



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

Case reference : **LON/00BE/HMF/2021/0072**

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

Property : **Flat 4, 47 Southampton Way, London SE5 7SW.**

Applicant : **Mr. T. Reeves
Mr. J. Jenni
Mr. S. Dawkins**

Representative : **Mr Reeves**

Respondent : **Mr. A. Watson and Ms. J. Watson.**

Representative : **Mr Chipato of counsel**

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 MCIEH**

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

Date of decision : **23rd August 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 94 pages, a bundle of 126 pages from the Respondent and a response bundle from the Applicant of 25 pages, the contents of which have been noted.

Decision of the Tribunal

- 1. The Tribunal determines to deduct the applicants' water costs from the maximum RRO payable.**
- 2. It awards 90% of the remainder to make a Rent Repayment Order of £22683.60**
- 3. 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

- 4. The applicants made an application for a Rent Repayment Order on 8th March 2021. The applicants allege that the landlord has committed the offence of controlling or managing an unlicensed HMO.**
- 5. The applicants seek a RRO for the period 1st October 2019 to 1st September 2020, in the sum of £25,300.**
- 6. The Tribunal issued directions on 10th March 2021.**

The hearing

- 7. The hearing took place via video on 13th August 2021. The applicants attended and gave evidence, and Mr Reeves represented them. . The**

respondents attended and gave evidence. They were represented by Mr Chipat0 of Counsel.

The issues

8. 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) If the tribunal determines to make a Rent Repayment Order:-
- What is the applicable 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

9. Flat 4 is a three bedroom first floor flat with a communal living area, a shared bathroom and a shared kitchen. The property is in a complex of four similar flats in a converted industrial building in the London Borough of Southwark. The complex also includes a four bedroom house and an additional one bedroom property named 'The Ink Room' which has been used as a recreational space by the respondents and as a short term holiday let. During lockdown it was let below market rent to a friend of the respondents.
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. Mr Reeves lived in the property on an earlier tenancy, after that tenancy ended and after a short break, he found two other people, the other two applicants to take on a new tenancy of the property

12. The applicants signed the new tenancy, an Assured Shorthold Tenancy agreement on 16th September 2019 at a rent of £2300 pcm and paid a deposit of £2653. The tenancy was for a fixed term of 11 months. The respondents were named in the agreement as the landlord. Mr Richard Titchener was named as the property manager.
13. The property is situated within an additional licensing area in the borough of Southwark. The additional licensing scheme came into effect on 1st January 2016 and expired on 1st January 2021. Southampton Way was within the area designated for additional licensing. It required that all rental properties occupied as an HMO were licenced.
14. The appropriate HMO licence was not held during the period of the applicants' occupation and no licence application was made during this period.
15. The respondents are, along side Mrs Watson's parents, the long leaseholders of the property and own the entire complex. They have been the owners since 2006. Each of the respondents owns a 30% share of the complex; Mrs Watson's parents jointly own 40%. Renta income is divided in these proportions

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 Respondents were the owners of the property.

17. They produced evidence from Southwark Council that demonstrated that the property required licencing under its additional licencing scheme.

Argument of the respondent

18. The respondent concedes that the offence has been committed.

The decision of the Tribunal

19. The tribunal determines that the Respondents 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 Southwark Council, and the concession of the respondent.

What is the appropriate amount for the RRO?

21. The parties agreed that the maximum RRO is £25,300 and the 11 month period argued for by the applicants is appropriate.

The tribunal then heard arguments and submissions about deductions for utilities , the tenants' conduct, the respondents' conduct and heard the landlord's financial circumstances.

Deductions for utilities

22. The respondents argue that the costs for water and communal electricity should be deducted from the amount of the RRO awarded by the tribunal. The water bill for the building for the duration of the Tenancy amounts to £574. The electricity for the building is estimated around £1,133 per annum.
23. They have apportioned the costs on a per unit basis, therefore dividing the totals by five. The tribunal asked why not six, as the former Airbnb was also consuming these services so there were six rental units. . The respondents said that the division of costs was approximate, and it could be divided by six. They had divided the amounts by five because there were five properties on the title.
24. The applicants say that the communal electricity charges are reflective of the usage by other residents of the complex rather than that of the applicants.

25. Water charges are fixed rather than consumed at a rate the tenant chooses and they say that therefore they should not be deducted.
26. The communal area contained a washer dryer in an outdoor cupboard which was not accessible to the applicants and was used extensively by others. They say that this will have increased the costs. The respondents say that the washing machine ran from the meter for the house.
27. The applicants say that there is a lack of evidence provided by the respondents as to these costs.
28. They also suggest that the division of the expenses was unfair . There were 6 properties of uneven size on the complex including a large 4 bedroom house.

The tenants' conduct.

29. The respondents say that the applicants left the property filthy when they vacated the property at the end of the tenancy. This necessitated payment of a cleaner in the sum of £160. The respondents paid the Applicants the full deposit in any event, which they say demonstrates that they were good landlords.
30. The tenants say that they left the property in a proper condition having paid for a professional cleaner. They provide an invoice and photographs. Counsel for the respondents pointed out that the photographs were not dated and that the invoice was handwritten and unprofessional.
31. The tribunal asked Mr Watson if his complaint was that the applicants had not left the property cleaned to a professional standard, or that it was not cleaned at all. Mr Watson said that it was not cleaned to a professional standard.
32. The respondents raised some concerns about one of the applicants smoking and leaving cigarette butts in the communal areas. There was no evidence to support that this had been an issue for the respondents.
33. The parties agreed that they had always paid their rent on time and in full.

The respondents' conduct

34. The applicants argue that the failure to licence the property was a serious failing by professional landlords who should have known better.
35. They say that the result of failure to licence was that the necessary fire precautions were not put in place. There was no mains fire alarms and no emergency lighting. The respondents said that there were smoke alarms. Mrs Watson said that she thought that the front door to the property was a fire door but there was no evidence to support this. The respondents provided a fire risk assessment, but it was for flat 3. The respondents said that was a mistake and they could provide the report for flat 4.
36. The applicants say that the respondents have failed to take their responsibilities as landlords seriously. They point to the failure to protect the deposit and the failure to provide the 'How to rent guide'.
37. The respondents accept that they did not licence the property. This was because of the mistaken belief that licensing was only required if there were 5 or more tenants residing in the property.
38. The respondent argues that conduct unrelated to the rent repayment should not be taken into account in calculating the RRO. Therefore any allegation including the failure to protect the deposit and not being provided with the How to rent Guide that are unrelated to the offence are not to be taken into account.
39. In any event the respondents argue that the deposit was not protected due to a genuine oversight.
40. They also argue that because the respondents were unaware that the property was an HMO and therefore lack of compliance with fire alarm systems, emergency lighting or displaying the landlord or managing agents details was not due to disregard of their legal obligations. It was simply a natural consequence of the mistaken belief that the property was not an HMO.
41. The respondents say that they were great landlords. They respond quickly and sometimes within an hour after being notified of any issues in the property.

42. They point to the fact that Mr Reeves had lived in the property prior to the tenancy with two other tenants and requested to stay in the property y. In addition Mr Dawkins and Mr Jennion showed interest in renting a different property owned by the respondents after the expiration of the tenancy.
43. The applicants pointed out that there was a failure to licence the property at any point during the five year period of additional licensing requirements. None of the other properties in the complex are licensed.
44. The applicants suggested that disrepair was not dealt with as speedily as the respondents suggest citing a longstanding problem with maggots in the bathroom, and long standing issues with repairs to cracked windows in the property.
45. The respondent said that they did their best to resolve the maggot problem which was a consequence of poisoning rodents. They were unable to locate the dead body of the mouse which they believe caused the maggots.
46. They said that the cracks to the windows were largely cosmetic and resulted from the demolition of the next-door building. Mr Watson had got advice from a glazer who said that the windows were safe. Mr Watson said that repairs would require scaffolding and this seemed disproportionate and unnecessarily disruptive to the tenants.
47. The tribunal pointed out to Mr Watson that the photograph of the cracked window in the bathroom indicated that the cracking was extensive. As the window was hinged it would be opened and shut frequently and the tribunal was concerned that there was a safety risk. Mr Watson said he would look into this.

The financial circumstances of the respondents

48. The respondents own the complex plus a further four bedroom property in Brixton as well as a family home that has an annex that pre Covid was rented out for short term holiday lets.
49. The tribunal understand from the respondents that their property portfolio is as set out in the table below.

| Rental property | Value | Mortgage | Rental Income | notes | |
|----------------------------|--------------------|----------------------------------|---------------|--|--|
| 4 bedroom house in Brixton | £650,000 | £556,000 | £3,200 | This property had a six week void due to Covid. It was purchased in 1999 and if sold all the equity would go to pay CGT liabilities. | |
| Family Home with annex | £900,000 | £400,000 | | Previously rental income from annex of £28,000 per annum but due to Covid this income is nil. | |
| 4 bedroom house on complex | £650,000 - £700,00 | 3 mortgages on the whole complex | | Some void periods due to Covid | |
| Flat 1 | £300 - £325k | | £1100 pcm | | |
| Flat 2 | £475k | | £2200 | | |
| Flat 3 | 500k | | £2550 | | |

| | | | | | |
|-------------|------|--|-----------|--|--|
| Flat 4 | 500k | | £2100 pcm | | |
| The Inkspot | | | £200 pcm | | |

50. The applicants say that the land registry documents show that the properties were bought without the benefit of a mortgage and therefore there is very limited evidence of reduced financial circumstances.
51. The respondents say that the complex was bought with the benefit of a commercial mortgage, and they are unclear why the Land Registry documents are not accurate. The properties have extensive mortgages and there is limited equity and if they were to sell any properties, they would be liable for Capital Gains tax.
52. The respondents told the tribunal that they are currently going through divorce proceedings and splitting their assets. Their income is current reliant on income received from the properties they own and they have suffered a drop in income as a result of Covid. This has particularly impacted the substantial earnings they made on the holiday rental of the annex to the family home. They have been reluctant to restart this business because Mrs Watson and her son suffer from asthma and are at risk from Covid. Mrs Watson said that she has raised a further mortgage on Flat 3 Southampton Way to enable her to buy a small property as part of the divorce settlement. The tribunal has no doubt that after she moves out of the family home there will be sufficient opportunities for Mr Watson to generate income from the annex as he has in the past.

The decision of the Tribunal

53. The tribunal determines to deduct the applicants' share of the water costs which it calculates as one sixth of the water charges a sum of £96.00. It then makes an award of 90% of the maximum minus the deduction.

The reasons for the decision of the Tribunal

54. The tribunal determines that the costs of communal electricity are not deductible because they are not charges that the tenants had any control over and relate to an area of the complex outside of the tenancy. There is

no reference to these charges within the tenancy agreement. It does however determine that the tenants should pay a contribution to the water charges as they have had the benefit of water usage during the tenancy term and these charges are specifically identified in the tenancy agreement. The tribunal determines that the charge should be divided by six as there are six rental units at the complex.

55. The tribunal does not make any deduction for tenant conduct. The tribunal accepts that the applicants may not have had the property professionally cleaned to the standard required by the respondents but that was not what was required by the contract. The tribunal finds that the applicants did arrange for a cleaner and made good efforts to clean the property. Despite the doubts about the validity of the invoice of the respondents, the tribunal finds that the invoice was genuine.
56. The respondents have not provided any evidence that the property was not at the standard that it was when the tenants entered it. The tribunal notes that the respondents repaid the entire deposit. If the respondents had been dissatisfied with the cleaning the tribunal would have expected them to reclaim the amount from the deposit. The tribunal notes that the respondents did not provide an invoice for the cleaning they say took place.
57. Other than the allegations about the final cleaning the respondents had no substantive complaints about the applicants.
58. The tribunal has made a 10% deduction from the maximum RRO because of some evidence of good conduct by the landlord. In making its decision the tribunal takes into account that this was not a deliberate flouting of the law by the respondents. However, it has very serious concerns that a long-standing professional landlord has failed to comply with the local authority licensing requirements. If the respondents had complied, they would have had expert advice on fire precautions required. Failure to licence does place tenants at risk. The lack of a properly wired in fire alarm and emergency lighting are important defects.
59. The tribunal does not take into account the failure of the respondents to protect the tenancy deposit. The tribunal notes that proceedings are taking place elsewhere in relation to this.
60. The tribunal notes that in general the landlord provided a responsive repairs service. However, it is concerned by the failure to repair the cracked window, particularly the window in the bathroom which it considers placed the applicants at some risk.

61. The tribunal notes that Mr Watson said that he relied on a relationship of trust with his tenants. This may be acceptable for an accidental or amateur landlord. It is not acceptable for a professional landlord who is receiving a high rental income for his properties. The tribunal notes that both the respondents receive an income from the properties such that they have no additional employment. The tribunal also notes that Mrs Watson's parents also receive an income from the properties. In these circumstances the landlord should be proactive in ensuring that the property does not suffer from defects and ensure that he is abreast of the regulatory requirements of the local authority.
62. The tribunal has not taken the financial circumstances of the landlord into account. It has been given evidence of a relatively extensive property portfolio that is owned by four family members. These properties are mortgaged but there is no doubt that despite the mortgages the properties have a substantial value. The tribunal notes the values attributed to the properties by the respondents but considers that they are somewhat undervalued. The tribunal also notes that the respondents have received Covid loans and that their business has taken a hit during the pandemic. It also notes that the respondents will suffer some financial disruption as a result of divorce proceedings.
63. Nonetheless the tribunal does not consider that the financial circumstances of the respondents are such that the RRO should be reduced because of them.
64. 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 H. Carr

Date: 23rd
August 2021

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.

