



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

**Case References** : **LON/00AL/HMF/2022/0139  
CVP/video**

**Property** : **44 Rathmore Road, London, SE7 7QW**

**Applicants** : **Roxanne Porter Robinson**

**Representative** : **Justice for Tenants (Mr Neilson)**

**Respondent** : **Mr M J Johnson**

**Representative** : **Mr E Ross of Counsel**

**Type of Application** : **Application for a rent repayment order**

**Tribunal Members** : **Judge F J Silverman MA LL.M  
Ms R Kershaw BSc**

**Date of hearing** : **02 February 2023**

**Date of Decision** : **03 February 2023**

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**DECISION**

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## **Decision of the Tribunal**

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicant in the sum of £4,717.50.**
- 2. Additionally, the Tribunal makes an order against the Respondent and in favour of the Applicant in the sum of £300 in repayment to him of his application and hearing fees.**
- 3. The total award to be paid forthwith by the Respondent is therefore £5,017.50.**

## **Reasons**

- 1 The Applicant made an application to the Tribunal under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as 44 Rathmore Road, London, SE7 7QW (the property) for the period of her occupation of the property (as detailed below) during which time the property was unlicensed.
- 2 Rent for the property was payable to the Respondent as landlord and freeholder.
- 3 The remote video hearing of this matter to which both parties had consented or not objected, took place before a Tribunal on 02 February 2022 at which the Applicant was represented by Mr Neilson from Justice for Tenants and the Respondent by Mr Ross of Counsel.
- 4 Current restrictions prevented the Tribunal from carrying out a physical inspection but they were able to view the property and its location via Google.
- 5 Both parties had filed bundles of documents for the hearing including skeleton arguments. Prior to the hearing the Tribunal had read all of the documents submitted by each party. Relevant documents are referred to below.
- 6 The Tribunal understands that the subject property comprises a four bedroom terraced house which, during the entire time to which this claim relates, was occupied by four people from separate households who shared common facilities.
- 7 With effect from 01 October 2017 the property had become subject to an additional licensing scheme run by Greenwich London Borough Council. It is common ground between the parties that the property did not have a licence during the entire time when the Applicant and her co-tenants were in occupation. The Respondent made an application for a licence on 17 December 2021.

- 8 A landlord who fails to obtain a valid licence is committing a criminal offence under s72(1) Housing Act 2004.
- 9 The Respondent maintained that he had not known that the property needed a licence and had not been told by his agents that a licence was required.
- 10 He used a firm of estate agents only in connection with the actual letting of the property but during the tenancy itself assumed the responsibility for its maintenance and upkeep including organising appropriate professionals to enter and carry out repairs.
- 11 Although initially the Respondent maintained that he had a reasonable excuse for not having a licence because his agents had not told him that a licence was needed. However, in his oral evidence to the Tribunal he accepted that his agents had not been under an obligation or duty to inform him about licencing because they were only concerned with the creation of the tenancy itself including finding suitable tenants. In any event, the general law of agency would render the Respondent liable for his agent's actions omissions and imputed knowledge.
- 12 The Respondent therefore accepted that the property had needed a licence and that it did not have one. Further, he accepted that he had committed an offence pursuant to s.72(1) of the Housing Act 2004 and that the Tribunal should make a rent repayment order.
- 13 The argument before the Tribunal was therefore confined to quantum.
- 14 For the Applicant it was argued that she had on numerous occasions needed to message the Respondent about defects or wants of repair to the property. These included faulty windows, a defective bath panel, a broken light fitting, problems with the boiler and a lock on the porch door as evidenced in a series of text messages (Applicant's response page 8 et seq).
- 15 The Respondent appears to have reacted quickly to most of these messages and to have arranged for repairs to be carried out. Given that many of these events were taking place during lock downs or other restrictions caused by the Covid19 pandemic, the Tribunal does not criticise the Respondent's responses to these complaints most of which appear to have been caused by normal wear and tear and are not necessarily indicative of a property in poor condition.
- 16 The Applicant also complained to the Tribunal that the Respondent was in breach of a number of regulations eg by not displaying the landlord's name and address at the property, having insufficient fire protection equipment in the property including lack of fire doors, not being given copies of EPCs gas certificates etc.
- 17 The Tribunal views lack of fire precautions to be a serious matter. In the present case however, it accepts the Respondent's evidence that the property has the benefit of a wired in fire alarm system and that the local authority did not require fire doors to be fitted to first floor rooms. The kitchen door was fire resistant thus the only additional work which was needed in this area was in relation to the lounge area doors.

- 18 The evidence in relation to the allegation relating to lack of correct paperwork was inconclusive. The Applicant said she had not received the correct documents. The Respondent said that the letting agents would have supplied the relevant documents and that the gas certificate had been left in the kitchen with the boiler.
- 19 Although the Respondent conceded that he had received all the rent which had been due from the Applicant she had been consistently late in making payment and he had needed to send her text messages each month to remind her that her payment was overdue. The Tribunal notes that although payments were made shortly after their due date there was no evidence that any formal steps to the recovery of arrears had ever been necessary.
- 20 In addition to the subject property which the Respondent has owned and let since 2008 the Respondent also owns one other letting property and is a Director of a property development company. This letting was professionally arranged with formal documentation and was not an ad hoc informal arrangement between family and friends. The property had previously been let to unrelated tenants and the correspondence indicates that the Applicant and her co-tenants were encouraged to move into the property quickly because the Respondent landlord did not want to suffer loss of rent through a void period. The Tribunal bears in mind that the Respondent does not have a large portfolio of rental properties but nevertheless regards him as a professional landlord having owned this property for 14 years and having current interests in other property related ventures.
- 21 The Applicant has demonstrated to the Tribunal's satisfaction, and the Respondent has conceded, that that the property required a licence during the whole period covered by this application and that it did not have one.
- 22 The Tribunal was therefore, satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72 (1) of the Housing Act 2004 (as amended), namely, that, he had been in control or management of an unlicensed house.
- 23 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Housing & Planning Act 2016. The Applicant makes a claim for the period 23 October 2020 to 22 October 2021. Any award made by the Tribunal could not exceed the total rent received by the Respondent for this period of time.
- 24 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 25 The Respondent is a property professional and should therefore have been aware of his responsibilities as a landlord and of the need to licence the property.
- 26 There is no evidence that the Respondent had previous convictions of this kind or that the Council had considered the Respondent's offence to be sufficiently serious to prosecute it. However, in assessing the award to be made to the Applicant, the Tribunal does have regard to the Respondent's conduct. In the present case although a number of allegations were made by the Applicant

- (discussed above) in the Tribunal's opinion none of them has been serious enough to adversely affect the tenant's use and enjoyment of the property.
- 27 The purpose of the award however, is to discourage landlords from renting out non-compliant property by depriving them of the income derived from it.
  - 28 The Tribunal did not have details of the Respondent's financial circumstances but no formal plea of financial hardship was made on his behalf. A Tribunal order requires payment in full and not by instalments.
  - 29 The Applicant had not claimed any benefits during the period of her occupation.
  - 30 The parties agreed that no deductions were to be made from the award in relation to payment for services.
  - 31 There is no substantiated evidence of any misconduct on the part of the Applicant although the Tribunal is concerned that the Applicant may have overstated complaints about disrepair and notes her persistent lateness in paying rent the reason for which, although explained to the Tribunal, appears not to have been explained to the Respondent at the time.
  - 32 The Applicant paid £462.50 per month as rent. Evidence of payment was produced to the Tribunal (page 40) and was not disputed by the Respondent.
  - 33 In assessing the award the Tribunal also had regard to the guidelines set out in *E Acheanpong v Roman & Others* [2022] UKUT 239 (LC).
  - 34 The period for which rent must be repaid by the Respondent is 23 October 2020 to 22 October 2021. This amounts to £5,550.
  - 35 The starting point for assessing the amount of the award is 100%. The Tribunal rejects the Respondent's assertion that the starting point should be 25% and also the Applicants proposed figure of 85% neither which can be objectively justified in the light of the above case.
  - 36 The Tribunal rejects both parties' reliance on *Hallett v Parker* [2022] UKUT 165 (LC) where a letting agent failed to inform a landlord of the need for a licence. In this case (and unlike Hallett) the Respondent accepted that the estate agents were only engaged to deal with the formalities of creation of the tenancies and were not under a duty to inform him that a licence was required for the property to be let as a HMO.
  - 37 Further, *Aytan v Moore* [2022] UKUT 27 suggests that "... a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent". The Tribunal

considers that the ruling in Aytan is equally applicable in the present case.

38 The property became subject to the licensing provisions in October 2017. A licence was applied for more than three years later in December 2021.

39 Although minor criticisms have been made of the Respondent's management of the property the Tribunal also acknowledges that he came to the hearing with an acceptance of his wrongdoing, having now corrected that with the applications for licences on both of his rental properties. The offence had however been ongoing for several years before a licence application was made. Against that is measured the persistent late payments by the Applicant and in respect of the latter's conduct the Tribunal deducts 15% from the total award which compensates for the inconvenience caused to the Respondent in having to chase the rent on a regular basis but nevertheless reflects his admission of his error in failing to licence the property. This results in an award of £4,717.50 payable to the Applicant forthwith.

40 The Applicant is also requesting the Tribunal to order the Respondent to repay the application and hearing fees (£300). This application is granted.

41 The total award payable to the Applicant is therefore £5,017.50.

#### 42 Relevant Law

##### Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 ("the Act") provides:

"(1) The Second-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

16. Section 44 of the Act provides:

(1) Where the Second-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.”

**Name:** Judge Frances Silverman  
as Chairman

**Date:** 03 February 2023

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the Second-tier Tribunal at the Regional office which has been dealing with the case.

Under present Covid 19 restrictions applications must be made by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.