



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

Case reference : **LON/00BE/HMF/2020/0231**

HMCTS code : **V: CVPREMOTE**

Property : **1 Meridian Court, 2 Gervase Street,
London SE15 2GE**

Applicant : **Sophie Small (1)
Natalie Dilworth (2)
Katherine Hall (3)**

Representative : **Alasdair McClenahan
Justice for Tenants**

Respondent : **Murali Ravuru Krishna-Murty (1)
Mohan Ravuru Krishna-Murty (2)**

Representative : **Murali Ravuru Krishna-Murty**

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
Mr C Gowman MCIEH**

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

Date of hearing : **18th May 2021**

Date of decision : **21st May 2021**

DECISION

Decision of the tribunal

- (1) The Respondents shall pay to the Applicants a Rent Repayment Order in the total sum of £22,800.**

(2) The Respondents are further ordered to repay 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 the Respondents, the freehold owners of the property, had failed to obtain a license for the property in breach of the licensing requirements introduced by Southwark Council (“The Council”) which commenced on 1st January 2015.
3. The history of the occupancy is briefly as follows. The Applicants, who are not related, entered into a one-year fixed term AST agreement dated 17th January 2017 with the 1st Respondent from 25th January 2017 to 24th January 2018. A deposit of £2630.76 was paid to the 1st Respondent. The monthly rent was £1900. At the end of the fixed term the tenancy became a statutory periodic one. The property is a three-bedroom flat with a shared kitchen and two bathrooms.
4. The 1st and 3rd Applicants moved into the property on 25th January 2017 and the 2nd Applicant moved in on 28th January 2017. All three Applicants moved out of the property on 24th October 2019.
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 25th October 2018 to 25th October 2019. The sum claimed is £22,800.00.
6. On 1st February 2021 the Tribunal issued directions [11-18]. Within those directions several issues arose:
 - (i) In view of the Applicants claim for a RRO for the period of 25.10.2018-25.10.2019, they were ordered to provide evidence of their tenancy covering that period. Evidence was provided under cover of the representative’s letter of 9th February 2021 [19-30] explaining that the tenancy had become periodic at the end of the fixed period and providing some correspondence to evidence the ongoing tenancy; and
 - (ii) Having noted that the property was owned jointly by Murali Ravuru Krishna-Murty (“the 1st Respondent”) and Mohan Ravuru Krishna-Murty, the Tribunal sought clarification as to whether

Mohan Ravuru Krishna-Murty should be joined as a party. In response the Applicants applied for permission and by an order dated 11th February 2021, Mohan Ravuru Krishna-Murty (“the 2nd Respondent”) was joined and the order was sent to the Respondents on that date [31].

7. On 7th April 2021 a notice of intention to de-bar the Respondents was issued by the Tribunal. On 20th April 2021 following the Respondents failure to respond to that notice, the Tribunal ordered that the Respondents be debarred from presenting evidence to the tribunal at the final hearing.

PRELIMINARY ISSUE

8. The Respondents played no part in these proceedings. They failed to comply with the directions order of 1st February 2021, did not respond to the order joining the 2nd Respondent, the order threatening to debar, nor did they respond to the order debaring them from presenting evidence at the final hearing.
9. However, at 8.34 a.m. on the morning of the hearing, the Tribunal panel members were forwarded an email from the 1st Respondent with new evidence. In order to assess whether this was an application for relief from sanctions, and to assess whether the email provided any genuine reasons for the non-compliance to date, the Tribunal considered the document. This consisted of several typed pages complaining that the Applicants had in fact unlawfully occupied the property as squatters because the Respondent had not agreed to the tenancy becoming periodic at the end of the first fixed period, reporting that the Applicants had left the property in a poor state when they left and that is the reason for not refunding the deposit, and attaching some email correspondence from 2017 between the 1st Respondent and Foxtons as well as some email correspondence with the Applicants in 2019 when they were trying to regularise their tenancy agreement.
10. The only reason given for the Respondents’ non engagement with the proceedings was that their laptop had a broken screen and they could not access the evidence that they wanted to submit to the Tribunal. That evidence being the emails from 2017 and 2019 relating to the tenancy. There is nothing in the document giving any reason for the failure to apply for a licence. In fact licensing is only mentioned at paragraph 14 where the 1st Respondent states “*Further Note – On the 30 April 2018 under Foxtons terms and directions I successfully applied for an HMO for a different property in the same area SE15 London*”.
11. In some form of attempted defence to these proceedings in an incomplete email from Foxtons headed “*Re: Additional License for 1 Meridian Court, 2 Gervase Street, London SE15 2GE*”, and the 1st Respondent’s reply on 02/11/2017 he asserts “*Two of the tenants (sic)*

are in a relationship and the third is related to one of the first (sic) two mentioned. I hope this helps”.

12. Having considered these documents, the Respondent was asked at the beginning of the hearing for his reasons for not engaging until the morning of the hearing. His response was to repeat the issue of the broken laptop as the only reason why he had not engaged, because that laptop contained the emails which he had attached to his document. When asked about his email address, his response that his email has always been the same throughout the period, but these particular emails were archived in that particular computer.
13. Although he asserted that he had spoken to a Tribunal Clerk at some point, he still failed to comply with any direction.
14. On the morning of the hearing the Tribunal Clerk had noted that the 1st Respondent had failed to serve his document on the Applicants, and she explained that this was required. The Applicants confirmed to the Tribunal that they had not received this document by email until 9.47 a.m., over an hour after this requirement had been explained to the 1st Respondent. The hearing having been listed for a 10 a.m. start.
15. Having orally confirmed that the 1st Respondent had received the notice of being debarred, and having orally reiterated the excuse of the broken laptop screen as the only reason for the failure to comply with the directions, the Tribunal found that there was no reason to lift the debarring order. The Tribunal Judge explained to the 1st Respondent that he would not be permitted to adduce any new evidence but that he could test evidence by asking questions, but that he must be careful to deal only with issues raised in evidence.

THE HEARING

16. 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.
17. 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 138 pages. The 1st Respondent submitted a 9 page document on the morning of the hearing, which has been dealt with above.
18. The Applicants attended the hearing remotely individually by video connection. They were represented by Alasdair McClenahan from Justice for Tenants, also joined remotely by video.

19. The 1st Respondent appeared remotely by video until the end of the hearing, when he could access the hearing only by telephone. He was able to retrieve the Applicant's bundle from his spam email folder, so that he could follow the presentation of the case.
20. Throughout the hearing the 1st Respondent showed a complete disregard for the proceedings. Although the parameters of his engagement with the hearing had been explained to him, he continually tried to introduce new evidence when asking the Applicants questions, and when the Judge explained to him his error, he became argumentative and rude. At the conclusion of the hearing the 1st Respondent did acknowledge that it was his fault that he had not complied with the directions and apologised.
21. In oral evidence each of the Applicants confirmed that they are not related and not in any sort of romantic relationship with each other. The 1st and 3rd Applicants confirmed that they had lived in the property from 25th January 2017. The 2nd Defendant lived at the property from 28th January 2017. They all moved out of the property on 24th October 2019. The relevant period for the purpose of this application is 25th October 2018 to 24th October 2019. Each Applicant occupied their own room and shared the kitchen and a bathroom. One of the rooms has an ensuite bathroom.
22. The 1st Respondent has had the benefit of advice and assistance in terms of letting his property to the Applicants from the start of the tenancy in 2017, as evidenced by Foxton being named on the original tenancy agreement [41-57] with an email address. Evidence of the ongoing relationship between the 1st Respondent and Foxtons, and the negotiations carried out by Foxtons on his behalf with the Applicants is detailed in email correspondence in 2018 and 2019 [41-57].
23. The Applicants confirmed the sum of rent paid for the relevant period was £22,800. This is set out in a schedule and bank statements [62-75]. The monthly rent paid was £1900 jointly by the Applicants. This was paid in full every month except December 2018 when the amount paid to the 1st Respondent was £1661.01 [65]. The deduction of £238.99 reflects the fee the Applicants paid to a British Gas engineer on or around 2nd November 2018 to rectify a problem with the boiler [137]. In oral evidence the 2nd Applicant confirmed that she had contacted an engineer when the 1st Respondent failed to remedy the problem with the boiler which is evidenced by 'whats app' messages [133-139] covering the period from 31st October 2018-22nd December 2018. The content of the messages make it clear to the 1st Respondent that the flat is cold.
24. In oral evidence the Applicants confirmed that no gas safety inspection had been carried out during their occupation from 17.1.2017-24.10.2019.
25. There were no fire safety doors in the property but the applicants could not remember if there were smoke alarms in the bedrooms.

26. Having moved out of the property the 1st Respondent did not respond to the Applicants' requests for details of the deposit certificate. Contact was made with the tenancy deposit schemes. There was no evidence of the deposit having been protected [124-132]. To date the deposit has not been returned or accounted for by the 1st Respondent.

FINDINGS

27. The tribunal were satisfied beyond reasonable doubt that the Respondents were in breach of the requirement to licence the property as set required by the Council's additional licensing scheme which came into force on 1st January 2016 [114-115], and as confirmed in the Council's email dated 25th September 2020, which states "*I can confirm the above property does not currently have a licence. However, one was submitted and received by this department on 29 July 2020*" [79].

28. Therefore the only further issue for determination by the Tribunal is the amount of the RRO.

29. 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.

30. There is no evidence before the Tribunal to question the conduct of the Applicants. They are all professional young women who have paid the full rent on time.

31. In relation to the conduct of the 1st Respondent the tribunal finds as follows:-

- a. He has had the benefit of the assistance of professional agents from the commencement of the tenancy in 2017 through to 2019, evidenced by documents in the Applicants' bundle. Foxtons are a well known professional organisation and would or should be aware of licensing requirements in the Borough, which suggests to the Tribunal that the failure to licence the property was not just an oversight or error, which in any event would not be a defence. The involvement of a professional agent suggests to the Tribunal that the 1st Respondent would or should have been advised of licensing requirements in relation to the property and he has made a choice not to apply for a licence until 29th July 2020.
- b. The failure to comply with the gas safety inspection requirements to ensure the safety of the property and those occupying that property is a serious breach of the 1st Respondent's responsibilities.
- c. The failure to carry out repairs to the boiler during the cold months of the year and leaving the Applicants to arrange for repairs to be carried out, such that the Applicants had to take

matters in to their own hands and arrange repairs themselves. Further bearing in mind the lack of gas safety inspections, a problem with the boiler should have alarmed the 1st Respondent sufficiently to send an engineer as quickly as possible so as to ensure the Applicants' safety. There was no such concern shown by him.

- d. Failure to protect the deposit is a further example of disregard for statutory regulations.
 - e. Failure to engage with these proceedings, combined with his breaches set out above, indicate his lack of respect for the law.
32. The 1st Respondent has provided no evidence of his financial circumstances. The Tribunal know nothing about his circumstances other than evidence from the land registry document [76-78] which evidences his joint purchase of the property with his brother, the 2nd Respondent, in 2008 with the benefit of a mortgage. No evidence of mortgage payments has been provided.
33. The Applicants have confirmed that they paid the utility bills, and no deductions from the RRO are to be made in relation to utilities.
34. The 1st Respondent has not been prosecuted by the Council for not licensing the property.
35. 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 £22,800, which should be paid to the Applicants.

Name: Tribunal Judge Brandler **Date:** 21st May 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.