



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

Case reference : **LON/00BG/HMF/2021/0233**

HMCTS code : **P: CVPREMOTE**

Property : **285 Manchester Road, London E14,
3DP**

Applicants : **(1) Matthew Vaughan
(2) Guiseppe Serra
(3) Luca Piras**

Representative : **In person**

Respondents : **(1) Euro Room Lettings
(2) Avanti Enterprises Ltd
(3) Syed Imadadur Rahman
Mr Veerapen, Solicitor for the First
and Second Respondents**

Representative : **Third Respondent did not attend
and was not represented**

Tribunal members : **Tribunal Judge I Mohabir
Mr C Gowman MCIEH**

Date of hearing : **22 June 2022**

Date of decision : **11 July 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Introduction

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondents in respect of 285 Manchester Road, London E14, 3DP (“the property”).
2. The property is described as a 6 bedroom flat arranged over two floors with a shared kitchen and two bathrooms.
3. It is the First Applicant’s case that he rented a room in the property from May 2019 to October 2020 at a monthly rent of £498 payable on 30th day of each calendar month. The rent was varied to £450 between May to August 2020 as a result of the lockdown imposed by the Covid-19 pandemic. The letting was granted by Euro Rooms Lettings, which is the trading name of the Second Respondent, pursuant to a house share licence agreement. At all material times, the rent was paid to the Second Respondent. Therefore, only the Second and Third Respondents are in fact potentially the correct Respondents to this application.
4. The First Applicant asserts that during his occupation of the property, the other 5 rooms were let separately to other occupiers. The total occupancy was never less than 6 and up to a maximum of 8 persons.
5. It was common ground that the Second Applicant and Third Applicants also occupied separate rooms in the property from March to October 2020. Both paid rent of £280 per fortnight or £560 per month to the Second Respondent. It was conceded by the Second Respondent that both of these Respondents had also been granted house share licence agreements by it. Again, because of the Covid-19 pandemic their rent was varied to £20 per fortnight or £520 per month between May to October 2020. These payments included the cost of the utility bills. However, there was no evidence before the Tribunal as to what apportionment of the rent was attributable to the bills and so it proceeded to decide the case on the global rent paid by the Applicants.
6. All of the Applicants submit that during their occupation the property was an unlicensed House in Multiple Occupation (“HMO”) and seek a rent repayment order for their period of occupation (limited to 12 months for the First Applicant) of £5,736 and £4,480 respectively.
7. The Third Respondent is the registered proprietor of the property. However, he has not participated in these proceedings at all and has not served or filed any evidence.

***Relevant Law
Requirement for a Licence***

8. The Housing Act 2004 introduced the mandatory licensing of HMOs whilst The Licensing of Houses in Multiple Occupation Order 2006(3)(2) details the criteria under which HMOs must be licensed. These criteria were later adjusted and renewed by the Licensing of Houses in Multiple Occupation Order 2018, which came into force on 1 October 2018.
9. The Housing Act 2004 Part 2 s.72(1) provides:
(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.

Section 263 of the Act defines a person having control or managing as:

- (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 an other person as agent or trustee, that other person.*

3. The Housing Act 2004 Part 2 s. 61(1) provides:

- (1) *Every HMO to which this Part applies must be licensed under this Part unless—*
- (a) *a temporary exemption notice is in force in relation to it under section 62, or*
- (b) *an interim or final management order is in force in relation to it under Chapter 1 of Part 4.*

4. Section 55 of the Housing Act 2004 provides:

55 - Licensing of HMOs to which this Part applies

- (1) *This Part provides for HMOs to be licensed by local housing authorities*

where—

- (a) they are HMOs to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

- (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
- (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

Making of rent repayment order

10. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings are offences described at row 2 (eviction and harassment of occupiers) and 5 (control or management of unlicensed HMO) of the table.

11. Section 43 of the Housing and Planning Act 2016 (“the Act”) provides:

“(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—

- (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).

Amount of order: tenants

12. Section 44 of the Act provides:

(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***

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of

the period of 12 months ending with the date of the offence

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.”

The Issues

13. These are:

(a) was the property an HMO during the occupation of the Applicants?

(b) if so, was the property licensed?

(c) which of the Respondents is liable?

(d) should a RRO be made against that Respondent and, if so, for what amount?

These are dealt with in turn below.

Hearing

14. The remote video hearing in this case took place on 22 June 2022. The Applicants appeared in person, but the lead Applicant was the First Applicant, Mr Vaughan. The First and Second Respondents were represented by Mr Veerapen, a Solicitor. The Third Respondent did not appear and was not represented.

15. It should be said that the Tribunal was not assisted by the rather haphazard and incomplete evidence filed and served by both parties.

Was the property an HMO?

16. Mr Cardoso is the London director of the Second Respondent. In his witness statement dated 9 June 2022, he asserted that he took over the property from the Third Respondent in the belief that it had a licence to let. At no stage did he let the property to more than 4 tenants. He stated that ‘the landlord’ had taken all preparatory steps to apply for an HMO licence for the property up to March 2020, but could not make an application because of the lockdown imposed by the Covid-19 pandemic prevented any further letting to new tenants. In any event, it was submitted that a licence was not required after March 2020 because no more than two households occupied the property after that date.
17. Each of the Applicants gave credible and consistent evidence that the property was comprised of 6 bedrooms, each of which was occupied by separate individuals where the occupancy was never less than 6 persons. This was materially corroborated by the photographic evidence adduced by the Applicants showing the layout of the bedrooms numbered 1-6.
18. In addition, the evidence of the Applicants in relation to the occupancy of the property was also corroborated by the evidence in the witness statements of Sian Hobson, who occupied the property from October 2019 to April 2020. She confirmed that there were 6 bedrooms in the property and that at the time she vacated it there were still 6 persons still living there.
19. These facts were further corroborated by the witness statements of Mr Esteban Lopez dated 21 September 2021 who occupied the property from April 2019 until March 2020 with his partner, Ms Porqueres. She also provided a witness statement dated 9 May 2022. Both witness statements confirmed that the occupancy varied between 6-8 persons during their occupation. She stated *“there never seemed to be any breaks in between people moving out and new people moving in. As soon as we heard that somebody had moved out, a new person who took their room would appear. The agency didn’t appear to have any problems re-letting each room as people left”*.
20. The Tribunal accepted the evidence of the Applicants, Ms Hobson, Mr Lopez and Ms Porqueres together with the photographic evidence and found that during the occupation of the First Applicant for the period of 12 months from October 2019 to October 2020 and the occupation of the Second and Third Applicants for the period March to October 2020, the property was variously occupied by 6-8 persons as separate households and was an HMO within the meaning of section 254 of the Housing Act 2004 (“the 2004 Act”).
21. It was common ground that the property during the relevant periods of time was never licensed as an HMO. It follows, therefore, that the tribunal was satisfied

beyond reasonable doubt that an offence had been committed under section 72(1) of the 2004 Act.

Liability of Respondents

22. The Second Respondent admitted that it granted a house share licence agreements to each of the Applicants and it received the rent from each of them. However, Mr Cardoso contended that it took over the management of the property from a previous letting agent called 'The Plan 3 Limited' who had been instructed by the Third Respondent pursuant to 'an agreement'. He asserted that the rent was paid to the previous agent. However, somewhat surprisingly, no evidence was adduced of the purported agreement or the rental payments made to 'The Plan 3 Limited'.
23. The only factual evidence before the Tribunal was the contractual agreement house share agreement granted by the Second Respondent to the First Applicant. It was conceded by Mr Cardoso that similar agreements had been granted to the Second and third Applicants on the same terms. There is no reference to the Third Respondent being the grantor, which would have been the case if he had in fact been the landlord. He was not, as a matter of law, privy to the contract and, therefore, could not enforce any of its terms. This could only be done by the Second Respondent.
24. In addition, there was no evidence at all of the purported agreement between the Second Respondent and 'The Plan 3 Limited' or any rental payments made by the former to the latter.
25. The Tribunal, therefore, had little difficulty in finding that the Second Respondent was "person having control" of the property within the meaning of section 263 of the 2004 Act and is liable for the RRO and not the Third Respondent.

RRO & Quantum

26. In the light of the findings made by the Tribunal above, the Tribunal was satisfied that a RRO should be made against the Second Respondent. The lockdown imposed by the Covid-19 pandemic did not prevent it from electronically lodging an application for an HMO licence. By merely doing so, the Second Respondent could have avoided liability for a RRO and no good reason was advanced at the hearing for not doing so.
27. The Tribunal then turned to assess the quantum of the rent repayment order that should be made against the Second Respondent.
28. Guidance was given by the Upper Tribunal in ***Vadamalayan v Stewart*** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matter set in sec-

tion 43(4).

29. This decision was followed by the Upper Tribunal decision in the case of ***Williams v Parmar*** [2021] UKUT 244 (LC) where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.
30. The Upper Tribunal held that “*there is no presumption in favour of the maximum amount of rent paid during the period*”. It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be “*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*”. Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.
31. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord compromise part of the “*conduct of the landlord*” and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating “*meritorious conduct of the landlord may justify a deduction from the starting point*”. It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the “*scale of seriousness, by reason of mitigating circumstances or otherwise*”.
32. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.
33. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.
34. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the “starting point” that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.
35. The facts of this case are analogous to ***Williams*** is so far as it concerns a professional landlord who failed to obtain an HMO licence. The reason for not doing so is unknown.

36. The financial circumstances of the Second Respondent are equally unknown. As the Tribunal understands it, the Second Respondent has not been convicted of any offence. Therefore, the only section 44(4) consideration by the Tribunal was the conduct of the parties.
37. There was no suggestion that the Applicants had rent arrears or had breached any terms or conditions of the tenancy agreement. The only criticism made of the Second Respondent by the Applicants is the abrupt notice given to them to vacate the property. In addition, the Respondent had asserted that the property had been fitted with the appropriate fire prevention equipment in preparation for an HMO Licence application and that this was not denied by the Applicants.
38. Accordingly, the Tribunal made a rent repayment order in favour of the Applicants, which represents an award of 70% of the rent paid by them to the Second Respondent. For the 12-month period of October 2019 to October 2020 claimed by the First Respondent, this is a RRO for the sum of £4,082. For the period of March 2020 to October 2020 claimed by the Second and Third Applicants, this is an RRO for the sum of £2,604 each. The amount of each of the rent repayment orders is payable by the Second Respondent within 14 days of this decision being issued to the parties.
39. In addition, the Second Respondent is ordered to reimburse the Applicants the fees of £300 paid to the Tribunal to have the application issued and heard. This sum is also to be paid by the Second Respondent within 14 days of this decision being issued to the parties.

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).