



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

Case reference : **LON/00AU/HMF/2020/0089**
HMCTS code : **V: HMCTS/REMOTE**
(video)

Property : **Flat 6, 435 Holloway Road, London N7
6LJ**

Applicants : **(1) James Nelson (2) Thomas Preston**

Representative : **In person**

Respondent : **Highlands Investments Ltd**

Representative : **Mr Newman, solicitor**

Type of application : **Rent repayment order**

**Tribunal HMCTS
embers** : **Judge Tagliavini
Mr M Cairns MCIEH**

**Venue & date of
hearing.** : **10 Alfred Place, London WC1E 7LR
(Video: HMCTS/Remote)
20 January 2021**

Date of decision : **3 February 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V: HMCTS/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 in an applicants' bundle pages 1 to 137 and a respondent's bundle pages 1 to 81 the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The application for a rent repayment order is refused.**
 - (2) The application for the reimbursement of fees is refused.**
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The application

1. This is an application made under section 41 of the Housing and Planning Act 2016 seeking a rent repayment order (RRO) for the respondent's failure to obtain a licence for a house in multiple occupation (HMO) under the London Borough of Islington's Additional Licensing Scheme for the Caledonian and Holloway Road areas which came into effect on 1 September 2015. This Scheme requires an HMO occupied by three or more persons comprising one or more households to be licensed. The respondent therefore was alleged to have committed an offence under section 72(1) of the Housing Act 2004 for having the control or management of an unlicensed HMO.

The applicant's case

2. The tribunal was provided with a bundle of documents by the applicants for the hearing although no witness statement from the applicants or any other former tenant were provided. In the application to the tribunal dated 20 June 2020 the applicants claimed a RRO in the sum of £21,146.64 for a 12 months' period prior to 2 April 2020. The applicants also sought the reimbursement of the application and hearing fee of £100 and £200 respectively.
3. The subject property is a relatively new conversion comprising a three bedroom dual level flat in a converted warehouse with open plan kitchen/dining/living room and shared bathroom/w.c. Throughout the period of the applicants' occupation the subject property was occupied by unrelated individuals forming three households with shared use of the communal facilities in the flat in accordance with various written contracts the first of which commenced on 6 November 2016.

4. In a document headed 'Case Summary' the applicants relied on a tribunal decision in *LON/00AU/HNA/2019/0118* where the London Borough of Islington imposed a financial penalty on the respondent of £6,000 on 5 September 2019 under section 249A and Schedule 13A of the Housing Act for failing to obtain an HMO licence in respect of the subject property. This decision established that the offence for which a financial penalty had been imposed had been committed on 9 May 2019.
5. The applicants also gave oral evidence to the tribunal and asserted that during the period 6 December 2016 and 1 April 2020 the Flat was not licensed as an HMO as an application for a licence was not made until 30 July 2019 which was granted on 2 April 2020. The applicants also stated that they were distressed to learn that the additional fire requirements imposed by the draft licence of fitting a self-closer and an intumescent strip on the kitchen door and the provision of a fire blanket were not complied with until 4 August 2020 and therefore outside of the 1 month time period specified in the HMO Licence. The applicants stated they felt they had a 'moral duty to ensure that through every legal means possible the landlord is reminded of the importance of compliance with the Housing Act 2004 and the consequences of operating unlicensed HMO's.'
6. The applicants asserted that they had been good tenants throughout the period of their occupation and had paid the rent of £610 per week payable monthly in full and on time as evidenced by the bank statements provided. In addition to the respondent's failure to satisfy the fire safety requirements the applicants asserted that no report had been provided after the fire alarm had sounded on three occasions; failed to display a copy of the HMO licence and had been slow to carry out repairs.
7. The applicants produce a Schedule showing the names of the occupiers and the periods of occupation from 6 December 2016 to present. Throughout, the applicants had been in occupation of the subject premises with the identity of the third tenant changing as evidenced by copies of new tenancy agreements. However, no witness statements from these third tenants were provided to the tribunal and when questioned the applicants were not entirely sure of the dates these third tenants had vacated the premises leaving only the two applicants in occupation.
8. On questioning by the tribunal and by the respondent the applicants asserted that the period for which they were claiming a rent repayment order was 2 April 2019 to 1 April 2020 as set out in their calculation.

The respondent's case

9. The respondent also provided the tribunal with a bundle of documents for the hearing. In a Reply to the applicant's Statement of Case the respondent opposed the application and asserted that the applicants had failed to establish beyond reasonable doubt that an offence was being committed during the 12 months period for which the RRO was being claimed. The respondent also

asserted that the landlord had been responsive to complaints of disrepair and that the applicants had remained in occupation for a considerable period despite their assertions of poor management.

10. The tribunal was also provided with a witness statement of Mr Sheldon Fry dated 13 November 2021. Mr Fry confirmed the date of the respondent's application for a licence on 30 July 2019 and its subsequent grant on 2 April 2020. Mr Fry told the tribunal that the matters of fire safety and repairs complained about by the applicants had been dealt with in a timely and appropriate manner and that one of the occupiers had expressly made it known to him that 'We've loved living at Flat 6 and will be sad to go....' Mr Fry also told the tribunal that although tenancy agreements had been granted in different names for different periods the respondent could be expected to know if these persons formed more than one household.

The tribunal's decision and reasons

11. The tribunal finds that the applicants seek a RRO for the period 2 April 2019 to 1 April 2020 in the sum of £21,146.64. However, the tribunal finds that an application for a licence for an HMO under the Additional Licensing Scheme brought into effect by the London Borough of Islington was made on 30 July 2019. Section 72(4) of the Housing Act 2004 which states:

'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)).

Therefore, the tribunal finds that the respondent was not committing the offence alleged as from 30 July 2019 to the date the licence was granted on 2 April 2020.

12. The tribunal finds therefore, that the only period for which an offence could have been committed by the respondent and for which part of the period a RRO is sought, is from 1 April 2019 to 29 July 2019. Although the tribunal was provided with a schedule in which the applicants and Ms Niamh McAnulty are said to have occupied the subject premises together from 6 October 2018 to 5 July 2019, the relevant tenancy agreement provided to the tribunal stated that the tenancy was granted to the applicants and Ms McAnulty on 6 October 2018 to 5 April 2019. Further, the tribunal could not be sure or reasonably infer in the absence of any witness statement or oral evidence from Ms McAnulty in

addition to the vagueness of and uncertainties in the applicants' oral evidence, as to the dates of Ms McAnulty's occupation and that the subject premises were occupied by three persons during the whole or part of this period. Therefore, the tribunal is not satisfied beyond reasonable doubt as to the dates on which the alleged offence was committed by the respondent if at all.

13. In conclusion, the tribunal is not satisfied beyond reasonable doubt that an offence under section 72(1) of the Housing Act 2004 was being committed by the respondent during the period 2 April 2019 to 1 April 2020 or any part of it. Therefore, the application for a rent repayment order is refused. The application for the reimbursement of fees is also refused.

Name: Judge Tagliavini

Date: 3 February 2021

Rights of appeal from the decision of the tribunal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).