



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

Case reference : **LON/00BG/HMF/2020/0076**

HMCTS code : **P: CVPREMOTE**

Property : **Flat 19, Tannery House, 6 Deal Street, London E1 5AG**

Applicants : **(1) Aris Gyalui
(2) Adriel Aiach-Kohen**

Representative : **Ms Clara Sheratt, Justice for Tenants**

Respondent : **Renee Daff**

Representative : **In person**

Tribunal members : **Tribunal Judge I Mohabir
Mr S Wheeler MCIEH CEnvH**

Date of hearing : **15 December 2021**

Date of decision : **1 March 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has been consented to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

Introduction

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) for a rent repayment order against the Respondent in respect of Flat 19, Tannery House, 6 Deal Street, London E1 5AG (“the property”).
2. The salient facts of this application are a matter of common ground. These are:
 - (a) that the Applicants jointly occupied the property commencing on 23 September 2018 until 22 June 2019 pursuant to an assured shorthold tenancy granted by the Respondent.
 - (b) that the Respondent was the landlord at all material times and the “person having control” and/or the “person managing” within the meaning of section 263 of the Housing Act 2004 (“the 2004 Act”) as the rent was paid by the Applicants to her (see below).
 - (c) that the property was unlicensed as required by section 85(1) of the 2004 Act (see below). The property was situated within a selective licensing area as designated by Tower Hamlets Council. The selective licensing scheme came into force on 01/10/2016. Therefore, the Respondent had committed an offence under Part 3 s.95(1) of the 2004 Act.
 - (d) that the total rent paid by the Applicants to the Respondent during their tenancy was £15,210 and £7,020 respectively, being £22,230 in total.
3. Subsequently, the Applicants made this application for a rent repayment order for the period of their occupation during which the property was let unlicensed.

Relevant Law

Requirement for a Licence

4. Section 79 of the Act provides:

“Licensing of houses to which this Part applies

(1) This Part provides for houses to be licensed by local housing authorities where—

- (a) they are houses to which this Part applies (see subsection (2)), and
- (b) they are required to be licensed under this Part (see section 85(1)).

(2) This Part applies to a house if—

- (a) it is in an area that is for the time being designated under section 80 as subject to selective licensing, and
- (b) the whole of it is occupied either—
 - (i) under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
 - (ii) under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4)...”.

Making of rent repayment order

- 5. Section 40(1) of the 2016 Act confers the power on the First-tier Tribunal to make a rent repayment order in relation to specific offences which are listed in a table at section 40(3) of the Act. Relevant to these proceedings is the offence described at row 6 (control or management of unlicensed house) of the table.
- 6. Section 43 of the Housing and Planning Act 2016 (“the Act “) provides:
 - “(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).

Amount of order: tenants

- 7. Section 44 of the Act provides:
 - (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

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of

the period of 12 months ending with the date of the offence

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.”

Hearing

8. The remote video hearing in this case took place on 15 December 2021. The Applicants were represented by Ms Sheratt from Justice for Tenants. The Respondent appeared in person from Australia where she was residing.
9. The Respondent’s primary case was that because she was unaware of the requirement to obtain a licence she was afforded the defence of reasonable excuse¹.
10. In the alternative, in June 2020 she applied for a licence she was advised that the property was exempt from the licensing scheme because she had stated on the application form that the property was her residential address from time to time. Therefore, the exemption operated retrospectively.
11. Save for confirming the evidence in their respective witness statements, the Applicants gave evidence about the minor decorative disrepairs caused to the

¹ see ***IR Management Services Ltd v Salford City Council*** [2020] 8 UKUT 81(LC) and ***Thurrock Council v Khalid Daoudi*** [2020] UKUT 209 (LC) at paragraphs 26-27

walls of the property as a result of hanging various items on the walls. The Tribunal was told that this was the subject matter of a deduction of £2,292 from the tenancy deposit held under the Tenancy Deposit Scheme and was satisfied that it was not relevant to this application.

12. In cross-examination, the Respondent stated that, in addition to this property, she owned another property in the same block on a shared ownership basis and another property in Greenwich, all of which were let as part of her pension plan. In addition, the Respondent owned another in Australia, which was also rented. She currently resided with her father in Australia.
13. The Respondent said that, save for the omission to obtain a licence, she had adhered to all of her other statutory obligations as a landlord. She was a member of the National Landlords Association in this country until 2014. Nevertheless, she still used their website to carry out reference checks for prospective tenants and still received their emails about relevant legal changes affecting landlords.
14. The Tribunal then heard closing submissions from Ms Sheratt who primarily contended for an award of 100% of the rent paid by the Applicants. In the alternative, she contended for an award of 90%.
15. By reason of the Respondent's admission that the property did require a licence during the period of the Applicants' tenancy and that there was no licence applied for, it was not necessary for the Tribunal to make any finding in this regard.
16. It follows that the only issues before the Tribunal were whether a rent repayment order should be made against the Respondent and, if so, to assess the quantum of any such order.
17. Dealing firstly, with the issue of whether a rent repayment order should be made, The Tribunal was satisfied that the Respondent's failure to apply and obtain a licence was not reasonable in the circumstances and/or that her ignorance of this fact did not avail her of the defence of reasonable excuse.
18. In *Thurrock Council v Khalid Daoudi* [2020] UKUT 209 (LC) at paragraph 26-27, it was held by the Upper Tribunal that, "...ignorance of the need to obtain a licence may be relevant to the issue of culpability. Although, as the Government's Guidance points out, a landlord is running a business and ought to be expected to understand the regulatory environment in which that business operates, not all businesses are the same. A decision maker might reasonably take the view that a landlord with only one property was less culpable than a landlord with a large portfolio... No matter how genuine a person's ignorance of the need to obtain a licence, unless their failure was reasonable in all the circumstances, their ignorance cannot provide a complete defence.

19. On the Respondent's own case, she is a professional landlord. She had been a member of the National Landlords Association and kept herself updated through its website of any legal changes affecting regulatory environment for landlords. The inference to be drawn is that the requirement to obtain a licence would also have been widely published on the website. Therefore, the Tribunal concluded that the Respondent's ignorance of this requirement did not provide her with a complete defence.
20. For the avoidance of doubt, the Tribunal was also satisfied, as a matter of law, that the purported exemption obtained by the Respondent in June 2020 did not operate retrospectively because there is no provision in the Act or the 2004 Act that permits this. The Tribunal made no finding of fact about whether the Respondent was resident in the property at the time the exemption was granted.
21. Therefore, the Tribunal concluded that a rent repayment order should be made in favour of the Applicants.
22. Turning to the issue of quantum, guidance was given by the Upper Tribunal in **Vadamalayan v Stewart** [2020] UKUT 0183 (LC) as to how the assessment of the quantum of a rent assessment order should be approached. It was held in that case the starting point is that any order should be for the whole amount of the rent for the relevant period, which can then be reduced if one or more of the criteria in section 43(4) of the Act or other relevant considerations require such a deduction to be made. The exercise of the Tribunal's discretion is not limited to those matter set in section 43(4).
23. This decision was followed by the Upper Tribunal decision in the case of **Williams v Parmar** [2021] UKUT 244 (LC) where the Upper Tribunal held that when considering the amount of a rent repayment order the Tribunal is not restricted to the maximum amount of rent and is not limited to factors listed at section 44(4) of the Act.
24. The Upper Tribunal held that "*there is no presumption in favour of the maximum amount of rent paid during the period*". It was noted that when calculating the amount of a rent repayment order the calculation must relate to the maximum in some way. Although, the amount of the rent repayment order can be "*a proportion of the rent paid, or the rent paid less certain sums, or a combination of both*". Therefore, there is no presumption that the amount paid during the relevant period is the amount of the order subject to the factors referred to in section 44(4) of the Act.
25. The Upper Tribunal further went on to highlight that the Tribunal is not limited to those factors referred to in section 44(4) and that circumstances and seriousness of the offending landlord compromise part of the "*conduct of the landlord*" and ought to be considered. The Upper Tribunal considered that the Tribunal had taken a very narrow approach of section 44(4)(a) by stating "*meritorious conduct of the landlord may justify a deduction from the starting point*". It concluded that the Tribunal may in appropriate cases order a lower than maximum amount if the landlord's conduct was relatively low in the "*scale of seriousness, by reason of mitigating circumstances or otherwise*".

26. The Upper Tribunal went on to lower the amount of the rent repayment orders made by the Tribunal by applying a reduction of 20% and 10% on the basis that whilst the landlord did not have any relevant previous convictions, she was also a professional landlord who had failed to explain why a licence had not been applied for and the condition of the property had serious deficiencies.
27. The Upper Tribunal also confirmed that in cases where the landlord is a professional landlord, and the premises has serious deficiencies more substantial reductions would be inappropriate even if the landlord did not have any previous convictions.
28. This decision highlights that there is no presumption that rent repayment orders will be for maximum rent, and that while the full rent was in some sense still the “starting point” that did not mean that the maximum rent was the default. The amount of the rent repayment order needs to be considered in conjunction with section 44(4) factors and the Tribunal is not limited to the factors mentioned within section 44(4). This means that even if a landlord is guilty of an offence, if their offence is not a particularly serious one, they will expect to be ordered to repay less than the full rent paid during the relevant period.
29. The facts of this case are analogous to *Williams* is so far as it concerns a professional landlord who failed to obtain an HMO licence (for approximately a 9 month period of time here).
30. The financial circumstances of the Respondent are unknown because she made no financial disclosure. As the Tribunal understands it, the Respondent has not been convicted of any offence. Therefore, the only section 44(4) consideration by the Tribunal was the conduct of the parties.
31. There was no suggestion that the Applicants had rent arrears or had breached any terms or conditions of the tenancy agreement save for the decorative disrepair to the walls of the property. The Tribunal also had regard to the fact that the Respondent had no reasonable explanation or excuse for not obtaining an HMO licence.
32. Accordingly, the Tribunal made a rent repayment order in favour of the Applicants in the total sum of say £17,784, which represents approximately 80% of the total rent paid by them. This sum is to be apportioned between the Applicants in accordance with their respective rent contributions. The total amount of the rent repayment order is payable by the Respondent within 14 days of this decision being issued to the parties.
33. In addition, the Second Respondent is ordered to reimburse the Applicant the fees of £300 paid to the Tribunal to have the application issued and heard. This sum is also to be paid by the Second Respondent within 14 days of this decision being issued to the parties.

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).