



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

	: LON/00BG/HMF/2021/0070
Property	: Flat 14 Howcroft House, Benworth Street, SE32AU
Applicants	: Nannette Onu
Representative	: Muhammed Williams
Respondent	: Mathew Gamble and Annabel Gamble
Representative	: In Person
Type of Application	: Application for a Rent Repayment Order
Tribunal Members	Judge Shepherd : Appollo Fonka MCIEH
Date of Decision	: 3 rd February 2022

DETERMINATION

1. In this case the Applicant is seeking a Rent Repayment Order pursuant to section 41 (1) of the Housing and Planning Act 2016. It is the Applicants' case that the premises at Flat 14 Howcroft House, Benworth Street, London SE32AU ("The

Premises”) required an additional HMO license from the 1st April 2019 when the Additional License scheme was introduced by Tower Hamlets. She says that the Respondent who is the owner and landlord at the premises failed to apply for such a license until 30th September 2020 after he was reminded to do so by the council.

2. The Additional HMO licensing scheme in Tower Hamlets applies to all households with three or more people living as two or more households who share facilities including a bathroom and kitchen and at least one of them pays rent. The scheme also includes HMO properties that are not already subject to mandatory HMO licensing.

3. The Applicant shared the premises with two others who were not related to her. Accordingly, the Respondents should have applied for an additional license but failed to do so until 30th September 2020. The Applicant seeks an RRO of £10,195 for the period 30th April 2019 until 28th February 2020.

Background

4. The Applicant was an assured shorthold tenant of the premises. Her tenancy began on 18th May 2018. She shared the premises with two other tenants. She made enquiries with the licensing team at Tower Hamlets in June 2020 as to whether the property had a license. On consulting the Housing Register it was clear that it did not. Mr Rahman from Tower Hamlets wrote to the Respondents on 7th August 2020 and threatened enforcement action if the property remained unlicensed. A further letter was sent on 4th September 2020. Mr Rahman then called Mr Gamble on 21st September 2019 who promised to apply for the license which he duly did.

The Respondents’ case

5.The Respondents concede that they should have applied for a license but sought to mitigate on the basis that they were ignorant of the additional licensing regime, that the local authority had not raised awareness of the scheme and that their letters were sent to the wrong address or the property itself and were not passed on by the tenants. The Respondents also plea in mitigation that they have carried out fire safety works at the premises notwithstanding their failure to obtain a license. The Respondents submitted financial information relating to deductions for outgoings at the premises.

The hearing

6.Mr Williams from Tower Hamlets appeared on behalf of the Applicant and Mr Gamble appeared in person. It was established during the hearing that letters about the additional licensing scheme had been sent by Tower Hamlets to the wrong address and an email had been sent with an incorrect email address. This meant that there was a delay in the Respondents receiving notice from the local authority that he was in breach of the licensing requirements. Nonetheless it was the Applicant's case that the Respondent should have known of the need for a license.

The law

7.The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) order 2018 confirm that the property is an HMO if the following criteria apply-

- it is occupied by five or more persons;
- it is occupied by persons living in two or more separate households;

- it meets the standard test under section 254 (2) of the Act

8. In addition s.56 of the Housing Act 2004 enables a local authority to designate areas subject to additional licensing if there are a significant proportion of HMOs being managed ineffectively in the area in question. The additional licensing criteria in Tower Hamlets are described above.

9. Under section 41(1) of the Housing and Planning Act 2016 a tenant may apply to the First Tier Tribunal for a rent repayment order against a person who it is alleged has committed an offence. Section 43 of the Act permits the FTT to grant a rent repayment order if satisfied beyond reasonable doubt that a landlord has committed an offence under section 72 one of the Housing Act 2004 by failing to obtain an HMO licence. Section 44 of the Act permits the FTT to grant a Rent Repayment Order in respect of the rent paid by the tenant for a period not exceeding 12 months.

Determination

10. There is no dispute that the Respondents did not have a license for the period in question and accordingly they are prima facie liable for a Rent Repayment order. The Tribunal had some sympathy with Mr Gamble's case, in particular it was clear that correspondence had been sent to the wrong address. Nonetheless the Respondents ought to have been aware of the Additional Licensing Scheme. They did not make out their case that the local authority failed to draw attention to the scheme and information would have been available on the local authority's website. However, in order to reflect the fact that the Respondents applied for the license as soon as they were properly aware of the need for one and the fact that the premises were in a good condition the Tribunal will make a deduction of 15% for any award.

11. Mr Gamble gave details of utilities expenditure at the premises. These amounted to £99.65 per month for the whole property or £33.22 per tenant (there is only one

tenant applying for the RRO). £33.22 x 12 months = £398.60 which should also be deducted from any award.

12. The amount claimed by the Applicant was £10195 which is accepted to be the rent paid over the period of the claim. Deducting the 15% and the utilities as described above equates to a rent repayment order of £8267.15

Summary

12. The Respondent is liable for a Rent Repayment Order of £8267.15

Judge Shepherd

3rd February 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.