



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

**Case reference** : **LON/00AG/HMF/2021/0300**

**HMCTS code** : **Face to Face**

**Property** : **Flat 11 Soane Court, St Pancras Way,  
London NW1 9EG**

**Applicants** : **(1)Jessica Pope-Alkarkhi & Nathan  
Francis  
(2)Titas Sarkar & Shuvaneel Ghosh  
(3)Penny Atkinson**

**Representative** : **Justice for Tenants**

**Respondent** : **(1)Blackstone Vertu Limited  
(2)Asrah Abbas Rasool  
(3)Beachstone Properties Limited**

**Representative** : **N/A**

**Type of application** : **Application for a rent repayment order  
by a tenant**

**Tribunal member(s)** : **Sections 40, 41, 43, 44 & 46 of the  
Housing and Planning Act 2016**  
**Judge Tagliavini  
Mr A Lewicki FRICS MBEng**

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

**Date of hearing** : **7 October 2022**  
**Date of decision** : **4 November 2022**

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**DECISION**

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### **The tribunal's summary decision**

- (1) The tribunal directs the first and second respondents are to pay by way of rent repayment orders the following amounts:

Jessica Pope-Alkarkhi & Nathan Francis: £1,797.60

Titas Sarkar & Shuvaneel Ghosh: £2,412.05

Penny Atkinson: £1,235

- (2) The tribunal directs the respondents to reimburse the applicants the sum of £100 (application fee) and £200 (hearing fee).
  - (3) All sums identified in (1) and (2) above are to be paid within 14 days of the date of this decision.
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### **The application**

1. This is an application made by the applicants seeking a rent repayment order (RRO) under section 41 of the Housing and Planning Act 2016 following the landlord's conviction for the offence of having the control or management of an unlicensed HMO. The applicants seek a RRO for the period 1 September 2020 to 6 January 2021 in the sum of £5,731.29.

### **Background**

2. By various lease agreements made between Blackstone Vertu Ltd as the named landlord and the applicants, they became the tenants of Flat 11, Soane Court, London NW1 9EG ('the premises'). The second respondent is the title holder listed on the Land Registry Deed. The third respondent Beachstone Properties Limited was the company that received the applicants' payments of rent.
3. The premises comprised a 4-bedroomed self-contained flat with living room converted into a 5<sup>th</sup> bedroom in a purpose-built block of flats.
4. The first applicants occupied Room 1 for the period 1/9/2020 to 1/3/2021 at a rent of £950 pcm. The second applicants occupied Room 3 between the period 9/9/2020 to 13/12/2020 at a rent of £750 pcm. The third applicant occupied the ensuite Room 4 between the period 10/9/2020 to 10/11/2020 at a rent of £650 pcm. All of the applicants shared a kitchen and bathroom/toilet facilities.
5. The first applicants jointly seek a RRO in the sum of £1,892.29 as Ms Pope-Alkarkhi was in receipt of the housing component of Universal

Credit for her 'share' of the rent during the period of her occupation. However, the second applicants jointly seek a RRO in the sum of £2,539.00. The third applicant seeks a RRO in the sum of ££1,300.

6. The first and second respondents were convicted of the offence of having the control or management of an unlicensed HMO contrary to section 72(1) HA 2004 and breaches of unlicensed HMO regulations pursuant to section 234(3) HA 2004. On 4 May 2002 at Highbury Corner Magistrates Court the first respondent was fined £35K for the s.72(1) offence and £40K for the s.234(3) offence. The second respondent was fined £15K for the s.72(1) offence and £25K for s.234(3) offence. The respondents were ordered to pay £15K in costs.
7. In October 2020 an application for a licence was made under the London Borough of Camden's additional licensing scheme that came into force on 08/12/2015. A further additional licensing scheme came into effect on the date of the expiry of the initial scheme on 8/12/2020 which runs until 8/12/2025 or earlier date if revoked by LBC. Consequently, the premises met the requirements for a licence under these additional licensing schemes.
8. This application for a RRO was received by the tribunal on 9/12/2021.

### **Preliminary issue**

9. Immediately before the tribunal heard oral evidence in respect of the substantive application, Mr Nielson sought to withdraw the application against Beachstone Properties Limited as the party against whom a conviction had not been obtained. In the absence of any opposition the tribunal granted this application, *rule 10(1) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013*.
10. The tribunal also considered whether the application by the third applicant had been made in time. Mr Nielson submitted that the offence continued even after Ms Atkinson had left the premises on 10/11/2020 as it is not related to a particular tenant and therefore her application had been made in time, i.e., within 12 months of the date the offence had been committed.
11. The tribunal did not accept this argument as Ms Atkinson was no longer an occupier against whom the offence was being committed. However, the tribunal considered the provisions of s.73 (8) Housing Act 2004 which states:

*If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—*

*(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been*

*required by a rent repayment order to make a payment in respect of*

*(i) [one or more relevant awards of universal credit, or*

*(ii) housing benefit paid in connection with occupation of a part or parts of the HMO ,*

*(b) that the occupier paid, to a person having control of or managing the HMO , periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO , and*

*(c) that the application is made within the period of 12 months beginning with—*

*(i) the date of the conviction or order, or*

*(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.*

12. This provision was not expressly referred to by Mr Nielson. However, the tribunal finds it appropriate to have regard to this section when determining whether Ms Atkinson's claim has been made out of time.
13. The tribunal finds the first and second respondents were convicted of offences under ss. 71(1) and 243(3) of the Housing Act 2005 at the Highbury Corner Magistrates Court and sentenced on 4 May 2022. As this application was made to the tribunal on 9 December 2022 the tribunal finds that this is within the 12 months period referred to in s.73(8) HA 2004. Therefore, the third applicant's application for a RRO has been made in time and is not statute barred.

### **The hearing**

14. Documentary evidence was provided by way of a hearing bundle numbering 285 electronic pages and additional documents including proof of conviction and the legal authorities relied upon by Mr Nielson. Witness statements were provided by Ms Gosh, Ms Sarkar and Ms Pope-Alkarkhi who all gave oral evidence to the tribunal.
15. The tribunal heard that the subject property, throughout the applicant's occupation lacked fire safety measures including an absence of fire safety doors and notices and problems with the electricity supply including the shower room becoming 'electrified' causing the paramedics to attend Ms Sakar on one occasion.
16. In his submissions, Mr Nielson stated that in determining the level of any RRO the tribunal should consider the convictions; the seriousness

of the breaches of the regulations; the status of the respondents and their conduct as well as the good conduct of the applicants. Mr Nielson submitted that the starting point should reflect 95% of the rent paid by the applicants during their periods of claim with no deductions being made for poor conduct by the applicants.

### **The tribunal's decision**

17. The tribunal makes the following rent repayment orders representing 95% of the sums claimed:

Jessica Pope-Alkarkhi & Nathan Francis: £1,797.60

Titas Sarkar & Shuvaneel Ghosh: £2,412.05

Penny Atkinson: £1,235

### **Reasons for the tribunal's decision**

18. In reaching its decision the tribunal had regard to the relevant provisions of the Housing and Planning Act 2006 which state:

#### Section 43

*(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).*

*(2)A rent repayment order under this section may be made only on an application under section 41.*

*(3)The amount of a rent repayment order under this section is to be determined in accordance with—*

*(a)section 44 (where the application is made by a tenant);*

*(b)section 45 (where the application is made by a local housing authority);*

*(c)section 46 (in certain cases where the landlord has been convicted etc).*

19. The tribunal finds in light of the proof of the conviction of the first and second respondent and the uncontradicted evidence of the applicants an offence under s.72(1) Housing Act 3004 was committed throughout the full extent of the various periods claimed within 1/9/2022 to 1/3/2021.
20. When determining the amount to be paid, the tribunal took into account the conduct of the landlord/respondents and the tenants, the

financial circumstances of the landlord and whether the landlord has been convicted of an offence to which this Chapter applies; see s.44 Housing and Planning Act 2006.

21. The tribunal finds that the first and second respondents are professional landlords and/or managing agents of residential property and failed to comply with the regulations regarding a licensed HMO. The tribunal finds the lack of fire safety measures and the problems concerning the electrical installations were of particular seriousness having regard to the risk to life they presented.
22. As the respondents took no part in this application and did not provide any financial information the tribunal were unable to have regard to their particular financial circumstances. The tribunal did, however, have regard to the significant fines made against the first and second respondents.
23. The tribunal accepted the first and second respondents had been the subject of significant financial penalties and accepted the submissions made by Mr Nielson that any 'RRO should be for 95% of the rent paid by the applicants during the respective periods of their occupation. Further, the tribunal found no reason to make any deductions from this sum by reason of the applicant tenants' poor conduct and was satisfied the applicants had paid their rent as required throughout the periods for which their claims are made.
24. Therefore, the tribunal determines the amounts of the RRO to be paid by the first and second respondents to the applicants within 14 days of the date of this decision.

Name: Judge Tagliavini

Date 4 November 2022

### **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).