



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

Case Reference : **LON/OOAG/HMK/2018/0003**

Property : **Flat 5, 47 Fitzroy Street, London W1T 6LA**

Applicants : **Mr Alex Yiu Fai Chan
Ms Shuen Yuk Lau
Mr UyiHei Jonathan Wong**

Representative : **Mr Wong**

Respondent : **DaanishAmanZaki**

Representative : **Mr R Tacagni MICIEH CEnvH**

Type of Application : **Application by the Applicants for rent repayment order under sections 40 – 44 of The Housing and Planning Act 2016**

Tribunal Members : **Tribunal Judge Dutton
Mr T W Sennett MA FCIEH**

Date and venue of Hearing : **10 Alfred Place, London WC1E 7LR on 30th May 2018**

Date of Decision : **17th July 2018**

DECISION

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The Tribunal finds that the Respondent is liable under provisions of sections 43 and 44 of The Housing and Planning Act 2016 (the Act) to pay the sum of £1,500 to each of the Applicants under a rent repayment order relating to the property at Flat 5, 47 Fitzroy Street, London W1T 6LA (the Property) for the reasons set out below.

BACKGROUND

1. The Applicants, the tenants of the Property, sought a rent repayment order (RRO) from the Respondent as a result of his failure to ensure that the Property had an HMO licence.
2. In the papers lodged before the hearing, we were provided with two bundles. In the Applicants' bundle was a statement of case and a witness statement of Miss Grace House, an Environmental Officer with the London Borough of Camden (the Council). There were copies of the tenancy agreement entered into by the Applicants, email correspondence and an Improvement Notice that had been issued on 13th February 2018 relating to works that were required following an inspection by Miss House on 14th December 2017.
3. In the Respondent's bundle, likewise we had a statement of case and a witness statement of Mr Zaki together with a number of exhibits including email correspondence, an electrical certificate dated 15th December 2017 and other items which we will refer to as necessary during the course of this decision.
4. The tenancy agreement is dated 3rd August 2017 and is for a term of one year commencing on 18th August 2017 at a weekly rent of £615. The chronology relating to the agreement and the circumstances surrounding same is set out in the Applicants' statement of case and does not appear to be contested. An allegation is raised that Mr Zaki had committed an offence of controlling or managing an unlicensed HMO under section 72(1) of The Housing Act 2004 (the 2004 Act). By virtue of section 40 of the Act, this is an offence, which entitles the Applicants to recover rent paid, by reason of section 44(2) of the Act.
5. We have read both parties' statements of case and have taken into account those matters which have been raised. We also heard from Mr Wong on behalf of the Applicants, he confirming he had authority to represent them, and Mr Tacagni on behalf of Mr Zaki who attended and gave evidence. The statement of case from the Applicants indicated they were seeking to recover the sum of £10,894.91 being rent paid from the commencement of the tenancy on 18th August 2017 to the date that an application for an HMO licence was made on 20th December 2017. This was a period of 124 days at a weekly rent of £615.
6. In the Respondent's statement of case, aside from dealing with the circumstances leading to the problems which Mr Zaki faced, it also set out under paragraph 21 the costs which he said had been incurred by him during the period which included the fees paid to Foxton, fees for repairs and maintenance, mortgage payments and other costs. It is said that these totalled some £16,457.78.

7. Miss House's statement confirmed that she was contacted by the Applicants suggesting that the Property was being used as an unlicensed HMO, this being at the end of October 2017. She visited the Property on 14th December 2017 and established, following investigations, that although Mr Zaki had registered an online account with the Council on 14th August 2017, at the time of her visit no application for a licence had been made. Furthermore, it seems that in the course of her visit she noticed certain deficiencies which resulted in an Improvement Notice being served. The Improvement Notice, a copy of which is in the bundle, is dated 13th February 2018 and we understand the works required have now been completed.
8. The statement from Miss House also indicated that on 26th March 2018 a notice of intention to serve a civil penalty notice of £15,000 for failure to comply with section 72 of the 2004 Act had been served on Foxtons.
9. In the final comments she considered that both Foxtons and Mr Zaki were equally responsible. She did, however, confirm that Mr Zaki had been fully compliant throughout the investigation and there were no aggravating factors.
10. From a perusal of the emails it would appear that the Applicants were aware of the Respondent's obligation to obtain a licence. These issues were raised before the Applicants moved in by Mr Chan, who we were told is a law graduate. It seems clear, therefore, that when the Applicants took occupation on 18th August 2017 they were aware that the Property was not licensed. There were, however, conflicting emails sent from Foxtons first indicating that a licence was not required and then confirming that it was and that it would be put in hand.
11. We heard from Mr Zaki that he had attempted to obtain a licence but had been stymied by the fact that the electrical certificate was out of date and a new one which was sought indicated that there were problems with the Property that required quite extensive works. Indeed, by a letter from Pride Installations dated 22nd August it appears that the costs of carrying out the electrical works could be as much as £7,860 plus VAT. That should be contrasted with what appeared to be the actual rewiring costs set out in Mr Zaki's statement of case of £2,002 plus VAT.
12. In addition to the various documents that were before us, Mr Wong told us briefly about the case but relied on their statement of claim. He confirmed the terms of the tenancy agreement and that although the lack of the licence did not directly affect them there was no electrical certificate and accordingly there were certain areas where works were required. Indeed, this was apparent from the fact that an Improvement Notice was issued the following year.
13. He was able to confirm that the three tenants are not related. They are either students or working. We were also told that the tenants have paid the rent as it has fallen due and that there are no suggestions that there has been any behaviour by the tenants that needed to be considered by us under the provisions of section 44(4)(a) of the Act.
14. Mr Tacagni for Mr Zaki asked us whether or not an offence had been committed under section 72. He accepted that the London Borough of Camden did enforce a

selective licensing policy and his only reason for suggesting that there may not have been an offence was whether the relationship between the tenants was one of family. It was confirmed by Mr Wong that this was not the case. He also referred us to section 72(5) of the 2004 Act This provides that it may be a defence to proceedings that Mr Zaki had a reasonable excuse for having control or management of the house or for permitting the persons to occupy or for failing to comply with the condition. He pointed out that no civil penalty notice had been served on Mr Zaki but on Foxtons. He pointed out that if we decided that a rent repayment order should be made we had a discretion in the amount. We needed to consider those matters set out in section 44(4) which were the conduct of the parties, the financial circumstances of the landlord and whether the landlord had been convicted. It was not suggested that in reality there was any conduct of either party which might affect the matter. We were made aware of the financial circumstances and there is no conviction.

15. One of the matters that was investigated in questions of Mr Zaki was the length of time it had taken for the electrical works to be undertaken. It appears that he had embarked upon resolving the electrical issues but that the works could not be done until December apparently because of some confusion in relation to rights of access to the Property. Mr Wong told us that they would have afforded access to the electrician without difficulty had they been asked to do so and to provide a key perhaps with Foxtons attending.

THE LAW

16. The law applicable to this matter is set out below.

FINDINGS

17. It is clear from the statement of Miss House that the subject Property is an HMO and would have required licensing with the Council. In truth that was not really argued against by Mr Zaki. The suggestion that the Applicants may have been related was rebutted by Mr Wong and Mr Zaki had not evidence to the contrary. It seems, therefore, that is an offence that has been committed bearing in mind the licensing regime applicable with the Council. In those circumstances, we need to consider what amount if any would be appropriate for Mr Zaki to reimburse to the Applicants in respect of the rent for the period which was accepted to be from 18th August 2017 to 20th December 2017.
18. No evidence was put to us that either the landlord or the tenant had behaved in any way which needed to be taken into account. It is also agreed that Mr Zaki has not been convicted of an offence. The details of his expenditure are set out in his statement of case and we have noted those. It does seem to us that many of those expenses would have inevitably been incurred whether the rent was being paid or not. The provisions of section 44(3) indicate that the amount that the landlord may be required to pay must not exceed the rent in respect of the period less any reward of Universal Credit, which is not applicable in the case. The amount of rent is also not in dispute. The question is the discretionary element and what we consider would be a reasonable amount to order Mr Zaki to pay.

19. There is no doubt that the need to license HMOs is an important one and it is inappropriate if people in Mr Zaki's position do not deal with the licensing requirements at the right time. We accept also that he had employed the services of managing agents (Foxtons) and had relied on them to advise him of his obligations. They did not initially appear to know what they might be. We accept that this appears to be his only rented property and that he has no knowledge of the licensing regulations. Indeed, it seems he has little knowledge of the tenancy agreement for he was not aware of his right to enter the Property to carry out the works, which he could have done and which would have enabled the rewiring to be carried out more quickly than he did. However, he is the party who has suffered as it has extended the period for which a rent repayment order could be made, it preventing him making an application for a licence until 20th December 2017.
20. We are also of the view that the Applicants, or certainly Mr Chan, was well aware of the law applicable to HMO licensing and the rights that might apply in respect of any reimbursement of rent. Although in the hearing Mr Wong said that they had sought the Council's involvement because of the condition of the Property leading to the improvement notice, that is inconsistent with the witness statement of Miss House. She says that on 30th November 2017 they had received a complaint from the tenants of the Property advising the Council that they believed it to be an unlicensed HMO.
21. It is possible, therefore, that the Applicants could have declined to take occupation until Mr Zaki had resolved the licensing position. They did not do so and, therefore, to an extent we find whilst they do not have culpability they had knowledge.
22. We have seen the outgoings of Mr Zaki during this period which total £16,457.78. It seems to us, however, that those are costs that would inevitably have been incurred. The only item of expenditure which he may wish to challenge are the fees paid to Foxtons. On the evidence before us, it would seem that he was not serviced by Foxtons as well as he might have been. There are emails indicating that they believe that the Property was not situated in Camden and therefore licensing was not required. Subsequently they changed their view but did not seem to help Mr Zaki to any great degree in sorting out the licensing arrangements. Furthermore, the proposal for the electrical rewiring was at a cost which greatly exceeded the amounts which Mr Zaki actually paid at the end of the day. We do not propose to go into that matter anymore. It seems to us that Mr Zaki has responsibility for the actions or inactions of his agent and it is a matter for him and his agent to resolve any of those issues.
23. There is no doubt that the Applicants had the use and occupation of the Property during the period for which the rent repayment could be ordered. There appears to be no particular authority as to the level of rent repayment order that should be made in these circumstances.
24. We have considered the provisions of section 44(3)(4). We have noted the financial expenditure to which Mr Zaki refers to in his statement case. We note also the fact that the tenants have had the use and occupation of the Property albeit with some problems.

25. It seems to us, doing the best we can, that some payment should be made by Mr Zaki to reflect his failings. Evidence was put to us that there had been problems with the Property and indeed the fact that an Improvement Notice has been issued dealing with various matters, supports that contention. We consider, therefore that it would be fair and reasonable to make an order that Mr Zaki reimburses to each tenant/Applicant the sum of £1,500 such reimbursement to take place within 28 days. If in the alternative the parties wish to come to some agreement that this sum is offset against future rental expenditure, that is a matter for them to consider.

Andrew Dutton

Judge:

A A Dutton

Date: 17th July 2018

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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 identify the decision of the Tribunal to which it relates (ie 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.

The Relevant Law (Housing and Planning Act 2016)

s41 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.

s43 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).

s44 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.

<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 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.