by Emily Kocheff who lived at the Premises from 5th April 2020 to 31st July 2020.

Room 2: Sophie Langton lived at the Premises from 31st October 2016 to 4th April 2020. Sophie was replaced by Andrew Forshaw who lived at the Premises from 5th April 2020 to 31st July 2020.

Room 3: Camilla Budd lived at the Premises from 31st October 2016 to 31st July 2020.

Room 4: Adam Wakefield lived at the Premises from 31st October 2016 to 31st July 2020.

Room 5: Lewis Foster lived at the Premises from 31st October 2016 to 30th January 2020,.Lewis was replaced by Phillipa Conway who lived at the Premises from 31st January 2020 to 31st May 2020. . Phillipa Conway was replaced by Jessica Drake who lived in the property from 1st June 2020 to 31st July 2020.

23. The applicants point to Zoopla adverts and to correspondence to show that the respondents' agent was fully aware that the property was let to five people.
24. The respondent says that the adverts were targeted at families seeking to rent and therefore the HMO rules were not relevant.
25. The respondent disputed that the offence had been committed. He accepted that the respondents are persons in control of the property as they receive rent, that the property did not have an HMO licence and that no application had been made for an HMO licence in the relevant period.
26. He argued that the applicants had not proved beyond reasonable doubt that the property was the only or principal residence of all of the applicants. He noted that Mr Wakefield had left the property in early April 2020 to visit his parents and had not returned for three months. Mr Wakefield said that he had intended his visit to be brief but travel restrictions made it impossible to return before June. He had continued to pay rent and all of his belongings were in the property. He told the tribunal he had every intention to return.
27. More significantly the respondent argued that the property was not subject to mandatory licensing. His argument is that the respondent did not know that there were five tenants in the property, he never provided written consent for five tenants in the property and that there is no evidence to show beyond reasonable doubt that the property was occupied by five tenants during the period of the claim.
28. He points out that the adverts that the applicants produce are targeted at families for whom there would be no need for an HMO licence. He notes that they are unable to produce the advert that they responded to. He argues that is because this was for a 4 bedroom two reception room property. He asserts that the agents were always of the belief that there were only four occupiers and relies on the email of 20th July 2020 reminding Mr Wakefield of this.

29. Mr Wakefield responds to this by saying that the email was an attempt to cover the respondent's back and that this was the first time that the agents had ever mentioned in writing or in person that the property could not be occupied by more than 4 people. He says that at all times the agents were aware that there were five people in the property.
30. The respondent points out that when the tenants sought replacement mattresses the landlord provided only four mattresses, one for each occupant.
31. Mr Wakefield says that they only requested four mattresses as one of their number had provided their own mattress.
32. The respondent also says that the respondent does not know what proportion of that rent was paid by Mr Wakefield personally and what was paid by the other two applicants or other occupants of the property whether legal or illegal.

33. The decision of the Tribunal

34. The Tribunal determines that the Respondent committed the offence of controlling or managing an unlicensed HMO.

The reasons for the decision of the Tribunal

35. The tribunal finds that the tenants occupied the property as separate households, and that none of the applicants were in receipt of the housing element of universal credit. It relies on the statements of the applicants and the concessions of the respondent.
36. The tribunal finds that Mr Wakefield occupied the property as his only or principal home. There is no contradiction between occupying rented property as your only or principal home and visiting your parents. It is clear from Mr Wakefield's evidence that he had every intention of returning to the property and that his belongings were in the property. He continued to pay rent and take responsibility for the rental payments of the other tenants. It was only the peculiar circumstances of the pandemic and the consequent travel restrictions that prevented him from returning when he initially intended to return.
37. On this basis the tribunal is satisfied beyond reasonable doubt that Mr Wakefield occupied the property as his only or principal home. No

challenge was raised to the occupation of the other applicants who gave evidence that they did not leave the property during the pandemic.

38. The tribunal has thought very carefully about the evidence in relation to the number of occupiers of the property and the knowledge of the respondent.
39. The tribunal has taken note of the email trail between four of the tenants dated 30th September to 3rd October 2016 prior to the commencement of the agreement when it was confirmed that it was acceptable for four tenants to pay the holding fee and then for the fifth to pay the additional holding fee once that person was identified. There was no suggestion at this stage that five occupiers were unacceptable. This provides strong evidence that the agents were aware of the number of occupiers from the commencement of the tenancy.
40. The email from the agents to Mr Wakefield dated 4th October 2016 makes the position very clear:

We have received 4 payments £110 each. I guess is your holding deposit. Now we are waiting for the last one. Please note that in future we need only one full payment not separate.

41. The tribunal also notes evidence from the applicants that it was not until they went to sign the tenancy agreement on 1st November that they were informed that the AST would only include four of the tenants. The applicants said that they had conversations about the fifth tenant's status and were assured he was an official tenant.
42. The tribunal also considered the emails between Jack Hesketh and Kashif Ali dated 13th November 2017 when, following complaints about conditions, Mr Malik asked for evidence that Mr Hesketh was living at the property as his name was not on the contract and there is no information about him in their records.
43. It is not clear what the outcomes of this were as Mr Malik refused to act on Mr Hesketh's concerns as he was not a tenant, but another agent agreed to progress the repair request.
44. No explanation was given of Mr Malik's confusion. It may be that he himself was not aware of the arrangement, but the tribunal finds that other employees of the agent were.

45. There is no evidence of any follow up by the agents about the presence of a fifth person in the property.

46. It has also considered the email of 20th July 2020 which includes the following:

'as with the latest fire regulations etc just mentioning again that this property is for 4 tenants and we will not be able to offer this to 5 persons so please make sure that this property should not be occupy more then 4 people are any time. (sic)

47. The tribunal notes that this email was sent nearly four years after the commencement of the occupancy of the property and that Mr Wakefield replied immediately with the following;

You (Cribs) willingly marketed and let this to us as a five bedroom property. When we viewed it, it was already a five bedroom property so going forward you either need to: A) get the correct HMO for letting a five bedroom property. B) Rent the property as a 4 bedroom and reduce the rent accordingly because £3,800 is clearly the price for a 5 bedroom.

48. Moreover the tribunal consider that the email of 20th July 2020 has to be read with the knowledge that Mr Wakefield constantly informed the agents of the names of new tenants replacing former tenants. So for instance on 9th July 2018 Mr Wakefield wrote to Dilber Ali as follows:

We have a new tenant moving in this week. Jack (the one who is not officially on the contract) is moving out into his own place and we have a new friend moving in. Nothing will change due to there being just four names on the contract and I will continue to transfer rent on behalf of everyone. Olly transferred is deposit to me and I pass it onto Jack so that is taken care of.

49. The tribunal finds the evidence of the applicants to be truthful. They gave honest and thoughtful answers to the questions raised,

50. It concludes from the evidence provided that there were always five occupants of the property, that the applicants made no effort to disguise this, and that the respondent, via the agents, was fully aware of the situation. The tribunal notes that it cannot be enough to rely on an agreement which only names four occupiers to cast doubt on the number of

occupiers in a property when the agents themselves insisted on this arrangement.

51. The tribunal notes that it has not been provided with any response from the respondents which suggested that the arrangements were unacceptable other than the email sent in July 2020.
52. The respondent also says that it is not known how much of the rent was paid by the different occupiers. This was because, for the convenience of the respondent, Mr Wakefield was treated as head tenant. The agents wished only to deal with one cheque. It does not seem appropriate to use something which was for the convenience of the respondent to cast doubt on the arrangements that the applicants made.
53. In addition, after the hearing, and with the permission of the tribunal, the other two applicants provided bank statements to demonstrate that they paid rent to Mr Wakefield. The tribunal finds therefore that there is clear evidence that the other two applicants paid their share of the rent to Mr Wakefield who passed it on to the respondent.

What is the appropriate amount for the RRO?

54. Adam Wakefield is seeking to recover the sum of £10,200 for the rent paid for the period between 29th April 2019 and 28th April 2020
55. Sophie Langton is seeking to recover the sum of £8,484 for the rent paid for the period between 29th April 2019 and 4th March 2020.
56. Camilla Budd is seeking to recover the sum of £8,880 for the rent paid for the period between 29th April 2019 and 28th April 2020.
57. There is no deduction for utilities as the applicants paid all the utilities themselves..
58. The respondent argued that whilst there was evidence that Mr Wakefield had paid £3,800 pcm to the respondent they required further evidence that the other two applicants had paid rent. The tribunal allowed the applicants to submit bank statements after the hearing which showed these payments.

59. The tribunal then heard arguments about the tenants' conduct, the respondent's conduct and financial circumstances.

The tenants' conduct.

60. The tenant's representative said that the tenants had behaved properly. They paid their rent on time, reported repairs in a timely fashion and generally behaved well. They took responsibility for finding new tenants and for managing the deposits. They communicated appropriately with the agents.
61. The respondent had two concerns about the behaviour of the tenants. First he considered that the application was orchestrated and malicious. He points particularly at the behaviour of Mr Wakefield saying that he sent a list of what was wrong with the property on 16th July 2020 after he had given notice of his intention to move out of the property. The respondent argues that there was no need for him to be concerned with the condition of the property at that stage. The respondent also refers to the correspondence between the agents and Mr Wakefield in relation to the deposit. He says that Mr Wakefield accused Kashif of being unprofessional in not transferring the deposit and threatens 'transfer the full deposit within 3 days or face the ramifications.
62. Mr Wakefield says that he was concerned about future occupiers of the property and that was why he reiterated the list of problems in the property.
63. Second he argued that Mr Wakefield had behaved very badly in connection with rubbish which was left at the house subsequent to the termination of the tenancy.
64. Mr Wakefield agrees that there was a problem with the rubbish at the end of the tenancy but that the tenants were not responsible. They had arranged for the council to collect the rubbish and it failed to do so. This matter was dealt with through retention of a sum from the deposit.
65. He apologised for any offence that the wording of his email dated 12th August 2020 caused to the respondent, and said that it was perhaps an unfortunate choice of words. His explanation was that he was very frustrated in dealing with the matter.
66. The tribunal notes the following comment from the respondent, 'Mr. Wakefield as the Lead tenant seemed to think that the original signatories of the one year lease could avoid their responsibilities under the lease by vacating and providing a replacement and that the Respondents should not

delay or object'. The tribunal assumes this refers to the decision of the respondent to terminate the tenancy once Mr Wakefield gave notice. Again the tribunal notes that the notion of lead tenant was one which had been put in place for the convenience of the respondents' agents.

The respondent's conduct

67. No evidence was provided in connection with the financial circumstances of the respondent.
68. The applicants argue that the failure to licence the property was a very serious failing
69. The applicants allege that the property failed to meet the necessary standards required to ensure that the property was safe to live in for multiple occupiers.
70. In particular the applicants say that there were no fire doors in the property and the doors were a further risk as the locks on the doors were faulty. This meant that on a number of occasions the applicants got stuck or locked into the bedrooms/bathrooms. The applicants also allege that the electricity was hazardous. During the applicants' occupancy one of the electrical light switches fell out leaving an exposed live wire posing a risk of electrocution.
71. The applicants say that they were never provided with an EIC Certificate.
72. The applicants also say that no emergency contact was provided to the tenants and disrepair issues either took several months to be resolved due to the slow response of the agents or were never addressed. They allege that the agents were poor and unprofessional.
73. They say that a number of issues arose during the applicants' tenure. A rusty pipe burst, flooding the kitchen and the downstairs and because no emergency contact was provided the applicants were unable to locate the stopcock in a timely manner.
74. The tiles of the kitchen floor were broken and unsteady to walk on, there was dampness in the living room and bedrooms and several fixtures and fittings in the property were faulty or broke during the tenancy such as the dishwasher, fridge, front door, blinds toilet seat, boiler and door handles.

75. The applicants also say that the seriousness of the offence is exacerbated because the respondents were aware of their obligations and tried to avoid them by refusing to include 5 tenants on the tenancy agreement while they were aware that there were five tenants at the property.
76. The respondents assert that they have taken every care to deal with any complaints and remedied any defects there may have been in the property. They say that it must be born in mind that for many months of the tenancy Covid was raging and so visiting the property and carrying out repairs was that much more difficult.
77. The applicants, drawing on the full range of Upper Tribunal decisions, suggested that the tribunal should take as its starting point 100% of the rent payable in the relevant period and then only reduce that amount if there was poor conduct on the part of the applicants or good conduct on the part of the landlords. In this case there was no reason to reduce the award from 100% as the tenants had been exemplary and the landlords had done no more than meet their legal obligations as they understood them. However if the tribunal thought there was, then at that point it should take into account good conduct from the tenants and poor conduct from the landlords to in effect work back towards a level of 100%. The applicants argued that there was very good conduct on the part of the tenants and poor conduct on the part of the landlord. The failure to licence by a professional landlord is very poor conduct. There were no regular inspections of the premises, the premises were a serious fire risk and there was some poor handling of repairs in particular in relation to faulty guttering which took several weeks to repair. Even after repair the damage caused to the bathroom was not repaired. The applicants also point to the poor handling of the return of the deposit.
78. Therefore, they argue that the appropriate award in this case is 100% of the rent paid.
79. They also argue for the refund of the tribunal fees totalling £300.

The decision of the Tribunal

80. The Tribunal determines to award an RRO at 80% of the rent paid in the applicable period -.

The reasons for the decision of the Tribunal

- 81.** The tribunal finds that the tenants conduct was good. They were responsible tenants throughout the tenancy. They in effect managed the occupancy finding replacement tenants and managing the deposit.
- 82.** The respondent raises the behaviour of Mr Wakefield but the tribunal does not consider that there is evidence of malice. It accepted Mr Wakefield's evidence that he was concerned for future occupiers of the property when he raised problems in his email of 19th July 2020. It notes the language Mr Wakefield used in connection with the return of the deposit in his email of 12th August 2020 but considers that professional managing agents should not have been offended by the wording.
- 83.** The tribunal is very concerned by the landlord's conduct. Avoiding regulation by refusing to place the fifth occupier on the tenancy agreement is unacceptable behaviour from a professional management agency.
- 84.** It also notes that the respondent relies on the tenants to fulfil some of its responsibilities for managing the property. So for instance it does not carry out regular inspections but responds to requests for repairs from tenants. Nor does it inspect works carried out by its contractors but relies on tenants to confirm that the work has been carried out to a satisfactory standard. Tenants handle the deposit issues and select new tenants. One of the purposes of the regulatory system is to ensure that landlords manage multiple occupied houses properly. This has not happened in this case.
- 85.** On the other hand, although there was significant disrepair in the property, and it took some time for it to be resolved, the disrepair in the property was not the most serious and the applicants have lived in the property for a long period, suggesting that the standards were not of the worst. For this reason the tribunal has made a small reduction in the level of the RRO.
- 86.** The respondents do not have criminal convictions.
- 87.** Balancing these findings the tribunal determines that 80% of the rent is an appropriate level for the RRO.
- 88.** In the light of the findings above the tribunal also orders the respondent to reimburse the applicants for the application fee and hearing fee, totalling £300.

Name: Judge H Carr

Date: 20th
December 2021

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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.

