



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

Case References : **LON/00AP/HMF/2022/0102**

Property : **160C Muswell Hill Road, N10 3NG**

Applicants : **Harrison Ramsdale
Matthew James Congdon
Conor Keegan**

Representative : **Represent Law, Mr Barrett
(Ref : Ref: NRA 13504-RRO)**

Respondent : **Jalay Enterprises Ltd**

Representative : **Mr N Young, Londinium Solicitors**

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

Tribunal Members : **Judge F J Silverman MA LLM
Mr A Fonka MSc MCIEH CEnvH**

Date of hearing : **13 January 2023**

Date of Decision : **16 January 2023**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicants jointly and severally in the sum of £16,566.**
- 2. Additionally, the Tribunal makes an order against the Respondent and in favour of the Applicants jointly and severally in the sum of £300 in repayment to them of their application and hearing fees.**
- 3. The total award to be paid forthwith by the Respondent is therefore £16,866.**

Reasons

- 1 The Applicants 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 160C Muswell Hill Road, London, N10 3NG (the property) for the period of their occupation of the property (as detailed below) during which time the property was an unlicensed HMO.
- 2 Rent for the property was payable to the Respondent as landlord and freeholder.
- 3 The hearing of this matter took place before a Tribunal sitting in London on 13 January 2023 at which the Applicants were represented by Mr Barrett of Represent Law and the Respondent by Mr N Young, solicitor. Mr Ramsdale and Mr Keegan both attended the hearing and gave oral evidence to the Tribunal. Mr Congdon was out of the UK and unable to attend the hearing in person but had filed a written witness statement which the Tribunal read.
- 4 In the week before the hearing the Respondent’s application to postpone the hearing had been considered and refused by a procedural judge. Mr Young sought to renew that application and to ask the Tribunal to allow the documents which he contended his client had served on the Applicants on 23 December 2021 to be admitted in evidence. He asserted that his client had a reasonable excuse defence which should be considered by the Tribunal. Mr Patel, a Director of the Respondent company was present at the hearing.
- 5 The Applicants’ application had been filed with the Tribunal on 03 May 2022 and Directions were issued on 20 June 2022 which set out a timetable for procedural matters to be undertaken by each party leading to a hearing the date of which would be arranged subsequently. Importantly, the date for hearing bundles to be filed

was 22 August 2022 with which the Applicants complied but the Respondent did not.

- 6 Mr Young said that the Respondent had written to the Tribunal (but not at that time also to the Applicants) on 7 September 2022 asking for an extension of time and said that his client had never received a reply to that request. He was unable to explain why his client had neither chased the Tribunal for a response nor filed a bundle in accordance with the Directions. It is noted that the request for an extension was made significantly after the date for filing had already passed.
- 7 Ultimately, the Respondent served some documents on the Applicant's representative on 23 December 2022 which was after the Applicant's representative had closed for the Christmas holidays. As a result, the documents were not seen by the Applicants' representative until 04 January 2023 and had not been seen by the Tribunal at all because, contrary to the Respondent's assertion that they had been served, they had not been received by the Tribunal.
- 8 The Respondent's representative wished the Tribunal to consider both a skeleton argument and a 'supplement' witness statement. The Tribunal declined to admit these documents as they had not been served on the Applicants in sufficient time to allow them to respond.
- 9 The Tribunal maintains the position that the Respondent had failed to comply with the Tribunal's Directions, had failed to respond to the application in any meaningful way and was therefore effectively precluded from taking an active part in the hearing. The Tribunal heard the Respondent's representative's submissions described as being 'for relief of sanctions' but declined to postpone the hearing. No plausible reason for the Respondent's failure to comply with the Directions or tardiness was mooted and prejudice would be suffered by the Applicants if the case was further postponed.
- 10 The Tribunal understands that the subject property comprises a three bedroom split level flat which, during the entire time to which this claim relates, was occupied by three people from separate households who shared common facilities. The building within which the property is situated also includes two other self-contained flats both owned by the Respondent.
- 11 Owing to continuing restrictions originally imposed during the Covid19 pandemic, the Tribunal was unable to carry out a physical inspection but had the benefit of viewing the property and its location via Google Map.
- 12 With effect from 27 May 2019 the property had become subject to an additional licensing scheme run by Haringey London Borough Council. It is common ground between the parties that the property did not have a licence between that date and 10 May 2021 when the Respondent filed an application for a licence with the local authority. As at that date an application to the Tribunal for a rent repayment order filed by the then tenants of the property was pending.

- 13 A landlord who fails to obtain a valid licence is committing a criminal offence of strict liability under s72(1) Housing Act 2004.
- 14 The Applicants have demonstrated to the Tribunal's satisfaction that the property required a licence during the whole period covered by this application and that it did not have one.
- 15 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, it had been in control or management of an unlicensed house.
- 16 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 Applicants made a claim for the period 29 August 2020 to 09 May 2022 (both dates inclusive).
- 17 Any award made by the Tribunal could not exceed the total rent received by the Respondent for this period of time.
- 18 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 19 The Respondent is a limited company, incorporated in 1971, whose stated object is to run a property letting business (page 27). According to documents obtained from Companies House and the Land Registry the company appears to own/manage at least five other properties (page 35 et seq). The subject property is one of three similar flats which together comprise 160 Muswell Hill Road.
- 20 A successful application for a rent repayment order made by previous tenants of the subject property was decided by the Tribunal in 2021 (LON/00AP/HMF/2021/0102).
- 21 The Respondent should therefore have been aware of its responsibilities as a landlord and of the need to licence the property. Since the offence under s72 is one of strict liability the Respondent's knowledge or intentions are irrelevant except as to mitigation.
- 22 There is however, 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 Applicants, the Tribunal does have regard to the Respondent's conduct including the findings of the previous Tribunal and its failure to cooperate with the Tribunal procedures or to file any documentation.
- 23 The Tribunal also notes complaints raised by the Applicants in regard to the Respondent's failure to maintain the property (persistent damp in one bedroom and defective lavatory) and has particular concerns about the Applicants' allegations that the property was deficient in fire protection (only one battery operated smoke alarm, no door to the kitchen and no fire doors throughout the flat).
- 24 The Tribunal did not have details of the Respondent's financial circumstances but no formal plea of financial hardship was made on its behalf. A Tribunal order requires payment in full and not by instalments.
- 25 None of the Applicants had claimed any benefits during the period of their occupation.

- 26 There is no evidence of any misconduct on the part of the Applicants.
- 27 The Applicants paid £1,980 per month as rent, this sum being split equally between them. Evidence of payment was produced to the Tribunal (page 71-72) and had not been disputed by the Respondent.
- 28 In assessing the award the Tribunal also had regard to the guidelines set out in *Acheampong v Roman & Others* [2022] UKUT 239 (LC).
- 29 The period for which rent must be repaid by the Respondent is 29 August 2020 until 9 May 2021 at £1,980 per month. This amounts to £16,566.
- 30 The Respondent's conduct as outlined in paragraphs 22 and 23 above both during the period of the Applicants' occupation and since the application was filed amounts to unbecoming behaviour for a professional landlord. In the light of this conduct the Tribunal considers it appropriate to make the full award to the Applicants.
- 31 No deductions have been made for outgoings because no evidence of outgoings was adduced by the Respondent.
- 32 The Applicant is also requesting the Tribunal to order the Respondent to repay the application and hearing fees (£300). This application is granted.

33 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

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: 16 January 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 London.Rap@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.