



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

**Case Reference** : **LON/00AP//HMF/2022/0113**

**HMCTS Code** : **HMCTS: Remote**

**Property** : **Flat 4, Fenstanton, London N4 3AT**

**Applicants** : **Ms Ruxandra Oprea**

**Represented by** : **Mr Cameron Neilson – Tenants for Justice**

**Respondents** :  
: **Ms Julia Zinchenko- the First Respondent**  
**Ms Matheka Begum- the Second Respondent**

**Type of Application** : **Applications for Rent Repayment Orders by  
Tenants  
Sections 40, 41, 43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Members** : **Judge Daley**  
**Mrs Sue Coughlin MCIEH**

**Date of Hearing** : **10 November 2022**

**Date of Decision** : **12 December 2022**

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## DECISION

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### Decision

1. The Tribunal is satisfied on the evidence before it that grounds exist to make a rent repayment order against the First Respondent Ms Julia Zinchenko only. The claim for a rent repayment order against the Second Respondent, Ms Matheka Begum is dismissed
2. The Tribunal makes a rent repayment order in the sum of £2,768.88 for the rent paid by the applicant for the period between 27/11/2020 and 06/06/2021.
3. The Tribunal makes an order for the reimbursement of the application fee in the sum of £100.00 and the hearing fee in the sum of £200.00

### Introduction

1. This is an application by the Applicant's listed above for a Rent repayment Order under section 41 of the Housing & Planning Act 2016. The Application is made on the grounds that the Landlord had control and management of an unlicensed HMO in breach of Section 72 of the Housing Act 2004.
2. The Tribunal issued Directions on 27 June 2022, setting out how the parties should prepare for the hearing. This matter was set down for hearing by video link on 10 November 2022.

### Property Details

3. In the application, the Tribunal was provided with information that the Premises was a 3-bedroom self-contained flat in a purpose-built block of flats, with the living room converted into a fourth bedroom. Thus, the property contains 4 bedrooms with a shared kitchen and bathroom. The Tribunal were informed that the Premises were occupied by at least 4 people at all points during the relevant period of 27/11/20 – 06/06/2021, being the period for which an order was sought.
4. The Tribunal heard that each tenant occupied their own room on a permanent basis with separate occupation agreements.
5. There was communal cooking, and toilet and washing facilities, with separate, unrelated individuals each paying rent and occupying their rooms as their only and principal home.
6. The Tribunal did not carry out an inspection of the property and makes no assumptions regarding the accommodation.

### **The Hearing**

7. The hearing of this matter was held remotely. All parties were given a letter inviting them to attend the hearing with the relevant login details. The hearing was attended by the Applicant, Ms Oprea, and her representative Mr Neilson from *Justice for Tenants*. Neither the first respondent or the second respondent attended the hearing, or requested an adjournment.
8. Neither respondent provided any written representations. The Tribunal wrote to both Respondents on 20 October 2022 informing them that unless they complied with the directions, they would be debarred from taking any further part in the proceedings.
9. On 1 November 2022 in the absence of any submissions from either Respondent the Tribunal informed them that they were debarred from defending the Application.

### **Preliminary Matters**

10. The Applicant, prior to the hearing made an application under Rule 20 of The Tribunal Procedure Rules on 25 May 2022. The Application was not complied with by the Respondents. Accordingly, the only information concerning the status of the landlord was as set out in the tenancy agreement.

### **Relevant Law**

11. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

- (2) A tenant may apply for a rent repayment order only if —(a) the offence relates to housing that, at the time of the offence, was let to the tenant, and  
(b) the offence was committed in the period of 12 months ending with the day on which the application is made.

12. Section 40(5) of the 2016 Act lists 7 categories of offence and offence no 5 refers to Control or management of an unlicensed HMO
13. The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act 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).
14. Section 44 of the 2016 Act sets out the amount of order:
  - (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.

### **The Applicants' Submissions**

15. The Tribunal was informed that the Applicant signed an assured shorthold tenancy agreement dated 27 November 2020. This agreement was signed by her and was also signed by Ms Julia Zinchenko as the Landlord for the premises.
16. In the application form to the Tribunal the Applicant set out that "Part 2, s. 55(b) and s. 56 of the 2004 Act permits local authorities to designate the area of their district or an area within their district as subject to additional licensing provided that certain criteria (detailed in Part 2, Section 57-58 of The Housing Act 2004) are met. The application went on to state that "The London Borough of Haringey ("Council") in exercise of its powers under sec 56 of the Housing Act, had on the 12th of February 2019 designated the whole borough as subject to additional HMO Licensing. The scheme was known as The London Borough of Haringey Designation of an area for Additional Licensing of Houses in Multiple Occupation No 3, 2019. The designation applies to all Houses in Multiple Occupation ("HMO") that are occupied under a tenancy or a licence unless it is an HMO that is subject to mandatory licensing under section 55(2) of the Act or is subject to any statutory exemption."
17. The Applicant submitted that the property met the criteria to be licensed as an HMO under Section 254 on account of the fact that the property was let to 3 or more tenants who form 2 or more households who share a kitchen, bathroom or toilet' and that the 'property is used as the tenants only or main residence'.
18. The Applicant provided evidence of the occupancy of the premises in her witness statement, and in her evidence set out details of the changes in occupancy within the 4 rooms that were rented at the premises during the period in issue.
- 19.
20. The Applicant provided copies of her bank statement which evidenced payments having been made to Ms Julia Zinchenko. The Applicant provided proof of her rent payments, in the sum of £433.00 PCM by way of a rent schedule. In his submissions Mr Neilson stated that the first respondent was in receipt of the rack rent. The second respondent was the registered proprietor of the property in the land registry
21. On 21 May 2021, as a result of having problems with the landlord, Ms Oprea contacted the London Borough of Haringey, and was informed that the property was unlicensed. Ms Oprea in her witness statement and in her oral evidence set out that there were mice in the property. She also informed the Tribunal that the thermostat was broken and as a result, it was not possible to regulate the heating within the rooms. It was not possible to operate the hot water without the heating being on which meant that the property was overhot in the summer months.
22. Also the Applicant was concerned that none of the rooms had fire detectors Ms Oprea stated that the only contact details that she had for Ms Zinchenko was her email, and her mobile phone number, which she used

to. S contact her by WhatsApp when there were issues in the property, and either Ms Zinchenko or her boyfriend responded. They were however slow to respond and did not always carry out repairs, and it was for this reason that she sought the intervention of the local authority.

23. On 20 December 2021, Justice for Tenants wrote to Haringey Council which in response to questions from Justice for Tenants confirmed that the property was unlicensed.
24. Mr Neilson informed the Tribunal that the landlord had failed to provide copies of Gas Safety Inspection, Electrical test certificates or Energy Performance Certificates as required by law and had failed to comply with duties under *The Management of Houses in Multiple Occupation (England) Regulations 2006*. The property had inadequate fire detection and no firefighting apparatus.
25. In respect of the Second Respondent, the Tribunal was informed by Mr Neilson, that the second respondent had letters delivered to the property, and this was partially how Ms Oprea had become aware of the Second Respondent. In the skeleton argument it was submitted that “While the Applicant paid rent to Ms Julia Zinchenko, for the reasons outlined at paragraph 4, Matheka Begum was their immediate landlord. As such, it is the Applicant’s case that Matheka Begum received rent from Ms Julia Zinchenko who was acting as their agent in collecting rent from the Applicant. Matheka Begum has produced no evidence and advanced no positive case to indicate that they did not receive rent from Ms Julia Zinchenko. The Applicant invites the Tribunal to draw an inference that Matheka Begum did receive such rental payments from Ms Julia Zinchenko on the basis of their failure, in contravention of the Tribunal Directions dated 27 June 2022, to produce any such evidence (which must have been in their control). Matheka Begum was thereby a person in control or management of an unlicensed HMO (Housing Act 2004 ss. 263(1)-(3))”.
26. Mr Neilson submitted that Ms Begum would have received the rent as part of her agreement with the First Respondent Ms Julia Zinchenko, accordingly, he stated that she was the Applicant’s landlord, and was managing an unlicensed HMO contrary to S.263(3)(b) Housing Act 2004. . The Tribunal heard that Ms Oprea had not met Ms Begum, and although Ms Oprea stated that she had been informed by other occupants that she had come to the premises Ms Oprea had no knowledge of her attending the premises during her occupancy

### **The Respondent’s Submissions**

The Tribunal received no representations from either of the respondents.

### **The Applicant’s Closing Submissions**

27. The Tribunal heard submissions from Mr Neilson and also referred to his Skeleton Argument in which he set out the purpose of the licensing regime and referred to case law that supported his submissions that the Tribunal should as a starting point consider making an order for all of the rent which had been paid or at least 85% to act as a suitable deterrent for the landlord.

He also submitted that the conduct of the landlord in failing to properly manage the property, as set out by Ms Oprea in her evidence ought to be taken into account.

28. He repeated his submissions concerning Ms Begum, and cited the difficulties that would occur if an order was only made against Ms Zinchenko as other than the property, the Applicant only had an email address for her and she had not responded. Further in respect of the application to license the property the Local Authority had been corresponding with Ms Begum at the property address.

### **Tribunal Decision**

29. The Tribunal in reaching its decision applied a four-stage test, it decided that to make an order it would have to satisfy itself of 4 matters –

Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004

- (ii) Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.

30. The Tribunal considered the evidence before it in relation to both of the Respondents.

31. The Tribunal also reminded itself of the law including the case of *Rakusen v Jepsen* [2020] 0183(LC) in which it was decided that where a landlord has sub-let property to another landlord, he or she is not liable for rent repayment orders as a consequence of a failure to apply for a License.

32. The Tribunal had no evidence of any direct relationship between the Second Respondent and the Applicant. The Tenancy agreement was signed by the First Respondent as landlord, and rent was paid to her.

33. Accordingly, the Tribunal is not satisfied that the Second Respondent had control of an unlicensed property.

34. Therefore, the Tribunal dismisses the claim for a rent repayment order against the Second Respondent, Ms Begum.

35. In respect of the First Respondent, Ms Zinchenko having considered all the evidence, The Tribunal is satisfied beyond reasonable doubt that the Respondent was responsible for managing an unlicensed property contrary to and committed an offence under s.72(1) of Housing Act 2004. The Tribunal also considers that it would be appropriate to make a Rent Repayment Order for the period of 27/11/2020 to 06/06/2021.

36. The Tribunal reminded itself of the Upper Tribunal's decision in ***Acheampong v Roman [2022] UKUT 239 (LC)*** where Judge Cooke gave the following guidance:

a. "20. *The following approach will ensure consistency with the authorities:*

*Ascertain the whole of the rent for the relevant period.*

*Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available and experienced tribunal will be able to make an informed estimate.*

*Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment made by made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step.*

*Consider whether any deduction from, or addition, to that figure should be made in the light of the other factors set out in section 44(4).*

37. Following this guidance the whole of the rent for the period is £2768.88p. The landlord has provided no bundle and has not taken any part in the proceedings. We make no deductions in the absence of any evidence of payment of utilities by the landlord.

38. In terms of seriousness of the offence failure to licence is not considered to be as serious an offence as illegal eviction, harassment or violence for securing entry however it is as serious as failure to comply with a Prohibition Order or Improvement Notice. Having regard to other offences of this type it is clear that there were no proper systems in place for dealing with repair issues and there was a failure to comply with regulations relating to Gas Safety, electrical safety and means of escape from fire. Having regard to all these factors, the Tribunal concludes that the offence is towards the upper end of the seriousness range and justifies repayment of 80% of the rent

39. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act. The Tribunal had no evidence of the second respondent's financial position and there is no evidence before the Tribunal that the First Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.

40. In terms of conduct we find no evidence of any bad conduct on behalf of the applicant. We find that there is poor conduct on behalf of the landlord who failed to comply with many legal obligations in addition to the failure to licence. Accordingly we find it appropriate to increase the percentage in this case to 85% Accordingly, the Tribunal makes an order in the sum of £2353.55 for the rent paid for the period between 27/11/2020 and 06/06/2021.

41. The Tribunal makes an order in respect of reimbursement of the hearing and application fees in the sum of £300.00.

Signed: Judge Daley

Dated: 13 December 2022

### **Right to 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.