



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

Case reference : **LON/00AP/HMF/2021/0026**

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

Property : **39 Victoria Crescent, London N15 5LP.**

Applicant : **William Armston-Sheret; Ross Holden and Fraser Watt.**

Representative : **Justice for Tenants - Ms Clara Sherratt**

Respondent : **Nathu Ram Puri**

Representative : **J.V. Gossage In house Solicitor for Purico**

Type of application : **Application for a Rent Repayment Order by tenant. Sections 40,41, & 44 of the Housing and Planning Act 2016**

Tribunal members : **Judge H Carr
Mr C. Gowman**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12th July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was **V: CVPREMOTE**. 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 in a bundle from the Applicant comprising 158 pages, a bundle of 40 pages from the Respondent and a response bundle from the Applicant of 53 pages, the contents of which have been noted.

Decision of the Tribunal

- 1. The Tribunal determines to make a Rent Repayment Order of £14,400.**
- 2. The Tribunal determines to order the Respondent to reimburse the Applicants the application and hearing fees of £300 within 14 days of receipt of this decision.**

The application and procedural history

- 3.** The applicants made an application for a Rent Repayment Order on 17th December 2020. The applicants allege that the landlord has committed the offence of controlling or managing an unlicensed HMO.
- 4.** The applicants seek a RRO for the period 29 June 2019 to 28 June 2020, in the sum of £18,000.00.
- 5.** The Tribunal issued directions on 10th March 2021.

The hearing

- 6.** The hearing took place via video on 18th June 2021. The applicants attended with their representative. Ms Clara Sherratt. Mr John Taylor and Mr Malcolm Thomas attended on behalf of the respondent who was represented by Mr Gossage, in house solicitor with Purico.

The issues

7. The issues that require to be decided by the Tribunal are:
 - (a) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of being someone in control of or managing an HMO which is required to be licensed and is not so licensed?
 - (b) Does the respondent have a reasonable excuse defence?
 - (c) If the tribunal determines to make a Rent Repayment Order:-
 - What is the applicable 12-month period?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of the respective conduct of the applicants and the respondent and of the financial circumstances of the respondent?

The background and chronology

8. 39 Victoria Crescent is a Victorian 2 storey 3 bedroomed purpose built self-contained flat. It comprises a living room, kitchen, bathroom and three bedrooms. The flat is on the first storey of the property.
9. The applicants occupied the property from 29th March 2018 until 26th September 2020. Mr Watt occupied Room 1, Mr Holden occupied Room 2 and Mr Armston-Sheret occupied Room 3.
10. The applicants occupied the property on a standard HMO arrangement, with shared kitchen and bathroom facilities but each occupying their own rooms as separate individuals.
11. The applicants signed an Assured Shorthold Tenancy agreement on 29th March 2018 at a rent of £1500 and paid a deposit. The tenancy was for a fixed term of 12 months. A further 12 month fixed term was granted from 29th March 2019 with the rent continuing at £1500 pcm and then the tenancy ran over on a periodic basis until 28th September 2020 when it ended following service of notice by the Applicants.

12. The property is situated within an additional licensing area in the borough of Haringey. The additional licensing scheme came into effect on 27th May 2019. The additional licensing scheme is borough wide. It requires that all tenanted properties occupied as an HMO are licenced.
13. The appropriate HMO licence was not held during the period of the applicants' occupation and no licence application was made during this period. At the time of the hearing the property is occupied by two individuals and therefore does not require a licence.
14. The respondent is the freehold owner of the property and has been since 1977. The property is managed on behalf of Mr Puri by Mr Taylor assisted by Mr Thomas. Both are based in Nottingham but Mr Thomas visits London roughly once a month. An external residential property agent, Outlook acts in the lettings.
15. The respondent made an application for a licence on 24th November 2020.

Did the Respondent commit the offence of controlling or managing an unlicensed HMO?

Arguments of the applicant

16. The applicants assert that:
 - the house was an HMO
 - the applicants lived in the property as their only or principal home
 - they did not receive the housing element of universal credit
 - the property was in an area of additional licensing
 - that no licence has been granted in relation to the property
 - and that the Respondent was the owner of the property.
17. They produced evidence from Haringey Council that demonstrated that the property required licencing under Haringey Council's additional licencing scheme.

Argument of the respondent

18. The respondent concedes that the offence has been committed. He does not argue a reasonable excuse defence.

The decision of the Tribunal

19. The Tribunal determines that the Respondent committed the offence of controlling or managing an unlicensed HMO.

The reasons for the decision of the Tribunal

20. The tribunal relies on the statements of the applicants, their supporting evidence, particularly the evidence from Haringey Council, and the concession of the respondent.

What is the appropriate amount for the RRO?

21. The parties agreed that the maximum RRO is £18000 and the 12 month period argued for by the applicants is appropriate.
22. The tribunal then heard arguments about the tenants' conduct, the respondent's conduct. The tribunal notes that no submissions were made in relation to the landlord's financial circumstances.

The tenants' conduct.

23. The tenants representative said that the tenants had behaved in an exemplary way. They paid their rent on time, reported repairs in a timely fashion and generally behaved well.
24. The respondent raised no issue about the conduct of the tenants.

The respondent's conduct

25. The applicants argue that the failure to licence the property was a very serious failing by a professional landlord who has extensive resources available to him. They say that it was unacceptable to rely on a lettings agent to provide information about licensing and that they have failed to fulfil the responsibilities to put in place a system that ensures compliance with local landlord requirements.

26. The applicants allege that the property was poorly managed and poorly maintained. They refer to the damp and discolouration of a wall in the bathroom as a result of a delay in repairing faulty guttering. They also refer to problems at the start of the tenancy in relation to the provision of bins and to problems with the lock on Mr Holden's door which prevented him from gaining access to the property. It had to be removed and was not replaced throughout the tenancy.
27. They also say that for instance attempting to deduct the cost of the lock from the applicants deposit is poor conduct in light of the fact that it was the respondent who had specifically request it to be removed permanently. They criticise the handling of the return of the deposit as well in relation to the attempt to withhold monies to redecorate the bathroom which they say was in a poor condition as a result of the faulty guttering.
28. The respondent denies that the property was poorly managed and maintained. The respondent says that the applicants mention only a small number of defects These were all dealt with promptly.
29. The applicants had direct access to Mr Thomas and another employee. In the case of emergency access was available 24 hours a day and seven days a week. There was a traffic light system for repairs which were handled well. The only time there were problems were as a result of poor behaviour by the contractor.
30. The respondent asks the tribunal to disregard the applicants criticism of the management of the property. The respondent is a fair and responsible landlord providing good quality accommodation for his tenants. Professor Puri is a well known businessman and his reputation is important to him.
31. The applicants also argue that the failure to licence placed the applicants at risk. The applicants suggested that the doors were poor quality and that the kitchen door had no self-closer.
32. Whilst the respondent agreed that the kitchen door was not a fire door, Mr Taylor told the tribunal that there were spring closers to the door.
33. The failure to licence is conceded by the respondent nonetheless the respondent argues that it has at all times acted honourably and fairly. Checks were made to see if licensing was required. The respondent says that he received no notice of the introduction of a borough wide scheme. Its letting agent – which the respondent says was highly reputable and reliable – was unaware of the licensing requirement.

34. The parties made submissions on quantum which are summarised below.
35. The respondent submitted that it has always been a conscientious landlord and that any failing was accidental. It argued that the circumstances of the breach was a relevant factor for the tribunal to take into account when determining the amount of the RRO and in this particular case the fact that it had made enquiries about licensing but did not learn that licensing was required should be taken into account.
36. Other than this failing the respondent argues that its conduct was good. It delivered a good repair service and any problems that the applicants faced were dealt with promptly. It accepts that mistakes were made over the return of the deposit but suggest these are of limited relevance as the applicants had their deposit returned in full.
37. The respondent argued that ignorance is a part of conduct which was otherwise almost exemplary and that it is important that a distinction is made in setting the level of the RRO between a good landlord acting in ignorance and an egregious failure of the law.
38. The applicants submitted that the tribunal should work on the basis that the respondent is a professional landlord with a full portfolio of properties, and it should, but did not, have proper provision in place to ensure that it complied with the law. The respondent, therefore, as a result of its own failings committed a serious breach of the law.
39. The applicants found it difficult to understand how Outlook failed to be aware of the licensing scheme as Haringey had to fulfil statutory requirements in relation to publicity. There is no evidence provided that Haringey were in breach of those requirements.
40. The applicants, drawing on the full range of Upper Tribunal decisions, suggested that the tribunal should take as its starting point 100% of the rent payable in the relevant 12 month period and then only reduce that amount if there was poor conduct on the part of the applicants or good conduct on the part of the landlords. In this case there was no reason to reduce the award from 100% as the tenants had been exemplary and the landlords had done no more than meet their legal obligations as they understood them. However if the tribunal thought there was, then at that point it should take into account good conduct from the tenants and poor conduct from the landlords to in effect work back towards a level of 100%. The applicants argued that there was very good conduct on the part of the tenants and poor conduct on the part of the landlord. The failure to licence by a professional landlord is very poor conduct. There was no regular inspections of the premises, the premises

were a serious fire risk and there was some poor handling of repairs in particular in relation to faulty guttering which took several weeks to repair. Even after repair the damage caused to the bathroom was not repaired. The applicants also point to the poor handling of the return of the deposit.

41. The applicants also argue that financial circumstances are not only relevant when the respondent has limited resources. For the order to have the necessary deterrent effect they say that financial circumstances such as those of the respondent mean that the award should be higher.
42. Therefore, they argue that the appropriate award in this case is 100% of the rent paid.
43. They also argue for the refund of the tribunal fees totalling £300.

The decision of the Tribunal

44. The Tribunal determines to award an RRO at 80% of the rent paid in the applicable period - £14,400.

The reasons for the decision of the Tribunal

45. The tribunal finds that the tenants conduct was good. They were responsible tenants throughout the tenancy.
46. In making its decision in relation to the landlord's conduct, the tribunal takes as its starting point that the respondent's failure to licence was not a deliberate flouting of the law. It relied on information from its letting agent. Therefore there is a distinction between it and more egregious breaches of the law. The tribunal also notes that the respondent provided a repairs service which was relatively responsive to requests from the tenants and that the letting agreement was an AST so that appropriate security and rights were given to the applicants. The reduction in the RRO from 100% to 80% reflects these aspects of the landlord's conduct.
47. Nonetheless the tribunal has serious concerns about the conduct of the landlord. It does not think it is sufficient to provide for Mr Thomas to visit London monthly to check on the properties. The inadequacies of the provision have been revealed by the respondent's failure to be aware of the additional licensing scheme. It is clear that relying on Outlook who were only providing letting services was insufficient to keep the respondent up-to-date with local legal requirements.

- 48.** It also notes that the respondent relies on the tenants to fulfil some of its responsibilities for managing the property. So for instance it does not carry out regular inspections but responds to requests for repairs from tenants. Nor does it inspect works carried out by its contractors but relies on tenants to confirm that the work has been carried out to a satisfactory standard.
- 49.** This suggests to the tribunal that what was required was a local managing agent who would take responsibility for effective management of the properties.
- 50.** The tribunal is also concerned that the flat posed a serious fire risk. Accepting the evidence provided by the respondent in relation to 31 Victoria Crescent as being relevant to the subject property, the tribunal notes from the email from Haringey Council dated March 8th 2021 at page 41 of the respondent's bundle that the flat required, inter alia an automatic fire and smoke alarm, proper fire doors, a means of escape from the third bedroom, fire resistant partitions between the rooms adequate artificial lighting and a new entrance lobby in order to provide necessary protections from the risk of fire.
- 51.** The lack of a protected means of escape from the third bedroom requiring tenants to pass by the kitchen, which was not fitted with an FD 30 rated fire door, was of particular concern to the Tribunal in a property of this type.
- 52.** The tribunal is also concerned that the management system that the respondent used was very limited. The tribunal would have expected that the property is inspected regularly to check that the fire and smoke alarms are in working order.
- 53.** These were serious failings which the tribunal takes into account in setting the level of RRO at 80% of the rent paid.
- 54.** The tribunal notes the applicants' submission about the financial circumstances of the respondent but does not take this into account in reaching its decision about the level of RRO.
- 55.** In the light of the findings above the tribunal also orders the respondent to reimburse the applicants for the application fee and hearing fee, totalling £300.

Name: Judge Carr

Date: 12th July
2021

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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.

