

28 April



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

Case reference : **LON/00AM/HMF/2021/0226**

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

Property : **55 Geffrye Court, London N1 6RX**

Applicant : **Ms Rana Fadavi**

Representative : **Ms L Crisfield of Miles & Partners**

Respondent : **Mr Vino Patel**

Representative : **In person**

Type of application : **Application for a Rent Repayment Order
by a tenant: Sections 40 – 44 Housing
and Planning Act 2016**

**Tribunal
member(s)** : **Judge Dutton
Mrs L Crane**

Venue : **Video hearing 13 April 2022**

Date of decision : **28 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPRemote. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal were referred to are in bundles of some 79 pages and various exhibits, the contents of which have been noted.

DECISION

The Tribunal finds that the Respondent, Mr Vino Patel, has committed an offence under section 72(1) of the Housing Act 2004 (the 2004 Act) of being in control and managing an unlicensed HMO and determines that the Respondent must pay to the Applicant by way of Rent Repayment Order the sum of £6,000 together with a refund of the tribunal fees of £300 within 42 days under the provisions of sections 40 – 44 of the Housing and Planning Act 2016 (the 2016 Act)

BACKGROUND

1. By an application dated 14 August 2021 the applicant Ms Rana Fadavi, commenced proceedings against the respondent, Mr Vino Patel seeking to recover rent paid in the period November 2020 to November 2021 (the Period) totalling £8,150 for her occupancy of 55 Geffrye Court, London N1 6RX (the Property).
2. In the Applicant's first bundle we were provided with a copy of the application and directions, an expanded statement of reasons, a witness statement, land registry details of the freehold and leasehold, a copy of the tenancy agreements, proof of payment and confirmation that the Property did not have a licence and that no application was pending.
3. The respondent, Mr Patel, had provided a statement of case with a number of exhibits. Included amongst those exhibits was a letter from Hackney Council dated 6 September 2021 advising Mr Patel that a licensing scheme was introduced in October 2018 requiring households of three or more unrelated individuals in privately rented accommodation to be licenced. It warns Mr Patel of the consequences of not so doing.
4. Ms Fadavi had responded to this statement, to which Mr Patel made further response and produced further papers including a purported email from Jade Barazi, which contains allegation concerning Ms Fadavi's behaviour. On this statement, it was said by Ms Fadavi that she had become annoyed with Ms Barazi as she was unwilling to commit to a tenancy and indeed only stayed 10 days. There were other testimonials on behalf of Mr Patel, but none containing statements of truth.

5. We have noted all that has been said in these submissions and have taken the contents into account in reaching our determination.
6. Mr Patel at the hearing confirmed that, due to his lack of knowledge, he appreciated now that the Property was an HMO that required to be licensed. He complained that the Council had not told him of this requirement, save for an email dated 23 September 2020. He said that since that time he had been trying to contact the Council about licensing. No application has been made and that after Ms Fadavi left, he stopped renting out the Property, which he told us remains empty. He also said that he had received a deposit, by somewhat circuitous routes and that he would repay this to Ms Fadavi.

EVIDENCE

7. Mr Crisfield attending the hearing representing Ms Fadavi. The tribunal had been told of her involvement the day before the hearing, notwithstanding that it seemed she had been instructed in January 2022 to represent Ms Fadavi at the hearing. Mr Patel was unhappy about this, which he thought was unfair and a complete surprise to him. He did openly state that he had not arranged representation as he could not afford it and having admitted the offence and agreed the sum that Ms Fadavi claimed we considered that we could provide something of an “equality of arms” to ensure he was able to put forward his case, without of course “stepping into the arena”. We should however say that we found the concealment of Ms Crisfield’s involvement until the day before the hearing unreasonable. Although rule 14 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules allows for the appointment of a representative, to rely on rule 14(5), which does require the tribunal’s consent is not to be advised. Mr Patel was a litigant in person and were it not for his frank admission as to the commission of the offence and acceptance of the sum claim we may well not have given permission.
8. Although the application claimed £8,160 in fact the amount claimed was £8,150 as Mrs Fadavi had reduced her November 2020 rent by £10.
9. Mr Patel was critical of Ms Fadavi in relation to her involvement with other tenants, which he said had caused some to leave, and towards him. Apparently, the position was that the Property was let to three people as a combined let and Mr Patel appeared to have left it to the tenants to organise any replacements. This had also filtered down to deposit taking as it seemed each incoming tenant was required to reimburse the outgoing tenant with a sum equal to the deposit which they had paid, which then stood as that new tenant’s deposit. It seems Mr Patel has retained the original deposit and is therefore able to refund Ms Fadavi with the deposit she paid to the tenant that left before she took up occupancy.

10. Mr Patel did not see why he should be required to repay the rent to Ms Fadavi. He said she had been happy living at the Property and the Council had failed to tell him of the licensing scheme. He told us he owned two other properties, one of which he lived in. the other property was, he told us, empty and therefore he had no income from the lettings. He was by trade a self-employed electrician but had health issues and was not presently working. He also told us that his father, who had returned to India, had recently died which had caused stress the more so as during the pandemic he had not been able to travel to see him. He said he was not entitled to any form of benefit and relied on help from friends and family.
11. It seems that all three properties are mortgaged, on fixed rates, with penalties for early redemption, which was putting him off selling. He told us that he was under threat of possession proceedings for non-payment of the mortgage on the property he lived in. He is single. He told us that he had ensured that the Property had up to date gas and electrical certificates and that the Property was in good order, as evidenced he said, by the photographs he had produced.
12. In a final submission Ms Crisfield said there was no issue of conduct on behalf of Mr Patel that she wished to raise. Whilst the Property was in good order the intent of the legislation was to deter landlords from letting properties without a licence. She denied that there had been any conduct on the part of Ms Fadavi which we should consider. The sum claimed was £8,150 together with a refund of the tribunal fees of £300.
13. Ms Fadavi indicated that initially she only wanted the refund of the deposit but had been advised by friends/colleagues of the Housing and Planning Act 2016 and when there was no satisfactory response from Mr Patel, she felt she had no other choice but to pursue the claim.

FINDINGS

14. In this case it is not necessary for us to make any findings on the evidence as to the culpability of Mr Patel as he accepts that the Property required a licence but that it was not so licenced. He also accepted the quantum of the rent that Ms Fadavi was claiming. We give him credit for this. Accordingly, an offence under s72(1) of the Housing Act 2004 is made out. This brings into play the possible defences available under s72(4) and 72(5) of the 2004 Act. None are raised by Mr Seymour save that he was ignorant of the need to licence and blames the Council for not telling him. That is no defence. As a landlord it is for him to ensure that he is up to date with the legislation and the requirement to licence has been in place since October 2018.
15. As to conduct we do not find that either party has acted in such manner that conduct is relevant. Unsubstantiated allegations were made

against Ms Fadavi, save for a a purported witness statement of Jade Barazi and there was evidence relied upon by Mr Patel to support him being a good landlord. Mr Patel has not been convicted for this offence, nor are we aware that he has any conviction for offences under the 2004 or 2016 Act. He is not in our finding a professional landlord. He owns two properties.

16. As to the financial circumstances it would seem that Mr Patel is in some financial stress. He told us that he was not working, had health issues and is not receiving any rental, or indeed any income. We should say that no evidence was provided to support this position, although some bank statements were produced.
17. The amount to be claimed is not challenged and is £8,150. There have been recent Upper Tribunal authorities which indicate that there is no requirement for this tribunal to make the maximum award. The position is governed by section 44 and section 46 does not apply in this case. Mr Patel does not, so far as are aware and it was not raised by Mrs Fadavi, have any previous relevant convictions. He is not a professional landlord. He is, we accept having some financial difficulties, but produced no papers to support this position. The Property appeared to be in good order from the photographs and this condition was not challenged by Mr Fadavi.
18. Taking these matters into account we find that the maximum award, which is £8,150 should be reduced by around 25% to reflect the matters at paragraph 17 above. This we find gives a figure of circa £6,000, which we consider the appropriate order to make in this case. In addition, we order that Mr Patel should reimburse Ms Fadavi the tribunal fees of £300. These sums should be paid within 42 days of the date of this decision.

Tribunal Judge Dutton

28 April 2021

ANNEX – 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 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 to 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 (ie 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.

Extract from the 2016 Act

40 Introduction and key definitions

(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.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2)The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(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.

(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.

Housing Act 2004

72 Offences in relation to licensing of HMOs

(1)A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2)A person commits an offence if—

(a)he is a person having control of or managing an HMO which is licensed under this Part,

(b)he knowingly permits another person to occupy the house, and

(c)the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3)A person commits an offence if—

(a)he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b)he fails to comply with any condition of the licence.