



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

Case Reference : **LON/00AG/HMK/2019/0002**

Property : **Flat 22 Palace Court, 250 Finchley Road, London NW3 6DN**

Applicants : **Daniel Grindrod
Jan Wiliem Decker
Alberto Zara
Gennaro Piedepaulumbo
Maximillian Hillebrand
Ilaria Pagani
Andrea Lupo**

Representative : **Daniel Grindrod**

Respondent : **AGM Investors Ltd**

Type of Application : **Rent Repayment Order**

Tribunal : **Judge E Samupfonda
Mr D Jagger**

Date and Venue of Hearing : **20 May 2019;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **21 May 2019**

DECISION

The Tribunal orders that there shall be a **Rent Repayment Order** in the sum of **£21,176.66**. The individual breakdown is shown in the Appendix 1 to this decision.

The relevant provisions in the Housing Act 2004 and the Housing and Planning Act 2016 are set out in Appendix 2 to this decision.

Reasons

1. The tenancy agreement is between AGM Investors Ltd and the individual Applicant tenants. The rent is paid to AGM Investors Ltd, the Respondent. The Respondent is the owner of the subject property, a house in multiple occupation. The property comprises 6 rooms, kitchen, 1 separate toilet, a shower and toilet. There is no separate living room. Each Applicant occupies one room with a couple sharing one room.
2. The Applicants moved into the property at different times during 2018. They paid different amounts in rent that ranged between £750-1,100 per month.
3. On 16 March 2018, Mr Adekoya, the Environmental Health Officer for London Borough of Camden visited the property. On inspecting the property, Mr Adekoya confirmed that it was being occupied as a house in multiple occupation (HMO). All of the occupants confirmed that it was their main residence. Mr Adekoya also confirmed that the person in control of the property had failed to licence the property as required under s72(1) of the Housing Act 2004. (the Act)
4. S72(1) of the Act states that it is an offence to control or manage an unlicensed HMO. London Borough of Camden introduced additional licensing scheme for all HMOs on 8 December 2015. Under this scheme all of the HMOs in the Borough are required to be licensed. However, it is a defence that an application has been made.
5. Having inspected the property, Camden told the Respondent that the property should be licensed. The letter dated 4 October 2018 from Mr Adekoya states that an application for an HMO licence “has recently been received” but no exact date is provided.
6. On 20th December 2018, the Applicants applied for a rent repayment order in accordance with section 41 of the Housing and Planning Act 2016. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301. Amongst other matters, it was held that an RRO is a penal sum, not compensation, and that the Tribunal should take an overall view of the circumstances, including whether the landlord has already been fined for the offence and whether the rent includes items the tenant has had the benefit of.
7. There is no doubt that the Respondent was committing an offence from when the additional licensing scheme came in until he made his application sometime in October 2018. Therefore, the Tribunal has the power to make a rent repayment order in respect of the period dating back to 12 months prior to the application, namely 20 December 2017 (see section 41(2)(b) of the Housing and Planning Act 2016). The Tribunal must also make an order if it satisfied that s73(5) and (8) applies.

8. The Tribunal has a discretion not to make a rent repayment order but sees no reason why it should exercise that discretion. The Respondent's ignorance is no defence. The tenants were denied the important and substantial protections of the licensing system. A financial penalty of £2,500 has been imposed by Camden on the Respondent.
9. The rents payable by each Applicant is set out in their respective tenancy agreement. The Tribunal has been provided with a schedule annexed to this decision as Appendix 1. This sets out the individual payments made. The total amount paid by all of the tenants is £21,176.66.
10. In determining the amount of the rent repayment order, the Tribunal must, under section 44(4) of the Housing and Planning Act 2016, take into account the conduct of both parties, the landlord's financial circumstances and whether the landlord has been convicted of any offence to which the rent repayment order provisions apply. The Respondent has no previous relevant convictions.
11. The Respondent has not responded to this application. The Tribunal received information from the tenants that included their witness statements that were confined to the factual basis of their occupation and tenancy agreements.
12. In the absence of any information, the Tribunal could not take into account the parties' conduct as set out in section 44(4)(a) when determining the rent repayment order.
13. The tenancy agreement does not specify that the tenants benefit from any services that the Tribunal could consider should be deducted from the sum to be paid.
14. Therefore, the rent repayment order is calculated as the total amount paid by each Applicant during the period of their tenancy.

Name: Judge E Samupfonda **Date:** 21 May 2019

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.
- (8) 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.
- (9) 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.
- (10) 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.

<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.

...

Name	Current Address	Dates of Residency	Bank Details	Total Rent Paid	Comments
Daniel Grindrod (Representative)	43 Brookdale, Lower Healey, Rochdale. OL120SS	26/01/18 – 26/7/18	Sort Code: 30-84-62 Account No: 24856260	£850 x 6 = £5100	£1700 total paid in January, but £850 deposit returned so not being claimed for.
Maximilian Hillebrand	Budinskygasse 14, 1190 Vienna, Austria	11/01/18 – 30/04/18	AT341200050292092603 BIC: BKAUATWW	(£850 x 3) + £538.33 = £3088.33	£1700 total paid in January, but £850 deposit returned so not being claimed for. Reduced final month payment as left early.
Jan Decker	Feldzeugmeisterstrasse 4, 10557 Berlin, Germany	11/01/18 – 30/04/18	IBAN: DE84 4286 0003 0026 9587 00 BIC: GENODEM1BOH	(£850 x 3) + £538.33 = £3088.33	£1700 total paid in January, but £850 deposit returned so not being claimed for. Reduced final month payment as left early.
Alberto Zara	Via Cazzaghetto 98B, Dolo, 30031, Venice, Italy	6/01/18 – 1/05/18	IBAN: IT88N0306967684510330245134	(£750 x 4) = £3000	January payment included £150 fee which we are not claiming for.
Ilaria Pagani and Andrea Lupo (shared room)	Ilaria: Via Ippodromo 56, Milano 20151, Italy Andrea: Via Luigi Zoja, 35 Milano 20153, Italy	11/01/18 – 30/04/18	IBAN (Ilaria): IT53M0326801600052668168520 IBAN (Andrea): IT32U0306909586100000001720	Monthly rent: £1100. January: Ilaria - £1100. February: Ilaria & Andrea - £550 each. March: Ilaria & Andrea - £550 each. April: Ilaria - £900 but reimbursed £300 for leaving early. Total Ilaria: £2800 Total Andrea: £1100	Got £300 back in the last month due to early departure.
Gennaro Piedepalumbo	Via Domenico Catalano, 155 84018, Scafati (SA) Italy	6/01/18 – 1/05/18	IBAN: IT5320306940083100000004893 BIC: BCITITMM	(£750 x 4) = £3000	January payment included £150 fee which we are not claiming for.