



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

Case Reference : **LON/00BJ/HMF/2020/0043**

Property : **45 Grandison Road, London SW11 6LS**

Applicant : **Abigail Beddows**

Respondent : **Raymond Bannerman**

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

Tribunal : **Judge Nicol
Mr A Fonka**

Date and Venue of Hearing : **22nd June 2022;
By remote video conference**

Date of Decision : **13th July 2022**

DECISION

The application for a Rent Repayment Order against the Respondent is dismissed because the Respondent is not the Applicant's landlord.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. The Applicant was a tenant at 45 Grandison Road, London SW11 6LS, a 3-storey house with 5 bedrooms and shared bathroom/toilet and kitchen facilities, from October 2017 until April 2019. The property was a house in multiple occupation but it was not licensed, although a Temporary Exemption Notice was granted some time after the Applicant left.
2. The Applicant seeks a rent repayment order against the Respondent in accordance with the Housing and Planning Act 2016 ("the 2016 Act").

The application was made in March 2020 but was unfortunately adjourned due to the COVID pandemic.

3. There was a remote video hearing of the application at the Tribunal on 22nd June 2022. The attendees were the Applicant (accompanied by her mother for moral support) and the Respondent (attending by telephone).
4. The documents available to the Tribunal consisted of the following in electronic form:
 - A bundle of 50 pages compiled by the Applicant;
 - An additional bundle of 34 pages, also compiled by the Applicant and containing the Respondent's brief statement of case.
5. The Tribunal may make a rent repayment order when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicant has alleged that the Respondent was guilty of having control of and managing a House in Multiple Occupation (HMO) which is required to be licensed but is not so licensed, contrary to section 72(1) of the Housing Act 2004 ("the 2004 Act").
6. While the offence under section 72(1) may be committed by agents, RROs may only be made against landlords – see sections 40(1), 43(1) and 44(3) and (4) of the 2016 Act and the Court of Appeal's decision in *Rakusen v Jepsen* [2021] EWCA Civ 1150. The Respondent claimed that he was not the landlord, having never signed an agreement nor received any rent, but merely helped out at the property on behalf of his mother who is now in her mid-80s and cannot manage such things herself.
7. According to the Land Registry entry, the freeholders of the property are Victoria Lankai Bannerman and Victoria Naa Abia Bannerman. The Respondent told the Tribunal that these are his mother and sister respectively.
8. When the Applicant first moved into the property, there were a number of people already there, including Paul McCarthy and Amanda Duplock. The Applicant was given no written agreement. It was Amanda who emailed her all the details of the tenancy, including the deposit arrangements, the amount of the rent, how bills would be paid and the need for references, not for herself but for "the landlord". Amanda said Paul collected the rent and paid the bills on behalf of everyone in the house. The Applicant paid her rent to Paul on the understanding that he passed it on to the landlord.
9. This sort of an arrangement in a house in multiple occupation is not uncommon nowadays but doesn't fit easily into the common law framework for the landlord and tenant relationship (see *Sturgiss v Boddy* [2022] L&TR 12). The problem here is that neither the Applicant nor the Respondent knew how it had started.

10. The Tribunal accepts the Respondent's evidence that he was not involved in the original letting of the property nor when tenants left or were replaced. He had not taken legal advice and had no idea how to analyse the legal position of himself, his mother, or the tenants, including the Applicant. He suggested Paul might be the landlord but, although rent passed through Paul's hands, he only acted as a conduit between his fellow tenants and the landlord. The Respondent is clearly not someone who has thought through his position in order to try to avoid legal liability.
11. The Applicant pointed to a number of matters which she asserted supported her claim that the Respondent was the landlord:
 - (a) Amanda and Paul referred to the Respondent as "the landlord" when talking to the Applicant. However, neither of them gave evidence and it is difficult to know from the available evidence whether they meant he was the person who granted the tenancy or the person who managed the property.
 - (b) When there were roof or other repair problems, it was the Respondent with whom the tenants, including the Applicant, liaised. The Respondent freely admitted this but asserted that he only did this in lieu of his mother who could not. This is consistent with his being an agent just as much as the landlord.
 - (c) At the end of the tenancy, the Respondent provided a breakdown of sums owed by the Applicant. Again, this is consistent with his being an agent.
 - (d) A balance owing to the Applicant was also paid out to her from an account in the name of "VL Bannerman". The Applicant was unaware of the Respondent's mother and assumed the surname referred to him. In fact, the initials are those of his mother and he confirmed that this was her account, not his.
12. In the Tribunal's view, the evidence is much more supportive of the Respondent's mother being the landlord with the Respondent as her agent. The fact that she was hands-off, not getting involved during the Applicant's time at the property, is not inconsistent with her being the landlord. It is worth noting that the Temporary Exemption Notice was granted to, and applied for in the name of, Mrs Bannerman, not the Respondent. Since the Respondent is not the landlord, he cannot be liable for a RRO and the application must be dismissed.

Name: Judge Nicol

Date: 13th July 2022

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).

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 –
- (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.

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 –
- (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).

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
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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
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(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.