



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

Case reference : **LON/00AH/HMF/2020/0221**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **67 Beverstone Road, Thornton Heath,
Surrey, CR7 7LX**

Applicant : **Raj Ranger (1)
Aiden Samuel (2)**

Representative : **Ms Nicholls
Flat Justice Community Interest
Company**

Respondent : **Victoria Nwachukwu**

Representative : **Anthony Osanwuta**

Type of application : **Application for a rent repayment order
by a tenant
Sections 40,41,43 & 44 of the Housing
and Planning Act 2016**

**Tribunal
member(s)** : **Judge D Brandler
Ms F MacLeod MCIEH
Mrs L Crane MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **24th May 2021**

Date of decision : **8th June 2021**

DECISION

Decision of the tribunal

- (1) The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £7200.**
- (2) The Respondent is further ordered to repay to the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application.**

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

Reasons for the tribunal's decision

Background

1. The tribunal received an application under section 41 of the Housing and Planning Act 2016 from the Applicant tenants for a rent repayment order (“RRO”).
2. The application alleged that Victoria Nwachukwu (“the Respondent”), the freehold owner of the property, had failed to obtain a licence for the property in breach of the Mandatory HMO licensing scheme. The Respondent was also in breach of the Selective Licensing scheme in L.B. Croydon which was in force from 1st October 2015 until 30th September 2020 which required all privately let property to be licensed. The period of claim is 2nd March 2019 to 1st March 2020.
3. The history of the occupancy is as follows. The Applicants, who are a couple, entered into a six-month fixed term AST agreement dated 31st October 2016 with the Respondent for a room in a shared house. A deposit of £580.00 was paid to the Respondent. The monthly rent was £600. At the end of the fixed term the tenancy became a statutory periodic one. The property is a five-bedroom house with shared kitchen and bathroom facilities.
4. The Applicants moved into the property on 1st November 2016. They moved out of the property on 31st August 2020.
5. The Applicants seek to recover by way of a RRO under s.44 of the Housing and Planning Act 2016 (“The 2016 Act”) the rent for the period from 2nd March 2019 to 1st March 2020. The sum claimed is £7,200.00.
6. On 18th February 2021 the Tribunal issued directions.
7. The Respondent has played no direct part in these proceedings. Her partner, Mr Anthony Osunwuta has acted on her behalf as her representative throughout. She provided a signed authorisation in this regard on 21st May 2021. He has complied with the directions to a certain extent. However, on 10th May 2021 he exceeded the provisions of the directions and provided a second statement of case. This was said to be in response to the Applicant’s permitted response. Mr Osunwuta’s

second statement of case was objected to by the Applicants' representative, Flats for Justice.

8. Having objected, Flats for Justice also submitted further evidence on the morning of the hearing in the form of an audio recording and a video recording.
9. Also received by the Tribunal panel on the morning of the hearing was a document from Mr Osunwuta headed "letter in mitigation".

PRELIMINARY ISSUES

10. The Tribunal first considered the Applicants' objection to Mr Osunwuta's second statement of case dated 10th May 2021. The submission of that document is in breach of the directions order. Having considered the new document, the Tribunal noted that it raised new evidence not previously mentioned in the first statement of case nor in any of the Respondent's 27 exhibits. That new evidence alleges that the 1st Applicant brandished a knife at Mr Osunwuta and threatened to kill him on 2nd August 2020.
11. When asked why he had not mentioned such a potentially serious matter previously, Mr Osunwuta replied that he had only raised issues that had been raised by the Applicants in their original application.
12. The Tribunal found this explanation to be inconsistent with such a serious allegation. There was no documentary evidence to support this allegation, despite the apparent attendance of the Police. It was noted that since the alleged incident, Mr Osunwuta had attended at the property, alone, to ask for the Applicants' keys and documents when they were preparing to leave the property. Such action is not consistent with someone who had been threatened with a knife. The request to admit the Respondent's second statement of case was therefore refused.
13. The Tribunal then considered Mr Osunwuta's "Letter of Mitigation" received on the morning of the hearing. The purpose of this document was to explain why the Respondent's second statement of case was late. The content of the document included a statement about the Respondent's health issues without any medical evidence, a report that Mr Osunwuta had fallen off a ladder, with no supporting medical evidence. That fall, it was said, had restricted his ability to prepare the second statement of case. Also included was a report of computer problems that had required repair, evidenced by a handwritten receipt from a computer repair.
14. The Tribunal found that as Mr Osunwuta had not been permitted to submit a second statement of case, the letter in mitigation was irrelevant, and therefore redundant.

15. The Tribunal then considered the Applicants' request to admit the late audio and video recordings received that morning. The Applicants' representative asserted that these would prove aggressive behaviour by Mr Osunwuta. Although it had been submitted specifically to counter the Mr Osunwuta's second statement, the Applicants nevertheless sought permission to have these recordings included in the proceedings. This was refused. Firstly, the evidence had been submitted only on the morning of the hearing, and secondly the audio evidence was unclear in terms of the identity of those people who had been recorded. Permission for the late video evidence was also refused.
16. The Applicants' representative also asked the Tribunal consider audio and video evidence that she says had been submitted previously to the Tribunal in accordance with directions. Unfortunately, that was not before the Tribunal panel and could not be considered.

THE HEARING

17. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
18. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The Applicants' Bundle consisted of 76 pages with the additional response dated 29th April 2021. Mr Osunwatu for the Respondent submitted an undated unpaginated response with 27 exhibits. The Tribunal considered all of the documents received.
19. The Applicants attended the hearing remotely by video connection. They were represented by Ms Nicholls from Flat Justice Community Interest Company, who also joined remotely by video. Mr Osunwuta for the Respondent appeared by video connection, and the Respondent appeared briefly on screen in the afternoon, but did not speak, and then left the room.
20. The Applicants confirmed that they had entered into an AST agreement dated 31st October 2016 and that they occupied a room together in the shared house from 1st November 2016. They paid a deposit of £580. They confirmed that they paid a monthly rental of £600 to Mr Osunwuta and provided the proof in the form of the bank statements [49-50]. Mr Osunwuta does not deny this.

21. It is common ground between the parties that the deposit had not been protected, and was subsequently used to settle the rent for the month of May 2020.
22. It is also common ground between the parties that there was no HMO licence agreement for the property until 12th May 2020.
23. Mr Osunwuta confirmed in oral evidence that he had first applied for a licence in April 2020. This had not been granted until May 2020 as he had not been aware that he had to pay for the licence at the time of the application. He defends this application on the basis that the property did not require a licence until May 2020. He says that prior to May 2020 the only occupiers of the property were the Applicants and Mr Osunwuta himself.
24. Mr Osunwuta's evidence was that he moved out of the property in May 2020 and moved back in with his partner the Respondent at 158 Croydon Road, Beddington, CRO 4PG ("158 Croydon Road"). No documentary evidence was produced to support his occupation of the property. There is however evidence that he lived at 158 Croydon Road in the form of his bank statement [exhibit 5], a photograph of a notice in the property telling tenants to contact him at 158 Croydon Road [exhibit 15], evidence that he paid the HMO licence fee with a reference placing him at 158 Croydon Road on 12/05/2020 [exhibit 23], a letter from the Council addressed to him at 158 Croydon Road [exhibit 24]. When asked about these documents, he said that in May 2020 he had changed his address with his bank to 158 Croydon Road, and that the notice informing tenants that he could be located at 158 Croydon road had only been put up after May 2020.
25. The Applicants say that the property was fully occupied and when they moved into the property. In oral evidence they explained that there had been two men from Pakistan occupying an upstairs room, a man from Jamaica occupying an upstairs room, and a female student from Nigeria occupying a room upstairs. Mr Osunwuta denies that these people exist.
26. The Applicants say that after the above mentioned tenants moved out, new tenants immediately moved in. These tenants were Charles Domfeh and his partner Sarah in room 3, Victor Sapalo in room 4, Iwebulem Amaajuoyi in room 5 and Abayomi Shoyebi in room 2. An occupancy schedule has been produced by the Applicants confirming that during the relevant period all of these people occupied rooms in the property. Also produced was a 192.com occupancy report. That document indicates that Victorino Ms Sapalo occupied the property from 2018 to the current time, Abayoi Shoyebi occupied from 2016 to the current time, Iwebbulam C Amaajuoyi occupied from 2018-2019.
27. Mr Osunwuta admits that Charles Domfeh, Vitorino Sapalo and Abayoi Shoyebi became tenants and occupied the property, but he denies that they lived there during the relevant period. He says that they only

moved into the property in May 2020 and to evidence that assertion he produced 3 tenancy agreements for each of these tenancies which commence on 15th and 20th May 2020 [exhibit 7]. He further states that the 192.com document is completely false because there is no mention of the Applicants names on that document, and in any event he doesn't recognise any of the names recorded on that document.

28. The Applicants complain that the heating was inadequate in the property, and that Mr Osunwuta put a padlock onto the boiler. This they say was deemed dangerous by an engineer who visited the property.
29. Mr Osunwuta in contrast states that it was the Applicants who damaged things in the house and fiddled with the boiler such that it stopped working. He denies having put the padlock on himself, and told the Tribunal that it was Charles Domfey who put himself forward as the spokesman of the other tenants in the building. According to Mr Osunwuta they had a meeting at which they nominated Mr Domfey, and that they all agreed that Mr Domfey should put a padlock onto the boiler, which Mr Osunwuta approved.
30. The Applicants further assert that the shower was broken, the washing machine door was broken off, there were rat droppings and the fridge freezer was so old, it was not working properly and needed defrosting very often.
31. Mr Osunwuta admits the washing machine door had been snapped off the machine, and the shower needed fixing but blamed the Applicants for any damage. He denied that the fridge freezer needed replacing, or that there were rodents in the property.

FINDINGS

32. The Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of the Mandatory licence requirements during the relevant period of 2.3.2019-1.3.2020, finding that the property was occupied as per their occupancy table by at least 5 people sharing the property during the relevant period [26].
33. The Tribunal found the Applicants' oral evidence about occupation consistent with their documentary evidence of the 192.com report that there had been other tenants in occupation during the relevant period. Namely Charles Domfey and Sarah, Victor Sapano.
34. In contrast the Tribunal found Mr Osunwuta's oral and documentary evidence to be inconsistent. In particular the tenancy agreements upon which he sought to rely to demonstrate that the tenants mentioned above had only moved into the property in May 2020 were found by the

Tribunal to be unreliable. The same errors were made in each of those documents, i.e. Mr Osunwuta signing each of those documents as the tenant, rather than the landlord, with no objection from any of the individual tenants of such a glaring error, and with no amendment. Mr Osunwuta admitting during oral evidence that he had not noticed that error before the hearing.

35. In relation to the heating and the padlock on the boiler, Mr Osunwuta's did not deny that one had been installed. His position was that the Applicants kept causing problems with the boiler and it was Charles Domfey who put the padlock on. He had been nominated by the other tenants in the house, to put the padlock on, sanctioned by Mr Osunwuta. This despite Mr Osunwuta's evidence that Mr Domfeh was a very new addition to the household only moving in around May 2020.
36. The Tribunal preferred the evidence of the Applicants and their description of the engineer telling Mr Osunwuta that a padlock on the boiler was not permitted, and could be dangerous.
37. Even on Mr Osunwuta's own case, that he occupied the property with the two applicants, which is not accepted by the Tribunal, the Respondent is in breach of the Council's selective licensing requirements.
38. Therefore the only further issue for determination by the Tribunal is the amount of the RRO.
39. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.
40. Whilst there was evidence to suggest that the relationship between the parties had been difficult, the Tribunal found on the evidence that this was primarily as a result of Mr Osunwuta's behaviour towards the Applicants in particular in relation to the boiler and the heating in the house. There is no other evidence to challenge the conduct of the Applicants. They paid their rent on time, and it was only as a result of the difficulties in the house that they approached the Council when they discovered that the Property should have been licenced.
41. The Tribunal found that Mr Osunwuta's conduct was lacking. The Tribunal did not believe that the relevant documentation had been provided to the Tenants at the time of the agreement, despite the schedule signed by them which was heavily relied upon by Mr Osunwuta. The Tribunal preferred the Applicants assertion that they believed they were just signing a part of the tenancy agreement, which was consistent with the lack of the correct documentary evidence that should have been provided at that time.
42. Although Mr Osunwuta provided a certificate relating to the installation of the gas boiler in 2016, this is not in the format of a Gas

Safety Certificate that is required. Nor was there any evidence of Certificates produced in 2017, 2018 or 2019 in breach of the Regulations. The failure to have the gas appliances inspected annually left the Applicants, and any other occupiers in the property, vulnerable to any potential defects.

43. Although Mr Osunwuta produced a copy of the How to rent booklet, it was the 2019 version. The Tribunal did not accept his explanation that he had provided the Applicants with his only copy in 2016 and that he reprinted the 2019 version.
44. The Respondent has provided no evidence of her financial circumstance. Nor has she provided any evidence of utility payments paid. No deductions are therefore made.
45. The Respondent has not been prosecuted by the Council for not licensing the property.
46. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the evidence of the landlord's conduct, we consider that the award should not be reduced. Accordingly, we find that an RRO should be made against the Respondents in the full sum sought £7200.00 which should be paid to the Applicants.
47. The Respondent is also ordered to pay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Tribunal Judge Brandler **Date:** 8th June 2021

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 Tribunal 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 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.

4. 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.

(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.