



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

Case Reference : **LON/00AY/HMF/2020/0122**

**HMCTS code
(paper, video,
audio)** : **V - Video**

Property : **42, Cranmer Road, London SW9 6EF**

Applicants : **(1) Mr. Biagio Marco Capodici
(2) Ms. Luciana Randazzo
(3) Ms. Fabiola Vassallo
(4) Ms. Jessica Di Domenico
(5) Ms. Fay Ali**

Representative : **Mr. D. Kurzer.**

Respondent : **Mr. Xinyu Zhao**

Representative : **Mr. R. Whittock of counsel by direct
access**

Type of Application : **Application for a rent repayment order by
tenants**

Tribunal : **Tribunal Judge S.J. Walker
Tribunal Member Mr K. Ridgeway
MRICS.**

**Date and Venue of
Hearing** : **27 January 2022 – video hearing**

Date of Decision : **28 February 2022**

DECISION

- (1) The Tribunal refuses the applications for Rent Repayment Orders under section 43 of the Housing and Planning Act 2016.**

(2) The Tribunal makes no order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbusement of fees.

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. 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 set out below, the contents of which were noted. The Tribunal's determination is set out below.

Reasons

The Applications

1. The Applicants seek rent repayment orders pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act").

The Law

2. The relevant legal provisions are set out in the Appendix to this decision.
3. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. Those offences include an offence under section 72(1) of the Housing Act 2004 ("the 2004 Act"). Such an offence is committed if a person has control or management of an HMO which is required to be licensed but is not. By section 61(1) of the 2004 Act every HMO to which Part 2 of that Act applies must be licensed save in prescribed circumstances which do not apply in this case.
4. By section 72(4)(b) of the 2004 Act it is a defence to a charge of an offence under section 72(1) that an application for a licence has been duly made in respect of the house under section 63.
5. The offences listed in section 40(3) of the Act also include offences under sections 1(2)(3) and (3A) of the Protection From Eviction Act 1977 – these are offences of unlawful eviction or harassment of occupiers. For an offence under section 1(2) to be committed a residential occupier must be deprived of occupation and for offences to be committed under sections 1(3) or (3A) there must be the commission of acts likely to interfere with the peace or comfort of the residential occupier or there must be a persistent withdrawal or withholding of services reasonably required for the occupation of the premises in question.
6. The Act makes provision about when applications may be made and in respect of what periods orders may be made. Those provisions are important in this case.

7. Section 44(2) of the Act provides that for offences of the kind alleged in this case an order may be made in respect of a period not exceeding 12 months during which the landlord was committing the offence.
8. Section 41(2) of the Act states as follows;
“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.*

Procedural Background

9. Prior to the making of this application, Mr. Kurzer, the Applicants’ representative, had made an earlier application for a rent repayment order in his own name in respect of the same property and against the same respondent. This earlier application was dated 6 December 2019 and is referred to in what follows as “the First Application”.
10. The current application was dated 3 July 2020 and the Tribunal records showed that it was received on 14 July 2020. It was in the name of the five Applicants, but not Mr. Kurzer, and was made against the same respondent and in respect of the same property as the First Application.
11. The allegations made in the First Application and in the application before this Tribunal were substantially the same, namely that the Respondent was a person in control of an unlicensed HMO, and that he was also guilty of offences of harassment.
12. The First Application was heard by a differently constituted Tribunal on 8 September 2021. Their decision, which was issued on 21 September 2021, was that the Respondent had committed an offence under section 72(1) of the 2004 Act but that no offences had been committed under the Protection From Eviction Act 1977. A rent repayment order was made against the Respondent in favour of Mr. Kurzer.
13. At that hearing this current application was also considered. The Tribunal concluded that it was unable to determine it at that time as further directions were required. These were contained in the Tribunal’s written decision in respect of the First Application.
14. Among other things, those directions required the parties to prepare bundles of documents on which they rely for use at the hearing.
15. The Tribunal received a bundle comprising 104 pages on behalf of the Applicants together with a bundle of 96 pages on behalf of the Respondent. There was also a 3-page response from the Applicants to the Respondent’s bundle. Page references throughout this decision are to either the Applicant’s bundle – which are prefaced A and which refer

to the electronic page number – or to the Respondent’s bundle – which are prefaced R - unless otherwise stated.

The Hearing

16. None of the Applicants attended the hearing, but they were all represented by Mr. Kurzer who attended on their behalf. The Respondent attended and was represented by Mr. Whittock of counsel.

The Section 72 Offence

17. The Tribunal first considered the allegations made in respect of the failure to licence an HMO and, in particular, the case made by the Respondent that this application was made out of time.
18. The Respondent’s case was that no offence under section 72(1) could possibly have been being committed at any time after 28 June 2019. This was because by that date an application had been made to the relevant housing authority – the London Borough of Lambeth – for an HMO licence. Reliance was placed on a letter from Lambeth dated 28 June 2019. This stated that an application had been received by them for an HMO licence in respect of the property on that date (page R8).
19. There was no challenge to this from the Applicants and the Tribunal was satisfied that an HMO licence application was made on 28 June 2019 in respect of the property. That being the case, it was satisfied that from that date on, no section 72 offence was being committed.
20. The Respondent further argued that, given that no such offence was being committed at least from 28 June 2019 onwards, even if an offence were being committed at an earlier time, no rent repayment order could be made as the application for it was out of time. The application was not signed by the Applicants until 3 July 2020, more than 12 months after any section 72 offence which was being committed had come to an end.
21. In the statement of response to the Respondent’s bundle Mr. Kurzer addressed the 12-month time limit. He argued that the First Application was accompanied by consent forms, bank statements and other evidence from the Applicants to this application and that it was simply an oversight that he had failed to include their names on the First Application. At the hearing he argued that it had always been the intention to include all the five current applicants with his own application and that the delay to proceedings because of the Covid pandemic meant that it was not until 30 June 2020 that he became aware that he needed to make a separate application.
22. The First Application is at pages A18 to A23. It clearly names only one applicant, Mr. Kurzer himself (page A18). The form asks if the applicant is aware of other applications involving the same respondent and property and this section has been left blank (page A21). At page A22 the application states that the amount sought is 11 months’ rent amounting to a total of £7,150. This is equivalent to a monthly rent of

£650, which is the rent paid by Mr. Kurzer himself (see his witness statement at page A8). It follows that the application made no mention of any sums sought by any other people. The application was not signed by anybody other than Mr. Kurzer. Though the Applicants to this current application did provide authority to Mr. Kurzer to act on their behalf in January 2020 (see pages A32 to A35), there was no application to the Tribunal at any time before this current application was made to add any other parties to the First Application.

23. On the basis of this evidence, the Tribunal was satisfied that no application had been made by the Applicants to this application until the application form was received by the Tribunal, which was on 14 July 2020 or, at the very earliest, until the application form was signed by them, which was on 3 July 2020 (see page A86).
24. In either case, more than 12 months had passed since the last possible date of an offence being committed under section 72(1) of the 2004 Act.
25. It follows from this that, as regards the Applicants' case in relation to an offence under section 72, the requirements of section 42(2) of the Act were not met and so the Tribunal had no jurisdiction to make an order in their favour. No offence was committed under section 72 within the period of 12 months immediately preceding the date of their application.

The Harassment Offences

26. This still left the allegation of offences under the Protection From Eviction Act as, if such an offence had been committed less than a year before this application was made, it would still be in time.
27. These offences were considered by the Tribunal which considered the First Application. They concluded that the Respondent had not committed any offences under the Protection From Eviction Act 1977. The allegation was one of harassment not unlawful eviction and the Tribunal was not satisfied that the Respondent had persistently withdrawn or withheld services required for the occupation of the property (see paras 53 to 55 at page A67).
28. At the hearing the Tribunal asked Mr. Kurzer whether, in the light of the conclusions made in respect of the First Application, he accepted that no offences had been committed under the Protection from Eviction Act 1977. He stated that he accepted the findings of the previous Tribunal and that no such offences had been committed.
29. In any event, the Tribunal considered the evidence submitted by the Applicants. Their witness statements are at pages A9 to A13. Those of the first four Applicants make no mention of any bad behaviour by the Respondent of any kind. The witness statement of the Fifth Applicant states that at some point prior to 25 September 2019 the Respondent's wife, Sue Song, had threatened to cut off the electricity and water supplies (see para 13 at page A13). A similar allegation was made in

Mr. Kurzer's statement (para 12 at page A8). However, there was no evidence that such supplies had in fact been withdrawn and it was also accepted in the Applicants' updated statement of case that supplies were not withdrawn (page A3). The only allegation in the application form was of multiple visits to the property without giving 24 hours' notice (page A84). No details of these visits was provided nor of what, if anything, occurred during them.

30. On the basis of this evidence, the Tribunal was not satisfied beyond reasonable doubt that the Respondent had committed any acts likely to interfere with the peace or comfort of the occupiers nor had they withdrawn or withheld services reasonably required for the occupation of the premises.
31. It followed therefore that there was no basis for making a rent repayment order in respect of the alleged harassment offences.

Conclusions

32. It follows from what is set out above that the Tribunal was satisfied that no rent repayment orders should be made. It was not satisfied that the Respondent had committed any offences under the Prevention From Eviction Act 1977. It was satisfied that even if the Respondent had committed an offence under section 72 of the 2004 Act – something which the Tribunal in the First Application was satisfied of – that offence came to an end on 28 June 2019 when an HMO licence application was made. This application was made more than 12 months after the section 72 offence came to an end, so the Tribunal has no jurisdiction to make an order.
33. There was no application by the Applicants under rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for the re-imbusement of the fees paid for bringing the Application. The Tribunal concluded that, in any event, given its decision, it was not just and equitable to make such an order.

Name: Tribunal Judge S.J.
Walker

Date: 28 February 2022

ANNEX - RIGHTS OF APPEAL

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against 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.

Appendix of relevant legislation

Housing Act 2004

Section 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.

- (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,
- and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,
- as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (1) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (2) The conditions are—
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (3) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

263 Meaning of “person having control” and “person managing” etc.

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
- (a) receives (whether directly or through an agent or trustee) rents or other payments from—
- (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
- (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
- (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;
- and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 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).

Section 41 Application for rent repayment order

- (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 —
- the offence relates to housing that, at the time of the offence, was let to the tenant, and
 - the offence was committed in the period of 12 months ending with the day on which the application is made.
- (3) A local housing authority may apply for a rent repayment order only if—
- the offence relates to housing in the authority's area, and
 - the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

- (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—
- section 44 (where the application is made by a tenant);
 - section 45 (where the application is made by a local housing authority);
 - section 46 (in certain cases where the landlord has been convicted etc).

Section 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.

If the order is made on the ground that the landlord has committed ***the amount must relate to rent paid by the tenant in respect of***

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.

Section 52 Interpretation of Chapter

- (1) In this Chapter—
- “offence to which this Chapter applies” has the meaning given by section 40;
 - “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;
 - “rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;
 - “rent repayment order” has the meaning given by section 40.
- (2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.