



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

**Case Reference** : **LON/00AB/HMF/2021/0006**

**HMCTS code  
(paper, video,  
audio)** : **V - Video**

**Property** : **Flat 54, Elgin House, 235 High Road,  
Romford, Essex, RM6 6GN**

**Applicants** : **(1) Mr. Nathan Skipper  
(2) Ms. Jemma Evett**

**Representative** : **Not represented**

**Respondents** : **(1) Ms. Kathleen Chow  
(2) Mr. Ka Lok Chow**

**Representative** : **Not represented**

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

**Tribunal** : **Tribunal Judge S.J. Walker  
Tribunal Member F. Macleod MCIEH**

**Date and Venue of  
Hearing** : **10 June 2021 - video hearing**

**Date of Decision** : **11 June 2021**

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**DECISION**

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**The Tribunal makes a Rent Repayment Order under section 43 of the Housing and Planning Act 2016 requiring the Respondents to pay the Applicants the sum of £11,012.**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the Tribunal was referred to are set out below, the contents of which were noted. The Tribunal's determination is set out below.

## Reasons

### The Application

1. The Applicants seeks a rent repayment order pursuant to sections 43 and 44 of the Housing and Planning Act 2016 ("the Act") for a period beginning on 1 September 2019.
2. The application was made on 28 July 2020, so is in time, and alleges that the Respondents have committed an offence under section 95(1) of the Housing Act 2004 ("the 2004 Act") – having control of or managing a house which is required to be licensed under Part 3 of the Housing Act 2004 but which is not licensed.
3. The application was originally made against the managing agents of the property, Advance Glennister, and directions were made on 27 January 2021. They required the parties to produce bundles of documents for use at the hearing.
4. The application was then listed for a hearing on 12 May 2021 before a differently constituted Tribunal. At that hearing the then Respondent raised a question as to whether, as managing agent only, they were the proper respondent to the application. As a result of this the First Applicant, Mr. Skipper, made an application under rule 10(1) of the Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013 to substitute Mr. and Mrs. Chow as respondents. This application was allowed, and an order was duly made substituting the Respondents to this application. Further directions were issued to enable the Respondents to file additional evidence.
5. In response to the various directions the Applicants produced a bundle of documents consisting of 57 pages. The Tribunal also had a bundle of 12 pages produced by the original respondent together with a witness statement from the First Respondent Mrs. Chow dated 3 June 2021 and a short appendix.

### The Law

6. The relevant legal provisions are set out in the Appendix to this decision.
7. The Tribunal may make a rent repayment order when a landlord has committed one or more of a number of offences listed in section 40(3) of the Act. An offence is committed under section 95(1) of the 2004 Act if a person has control or management of a house which is required to

be licensed under the selective licensing provisions of Part 3 of the Housing Act 2004 but which is not so licensed. Part 3 of the Housing Act 2004 allows local housing authorities to designate areas as being subject to selective licensing requirements. Section 95(3)(b) provides a statutory defence to proceedings for an offence under section 95(1). This defence applies where an application for a licence has been duly made and is still effective.

8. By section 44(2) of the Act the amount ordered to be paid under a rent repayment order must relate to rent paid in a period during which the landlord was committing the offence, subject to a maximum of 12 months. By section 44(3) the amount that a landlord may be required to repay must not exceed the total rent paid in respect of that period.
9. Section 44(4) of the Act requires the Tribunal to have regard to the conduct of the landlord and tenant, the financial circumstances of the landlord and whether or not the landlord has been convicted of a relevant offence when determining the amount to be paid under a rent repayment order.

### **The Hearing**

10. Both the First Applicant and the First Respondent attended the hearing. Neither were represented. The other parties did not attend.
11. There was very little dispute between them about the facts of the case, which are set out below.

### **Matters Not In Dispute**

12. The Respondents accepted that the property is jointly owned by them and that it has been rented out since 2015. They accepted that it was rented to the Applicants on 25 March 2019 (the tenancy agreement is at pages 30 to 37 of the Applicants' bundle). The property is in the London Borough of Barking and Dagenham.
13. The Respondents accepted that the property was subject to selective licensing. Indeed, their case was that the property had had a licence but that this expired on 31 August 2019 (see also page 10 of the Applicant's bundle where this is confirmed by the local authority). They accepted that from 1 September 2019 onwards the property was not licensed and that, therefore, an offence had been committed.
14. The Respondents' case was that the First Respondent applied for a new licence on 16 July 2020. This was accepted by the Applicants in their statement of case (page 3 of their bundle) and was confirmed by the First Applicant at the hearing.
15. On this basis the Tribunal is satisfied so that it is sure that an offence under section 95(1) of the Housing Act 2004 has been committed for the period from 1 September 2019 to 15 July 2020 inclusive. From 16 July 2020 onwards no offence was being committed as a licence application had been made and so the defence in section 95(3)(b)

applies. The offence was, therefore, being committed for a period of 319 days.

16. The Respondents also accepted that the Applicants had paid all the rent due in respect of that period and had paid on time. The rent payable under the terms of the tenancy agreement was £1,050 per month, or £12,600 per annum,
17. The Tribunal takes the view that the maximum amount that it can order to be paid under a rent repayment order is the rent paid for the period of 319 days during which the offence was being committed. Performing a pro-rata calculation produces the following. Maximum amount equals  $£12,600 \times 319/365$  or £11,012. It follows that the maximum amount that the Tribunal may order to be paid is £11,012.

### **Matters In Dispute**

18. The only matter remaining for the Tribunal to consider is the question of what sum the Tribunal should order to be paid, having regard to the provisions in section 44(4) of the Act referred to above.
19. The decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) makes it clear that when the Tribunal has the power to make a rent repayment order, it should be calculated by starting with the total rent paid by the tenant within the time period allowed under section 44(2) of the Act, from which the only deductions should be those permitted under sections 44(3) and (4).
20. In *Ficcara v James* [2021] UKUT 38 (LC) the Upper Tribunal judge, Martin Rodger QC, expressed concerns (at paragraphs 49-51) whether it is correct to use the full amount of rent paid as the “starting point” in the sense that it is used in criminal proceedings, not least because, unlike in criminal proceedings, the amount cannot go up in aggravated cases, but can only come down. Although in the case of *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke said that this issue may be a matter for a later appeal, at present the Tribunal must follow the guidance in *Vadamalayan*. Moreover, in the light of the matters considered below, the Tribunal doubts that any change in approach could have resulted in a different outcome in the circumstances of this particular case.
21. This is not a case where the rent paid by the Applicants includes any element of a contribution towards utilities. Clause 3 of the tenancy agreement (page 30 of the Applicants’ bundle) makes it clear that the Applicants are responsible for paying for all gas, electricity, water rates, telephone and council tax bills. There is, therefore, no basis for any deduction from the amount to be paid under the terms of the order to reflect the provision of utilities.
22. In relation to the question of the Respondents’ conduct, the Tribunal bears in mind the following. The First Respondent was aware that the

property had to have a licence and, indeed, she had previously obtained one which expired at the end of August 2019. The Tribunal would expect a responsible landlord to be aware when such a licence would expire.

23. In any event, in her witness statement the First Respondent accepts that in July 2019 – at least a month before expiry – she was advised by her managing agents that the licence would soon need to be renewed and that she was sent a link to use for the purpose of renewing the licence. Her evidence to the Tribunal was that this link was not working. She contacted the local authority requesting paper work for renewal on 11 July 2019 and was advised the following day that a new system was being implemented and that she would receive an update within 3 weeks – which would still have been within the currency of the existing licence (see the First Respondent’s appendix). Her case is that these documents were not received as they were sent to the property and not to her home.
24. The documents in the bundle produced by Advance Glenisters show that the First Respondent was in correspondence with them about the renewal of her licence on 7 August 2019.
25. The First Respondent’s case was that she had difficulties completing the application because she could not use the portal and that thereafter “life got in the way”. She was having problems with a break-down in her relationship with the Second Respondent and with dealing with a property she had inherited which was jointly owned by them, and she was also coping as the parent of young children. This was, she argued, compounded by the fact that the local authority were writing to her at the address of the property rather than her home address.
26. The Tribunal accepts that the First Respondent may have had personal problems at this time, and also that there may have been some technical difficulties with the process for renewing her licence. However, there is no evidence that she took any further steps to renew the licence or to rectify the licensing situation after it expired until she made her application on 16 July 2020, nearly a year later.
27. In addition, the Tribunal is not satisfied that this was entirely a case of mere inadvertence. At page 7 of the bundle of documents produced by Advance Glennisters is an exchange of e-mail correspondence with the First Respondent dated 3 September 2019. On that date the property manager contacted the First Respondent and asked if she had applied for her licence now. The First Respondent’s reply was “*We have. Paid last night*”. That is inconsistent with her evidence that she did not reapply until 16 July 2020.
28. The reality of the situation is that the Respondents, having been made well aware of the need to renew their licence, took no further active steps to do so for a period of nearly a year, during which time they would have been well aware that a licence was needed. In the view of the Tribunal this could be regarded as more serious than a case where a

landlord is completely unaware of the need for a licence at all. The proper management of residential property is a task which requires a degree of responsibility. Whilst the Tribunal can understand that personal and technical problems may have made things difficult for the Respondents at the time, this does not amount to an excuse for failing to licence the property.

29. When asked about her financial circumstances the First Respondent explained that in addition to the property in question she owned a half share in a 3-bedroom end of terrace house in Chadwell Heath. It has been fully adapted for people with special needs and is rented to the local authority. The other share of the property is owned by the Second Respondent. The property is not mortgaged and is worth in the region of £400,000. The First Respondent's evidence to the Tribunal was that she intended to sell that property. She also owns the property in which she lives, but this is mortgaged, as is the property occupied by the Applicants. She is not working.
30. On the basis of this evidence the Tribunal is satisfied that the Respondents have more than sufficient means to pay any sum ordered to be paid by the Tribunal.
31. The Respondents did not raise any issues in respect of the Applicants' conduct and there is no evidence that they have any convictions.
32. Taking all the matters set out above into account, the Tribunal is satisfied that there is no basis for deducting any amounts from the maximum amount which the Tribunal may order. It therefore decides to make a rent repayment order for the benefit of the Applicants in the sum of £11,012.
33. There were no other applications before the Tribunal.

**Name:** Tribunal Judge S.J.  
Walker

**Date:** 11<sup>th</sup> June 2021

## **ANNEX - RIGHTS OF APPEAL**

- The Tribunal is required to set out rights of appeal against its decisions by virtue of the rule 36 (2)(c) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 and these are set out below.
- If a party wishes to appeal against this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 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.
- If the application is not made within the 28-day time limit, such application must include a request for 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.
- 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.

### **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).

**263 Meaning of “person having control” and “person managing” etc.**

- (1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the



premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

- (2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.
- (3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—
  - (a) receives (whether directly or through an agent or trustee) rents or other payments from—
    - (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and
    - (ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or
  - (b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;and includes, where those rents or other payments are received through another person as agent or trustee, that other person.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

## **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.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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 —
- the offence relates to housing that, at the time of the offence, was let to the tenant, and
  - 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—
- the offence relates to housing in the authority's area, and
  - 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—
- section 44 (where the application is made by a tenant);
  - section 45 (where the application is made by a local housing authority);
  - 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

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.

## **Section 52 Interpretation of Chapter**

(1) In this Chapter—

“offence to which this Chapter applies” has the meaning given by section 40;

“relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;

“rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;

“rent repayment order” has the meaning given by section 40.

(2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.