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

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| **Case reference** | **:** | **LON/00AP/HMF/2021/0122** |
| **HMCTS code (paper, video, audio)** | | **V; CVPREMOTE** |
| **Property** | **:** | **19 Bury Road, London N22 6HX** |
| **Applicant** | **:** | **Helen Price (1)**<br>**Marie Celeste Dushime (2)**<br>**Ida Cassandra Ndahiro (3)**<br>**Zineb Oulmakki (4)** |
| **Representative** | **:** | **Justice for Tenants - Clara Sherratt** |
| **Respondent** | **:** | **Ms Danai Tzafettas** |
| **Representative** | **:** | **Mr Karol Hart (solicitor – Freemans Solicitors)** |
| **Type of application** | **:** | **Application for a Rent Repayment Order by tenants Sections 40 – 44 Housing and Planning Act 2016** |
| **Tribunal member(s)** | **:** | **Judge Dutton**<br>**Mr A Parkinson MRICS** |
| **Venue** | **:** | **Video hearing 19 August 2021** |
| **Date of decision** | **:** | **2 September 2021** |

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**DECISION**

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## Covid-19 pandemic: description of hearing

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was CVPRemote. A face-to-face hearing was not held because it was not practicable and no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of some 350 pages, the contents of which have been noted.

**The Tribunal finds that the Respondent has breached section 72(1) of the Housing Act 2004 (the 2004 Act) and determines that the Respondent must pay to the Applicants by way of Rent Repayment Orders the sum of £19,712.69, within 28 days.**

**In addition, the tribunal order the respondent to refund to the applicant the application and hearing fee in the sum of £300, again within 28 days.**

## BACKGROUND

1. On or about 10 February 2021 the applicants, through their representative, Justice for Tenants, commenced proceedings against the respondent seeking to recover rent paid in the period 16 September 2019 to 7 August 2020, totalling £24,212.69.

2. Annexed to the application were a number of documents which were included in four hearing bundles prepared for the hearing of this matter on 19 August 2021. We will refer to those documents considered relevant to our determination in due course.

3. The respondent Danai Tzafettas is the registered proprietor of 19 Bury Road, London N22 6HX (the Property), which she bought in December 2013, without it would appear a mortgage

4. We should comment on the late delivery of papers by the respondent and what appears to be three versions of her witness statement. The applicants' representative Ms Sherratt objected to the late introduction. For the respondent Mr Hart said that there was an amendment to paragraph 4 which commented slightly further on the role of the Property Company, who were the agents for the respondent. We concluded that there did not appear to be prejudice to the applicants and admitted the late documentation.

5. We have noted all that has been said and have taken the contents into account in reaching our determination.

6. For the respondent Mr Hart confirmed that the Property was one which required an HMO licence but that one was not applied for until 7 August 2020. In addition, the sums claimed by the applicants for

Rent Repayment Orders (RRO) were not in dispute. We are grateful to the respondent for these concessions.

**EVIDENCE**

7. For the applicant it is said that the Property, is a two-storey terraced house with 4 bedrooms. It is situated in an additional licensing area of Haringey Council which came into force on 27 May 2019 and is a borough wide scheme. This is not disputed.

8. The application sets out the rent said to have been paid by the four applicants, all of whom, it is said, occupied the Property in the period 16 September 2019 to 7 August 2020, although for Ida Ndahiro her occupancy ended on 16 July 2020. A copy of the tenancy agreement commencing on 14 September 2019, was included in the papers although occupancy did not occur until two days later.

9. We were provided with a spreadsheet showing the rent paid by each tenant, but again these payments are not disputed by the respondent.

10. An email from Mrs Glayne Russell for the London Borough of Haringey dated 1 December 2020 confirms that the Property has no HMO licence but that there was an application pending having been made on 7 August 2020 by the respondent.

11. In the applicants' bundle were witness statements from each applicant, the contents of which we noted. They dealt with the coming together of the applicants as a group, the problems with the condition of the Property on hand over, which required cleaning, and which delayed them taking occupation. The details of each applicants' occupancy are provided. There are allegations of vermin problems and, drainage issues. The statements go on to deal with problems concerning the refund of the deposit paid, allegedly due to the poor condition in which the property was left. However, the dispute was dealt with by the Deposit Holding company TDS who concluded that the retention from the deposit of £2,500 was incorrect and awarded the respondent only £399. There are allegations that the problems affected some of the applicants' mental health.

12. The applicants' statement of case, under the heading 'Conduct of both parties and summary' asserts that the respondent has made illegal gains from the Property as she had no licence and that strict safety conditions had not been complied with. We will address these issues in due course, in so far as they are necessary as we will deal with the legal submissions, which we have carefully noted.

13. For the respondent we had her third statement dated 18 August 2021. This confirmed that she had instructed the Property Company Limited (PCL) to arrange a letting of the Property in 2019. It appears she has been letting the Property since she purchased in 2013. She says she was told by PCL that the Property did not need to be licensed and that she was not initially aware of Haringey's requirements for

HMO licences. She said that PCL had moved three tenants into the Property without her knowledge and before she had finished some refurbishment works. It would seem, however, that at about this time she became aware of the need to licence the Property and she agreed with PCL that they would deal with the licensing arrangements as she was not a professional landlord and she believed they knew what they were doing in this regard. Subsequently it transpired that they had not made the application, and this is expanded upon at paragraph 4 of her statement. In July 2020 she received a letter from the Council giving a deadline for the application for the licence to be made. Such an application was made on 7 August 2020, and it is understood that a licence has been granted.

14. Her statement goes on to outline the personal problems that beset her in 2018 and the subsequent pandemic lockdown.

15. The question of the condition of the Property at the time of handover to the applicants and when handed back to her is addressed and we noted all that was said. An inventory, with photographs was made available for both hand overs and we noted the contents of same.

16. As to the issues with drainage she told us that her builder had investigated and ultimately some fairly extensive works were required. On the vermin point it would seem she was told by PCL that this probably stemmed from rubbish at the Property and a complaint of mould was an issue the tenants needed to address.

17. The respondent's statement spoke of the financial difficulties she and her husband found themselves in. They, with their children, were apparently, according to a letter from the respondent's brother, Dr Menelaos Tzafetts, living with him and had been since the beginning of 2019. We noted the contents of this letter.

18. It is relevant to record the contact that the respondent had with PCL concerning the licence. These are exhibited to her first addendum and start with an email dated 31 October 2019. This email confirms the respondent's knowledge that the tenants who moved in were not a family and that an HMO licence would be required, she having been told by PCL that if a family took occupation a licence would not be required. The email goes on to indicate that the respondent was of the view that PCL would be organising the licence and that she would prefer not to make the application herself as the process should be routine for the company. The email went on to request an update 'sooner rather than later' as she did not want to have issues with the council. This elicited an 'out of office' response.

19. On 13 January 2020 the respondent writes again to PCL complaining that she is having to chase up about the HMO application. She says that she will proceed with the application herself if they do not process the application. This elicits another 'out of office' response.

20. At the hearing we heard from Ms Helen Price whose evidence was accepted as being for all applicants and her answers also all encompassing. She had made a witness statement at page 210 of the applicants' bundle. We have recounted the essence of same above,

21. She was asked some questions by Mr Hart. It was said that the applicants had asked for a chain to be fitted to the front door and a tumble dryer to be supplied, which was. It does not seem, from the photographs following the checking out process that a chain was fitted to the front door. The question of vermin problems was touched upon, and Ms Price said that mice were trapped but were still running loose in the Property.

22. On the question of the move in date she told us that they had hoped to move in earlier, but the Property was not ready, so she stayed a Travel Lodge. Even though the work was completed she said the Property was still dirty and produced some photographs to support this contention. It was put to her that the Property was in a poor state when the applicants left. This was denied.

23. Ms Ndahiro had wished to add to the evidential matters but unfortunately her video connection let her down.

24. We then heard from the respondent Ms Tzaffetts. Matters were not helped by Mr Hart's connection to the video proving somewhat erratic. She was referred to her statement and confirmed that the changes she made were minimal and intended to assist. She confirmed she was aware of the licensing requirement of the Council and had been so since August 2019. Before then it seems the after effects of having given birth the year before had impacted on her physical and mental health.

25. She was asked about the handover to the applicants. She accepted that the Property was undergoing refurbishment, but she had not expected PCL to arrange a letting whilst these works were ongoing. She told us that she had organised the cleaning of the Property. As to the mice she only recalled one email and had referred it to PCL. She had no direct contact with the applicants but had provided details of a builder they could and did contact when necessary. He had resolved the drainage issue which had required extensive works.

26. On the question of the licence, she said she had eventually contacted the Council when it became apparent PCL had not and would not deal with the application, without payment of fees. She arranged an extension to the time for lodging the HMO licence and confirmed that all works she had undertaken at the Property meant it was to an acceptable standard for the Council. It appears that the manager at PCL eventually applied for a licence in the Summer of 2020.

27. The respondent was then asked some questions by Ms Sherratt. Asked what tasks PCL undertook she told us they were to find tenants and sort out an agreement. She said they also offered to manage the

Property. They offered a full service and as she had a relationship with the manager, Louis, she considered they would deal with all matters. She became concerned that they were not dealing with the licence when they did not reply to her email at the end of October 2019. She tried to contact the manager, Katherine, but with little success. She confirmed that PCL received the rent, and she paid an agency fee of 6% plus VAT.

28. She did not have any answer to the question why she had not taken the matter into her own hands other than she was sent fee details by PLC and that she had carried out all work at the Property to HMO standards. Also, the pandemic had slowed everything. She did eventually chase the manager and he stepped in and made the application immediately. She said she did wonder why it had not been done before. For her part she said that she had been reluctant to get involved as she was concerned she would make mistakes if she proceeded with the application. Finally, she was asked about the deposit retention. She had produced a pro forma invoice from Blenti Nasto for works to the Property at the end of the applicants' tenancy which had been priced at just below £2000 including VAT. This was the basis for her retention.

29. We invited submissions from Ms Sherratt and Mr Holt. Ms Sherratt said there was no reasonable excuse defence that could be relied upon by the respondent. She had been a landlord of the Property since 2013 and was experienced. There was no evidence to show instructions to PCL to apply for the licence and the emails were selected by the respondent. It was appropriate for her to apply for the licence herself when she knew PCL had not done so.

30. We were referred to the Upper Tribunal case of Vandamalayan and subsequent authorities. No clear evidence of any financial matters had been supplied by the respondent. The fact that the respondent may not have been the worst landlord was no reason to reduce from the 100% recovery the applicants sought. There was no bad conduct on the part of the applicants. As to the respondent there was bad conduct in that the Property was not licensed, there were problems during the currency of the tenancy and she had attempted to retain the bulk of the deposit. It was also suggested that the respondents conduct in the proceedings as evidenced by the late production of papers was relevant. A request for the refund of fees totalling £300 was made.

31. For Ms Tzafettas Mr Hart said there was a reasonable excuse. There was the backdrop of the medical issues and the pandemic. Further she had been surprised by the tenants that PCL introduced, who were 4 individuals for which she knew a HMO licence would be required. She is an experienced interior designer not a landlord. Further the HMO requirements only came into effect in May 2019.

32. It was suggested to us that the reasonable excuse was available given the medical/child/pandemic issues. Also, she was misled by PCL who she believed were dealing with the licence application. With hindsight she accepts she should have dealt with the application herself.

33. It was suggested that as this was a criminal offence the mens rea principle should apply. We were referred to certain authorities, Ficcara v James [2021] UKUT 38 (LC), although not to any detailed review. It was suggested that the fact that the respondent did not have a criminal conviction for this, or any other offence should be taken into account.

**FINDINGS**

34. In this case it is not necessary for us to make any findings on the evidence as to the culpability of the respondent as she accepts that the Property required a licence but that it was not so licenced. Accordingly, an offence under s72(1) of the Housing Act 2004 is made out. This brings into play the possible defences available under s72(4) and 72(5) of the 2004 Act. In so far as s72(4) is concerned the provisions of subsection (b) would apply and therefore the applicants only seek an RRO to 7 August 2020, the date the application for a licence was made.

35. As to s72(5) the respondent must show a reasonable excuse. Does she have one? The evidence before us is that she knew at the time of the tenancy to the applicants that a licence was required. We accept her evidence that she had entrusted this to the agents PCL. However, they have not been asked to give any evidence and are not in a position to defend themselves.

36. What is clear is that by the end of October 2019, if not before, the respondent was becoming concerned that an application had not been made. The next contact that we are aware of was in January 2020 and there appears to have been little contact on the subject of the licence until the Council contacted her direct. It is unclear when PCL were put in funds to make the application, but an invoice dated 4 November 2020 produced by the respondent shows monies being paid to PCL for the licence fee and the Council's fee totalling £1,322.

37. We accept that this matter must be determined beyond reasonable doubt. We find that until around 31 October 2019 it was reasonable for the respondent to consider that the agents PCL were dealing with the HMO licence application. When they did not respond, or at least respond in a meaningful manner within two weeks or so thereafter she should have grasped the nettle and made the application herself, if only for self-preservation purposes. She did not do so, and we find that any reasonable excuse had evaporated on or about the middle of November 2019.

38. As to conduct we do not find that either party has acted in such manner that conduct is relevant. There was a retention of just under £400 made from the deposit which would evidence some issues upon the applicants' departure. Equally, we accept that there were issues at the time the applicants moved in. It would seem that the respondent acted reasonably quickly, through her builder, to problems and supplied a tumble dryer promptly, even if the chain to front door was not dealt with. The drainage issues required extensive works, which were carried out. The vermin problems and mould can be a life-style issue as much as a requirement for the landlord to resolve.

39. The provisions of s44 of the Housing and Planning Act 2016 (the 2016 Act) require us to consider conduct of the parties, the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence under the 2016 Act. This is different to the provisions of s46 of the 2016 Act which refers to a conviction for the offence before us. The respondent has no criminal convictions. As to the financial circumstances it would seem that the respondent's husband is presently unemployed, having been so since 2018. The respondent is presumably self-employed. The Covid pandemic has affected everyone. The Property, on the HM Land Registry details is unencumbered. We were not provided with any further evidence of financial hardship and accordingly do not consider there is any hardship we can take into account.

40. The amount to be claimed is not challenged and is £24,212.69 as set out at page 78 of the applicants' bundle.

41. What to award? We have found that the respondent has the benefit of a reasonable excuse until around the middle of November 2019. This is 2 months into the tenancy. By that time she should have resolved the licence position and at the very least lodged an application, which would have afforded a defence under s 72(4)(b). Thereafter we find that she is culpable and should pay to the applicants the sum of £19,712.69, representing the balance of the rent claimed within 28 days. We direct that the sum should be paid to Justice for Tenants, and they can resolve the necessary apportionment between the applicants.

42. In addition, we award the applicants the sum of £300, being the application fee and hearing fee, to also be paid within 28 days. The refund of the fees to be made to the applicants representative Justice for Tenants, for them to allocate as is appropriate.

Tribunal Judge Dutton 2 September 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 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 to 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 (ie 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.

### Extract from the 2016 Act

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 |

(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).

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.

## Housing Act 2004

**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.