



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

**Case References** : **LON/00BG/HMF/2022/0030**  
**CVP/VIDEO**

**Property** : **Flat 3, Olive Grove House, 42A Fieldgate  
Street, London, E1 1ES**

**Applicants** : **Ms E M O'Neill  
Ms L Marsden  
Ms E Bradley  
Ms A Outherside**

**Representative** : **Represent Law Ltd**

**Respondent** : **MPL Estates Ltd (landlord) (1)  
Wisteria Management Ltd (2)**

**Representative** : **Mr Wright, solicitor (for adjournment  
application only)  
Mr Mohamed of second Respondent**

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

**Tribunal Members** : **Judge F J Silverman MA LLM  
Mr A Fonka MCIEH CEnvH M.Sc**

**Date of CVP  
remote hearing** : **07 July 2022**

**Date of Decision** : **19 July 2022**

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**DECISION**

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## **Decision of the Tribunal**

- 1. The Tribunal makes a rent repayment order against the second Respondent and in favour of Ms O'Neill in the sum of £7,236.**
- 2. The Tribunal makes a rent repayment order against the second Respondent and in favour of Ms Marsden in the sum of £8,748.**
- 3. The Tribunal makes a rent repayment order against the second Respondent and in favour of Ms Bradley in the sum of £4,536.**
- 4. The Tribunal makes a rent repayment order against the second Respondent and in favour of Ms Outherside in the sum of £3,240.**
- 5. Additionally, the Tribunal makes an order against the second Respondent and in favour of Ms O'Neill in the sum of £300 in repayment to her of her application and hearing fees.**
- 6. The total award to be paid by the second Respondent is therefore £24,060.**

## **Reasons**

- 1 The Applicants made a joint application to the Tribunal under section 41 of the Housing and Planning Act 2016 ("the Act") requesting a rent repayment order against the Respondents in respect of the property known as Flat 3 Olive Grove House 42A Fieldgate Street, London, E1 1ES (the property) for the period of their respective occupation of the property (as detailed below) during which time the property was unlicensed.
- 2 Rent for the property was payable to the second Respondent who is therefore the correct Respondent against whom this application should proceed.
- 3 Until the day before the hearing when an application to adjourn was made by the second Respondent, neither Respondent had responded to the application. At the same time, the second Respondent purported to file a bundle of documents. The matter was referred to the Judge who refused the adjournment on the grounds that it was too late but said that the request could be revisited at the hearing on the following day. Permission to file late documents was refused because no credible excuse for the delay was given and to allow their inclusion would give the Applicants insufficient time to respond to them.
- 4 At the commencement of the hearing Mr Wright , solicitor, on behalf of Mr Mohmed of the second Respondent made an application for an adjournment on behalf of his client. He said that he was only instructed in respect of the adjournment application and would not be speaking to the substantive issues. He said he had only been instructed on the previous day and asked on his

client's behalf for an adjournment on the grounds that his client had suffered from Covid, had not received the documents and had insufficient time to respond to the application. No evidence to support any medical condition was produced. Similarly no details of the failure to receive documents were offered nor any excuse for the late instruction of the solicitor.

- 5 The Applicants objected to the request for an adjournment.
- 6 Having retired to consider the matter, the Tribunal decided to refuse the application to adjourn. The application had been filed on 27 January 2022 and no plausible explanation had been given as to why the second Respondent had delayed instructing solicitors until the previous day. No medical evidence had been produced to substantiate the claim of ill health. The second Respondent's excuse that he had moved house should not have impacted on his ability to receive documents and correspondence at his given business address.
- 7 The Tribunal understands that the subject property comprises a three bedroomed purpose built flat occupied by separate households who shared common facilities.
- 8 During the entire period of the occupation of the property by the Applicants the property was in a selective licensing area which required all rented housing to be licensed irrespective of the number of occupants (page CEB2). The selective licensing scheme had been in force since 01 October 2016 and it is accepted that the selective licensing order ceased to apply to the property as from 01 October 2021 which date significantly after the period of this claim which covers the period 27 January 2020 to 26 January 2021.
- 9 Confirmation from the local authority that the property did not have a licence during the relevant time is shown at page CEB3/page 37.
- 10 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 11 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable to carry out a physical inspection of the property but had the benefit of viewing the property and its location via Google.
- 12 The hearing took place by way of CVP Video conference on 07 July 2022 at which the Applicants were represented by Mr Barrett and the second Respondent by Mr Mohamed. Mr Wright left the hearing after having made his submissions relating to the adjournment. The first Respondent did not appear and was not represented. Ms O'Neill gave oral evidence on her own behalf, the remaining Applicants were unable to attend the hearing but had filed witness statements which the Tribunal had read.
- 13 Mr Mohamed had not complied with any of the Tribunal's Directions and was barred from taking part in the substantive hearing save for a brief statement at the end during which he made unsubstantiated allegations of fraud on the part of both the Applicants and their representative. He also said that he had moved house and had not received documentation relating to the case. Given that he works from a business address the Tribunal

did not find this excuse plausible. He claimed that the property did not need a licence during the period when the Applicants occupied the property but produced no evidence to support this. Even if the selective scheme had not been in applicable the property would still have remained licensable under Additional HMO licensing given the number of occupants and the nature of the accommodation. Similarly, Mr Mohmed alleged damage caused to the property by the Applicants but had no substantiated evidence in support of his contention. He was asked by the Tribunal to cease making abusive verbal allegations against the Applicants and their representative and, after having been warned, was muted when he failed to comply with this request.

- 14 The Tribunal received and read a bundle of documents from the Applicants compiled largely by their representative who also purported to give evidence in support of those documents. This documentation established the basic facts of the case as verifiable from mainly public documents (ownership of the property, tenancy agreements, non-existence of licence, rent paid). The Tribunal accepted this evidence because it was verifiable from legitimate sources but reminded the Applicants' representative that such factual evidence forming the basis of the case should normally be presented by the Applicant(s) through their own witness statements.
- 15 The documentation before the Tribunal included statements from three Applicants who were not present at the hearing. The Tribunal had read their statements but was unable to place great reliance on them because their contents had not been subjected to cross examination. In essence they supported the factual evidence placed before the Tribunal by Ms O'Neill together with that contained in their representative's statement.
- 16 Mr Barrett for the Applicants stressed that because the property was in a selective licensing area for the whole period covered by the claim, the number of tenants in occupation at any one time was irrelevant. Factually there had always been at least three tenants in occupation at any given time.
- 17 The tenants had each paid their portion of the rent to Ms O'Neill who had added her share and sent the monthly amount totalling £2,200 to the second Respondent. Evidence of her remittances to the second Respondent are found on pages 75-91.
- 18 The monthly sum was divided as to £670 paid by Ms O'Neill, £810 paid by Ms Marsden, and £720 each by Ms Bradley and Ms Outherside. It is noted that Ms Bradley and Ms Outherside were consecutive occupants of one room at the property, they were not both in occupation at the same time.
- 19 Of the total sum claimed (£26,400), Ms O'Neill is claiming 12 months' rent (£8,040), Ms Marsden £9,720 (12 months) Ms Bradley £5,040 (7 months) and Ms Outherside £3,600 (5 months).
- 20 It is not disputed that one or more of the Applicants were in lawful occupation of the property during the entire period covered by this application. They occupied rooms in the property under tenancy agreements granted by the second Respondent (see page 137).

- 21 The first Applicant is also requesting the Tribunal to order the Respondent to repay the application and hearing fees (£300).
- 22 The Tribunal heard evidence from the Applicants that the property, a new build, was inadequately maintained. Ms O'Neill cited examples of a faulty fire alarm, a radiator not working, water leaking through a ceiling light socket and a toilet which fell off the wall. She said that they frequently asked the landlord to correct these items but some, such as the defective fire alarm, were never repaired. Additionally, she said that their deposit had not been returned and had at one stage during her occupancy become unprotected.
- 23 The Applicants have demonstrated to the Tribunals' satisfaction that the property required a licence during the whole period covered by this application and that it did not have one.
- 24 The Tribunal was, therefore, satisfied beyond reasonable doubt that the second Respondent had committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that, it had been in control or management of an unlicensed house.
- 25 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act. The first and second Applicants each make a claim for the twelve month period 27 January 2020 to 26 January 2021 whereas the third and fourth Applicants split this period between them, as to 7 months to Ms Bradley and 5 months to Ms Outherside. In each case, any award made by the Tribunal could not exceed the total rent received by the second Respondent for this period of time.
- 26 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 27 In the absence of evidence to the contrary the Tribunal made the assumption that the first Respondent was a property professional trading through a limited company and employing a management company to carry out routine work. He should therefore have been aware of his responsibilities as a landlord and of the need to licence the property.
- 28 There is no evidence that the second Respondent had previous convictions of this kind or that the Council had considered the second Respondent's offence to be sufficiently serious to prosecute it. However, in assessing the award to be made to the Applicants, the Tribunal does have regard to the second Respondent's conduct including making unfounded allegations about the Applicants' behaviour, failing promptly to repair faults at the property, failing to deal correctly with the tenants' deposit, disrespectful behaviour towards the Applicants and failure to engage with these proceedings until the day prior to the hearing.
- 29 The Tribunal did not have details of the Respondent's financial circumstances but no plea of financial hardship was made on its behalf. No evidence of any outgoings was put before the Tribunal.
- 30 None of the Applicants had claimed any benefits during the period of their occupation.

- 31 The Applicant’s representative asked the Tribunal to make a single award which would then be divided up between the various Applicants in proportion to the period of their occupation and amount of rent paid. In view of the fact that only one of the Applicants was present at the hearing the Tribunal declined to award a single lump sum and required the Applicant’s representative to produce figures relative to each Applicant’s entitlement.
- 32 There is no substantiated evidence of any misconduct on the part of the Applicants. The Tribunal was not however impressed by the conduct of the second Respondent during these proceedings or the failure to attend to repairs at the property.
- 33 Although the Tribunal does not condone the second Respondent’s behaviour it considers that making an award of the full amount to each Applicant might be considered too harsh a penalty in these circumstances (see *Hallett v Parker* [2022] UKUT 165 (LC)).
- 34 Accordingly the Tribunal makes a deduction of 10% from the full amount claimed by each Applicant and it makes awards as follows: to Ms O’Neill £7,236, to Ms Marsden £8,748 to Ms Bradley £4,536 and to Ms Outherside £3,240.
- 35 These sums amount to £23,760 to which must be added (and is payable to the first Applicant) the sum of £300 to reimburse the first Applicant for her Tribunal application and hearing fees.
- 36 This gives a total award of £24,060 payable as above to the Applicants.
- 37 Relevant Law  
Making of rent repayment order

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

“(1) The Second-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

16. Section 44 of the Act provides:

(1) Where the Second-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.”

**Name:** Judge Frances Silverman  
as Chairman      **Date:** 19 July 2022

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the Second-tier Tribunal at the Regional office which has been dealing with the case.

Under present Covid 19 restrictions applications must be made by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.