



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

**Case Reference** : **LON/00AU/HMF/2021/0244**

**HMCTS code** : **Video**

**Property** : **Flat 4, 9 Rheidol Terrace, London,  
N1 8NT**

**Applicants** : **Edmund Collins  
Ralph Chamberlen  
James Picton-Turbervill**

**Representative** : **In person**

**Respondent** : **Gina Aguda**

**Representative** : **No appearance**

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

**Tribunal Members** : **Tribunal Judge Prof R Percival  
Mr Gowman MCIEH**

**Date and venue of  
Hearing** : **5 May 2022  
Remote**

**Date of Decision** : **5 May 2022**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a remote video using CVP. A face-to-face hearing was not practicable and all issues could be determined in a remote hearing.

## **Orders**

- (1) The Tribunal makes rent repayment orders against the Respondent to each of the Applicants in the following sums, to be paid within 28 days:  
Mr Collins £2,060  
Mr Chamberlen £2,060  
Mr Picton-Turbervill £2,060
- (2) The Tribunal orders under Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, rule 13(2) that the Respondent reimburse the Applicants together the application and hearing fees in respect of this application in the sum of £300.

## **The application**

1. On 29 September 2021, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for Rent Repayment Orders (“RROs”) under Part 2, Chapter 4 of that Act. Directions were given on 24 November 2021.
2. In accordance with the directions, we were provided with an Applicants’ bundle of 26 pages, and a statement by the Respondent on a single page.

## **The hearing**

### *Introductory*

3. The Applicants attended and represented themselves. The Respondent did not attend, as she had indicated in correspondence with the Tribunal office.

### *The alleged criminal offence*

4. The Applicants alleged an offence of unlicensed control or management of a house in multiple occupation contrary to section 72(1) of the Housing Act 2004 (“the 2004 Act”).

5. The flat contained three bedrooms occupied by the Applicants, and shared kitchen and bathroom/lavatory facilities.
6. The London Borough of Islington has adopted an additional licencing scheme. In a letter dated 14 September 2021 to Mr Collins, an officer of the Borough Council state that the property required a licence, and, at that time, did not have a licence.
7. The short statement provided by the Respondent did not expressly set out a defence of reasonable excuse under section 72(5) of the 2004 Act. The statement does state that “Mr Edmund Collins and his two flat mates presented themselves as a one household unit”. We considered whether the Respondent might have thought that the Applicants together made up a single household in the relevant sense (2004 Act, section 258) and that that might amount to a reasonable excuse. They are all young men, with different surnames. It could not possibly have been reasonable to suppose that they were members of the same family (or all living together as the same sex equivalent of husband and wife) without any further investigation. Insofar as the assertion that they presented as a single household might constitute a reasonable excuse, we reject it.
8. We are sure, beyond a reasonable doubt, that the Respondent committed the offence under section 72(1) of the 2004 Act.

*The amount of the RRO*

9. The tenancy lasted from 5 June 2021 to 31 August 2021. The evidence of the Applicants was that they paid three full months’ rent for that period, to a total of £7,725. The rent did not include any element for utilities. None of the Applicants had been in receipt of housing related universal credit or housing benefit.
10. In the application, the Applicants had sought a single, global RRO representing all of the rent paid during the period of the tenancy. The Tribunal indicated that it would expect to make individual orders for each tenant. The Applicants told us that they had each contributed equally.
11. We accept the evidence as to rent paid, which was not contested by the Respondents.
12. As to conduct, the Applicants’ statement included an allegation that the Respondent was persistently unwilling to attempt to remedy potentially dangerous situations, but did not descend to details. There were some details of disputes between the parties in the Respondent’s statement, which we allowed the Applicants to respond to.

13. The principal dispute was over access to and the safety of a roof terrace or balcony. The terrace was accessed via a glazed door in one of the bedrooms (there being no other opening window in that room). The Applicants complained that the railings at the outside of the terrace were too low. The Respondent rejected these complaints, and the end result was either that the door was locked (the Applicants) or fitted with a width restrictor (the Respondent) to prevent access to the terrace. The Applicants' case was that this also prevented ventilation of the bedroom.
14. The Applicants' case was that the access to the terrace was necessary as a means of escape.
15. At the Applicants' instigation, the property was visited by an environmental health officer. There was no evidence before us of enforcement proceedings initiated by the local authority as a result, although the officer did provide the letter referred to in paragraph 6 above.
16. The Respondent objected to the condition of the flat during the tenancy, and said that it had been left in a mess at the end of the tenancy. There were burn holes in soft furnishings.
17. The Applicant's case was that they had employed a cleaner at the end of the tenancy, and the state of the flat was better than when they moved in. There was a single burn hole, which had been taken into account by the withholding of part of the deposit.
18. The evidence provided to us in respect of the condition of the property and the disputes between the parties was limited. Our general conclusion as to the conduct of the parties is that there was some substance to the Applicants complaints, but, first, it is unlikely that the issues with the terrace raised any real danger, in the (apparent) absence of local authority enforcement action; and, secondly, that there was no evidence of serious disrepair or poor condition.
19. We also concluded that there was little in the Respondent's criticism, such as it was, of the conduct of the tenants. They paid their rent in full and on time, and, apart from the matter dealt with in the context of the deposit, there was little concrete evidence of poor behaviour.
20. The Respondent did not raise their financial circumstances, and there was no material at all in the documents submitted to raise an issue relating thereto.
21. In assessing the quantum of the RROs, we have taken account of the guidance in *Williams v Parmar and Others* [2021] UKUT 244 (UT), [2022] H.L.R. 8 and *Aytan v Moore* [2022] UKUT 27 (LC), and the

cases referred to therein. We were particularly assisted by the approach of the Upper Tribunal to assessing the proportion of the maximum to award as an RRO in the context of a case in which there was little to take account of in terms of conduct, aside from the facts of the offence itself.

22. Given our views of conduct above, and of the guidance in, particularly, *Aytan*, we consider that an RRO of 80% of the maximum possible is appropriate in this case.

*Reimbursement of Tribunal fees*

23. The Applicants applied for the reimbursement of the application and hearing fees paid by the Applicants under Rule 13(2) of the Rules. In the light of our findings, we allow that application.

**Rights of appeal**

24. 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 London regional office.
25. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
26. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
27. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

**Name:** Tribunal Judge Professor Richard Percival      **Date:** 5 May 2022

## Appendix of Relevant Legislation

### 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.

### Housing and Planning Act 2016

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

#### **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 –
- (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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority’s area, and
  - (b) 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.

#### **42 Notice of intended proceedings**

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
  - (b) state the amount that the authority seeks to recover, and (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.

(5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

### **43 Making of a 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 had 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 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).

### **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 this 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 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,
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.