



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

Case reference : **LON/00BB/HSI/2020/0001**

Property : **123 Greengate Street, Plaistow,
London, E13 0BG**

Applicant : **London Borough of Newham**

Representative : **Vivienne Sedgley, Counsel**

Respondent : **RHP Lettings Limited**

Representative : **-**

Type of application : **Application for a rent repayment
order by a Local Housing Authority
under Section 41 of the Housing
and Planning Act 2019**

Tribunal members : **Judge D Brandler
Mr A Lewicki FRICS**

Venue : **10 Alfred Place, London WC1E 7LR
(remotely)**

Date of hearing : **19 November 2021**

Date of decision : **2 December 2021**

DECISION

Decisions of the tribunal

- (1) RHP Lettings Limited is ordered to repay Housing Benefit in the sum of £11,832.65 to the London Borough of Newham within 28 days.
- (2) RHP Lettings Limited is further ordered to repay the tribunal fees in the sum of £300 paid by the London Borough of Newham in relation to these proceedings within 28 days.

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: SKYPEREMOTE. 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 we were referred to are in a bundle of 176 pages produced by the Applicant, the contents of which we have noted. The Respondent provided no documents. References in square brackets are to pages in the Applicant's bundle. The order made is described at the end of these reasons.

Reasons for the tribunal's decision

Background

1. By an application received by the Tribunal on 03/12/2020, the London Borough of Newham ("the Council") seeks an order under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order in relation to Housing Benefit payments made to RHP Lettings Limited ("the Respondent") who is the landlord of 123 Greengate Street, Plaistow, London E13 0BG ("the property"). The tenants at the property have been in occupation since 2010, placed there originally by The London Borough of Hammersmith and Fulham. The tenants made applications for Housing Benefit to the Council. The parties to the original tenancy, as evidenced by the tenancy agreement, were the tenants and RHP Services Ltd whose address was 398 Forest Road, Walthamstow, London E17 5JF ("the original landlord"). In or around 2018 that company became insolvent and for a period no Housing Benefit was paid as it was not clear who had become the responsible landlord.
2. In 2019 Mr Toki Khan contacted the Council to advise that the new landlords are RHP Lettings Ltd ("The Respondent") whose address is also 398 Forest Road, Walthamstow, London E17 5JF. The Council were satisfied from the information provided by Mr Toki Khan that the Respondent was the new landlord entitled to receive payments for the use and occupation of the property, and the Council paid Housing

Benefit to the Respondent. None of those payments have been refused or returned by the Respondent to the Council.

3. On 15/06/2017 the Council introduced Borough-wide licencing requirements with the exception of the area of Stratford. The property is located in the area where licencing is required.
4. On 21/02/2019 the Council wrote letters to the registered owner of the property as well as to the original landlord to bring to their attention the requirement for an HMO licence. On 14/03/2019 a final warning notice was sent to the registered owner and the original landlord.
5. On 08/03/2019 Mr Toki Khan on behalf of the Respondent lodged an enquiry with the Council online in relation to the requirement for an HMO licence for the property. A unique reference in relation to the property was created as “ENQ3120003” [139]. On 12/03/2020 the Council inspected the property. On 09/06/2020 the Council issued a Notice of Intent to issue a Financial Penalty for Housing Offences in relation to the property [135].
6. On 11/06/2020 at 11:20 hours Mr Toki Khan paid a fee of £750.00 to the Council, under reference ENQ3120003 for a first time licence [139] and on the same day he sent an email to the Council to confirm that the payment had been made [142]. On 13/08/2020 the Council wrote to the Respondent to confirm that a licence for the property had been granted [149].
7. On 15/07/2020 the Council issued to the Respondent a “Notice of Intended Proceedings” for a Rent Repayment Order in relation to the property. That notice allowed the Respondent 28 days to respond [145]. No response was received from the Respondent and the Applicant issued the application.
8. The Tribunal issued directions on 14/04/2021.
9. The Respondent has taken no part in these proceedings other than an email dated 12/08/2021 which was sent to the Tribunal and to the Council from Toki@rhpsltd.co.uk. That email has the Respondent Company details displayed at the foot of the email, including the trading address at 398 Forest Road, Walthamstow E17 5JF and was ‘signed’ by Toki Khan. The email states “*Hi All. I keep getting all this correspondence and I don’t understand it. Can you please explain to me what is going on as we no longer manage this property*” [165].
10. In response, the Applicant wrote by email dated 16/08/2021 explaining the Council’s position [169]. Nothing further was heard from the Respondent until 16.35 on 18/11/2021.

11. The Tribunal did not inspect the property.

The hearing

12. The Applicant Council was represented by Vivienne Sedgley of Counsel at the hearing. A skeleton argument was provided. She was accompanied by Linda Brown, an environmental health practitioner, and Valerie Joseph a council tax officer, both employed by the Council. The Respondent did not attend and was not represented.
13. At 9 a.m. the Tribunal panel were forwarded an email from Mr Toki Khan on behalf of the Respondent. That email was dated 18/11/2021 at 16.35 and stated: *“I will have to get this case adjourned as I have covid and cannot attend this meeting. Please can we have this meeting adjourned. I am in self isolation.”*
14. Having considered the late application and the lack of information provided, a reference that Toki Khan was self-isolating, which is not relevant for a remote hearing, the Tribunal Judge asked the Clerk to respond to Toki Khan telling him that his application to postpone the hearing was refused and asking him to attend the video hearing to make an oral application.
15. Two further emails were received by Toki Khan on the morning of the hearing. At 9.26 a.m. he wrote *“I am at home I and a lot of pain and have been insolation for 2 days.”* (sic). At 10.26 a.m. he wrote *“I am trying to get someone legal to adjourned (sic) the meeting for me but I need to know what time is the meeting?”*
16. Nothing further was heard from Toki Khan. The tribunal’s correspondence file notes that he had been notified by letter sent by email on 3/09/2021 that the hearing had been listed to be heard on 19/11/2021 by video hearing.
17. Ms Sedgley opposed the application. She argued that the application as presented by Mr Toki Khan states only that he has Covid and is self-isolating is unsatisfactory. She pointed out that there is nothing to explain why this application was made at the eleventh hour, that the joining instructions were sent on 2/11/2021 and there is no reason why the Respondent should not be aware of the time and place of the hearing. Further, given the history of the Respondent’s lack of engagement or participation throughout these proceedings his application is disproportionate. In particular the Respondent has provided no response to the application, no evidence to contradict the Council’s evidence and has made no representations to the Tribunal. Ms Sedgley pointed out that rather than attending the hearing, the Respondent was trying to avoid the proceedings and any application to adjourn today should be refused.

18. By 10.35 neither Mr Toki Khan nor any representative for the Respondent had appeared at the hearing. Having heard the Applicant's submissions as well as having noted the very limited information in the Respondent's emails, and having noted the history of non-compliance with these proceedings and directions, the Respondent's application to adjourn the hearing was refused.
19. The reasons for the refusal are that
- (a) There is no evidence to suggest that Mr Khan was so unwell he could not attend a video hearing remotely, which would not require him to do anything other than self-isolate.
 - (b) He had waited till the 11th hour to make this application, claimed he did not know what time the hearing started, despite clearly being aware that the hearing was listed for that morning as evidenced by his application to postpone.
 - (c) The Respondent failed to engage in these proceedings from the outset, having failed to comply with directions, or make any submissions, even if they would have attended they would not have been in a position to do more than test the applicant's case.
 - (d) An adjournment would be contrary to the overriding objective to deal with the case fairly and justly and disproportionate
 - (e) The Tribunal is permitted by Rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to hear the case in the Respondent's absence being satisfied that the party has been notified of the hearing and that it is in the interests of justice to proceed with the hearing.

The Evidence

20. Ms Brown confirmed that on 15/06/2017 the Council designated the area in which the property is located as an area for selective licencing. On 15/03/2018 that scheme came into force.

21. The Respondent made an enquiry in relation to licensing on 18/03/2019, however the application was only completed when the fee was paid on 11/06/2020.
22. On 12/03/2020 Ms Brown carried out an inspection at the property. This visit was prompted by way of communication between her team and the housing benefit team as part of a joint working initiative as the property was not licenced. From her recollection, Ms Brown described the property as being in disrepair. Specifically, there were problems with the kitchen, the kitchen floor being non existent and problems in the garden. She thought that there was a fire detection system in the property when she visited. No documentary evidence was provided in relation to these issues as Ms Brown had passed the matter to the disrepair team after her inspection and she has not received an update on any of these issues.
23. Ms Brown explained to the Tribunal that the process of an HMO application in the Borough is a desk-top tick box exercise with no apparent checks being made after the application is lodged. The licence was granted without any apparent improvement requirements.
24. Ms Joseph confirmed that on the original application for Housing Benefit the tenant of the property had asked that this be paid direct to his landlord. At the time that was RHP Services Ltd. When the Council was advised that that company was insolvent, Housing Benefit had not been paid for a period. However, they were satisfied from their communications with Mr Toki Khan that the Respondent had taken on the responsibility of the landlord of the property. The Respondent accepted the Housing Benefit payments made to them. They have not complained that rent has not been paid, nor have they returned any of the Housing Benefit paid.
25. Ms Joseph took the Tribunal to the evidence that Housing Benefit was paid to the Respondent in the total sum of £14,708.91 for the period from 05/08/2019 to 07/06/2020 [149].

The Tribunal's Findings

26. On 15/06/2017 the Council designated the area in which the property is located as an area for selective licensing. On 15/03/2018 that selective licensing scheme came into force.
27. The Respondent was the landlord for the relevant period claimed by the Council and was in receipt of Housing Benefit paid directly to them by the Council in the sum of £14,708.91 for the period 05/08/2019-07/06/2020.

28. The Respondent was aware of the requirements for licencing from at least 08/03/2019 but the property remained unlicensed until the Respondent made an application on 11/06/2020. This followed the Council's Notice of Intention to issue a financial penalty in the sum of £1000 in relation to the offence of failing to licence the property, issued on 09/06/2020 [30]
29. On 15/07/2020 the Council issued a Notice of intended Proceedings for a RRO. No response was received from the Respondent.
30. No remedial works were required prior to the grant of an HMO Licence
31. The Respondent has not been convicted of any relevant offence.
32. The tribunal find beyond a reasonable doubt that the Respondent was the immediate landlord and was in breach of his requirement to licence the property under the HMO Licencing schemes managed by the Council.
33. The only further issue for determination by the tribunal is the amount of the RRO.
34. In determining the amount, the Tribunal must have regard to the conduct of landlord, the landlord's financial circumstances and whether the landlord has been prosecuted.
35. The Respondent has failed to make any representations leaving the Tribunal with limited information upon which to determine conduct. Having considered the information from the Council, the Tribunal finds:
 - (a) The Respondent has demonstrated poor conduct in the manner in which he has attempted to avoid applying for a licence, despite his apparent knowledge of the scheme. His conduct in waiting to be issued with a Notice of Intention to issue a financial penalty of £1000 on 09/06/2020 suggested that he was trying to save money by not applying for a licence until forced to on 11/06/2020.
 - (b) There is no evidence of disrepair at the property because the HMO licence was granted without improvements having been required. Nor is there any evidence that the Respondent has been prosecuted. No further

points in the Respondent's favour were available.

36. Having regard to the case of *Amanda Williams v Kishan Parmar and Others* [2021] UKUT 0244 (LC), the Tribunal has balanced the evidence of the Respondent's conduct and find that a 20% deduction from the full amount of Housing Benefit paid for the relevant period is appropriate.
37. In submissions, Counsel asked the Tribunal to take into account the fact that the Council had claimed only 10 months, and asked that the Tribunal consider that had provided a deduction from the possible full 12 months for a RRO. That argument is rejected by the Tribunal. The period claimed is the one before the Tribunal. A period which was not subject to the application, cannot be considered as a reduction.
38. In relation to the Respondent's financial circumstances, nothing is known, other than the fact that the Respondent has received a regular income for the property without complying with his duties as landlord by failing to apply for a licence for the relevant period. It is inappropriate therefore to make any deductions on this basis.
39. 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 balancing the issues referred to above in relation to the Respondent's conduct, the Tribunal finds that an RRO should be made against the Respondent at 80% of the amount sought of £14,790.81.
40. The Respondent RHL Lettings Limited must repay £11,832.65 to the Applicant Council within 28 days.
41. The Respondent, RHP Lettings Limited, is also ordered to pay to the Applicant Council the sum of £300 being the tribunal fees paid by them in relation to this application. To be paid within 28 days.

Name: Judge D Brandler

Date: 2 December 2021

Rights of appeal

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).

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.

(1) 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 42 Notice of intended proceedings

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
- (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.
- (5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

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.

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 45 Amount of order: local housing authorities

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a local housing authority, the amount is to be determined in accordance with this section.

(2) The amount must relate to universal credit paid during the period mentioned in the table.

<i>In the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to universal credit paid 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 the amount of universal credit that the landlord received (directly or indirectly) in respect of rent under the tenancy for that period.

- (4) In determining the amount the tribunal must, in particular, take into account—
- (a) the conduct of the landlord,
 - (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.