



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

Case reference : LON/00AL/HMK/2018/0022

Property : Rooms 2 and 4, 209 Court Road,
Mottingham, London SE9 4TG,

Applicants : Ms Ashleigh Abiona and Mr Joe
Docherty

Representative : In person

Respondent : Blok Management Limited

Representative : Mr T Edgar (Director)
accompanied by Mrs B Edgar

Type of application : Application for a Rent Repayment
Order – section 41 Housing and
Planning Act 2016

Tribunal member(s) : Tribunal Judge Dutton
Mr T W Sennett MA FCIEH
Mr C S Piarroux JP CQSW

Venue : 10 Alfred Place, London WC1E 7LR

Date of Decision : 6th September 2018

DECISION

The Tribunal determines that the sums payable by the Respondent under the provisions of a Rent Repayment Order (RRO) in respect of the rooms, being rooms 2 and 4, at 209 Court Road, Mottingham, London SE9 4TG, to the Applicant Miss Ashleigh Abiona is £3,500 and to the Applicant Mr Joe Docherty is £4,800 for the reasons set out below. Such sum is to be paid within 28 days of the date of the issue of this decision.

BACKGROUND

1. The Tribunal received a joint application for a RRO from the Applicants dated 4th May 2018. The application indicated that the Respondent, Blok Management Limited, had failed to obtain an HMO Licence in respect of the property at 209, Court Road, Mottingham, London SE9 4TG (the Property). There is no conviction. This is contrary to section 40(3) of the Housing and Planning Act 2016 (the Act).
2. In addition it is alleged by the Applicants that the Respondent has acted in such a way as to breach the terms of the Protection from Eviction Act 1977, in that the Respondent had harassed the Applicants. This is not an allegation which was pursued at the hearing as the Respondent accepted that there had been a failure to licence the Property as an HMO. The Applicants were content to proceed on that allegation alone.
3. The matter came before us for hearing on 5th September 2018. Prior to the hearing we had received bundles from both parties. The Applicant's bundle included the application, proof of payment and details of the alleged harassment. There were also statements from both Ms Abiona and Mr Docherty. In the Respondent's bundle we were provided with a statement by Mr Edgar, copies of the front page of six tenancy agreements, some photographs of the common parts, details of sums spent on the Property and a spread sheet showing the monthly expenditure and income, which we will return to in due course.
4. At the hearing both Ms Abiona and Mr Docherty confirmed the rental that they had paid during their occupancy of their respective rooms. For Ms Abiona it appears that she took occupation on 18th October 2017 and vacated on 14th April 2018. During that time she had made total payments to the Respondent and to a company called Goodlord.co of £4,328.15. This sum may have included some administration charges. It seems that an initial sum of £1,328.15 was paid in two tranches on 5th and 16th October and four monthly payments of £750, the last being on 31st January for February 2018. This means that she had to pay £345.10 for the period 18th October to 31st October 2017 and £1,109.25 for the period covering March and until she left on 14th April 2018 (45 days). The daily rate is £24.65. That would total £4,412.35, some £174.20 short, excluding a potential administration charge, evidence of which was not available to us.
5. Mr Docherty told us that he paid £1,813.70 at the commencement of the letting on 21st September 2017 and five further payments of £800, the last being on 27th February 2018, for March 2018, in effect 7 monthly payments totalling £5,600, not taking into account £213.70 for the

administration and card charge, which he did not dispute. He left on 4th May 2018. As with Ms Abiona it would seem that the actual rent payable would have been £5,917.50, on a daily rate of £26.30, so again there appears to be a shortfall.

6. For the Respondent Mr Edgar had submitted a statement, which we had read. He accepted that the Property was not licensed although he thought it was and had relied on an erstwhile fellow director Mr Channell, with whom he had fallen out over financial irregularities. He had not discovered the problem until January 2018. He was of the view that the breach only occurred when the number of tenants was five or more. In effect he argued that the Property was only unlicensed from 1st November 2017 to 3rd March 2018. We were told that an application had been made for a licence by the freeholder in May 2018.
7. We were told that the Respondent had entered into a three year lease with the freeholder and was paying £2,700 per month as rent. In addition Mr Edgar told us the Respondent paid Council tax, gas and electricity, TV licence, water rates, broadband and cleaning which totalled, at the maximum, £628.71 per month. The Respondent has now re-let the Property but before doing so alterations were required to be made. He told us that the Respondent was in debt to the sum of £90,000, apparently owed to Mrs Edgar, the 'Bank of Mum'. Apparently the Respondent manages 3 properties in Greenwich.
8. Ms Abiona told us that there was an additional tenant (Amy) who had vacated in December 2017, whose room was taken over by another tenant who paid £550 per month from the beginning of 2018, until May. These details were not included on the spread sheet. Mr Edgar confirmed that this was correct but that he knew nothing of Amy and he suspected that Mr Channell had been receiving the rent in cash and retaining it.

FINDINGS

9. In reaching our decision we have considered the provisions of sections 40, 41, 43 and 44 of the Act, details of which are set out below.
10. Whilst there were allegations of harassment it did not seem necessary to consider those in the light of the admissions made by Mr Edgar for the Respondent. We do not accept Mr Edgar's argument that the offence is only commissioned when the Property is occupied by 5 or more persons. We find that the Property should have been licensed from the outset. Accordingly, the period for which Ms Abiona can claim is from 18th October 2017 to 14th April 2018. For Mr Docherty the period is from 21st September 2017 to 4th May 2018. There did not appear to be any dispute on these periods, or indeed the rental actually paid.
11. We are satisfied that on the test of 'beyond reasonable doubt' the Respondent has committed the offence of having the control or management of an unlicensed HMO. In support of this we have not only

the admission of the Respondent but also a letter from the Royal Borough of Greenwich dated 20th June 2018 confirming that the Property is not licensed under the Housing Act 2004, it being a three storey house with 7 bedrooms.

12. In reaching our decision we have considered the provisions of s44 and in particular the provisions of s44(4). Both Applicants were in employment and therefore there is no question of any benefit payments being involved.
13. We consider it reasonable to reduce the sum that may be payable to the Applicants by the amounts paid by the Landlord for the outgoings referred to at paragraph 7 above. Divided on a straight unit basis the maximum monthly total of these costs was £628.71. Rounded up this gives monthly sum of £90 per tenant, which consider should be deducted from any award to the Applicants. We appreciate that there were lesser amounts for the very early days but do not consider it is necessary to become bogged down on the minutiae as something of a broad brush approach has been adopted by us. The payments to the freeholder are not a matter which we consider should be taken into account, they being costs that the Respondent would be required to meet in any event.
14. As to conduct there were allegations made by the Applicants and responded to by Mr Edgar in his statement. We have considered those matters, but they did not bear on our decision.
15. The total rental paid by Ms Abiona is £4,128.15 allowing for an administration charge of £200 and for Mr Docherty £5,600, again allowing for the administration charge and credit card fee. If we deduct the outgoings for Ms Abiona for the period October 2017 to April 2018 (approximately 6 months) being £540 and for Mr Docherty on a similar basis (approximately 8 months) being £720 we are left with the figures shown below.
16. Taking these elements into account we find that the sum repayable to Ms Abiona is £3,500, having rounded it down from £3,588.15 and for Mr Docherty the sum is £4,800, again rounding down. We consider that the Respondent should make these payments. It is important that legislation governing the suitability and standard of housing is maintained. We are satisfied that the Respondent was fully aware of the licensing requirements and took a cavalier approach to same. Indeed it is noted that despite discovering that the Property did not have a licence in January 2018, no application was made until May. It may well be that most of the blame lays with Mr Channell, but we did not hear from him and Mr Edgar must take responsibility as a director of the Respondent to ensure that all is in order. The sums we have found that are due and owing should be paid to each Applicant within 28 days.

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).

The Relevant Law

Housing Act 2004

S72 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 not exceeding £20,000.
- (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.
- (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 a residential property 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

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.

<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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).

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.

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).

44Amount 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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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.

47Enforcement of rent repayment orders

(1)An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2)An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3)The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.

49Helping tenants apply for rent repayment orders

(1)A local housing authority in England may help a tenant to apply for a rent repayment order.

(2)A local housing authority may, for example, help the tenant to apply by conducting proceedings or by giving advice to the tenant.