



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

Case reference : **LON/00AG/HMK/2020/0004**

Property : **Room 2, Flat 131 Penshurst Buildings,
Queens Crescent, NW5 3QJ**

Applicant : **Ms Imanja Kintaert**

Representative : **Mrs Marianne Kintaert**

Respondent : **Mrs Qi Jiang**

Representative : **Dr Jiaging Liao**

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 S Wheeler MCIEH, CEnvH**

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

Date of hearing : **25th August 2022**

Date of decision : **1st September 2022**

DECISION

Decision of the tribunal

(1) The respondent shall pay to the applicant a Rent Repayment Order in the total sum of £1730.75. This sum to be paid within 28 days of this order.

- (2) The respondent is further ordered to repay the applicant the sum of £100 for the fee paid to this tribunal in relation to this application within 28 days of this order.**

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 seeking a Rent Repayment Order (“RRO”) under section 41 of the Housing and Planning Act 2016. The application was received on 14/02/2020 and it alleged that Qi Jiang, “the respondent” landlord, failed to obtain an HMO licence for 131 Peshurst Buildings, Queens Crescent, London NW5 3GL (“the property”), in breach of the HMO licensing requirements operated by the London Borough of Camden (“the Council”).
2. Imanja Kintaert “the applicant” tenant occupied room number 2 in the property under an assured shorthold tenancy (“AST”) agreement commencing on 06/09/2019 at a monthly rental of £750. This included hot water and heating. Electricity was paid on a rota basis by the tenants by putting credit onto a key meter.
3. The property is a 2 bedroom, 1 living room flat in a purpose built block that the respondent had purchased on 16/10/2012 for £247,500. She lived in the property and took in lodgers. When she moved out of the property to go and live with her parents, she instructed an agent to manage the property and AST agreements were granted to 4 people from three households. One room was let to a Polish couple, one room was let to the Applicant, and one room was let to a male student. The tenants shared kitchen and bathroom facilities only, the living room being used as one of the let rooms.
4. On 15/01/2020 the Council inspected the property and wrote to the respondent [R81] and her agent on 21/01/2020. In that letter they confirm their findings that the property is operating as a HMO, that no application has been received by them for a licence, and that therefore an offence is being committed under section 72(1) of the Housing Act 2004 for failing to license the property.
5. The respondent applied and paid for an HMO licence for the property on 30/01/2020. The licence granted was for three people from two separate households only.
6. Further investigations by the Council resulted in the Council issuing a Notice of Intent to impose a financial penalty [R111] and further to representations by the respondent, on 22/05/2022 the Council confirmed that no further action would be taken in respect of the breaches at the property and the enforcement case was closed [R113].

7. The relevant period claimed by the applicant in relation to a RRO is 6/09/2019-29/01/2020:

- 25 days in September 2019 ($\pounds 750 \times 12 / 365 \times 25 = \pounds 616.44$)
- 3 full months, October, November, December 2019 = $\pounds 2,250.00$
- 29 days in January 2019 ($\pounds 750 \times 12 / 365 \times 29 = \pounds 715.07$)

Total $\pounds 3,581.51$

THE HEARING

8. 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.

9. This has been a face to face hearing at Alfred Place. The applicant's bundle contained 141 pages. Any reference to that bundle of documents in this decision will be made in square brackets and referred to as "A" followed by the electronic page number. The respondent's bundle contained 219 pages and any document referred to will be referenced as "R" followed by the electronic page number.

10. A case management hearing was held on 17/11/2021 and directions were issued. That hearing was concerned both with this application and an application by the couple living in Room 1 at the property. Originally the two cases were to be heard concurrently and the application fee for both were combined and split between Room 1 and Room 2. The applicant from Room 2 paid $\pounds 100$ and applied for help with fees. However, it became apparent during the course of the case management hearing that this would be difficult because of the requirements for interpreters in German (for Room 2), Polish (for Room 1) and Chinese Mandarin (for the respondent). The hearings were then listed to be heard consecutively. In any event the case in relation to room 1 was withdrawn.

11. The parties and their representatives were directed to personally attend. However, on the day of the hearing the applicant failed to attend. She was represented by her mother, Mrs Kinaert, who was assisted by a German interpreter. At the start of the hearing she confirmed that she wished to use the interpreter only if she did not understand a particular word. Indeed, Mrs Kinaert's English was very good and the interpreter was only rarely utilised.

12. The respondent, Mrs Qi Jiang was present at the hearing, accompanied by her daughter/representative Dr Liao. The respondent had the benefit of an interpreter fluent in Chinese Mandarin who assisted her throughout the hearing.

PRELIMINARY ISSUES

The respondent's late evidence

13. Just prior to the hearing the respondent handed up a skeleton argument and sought to adduce further written evidence in the form of further witness statements from the respondent and her representative daughter. The reason given for this late admittance of evidence was in the main because the representative is a busy doctor and did not have time to deal with this earlier. The representative explained the contents of the further documents were a new membership of a Landlord association and inadmissible documents relating to attempts to contact the applicant to attempt settlement.

14. The tribunal could see no good reason for admitting the late evidence and permission to adduce this was refused.

The applicant's failure to attend the hearing

15. A further preliminary issue was whether to proceed with the hearing at which the applicant was absent. Neither party wanted to adjourn the matter. Dr Liao explained that she is a doctor in Newcastle and she has no further time to allocate to this matter from her busy working life

16. Mrs Kinaert made no application to postpone the matter prior to the hearing, despite knowing that her daughter had left the UK some two weeks earlier. Nor had she alerted the tribunal to the fact that her daughter would not attend the hearing, contrary to the direction that the applicant must personally attend. Mrs Kinaert suggested that her daughter would have been too upset by the proceedings had she attended, but that we could speak to her on the telephone. As the applicant had failed to attend the hearing, and no witness statements had been produced to support the applicant's position, with the added complication that the applicant was outside the UK, the tribunal declined the offer to talk to her on the telephone.

17. Mrs Kinaert initially stated that she didn't know why her daughter was not at the hearing. She went on to explain that the applicant had been working with a group of disabled people in London, that she had broken her thumb, returned to Vienna some two weeks earlier and that it was now too expensive to fly back to London. She confirmed she would return on 01/11/2022 and that it in any event it would have been too stressful for her to have been at the hearing.

18. Mrs Kinaert confirmed that she had flown into London the day before the hearing and that she manages her daughter's affairs. She referred to her daughter as having a disability. Although she gave the name of the syndrome orally to the tribunal, there was no medical evidence available in this regard. Mrs Kinaert confirmed that the applicant had signed the AST agreement herself, with Mrs Kinaert present, that she had also made the application for her own bank account, with Mrs Kinaert present, that Mrs Kinaert has an Austrian power of attorney [A15]. None of this gave the

tribunal an understanding of how the applicant was disabled either for the Equality Act 2010 or otherwise how it could affect the tribunal's consideration of the applicant's conduct. In any event, the power of attorney stated that it was valid until 20/10/2020 and Mrs Kinaert confirmed orally that her daughter did not lack capacity.

19. Contrary to the suggestion that the applicant was restricted in some unquantified way, Mrs Kinaert explained that the applicant was a youth ambassador and had a job at the Roundhouse working with a group of deaf musicians, teaching them drums. She also advocates for other young people. She also told the tribunal that the applicant was able to come and go from the property sometimes very late at night, alone. The applicant had previously studied at Westminster University and then transferred to another college.

20. Mrs Kinaert tried to introduce evidence of a carer who she said she paid to help the applicant, but nothing more than the name 'Jiaxiang (Eve)' [A18] and a photograph of another person was provided [A93]. No witness statement was provided from this person nor was a contract produced to support the claim that this was a carer for the applicant. In relation to the applicant's medical needs, the only evidence was a photograph of tablets, which appeared from the containers to be mainly vitamin tablets [A94]. There was no explanation or medical evidence to explain whether or how the applicant is disabled and what reasonable adjustments would have assisted.

21. The issues in dispute appeared to the tribunal to be limited to conduct and the respondent's financial circumstances, the other issues not being in dispute. On that basis and because neither party wished to adjourn the matter, the tribunal considered that it was in the interests of justice to proceed in the absence of the applicant. This was on the proviso that the applicant's representative was to represent the applicant and not to give witness evidence herself, there being no witness statement on file from her.

22. This proviso proved difficult at times, as Mrs Kinaert attempted to admit new evidence on many occasions and was often not able to locate documents in her own bundle for some reason. For that reason, when a document was referred to, this was read out to Mrs Kinaert to assist her.

23. On several occasions Mrs Kinaert said she did not feel well, and on one occasion she was given permission to leave the hearing to self-administer what we were told was a Thiamine injection which she said would help her to concentrate. She was asked on each occasion whether she was well enough to continue with the hearing and on each occasion she confirmed that she was and that her doctor had given her the all clear in that respect.

Occupation and rent paid

24. It is not in dispute that the applicant occupied the property throughout the period claimed 06/09/2019-29/01/2020 and that she paid the

respondent landlord £750 pcm which includes heating, hot water and gas for the cooker. Details of those charges were provided by the respondent.

25. The heating and hot water are paid via the service charge at £913.18 pa [R138]. Dividing this between the three households occupying the property at the relevant period, this equates to £304 pa (£25.33 pcm or 83p per day) per household. The gas bills for the relevant period total approximately £74 [R167-168]. The charge for each household is therefore £25 for the period. Approximately £120 is deducted from the rent paid by the applicant for these utilities. The rent paid by the applicant for the relevant period net of heating and gas charges is therefore £3461.51.

26. The applicant's representative asserted that no UK benefits were paid to the applicant, and the respondent did not challenge this assertion.

27. It is not in dispute that the property should have been licensed as an HMO but was not. The respondent's position is that as soon as she was made aware of this requirement an application for an HMO licence was made and paid for on 30/01/2020. Whilst acknowledging that she was in breach, she explained that this was her only rental property, that she had instructed an agent who should have advised her correctly, she had some health issues and language restrictions. She has not been convicted in relation to the lack an HMO Licence.

Conduct

28. Mrs Kinaert complained that the deposit had not been protected at the time of the tenancy. However, there is evidence in the bundle that it was protected on 30 October 2019 [A116] although this does exceed the 30 day period permitted to protect a deposit.

29. Mrs Kinaert tried to introduce evidence in relation to alleged harassment of the applicant by the Polish couple. There was no evidence to support these assertions although there was evidence in the bundle that Mrs Kinaert had been arrested, put in handcuffs and kept in a police cell for 11 hours. This she said was a mistake by the police.

30. During the course of the hearing Mrs Kinaert alleged that the landlord should have assisted the Applicant because of her disability. The difficulty she had with this argument was that no evidence had been produced to clarify how the Applicant was disabled and what reasonable adjustments she may require. Similarly, the assertion that the alleged paid carer had not been allowed to enter the property was not supported in any witness statement.

31. Mrs Kinaert did concede later in the hearing that she could not blame the respondent for the complaints she made in relation to the Polish couple, although she did suggest at one point that the respondent had failed to check the Polish couple's immigration status, and alleged that the

couple were not married although when she was asked to clarify what relevance that had to these proceedings, she did not answer.

32. Finally, she made no submissions to suggest that the respondent had demonstrated poor conduct, other than protecting the deposit late and failing to apply for an HMO licence.

33. The documentary evidence is clear on this point, the respondent let the property to four people from three households. Although she did apply for a licence promptly after being told that she was in breach, the Council in their assessment of the property found that she should only be permitted to rent two rooms to three people as a maximum. She therefore profited from overcrowding the property.

34. The respondent asserts that the applicant and her representative caused nuisance to the other occupants of the property as well as to the respondent herself. The respondent was challenged as to why she believed the other occupiers and not the applicant. She had taken a view on the documentary evidence produced in the form of What'sApp messages from the Polish couple, an email from the student's parents, and their own experiences of being harassed by the applicant's mother herself. Her presumptions did not appear unreasonable on the face of the evidence.

35. The evidence before the tribunal is as follows:

- (a) Photos from the Polish couple demonstrating, they say, that the applicant did not clean the bathroom or kitchen floor [R181-183]. In response Mrs Kinaert stated that her daughter is allergic to mould and cannot clean.
- (b) An email from the student's parents [R186] complaining to the agent that:
 - *"the other tenants wishing to annoy each other because they don't get on"*
 - *"Bens neighbour talking loudly to her mother late in the evening (well after 12 o'clock)"*,
 - *"Bens Neighbour singing loudly (out of hours) which we assume is to annoy the other parties in the house"*
 - *"We also understand that Ben on one occasion was called by the landlady at around 11.55 one night to wake up Bens neighbour because her mother could not get hold of her"*
 - In response Mrs Kinaert stated the Ben had apologised to her for his parents' email. However no statement to that effect was included in the bundle.
- (c) An incident on 27/10/2019 at 23:59 when either Mrs Kinaert or the applicant's friend contacted the respondent by What'sApp asking that the applicant be located because she could not be contacted [A120]. Although the originating message is not included in the bundle, the response from the respondent has been included and states, *"Mr Ben said she is fine....we are not obligated to take care of her condition...."*
- (d) An allegation by the agent that Mrs Kinaert called him a liar [A122]

- (e) Complaint from the Polish couple about the applicant's mother, Mrs Kinaert. By a WhatsApp message [R183] they complain: *"The situation is very bad. The flat is dirty. For the new 3 months only me and Svitlan were cleansed.(sic). Imanji's mother was very aggressive and threatened us with the police. She insulted Svitlan very much. Svitlana was crying and she felt very bad. I don't know what to do next. We are very afraid of coming to Imanji's mother's apartment again"*.
- (f) Then a further message from the Polish couple stating *"her mother is again. She arrived yesterday. It greatly reduces the standard of renting an apartment."* [R184]

FINDINGS

36. The tribunal finds that the respondent landlord had control of the property and failed to apply for the requisite HMO licence until 30/01/2020.

37. The respondent did not have a reasonable excuse for not having a licence or making an application.

38. The rent paid by the applicant for the relevant period net of heating and gas charges paid was £3461.51.

39. The tribunal found beyond reasonable doubt that the respondent was in breach of her requirement to licence the property under the HMO licensing schemes managed by the Council.

40. Therefore, the only further issue for determination by the tribunal is the amount of the RRO.

41. 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.

42. There is no evidence to demonstrate that the landlord has been prosecuted.

43. The tribunal finds that the respondent demonstrated poor conduct as follows:

- (i) failure to apply for an HMO licence until she was notified by the Council, although she did this promptly upon notification
- (ii) profiting from letting the property to more tenants that was subsequently permitted under the terms of the licence
- (iii) protecting the deposit late, albeit protecting it by 30 October 2019

44. The tribunal finds that the applicant demonstrated poor conduct as follows:

- (iv) Failing to clean the bathroom and kitchen after her use of those communal areas
- (v) Causing a nuisance to the other occupiers in the property by singing and talking loudly late into the night in conjunction with her mother Mrs Kinaert.
- (vi) Failing to attend the hearing of her own application despite having been directed to, and despite adequate notice of the hearing, choosing instead to leave the country some two weeks before hand.

45. Not much is known about the respondent's financial circumstances. Although some bank statements which demonstrated some large payments which were reported to be mortgage payments to a friend, none of that was conclusive. The tribunal does know that the property is worth in excess of £250,000. Even if the respondent borrowed, as is said, £24,000, that is a small mortgage to value of the property. The Tribunal was told that the Respondent was previously a caterer but had been out of work since the start of the Pandemic. The Tribunal did not find this compelling. She is earning an income from her rental property and was in employment during the period relating to this claim. The Tribunal did not find any of this evidence persuasive so as to reduce the amount of the RRO.

46. 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, as well as principles set out in Williams v Parmer & Ors (2021) UKUT 244 (LC), We consider that a fair award should be made to the applicant in the sum of 50% of the net rent paid for the period. Accordingly, we find that an RRO should be made against the respondent in the sum of £1730.75 which should be paid to the applicant within 28 days of this order

47. The respondent is further ordered to repay to the applicant the sum of £100 being the tribunal fee paid by her in relation to this application. This to be paid within 28 days of this order

Name: Judge D. Brandler **Date:** 1st September 2022

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.

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.