



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

Case Reference : **LON/00AP/HMG/2021/0037 & 0038**

HMCTS : **V: CVPREMOTE**

Property : **91 Willingdon Road, London N22 6SE**

Applicants : **Rocio Bolanos-Mora (1)
Carl Johan Hoglind (2)**

Representative : **Mr Amritpal Bachu (Counsel)**

Respondent : **Ms Lucy James**

Representative : **In Person**

Type of Application : **Application for a Rent Repayment Order by Tenant**

Tribunal Member : **Anthony Harris LLM FRICS FCIArb
Mr R Waterhouse BSc LLM
MA FRICS**

Date and Venue of Hearing : **22 February 2022 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **2 March 2022**

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: CVPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be

determined in a remote hearing. The Applicant and Respondent each filed a Bundle of Documents and to which references are made in this decision.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £254.71 in favour of the 1st Applicant and £896.64 in favour of the 2nd Applicant. These sums to be paid within 28 days.
2. The Tribunal determines that the Respondent shall also pay the Applicants a total of £400 divided equally within 28 days in respect of the reimbursement of the tribunal fees paid by the Applicants. (Application fee of £100 each and a joint hearing fee of £200).

The Application

3. By an application, dated 27 September 2021, the 1st Applicant, Ms Bolanos-Mora seeks a Rent Repayment Order (“RRO”) in the sum of £3,060.00 against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the owner of the 91 Willingdon Road London N22 6SE (the House).
4. By an application, dated 4 October 2021, the 2nd Applicant, Mr Carl John Hoglind seeks a Rent Repayment Order (“RRO”) in the sum of £2,850.00 against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the owner of the House.
5. On 15 October 2021, the Tribunal gave Directions. Pursuant to the Directions, each party has filed a Bundle of Documents.

The Hearing

6. All parties appeared via video link.

The Housing and Planning Act 2016 (“the 2016 Act”)

7. Section 40 provides :

“(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.”

8. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include the offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed HMO.

9. Section 41 deals with applications for RROs. The material parts provide:

“(1) 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.

10. Section 43 provides for the making of RROs:

“(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).”

11. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides (emphasis added):

“(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.

12. Section 44(4) provides (emphasis added):

“(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.”

13. Section 56 is the definition section. This provides that “tenancy” includes a licence.

The Housing Act 2004 (“the 2004 Act”)

14. Part 2 of the 2004 Act relates to the designation of areas subject to additional licensing of houses in multiple occupation (HMO). By section 56, a local housing authority (“LHA”) may designate the area of their district or an area of the district is subject to Additional Licensing in relation to the designated HMOs specified.

15. Section 72 specifies a number of offences in relation to the licencing of houses. The material parts provide (emphasis added):

“(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.

(4) In proceedings against a person for an offence under subsection (1), it is a defence that at the material time

- (a) a notification had been duly given in respect of the house under section 62 (1) or
- (b) an application for a licence had been duly made in respect of the house under section 63

16. Section 62 (2) allows the local authority to grant a temporary exemption of up to 3 months where a landlord intends to take particular steps with a view to securing that the house is no longer required to be licensed.

17. It is not in dispute that the Respondent is the person in control of or managing the House.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (The Order)

This Order revokes the 2006 order and under paragraph 4 and HMO is of a prescribed description for the purpose of section 55 (2) (a) of the 2004 Act if it

- (a) is occupied by five or more persons
- (b) is occupied by persons living in two or more separate households and
- (c) meets the standard test under section 254 (2) of the 2004 Act

The Evidence

18. On 27 May 2019, the London Borough of Haringey introduced an Additional Licencing Scheme designating the whole Borough as an area for Additional Licensing of all Houses in Multiple Occupation occupied by 3 or more persons. Mandatory licensing applies in the case of houses occupied by 5 or more persons forming more than one household.
19. The house was previously the family home of the Respondent and was originally let in 2015 while the Respondent and her family lived and worked abroad.. It was managed for some time by agents, Martyn Gerrard. The house initially had four tenants as the agent advised that due to fire precautions reasons it should not have more than four tenants. Over time various tenants left and were replaced and by March 2021 only one of the original tenants, Mr Barbagli (NB) was still in occupation. A bank account for household expenses and rent was held in his name. At no stage following the original letting did the Landlord have possession and relet. The Applicants found the rooms by word of mouth or via Facebook.
20. Mr Hoglind, the second Applicant, became a tenant in September 2020 and Ms Bolanos-Mora, the first Applicant, moved in during March 2021. She paid a part months rent and her predecessor paid the balance. At the insistence of the first Applicant a tenancy agreement for a term of six months from 1st March 2021 was drawn up and signed by the various tenants.
21. The Respondent, Mrs James, was living in Singapore at the time and was unable to return to the UK because of Covid 19 restrictions. She therefore asked a friend, Monica, to deal with the tenancy agreement on her behalf. Although Mrs James recalled the advice from Martyn Gerrard that there should not be more than four occupants, she accepted the advice of Monica that provided the five tenants were on a single tenancy agreement there would be no problem with fire precautions. Mrs James stated that she had dispensed with the services of a managing agent and collected the rent herself.
22. There were five people on the tenancy agreement.
23. A letter addressed to Mrs James at the property was sent by the London Borough of Haringey on 19 March 2021 stating that the council intended to seek a financial penalty due to the fact that the house was an HMO and was not licensed. The letter gave a deadline of seven days to apply for a licence to avoid a financial penalty. This letter was forwarded on to Mrs James by NB. The letter referred to previous letters dated 17 July 2020

and 23 October 2020. Mrs James denied having seen or received those letters. The tribunal accepts this evidence.

24. On receipt of this letter Mrs James immediately made contact with agents based in the UK, Avenell Design Build and asked them to deal with obtaining a licence. By 26 March Avenell were in touch with Haringey who in turn extended the deadline to 9 April 2021. Haringey subsequently extended that for a further two weeks from 15 April 2021. An email confirms that a licence application was made on 27 April 2021. The deadline related to the imposition of a financial penalty and not to an application for a licence.
25. That application for a licence was withdrawn on or about 21 May 2021 due to difficulties with the Respondents mortgage and she took the decision to return to the UK and resume occupation. An application for an exemption under section 62 (2) was made on 24 May and an exemption granted for 90 days. A further application was made on 17 June and the combined effect of these was that there was no requirement to apply for a licence during the remainder of the tenancy. The reason for the exemption was that Mrs James had decided to return to the UK and resume living at Willingdon Road so that the use of the House as an HMO would cease. The tenants were advised of this orally and this was confirmed in an email dated 2 June 2021.

Licensing Scheme

26. The Additional Licensing Scheme applies to all properties which are occupied by three or more persons, comprising two or more households. The tribunal is satisfied beyond reasonable doubt that the House comes within the scheme and was required to be licensed.
27. It was common ground between the parties that the property was not licensed and no licence had been applied for prior to 27 April 2021.
28. The tribunal is satisfied, beyond reasonable doubt, that the House was an HMO, it was required to be licensed and was not licensed prior to the application.

The period of the offence

29. Under section 41(2)(a) of the Housing and Planning Act 2016 a tenant may apply for a rent repayment order if 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 was made.

30. Although the application seeks an RRO for a period commencing on 1 March 2021 only the second Applicant was in occupation at that date. He remained in occupation for the whole period of the tenancy. The first Applicant did not move in until mid-March and she paid the equivalent of 15 days rent. The offence ceases to be committed once an application is made for a licence. The tribunal is satisfied beyond reasonable doubt that the offence was committed during a period of 1 March to 27 April for the second applicant and from 16 March to 27 April for the first Applicant. This was within the period of 12 months ending on the day the application was made to the tribunal.
31. The tribunal heard argument that there should be a further short period between the withdrawal of the application for a licence and the granting of the exemption under section 62 (2). Although the documentation relevant to the exemption and the withdrawal of the licence was not before the tribunal, based on the contemporary correspondence which was submitted, the tribunal is not satisfied beyond reasonable doubt that the offence was being committed during this short period.

The relevant landlord

32. There is no dispute that Mrs James is the relevant landlord.

Repayment Order

33. The tribunal is satisfied that the conditions for the making of a Rent Repayment Order have been made out. Under section 44 of the 2016 Act the amount the landlord may be required to repay must not exceed the rent paid in that period. The tribunal must also take into account the conduct of the landlord and tenant and the financial circumstances of the landlord and whether the landlord has been convicted of an offence.
34. The tribunal has no evidence of a conviction.
35. The tribunal has no evidence of the Respondents financial circumstances.
36. Much of the evidence at the hearing and in the written evidence concerned the state of repair of the House. In particular evidence was given of a long-running problem of a roof leak through a skylight. The first Applicant complained about the state of cleanliness of her room at the commencement of the tenancy and the Respondent complained about the lack of cleanliness of the House at the end of the tenancy. The tribunal takes into account the fact that the Respondent did not have possession of the property at the commencement of the tenancy. There was also disagreement whether the gas installation had a gas safety certificate and whether the fire alarms worked.

37. The amount of rent paid in the relevant period is by the 1st Applicant during the relevant period was £700.71. Universal Credit was paid in the period of £446.00 and which has to be deducted from the rent paid. The net amount for an RRO is £254.71.

	Rent	£ 16.7671	per day	$((£510 \times 6) / (365/2))$	
	March	£ 248.00	payment		
	April	<u>£ 452.71</u>	(27 days)		
	rent paid	£ 700.71			
	less Univ Credit	<u>£ 446.00</u>			
	RRO	£ 254.71			

38. For the 2nd Applicant the rent paid for March was £475.00 and for the 27 days of April was £421.64. There is no Universal Credit to be deducted.

	Rent	£ 15.6164	per day	$((£475 \times 6) / (365/2))$	
	March	£ 475.00	payment		
	April	<u>£ 421.64</u>	27 days		
		£ 896.64			

39. The tribunal has considered the evidence from both parties relating to the condition of the premises and makes no adjustment on account of this factor.
40. The tribunal finds that the Respondent should have known the licensing requirements. It is true that the respondent was resident in Singapore when the additional licensing requirements came into force and the *Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018* replace the 2006 order she was on notice from her previous agents that there were requirements in relation to fire precautions as a minimum. A simple Google search would have revealed the true position of the licensing requirements and the tribunal finds that the Respondent was careless as to the requirements at the very least. Relying on a friend or neighbour is no excuse. In some circumstances a prompt application could be mitigation the tribunal does not find it in this case.
41. The tribunal finds no evidence of any conduct on behalf of the tenant which is relevant to this assessment.
42. The tribunal has considered the guidance given by the Upper Tribunal in *Williams v Parmar [2021] UKUT 244 (LC)* and *Aytan v Moore [2022] UKUT 027 (LC)* finds that the appropriate starting point for assessment of an RRO is 100% of the rent paid. It does not find anything in the conduct

of either party to justify variation from this figure and therefore makes rent repayment orders in favour of the Applicants.

Our Determination

43. The Tribunal is satisfied beyond reasonable doubt that the Respondents have committed an offence under section 72(1) of the 2004 Act of control of an unlicensed HMO. The House was a property that required a licence under Haringey's Additional Licencing Scheme. At no time during the period from 1 March 2021 to 27 April, was it so licenced. Time stopped running when the application for a licence was made and then followed by a period of exemption under s62(2).
44. We are further satisfied that the Respondents were "persons having control" of the House as they received the rack-rent of the premises from the Applicants.
45. The tribunal makes a rent repayment order in favour of the 1st Applicant in the sum of £254.71 and in favour of the 2nd Applicant in the sum of £896.64.
46. We are also satisfied that the Respondents should refund to the Applicant's the tribunal fees of £300 which have been paid in connection with this application.

**A Harris LL.M FRICS FCI Arb
Valuer Chair**

2 March 2022

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.