FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMK/2019/0023**
Property	**:**	**Flat 1, Wilson House, 161-169 Goldhurst Terrace, London NW6 3ET**
Applicants	**:**	**Julian Maass, Yuka Tada, Minkyung Park, George Chandler and Corben Jones**
Representative	**:**	**Julian Maass**
Respondent	**:**	**Pavel Bagan (also sometimes referred to as Pavel Began)**
Representative	**:**	**Not present and not represented at hearing**
Also in attendance	**:**	**George Chandler and Corben Jones**
Type of Application	**:**	**Application for Rent Repayment Order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Judge P Korn** **Mr D Jagger MRICS** **Mr A Ring**
Date and venue of Hearing	**:**	**18th July 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**22nd July 2019**

DECISION

Decision of the tribunal

The tribunal orders the Respondent to repay to the Applicants the sum of £20,207.07 in the following proportions:-

- £6,449.90 to Julian Maass
- £5,003.65 to Yuka Tada
- £4,267.52 to Minkyung Park
- £2,323.00 to George Chandler and
- £2,163.00 to Corben Jones.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 ("**the 2016 Act**").

2. The Applicants each entered into an assured shorthold tenancy agreement with the Respondent relating to a room within the Property. A copy of each tenancy agreement is in the hearing bundle.

3. Julian Maass's three tenancy agreements between them relate to the period 13th July 2017 to 12th January 2019, although in practice he remained in occupation until 25th February 2019. Yuka Tada's two tenancy agreements between them relate to the period 22nd November 2017 to 21st January 2019, although in practice the tenancy finished on 8th January 2019. Minkyung Park's two tenancy agreements between them relate to the period 20th November 2017 to 20th January 2019, although again in practice the tenancy finished on 8th January 2019. George Chandler's tenancy agreement is dated 1st March 2018 but does not specify the end date of tenancy, although according to his witness statement he was in occupation from 1st March 2018 to 1st August 2018. Corben Jones' tenancy agreement relates to the period 29th August 2017 to 28th August 2018.

4. The basis for the application is that, according to the Applicants, the Respondent was controlling an unlicensed house in multiple occupation which was required to be licensed at a time when the Property was let to each of the Applicants.

5. The claim is for repayment of rent paid between 18th March 2018 and 8th January 2019 totalling £20,686.26 in aggregate.

Applicants' case

6. According to a copy tenancy agreement provided to the Applicants by Becky Harman of Camden Council, the Respondent was himself granted a tenancy by George Lane Management A/C International

Media relating to the whole of the Property. That tenancy agreement prohibited subletting or taking in lodgers or paying guests.

7. On 11th February 2019, Adewale Adekoya from Camden Council wrote to the occupiers of the Property advising them that it had introduced an additional licensing scheme for houses in multiple occupation (HMOs) on 8th December 2015 and that all HMOs within the borough needed to be licensed as from that date. Adewale Adekoya had visited the Property on 25th July 2018 and seen that the Property was being occupied as an HMO, having spoken to the occupiers to confirm the facts. The Council was therefore satisfied that the Respondent had committed an offence under section 72(1) of the Housing Act 2004, being a person in control of an HMO requiring to be licensed and having failed to obtain a licence, and the Council was currently taking enforcement action against the Respondent. As at the date of the letter, the Respondent had not applied for a licence. The letter went on to advise the occupiers of the possibility of their being able to apply for rent repayment orders against the Respondent through the First-tier Tribunal.

8. The Applicants have each provided a witness statement providing basic details about their period of occupation, the amount of the rent, the fact that they paid rent to the Respondent, the number of occupiers, the nature of the shared facilities and the fact that they were not related to each other and used the Property as their main or only residence.

9. The Applicants have also provided either copy bank statements or other proof of payment of the rent for the period of the claim.

Rent calculations

10. The breakdown of the aggregate amount claimed by the Applicants is as follows:-

- Julian Maass – 18th March 2018 to 8th January 2019 – £6,486.90
- Yuka Tada – 18th March 2018 to 8th January 2019 – £5,040.65
- Minkyung Park – 18th March 2018 to 8th January 2019 – £4,598.71
- George Chandler – 18th March 2018 to 1st August 2018 – £2,360.00
- Corben Jones – 18th March 2018 to 28th August 2018 – £2,200.00.

Other relevant considerations

11. In written submissions and at the hearing, the Applicants portrayed the Respondent as largely having been an absent landlord. He had an agent called Steve, but when one of the occupiers asked Steve to repair something at the Property he generally failed to do so. In addition, the Respondent or his contractor entered the Property on numerous occasions without warning or prior consent, removed items from the Property without consent and carried out renovations without the consent of the then last-remaining tenant, Julian Maass, making it difficult for him to use the Property fully. Full details are in the hearing bundle. The Respondent also failed to pay back to Julian Maass the balance of his deposit, this being £364.29.

12. In addition, a few days after the visit to the Property by Adewale Adekoya identifying the Property as an HMO, a note was found taped to the inside of the front door which read: *"Dear Tenants, please do not answer the door to any strangers as there has been a spate of burglaries in the area with criminals pretending they are from the council and knocking on the door. If you suspect this has happened, then please notify me. Many Thanks – Pavel Bagan (Your Landlord)"*.

13. At the hearing Mr Maass said that the Applicants did not know anything relevant about the Respondent's financial circumstances.

14. On the question of outgoings, the Applicants accepted that the Respondent paid for electricity and gas out of the money received by him by way of rent. However, they did not have details of the amount spent by the Respondent on utilities, save that between them the Applicants had periodically paid towards the gas bill and had later been reimbursed by the Respondent.

Respondent's case

15. The Respondent has not made any written submissions. He was neither present nor represented at the hearing. We are satisfied that correspondence has been sent to the Respondent at the correct address, this being the address that he has given in tenancy agreements (where he has given an address at all).

Relevant statutory provisions

16. Housing and Planning Act 2016

Section 40

(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 …

(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

Section 41

(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.

Section 43

(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 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) …

Section 44

(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

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.

Housing Act 2004

Section 72

(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 … but is not so licensed.

Tribunal's analysis

17. The Applicants have provided evidence that the Property required a licence from the date of their occupation and that it was not so licensed, and the Respondent has made no submissions to counter the Applicants' evidence. In addition, the Respondent has not disputed the fact that the Applicants each had a tenancy agreement and that they paid to him by way of rent the sums now claimed by the Applicants by way of rent repayment.

18. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of having control of or managing an unlicensed HMO is one of the offences listed in that table.

19. The Applicants claim in their application that the above offence was being committed from a date prior to 18th March 2018 until 8th January 2019, when three of them vacated the Property. The application for a rent repayment order was dated 10th March 2019 but was apparently

only received by the First-tier Tribunal on 18th March 2019. As an application for a rent repayment order can only be made in respect of an offence committed within the period of 12 months ending with the date on which the application is made, the Applicants are seeking repayment of rent for the period 18th March 2018 to 8th January 2019. The dates have not been disputed by the Respondent, and nor has the Respondent sought to argue that he had a reasonable excuse for not having made a licence application.

20. Under section 43 of the 2016 Act, the First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence listed in the table in sub-section 40(3).

Has an offence been committed?

21. Under section 72(1) of the 2004 Act, a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed but is not so licensed. It is clear from the evidence, and is not disputed by the Respondent, that the Property was not licensed during the period 18th March 2018 to 8th January 2019 and that it was required to be.

Who is the landlord?

22. We are satisfied that the evidence supplied by the Applicants, which has not been challenged by the Respondent, shows that the Respondent was the landlord and that he had control of and/or managed the Property throughout the relevant period. Whilst there was also a superior landlord, namely George Lane Management A/C International Media, the evidence shows that the Applicants' relationship was with the Respondent and that he was their immediate landlord.

Amount of rent to be ordered to be repaid

23. Based on the above findings, we have the power to make a rent repayment order against the Respondent and we consider on the facts of this case that it would be appropriate to do so.

24. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant(s) in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.

25. In this case, as noted above, a rent repayment order can only be made in respect of the period 18th March 2018 to 8th January 2019, as per the Applicants' application, i.e. it cannot be made in respect of any longer period. There is no evidence of any universal credit having been paid, and therefore the maximum amount repayable is the whole of the amount claimed, i.e. £20,686.26.

26. Under sub-section 44(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 the relevant part of the 2016 Act applies.

27. The Upper Tribunal decision in *Parker v Waller and others (2012) UKUT 301 (LC)* is a leading authority on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. The case was decided before the coming into force of the 2016 Act but in our view the basic principles that it lays down apply equally to rent repayment orders under the 2016 Act, subject obviously to any relevant differences in the statutory wording.

28. In his analysis, based in that case on section 74 of the 2004 Act, the then President of the Upper Tribunal, George Bartlett QC, discussed the purpose of rent repayment orders in favour of occupiers. Under section 74 the amount payable is "such amount as the tribunal considers reasonable in the circumstances" and section 74 goes on to specify five matters in particular that should be taken into account, including the conduct of the parties and the financial circumstances of the landlord. This contrasts with rent repayment orders in favour of a local authority in respect of housing benefit under the 2004 Act, where an order for the full amount of housing benefit must be made unless by reason of exceptional circumstances this would be unreasonable. There are therefore different policy considerations under the 2004 Act depending on whether the order is in favour of an occupier or in favour of a local authority.

29. The President of the Upper Tribunal went on to state that in the case of a rent repayment order in favour of occupier there is no presumption that the order should be for the total amount of rent received by the landlord. The tribunal must take an overall view of the circumstances. Specifically in relation to payment for utility services which forms part of the rent, his view was that these should not be ordered to be repaid except in the most serious cases as the landlord will not himself (or herself) have benefited from these.

30. Section 44 of the 2016 Act does not state that the amount repayable to an occupier should be such amount as the tribunal considers

reasonable in the circumstances, but neither does it contain a presumption that the full amount will be repayable.

31. Starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence.

32. Based on the evidence before us, we consider the Applicants' conduct to have been good. There is no evidence to the contrary.

33. As for the Respondent's conduct, this has been poor. He has not engaged with the tribunal process at all, neither complying with the tribunal's directions not making any written submissions nor attending or being represented at the hearing. The renting out of rooms to the Applicants was in direct contravention of the covenants contained in his own tenancy agreement, and the note to tenants asking them not to answer the door to people claiming to be from the Council was disingenuous.

34. In addition, the Applicants' evidence, particularly that of Mr Maass, is of a landlord who was very unresponsive to the occupiers' concerns. Mr Maass's evidence also specifically shows that the Respondent and/or his contractor entered onto the Property without warning and without the consent of the occupiers, removed items (appliances, dried food and cleaning products) from the kitchen, carried out substantial alterations which adversely affected the quality of Mr Maass's use of the Property and adversely affected the plumbing, left debris in communal parts of the Property and possibly left the front door open at one point. The Respondent also failed to pay back the balance of his deposit.

35. We have not been provided with any specific information as to the Respondent's financial circumstances. As regards convictions, we have no evidence that the Respondent has been convicted of this offence or of any other relevant offences, although on 11th February 2019 the Council stated that it was taking enforcement action against him.

36. It is clear, though, by applying the principles set out in the decision in *Parker v Waller* and from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, **in particular**, take into account" the specified factors. One factor identified by the Upper Tribunal in *Parker v Waller* as being something to take into account in all but the most serious cases is the inclusion within the rent of the cost of utility services. Whilst we consider the Respondent's conduct to have been poor, we do not consider that the Respondent's conduct is such that this could be regarded as one of the most serious cases, and we therefore think that it is right in principle to

deduct any utility charges of which there is proper evidence, these representing actual costs rather than a profit for the Respondent.

37. However, as noted above, the Respondent has chosen not to make any written submissions and neither to attend nor to be represented at the hearing. Therefore, the only information that we have in relation to outgoings is the information provided by the Applicants themselves. This shows that between them they paid a total of £185.00 towards gas charges and that this amount was then reimbursed to them. Whilst we assume that the aggregate of the utility costs was more than this, we only have evidence of this amount and therefore this is all that we can properly deduct. In principle, the deduction of this amount should be apportioned according to how much each occupier would have benefited from the use of that gas, but as we have so little information on gas expenditure it would be impractical to try to divide it in that way. Therefore, and bearing in mind that £185.00 is a relatively small amount and is comfortably less than the likely total cost of utilities over the relevant period, we will use a broad-brush approach and split the £185.00 deduction equally between all of the Applicants.

38. In addition, whilst the supporting evidence for the amount of rent paid by each Applicant is generally good, especially in the absence of any challenge by the Respondent, there seems to be no evidence that Minkyung Park made the final rental payment in respect of the period from 20th December 2018. There is an invoice, but there is no evidence that it was paid, and Minkyung Park was not available to give oral evidence on this point. Therefore, we will not be including the final £294.19 in Minkyung Park's share of the rent repayment.

39. We do not consider that there are any other specific factors to take into account in this case in determining the amount of rent to order to be repaid, and therefore all that remains is to determine the amount that should be paid based on the above factors.

40. As regards the Upper Tribunal's general point that there is no presumption that a rent repayment order should be for the total amount of rent received by the landlord, there is a question as to whether the Upper Tribunal's view is solely or mainly based on the provision in the 2004 Act that the amount payable is "such amount as the tribunal considers reasonable in the circumstances", a phrase which is not repeated in the 2016 Act, or whether this would also be the Upper Tribunal's view in the context of the 2016 Act.

41. In our view, even in relation to the 2016 Act it is probably unhelpful to start with a presumption that the order should be for the total amount of rent received, and therefore we make no such presumption. However, taking all of the circumstances into account, including the fact that the Respondent has not engaged with the process at all and has offered no evidence in mitigation, the fact that all HMOs within the

borough have required a licence since December 2015, the good conduct of the Applicants and the poor conduct of the Respondent we consider in this case that it is appropriate to order the repayment of the whole of the amount of rent sought, less the known outgoings of £185.00 and less the unproven rental payment (in the case of Minkyung Park) of £294.19. The tribunal has discretion as to the amount payable, and we consider that this is the appropriate amount in the circumstances.

42. The amount of rent to be repaid is therefore as follows:-

- Julian Maass – £6,486.90 less one-fifth of £185.00 (£37.00) = £6,449.90
- Yuka Tada - £5,040.65 less one-fifth of £185.00 (£37.00) = £5,003.65
- Minkyung Park - £4,598.71 less one-fifth of £185.00 (£37.00) and less £294.19 = £4,267.52
- George Chandler - £2,360.00 less one-fifth of £185.00 (£37.00) = £2,323.00
- Corben Jones - £2,200.00 less one-fifth of £185.00 (£37.00) = £2,163.00.

Cost applications

43. There were no cost applications.

Name: Judge P Korn **Date:** 22nd July 2019

RIGHTS OF APPEAL

A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.

B. 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.

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. 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.