



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

**Case reference** : **LON/00AN/HMK/2017/0009**

**Property** : **64 Avonmore Road, London W14  
8RS**

**Applicant** : **Ms A Humphreys (1) Ms K Manser-  
Smith (2) and Ms C Breed (3)**

**Representative** : **Ms Humphreys and Ms Manser-  
Smith**

**Respondent** : **TLS Group Europe Limited and TLS  
Flatshare Management Limited**

**Representative** :

**Type of application** : **Application for a rent repayment  
order by tenant section 73(5) Of the  
Housing Act 2004**

**Tribunal** : **Tribunal Judge Dutton  
Mr M A Mathews FRICS  
Mr C S Piarroux JP CQSW**

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

**Date of directions** : **2<sup>nd</sup> February 2018**

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**DECISION**

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## DECISION

**The Tribunal determines that the Respondents, jointly and severally shall repay to the Applicants the rental payments set out below under the provisions of s73(5) of the Housing Act 2004 (the Act).**

## BACKGROUND

1. By an application dated 26<sup>th</sup> September 2017 the three Applicants together made application to the Tribunal seeking Rent Repayment Orders under the provisions of section 73(5) of the Act.
2. The chronology appears to be as follows. On 30<sup>th</sup> August 2017 the Respondents were convicted at Westminster Magistrates Court of an offence under section 72(1) of the Act (unlicensed HMO). A fine was imposed although the amount is not known by us. The evidence of the conviction is contained in an email dated 8<sup>th</sup> September 2017 sent by Arnel Collard of the London Borough of Hammersmith and Fulham to the Applicants. The email states that the property, 64 Avonmore Road London W14 8RS (The Property) had been an unlicensed HMO since 29<sup>th</sup> September 2016 and at the time of the email remained unlicensed.
3. The Application seeks to reclaim rental payments during part of the period for which the Property was unlicensed.
4. In a bundle of papers produced for the hearing on 2<sup>nd</sup> February 2018 we had copies of the letting agreement for each applicant, likewise copies of their respective bank accounts showing payments made to the Respondents. The letting agreements are in standard form and include an allowance of electricity and gas at £100 per month for each. There is also, included within the rental payment cleaning of the common parts, wi-fi and it would seem Council Tax. There are, we were told 9 – 10 letting rooms in the Property.
5. Although the Respondents have been written to by the tribunal and provided with copies of the directions made on 18<sup>th</sup> October 2017 they have not taken any part in these proceedings and have provided no mitigation or details of any financial difficulties that we might consider under section 74(5) of the Act.

## EVIDENCE

6. The bank statements produced from each applicant showed as follows:
  - For Ms Humphreys that she had made rental payments initially on 23<sup>rd</sup> September 2016 in the sum of £2155, although £1934 related to rent. In addition she had made payments in the period 1<sup>st</sup> November 2016 to 1<sup>st</sup> February 2017 of £867 per month save that the payment in February was in the sum of £257, relating to a rental period of 1<sup>st</sup> to 10<sup>th</sup> March 2017. The total sum claimed was £4792.00
  - For Ms Manser-Smith that she had made rental payments totalling £5006, the first being on 6<sup>th</sup> September 2016 and the last on 3<sup>rd</sup> January 2017. The initial payment was £1538 and there

followed four monthly payments of £867. The total sum claimed was £5006.

- For Ms Breed whilst it was said that there had been payments of £1388 on 4<sup>th</sup> September 2016, followed by four monthly payments of £867 the bank statements produced started 24<sup>th</sup> September 2016. The total sum said to be due was £5106 but this appeared to include deposits which we were told by Ms Humphreys and Ms Manser-Smith had been repaid. On that basis the maximum sum would appear to be £4856. Ms Breed was not able to attend so we could not clarify matters further.
7. Those Applicants in attendance confirmed that £100 was put towards the electricity and gas by the Respondents each month but the tenants usually had to top this up. It was confirmed that included within the rent was wi-fi, cleaning of the common parts and it would seem Council Tax. The Applicants accepted that £10 should be deducted from their claim for each month's supply of electricity. They had no knowledge of the other items of expenditure which the Respondents appeared to cover. They did say that the gas heating was unreliable.

## **FINDINGS**

8. As we indicated above the respondents have played no part in these proceedings. We have no idea what the costs associated with other services may be but the letting agreement at clause 4 under the heading Payments of Bills (Allowance) states that for properties of more than 4 rooms an allowance of £100 per month per utility was allowed for gas and electricity.
9. The Applicants in attendance, speaking also for Ms Breed, agreed that there should be a reduction of £10 per month for each of them for electricity. It seems to us that such an allowance should also be made for the gas. Accordingly from the sum claimed we reduce same by £20 per month for each applicant for the period for which a claim is made.
10. In respect of the claims by Ms Breed and Ms Manser-Smith the letting agreements predate the date for which it is said the Property was being used as an unlicensed HMO, which was 29<sup>th</sup> September 2016.
11. The application is within 12 months of the conviction but does in part seek to recover in respect of a period outside 12 months from the date of the Application. However as we have stated above the claims in all cases seek to recover rental payments before 29<sup>th</sup> September 2016 being the date the unlawful use appears to have to have come to the attention of the local authority.
12. For Ms Breed and Ms Manser-Smith the period before the 29<sup>th</sup> September 2016 is from 4<sup>th</sup> September 2016, the date their respective lettings began. This is a period of 25 days at a daily rate of £28.50 giving the sum of £712.50 to be deducted.
13. For Ms Humphreys, whose letting began on 24<sup>th</sup> September 2016 this is a period of 5 days giving a sum of £142.50.
14. We set out below the findings we make for each applicant. It should be noted that for Ms Breed the absence of any evidence as to payments

made before 24<sup>th</sup> September 2016 means that we must disallow the initial payment of £1388, made, it is said on or about 4<sup>th</sup> September 2016.

- Ms Humphreys – Total payments made, supported by bank statements £4792, less period of rent before 29.9.16 £142.50, less allowance of £20 for utilities for 5 months (£100) gives a total rent prepayment of £4549.50
- Ms Manser-Smith - Total payments made £5006, supported by bank statements, less period for rent before 29.9.16 £712.50 less allowance for utilities of £100 gives a total rent repayment of £4193.50
- Ms Breed - Total payments as evidenced by supporting bank statements £3468, less rent before 29.9.16 £712.50, less utilities of £100 gives a total rent repayment of £2655.50

15. Accordingly we make rent repayment orders in the sums set out above, such amounts to be repaid within 28 days.

**Name:** Tribunal Judge Dutton      **Date:** 2<sup>nd</sup> February 2018

### **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).

### **Other consequences of operating unlicensed HMOs: rent repayment orders**

(1) For the purposes of this section an HMO is an “unlicensed HMO” if—

- (a) it is required to be licensed under this Part but is not so licensed, and
- (b) neither of the conditions in subsection (2) is satisfied.

(2) The conditions are—

(a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));

(b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).

(3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—

(a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or

(b) any other provision of such a tenancy or licence.

(4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74 (in the case of an HMO in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England) .

(5) If—

(a) an application in respect of an HMO is made to the appropriate tribunal by the local housing authority or an occupier of a part of the HMO in Wales , and

(b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the relevant award or awards of universal credit or the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—

(a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),

(b) that—

(i) one or more relevant awards of universal credit have been paid (to any person); or

(ii) housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO ,

during any period during which it appears to the tribunal that such an offence was being committed,

(c) that the requirements of subsection (7) have been complied with in relation to the application.

(6A) In subsection (6)(b)(i), “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) or any corresponding provision replacing that Schedule, in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO.

(7) Those requirements are as follows—

(a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)—

(i) informing him that the authority are proposing to make an application under subsection (5),

(ii) setting out the reasons why they propose to do so,

(iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and

(iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;

(b) that period must have expired; and

(c) the authority must have considered any representations made to them within that period by the appropriate person.

(8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—

(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of

(i) one or more relevant awards of universal credit, or

(ii) housing benefit paid in connection with occupation of a part or parts of the HMO ,

(b) that the occupier paid, to a person having control of or managing the HMO , periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO , and

(c) that the application is made within the period of 12 months beginning with—

(i) the date of the conviction or order, or

(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

(a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and

(b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

- “ the appropriate person ”, in relation to any payment of universal credit or housing benefit or periodical payment payable in connection with occupation of a part of an HMO , means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;
- “ housing benefit ” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
- “ occupier ”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “ occupation ” has a corresponding meaning);
- “periodical payments” means—

(a)

payments in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 (“relevant payments”) or any

corresponding provision replacing that paragraph; and (b) periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation;

(11) For the purposes of this section an amount which—

(a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and

(b) is not an amount of universal credit or housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

#### **74 Further provisions about rent repayment orders**

(1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).

(2) Where, on an application by the local housing authority, the tribunal is satisfied—

(a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and

(b) that—

(i) one or more relevant awards of universal credit (as defined in section 73(6A)) were paid (whether or not to the appropriate person), or

(ii) housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of a part or parts of the HMO ,

during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO in question,

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority the amount mentioned in subsection (2A).

This is subject to subsections (3), (4) and (8).

(2A) The amount referred to in subsection (2) is—

(a) an amount equal to—

(i) where one relevant award of universal credit was paid as mentioned in subsection (2)(b)(i), the amount included in the calculation of that award under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) ( [S.I. 2013/376](#) ) or any corresponding provision replacing that Schedule, or the amount of the award if less; or

(ii) if more than one such award was paid as mentioned in subsection (2)(b)(i), the sum of the amounts included in the calculation of those awards as referred to in sub-paragraph (i), or the sum of the amounts of those awards if less, or

(b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii),

(as the case may be).

(3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) (“the rent total”) is less than the amount mentioned in subsection (2A), the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.

(4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.

(5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

(6) In such a case the tribunal must, in particular, take into account the following matters—

(a) the total amount of relevant payments paid in connection with occupation of the HMO during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);

(b) the extent to which that total amount—

(i) consisted of, or derived from, payments of relevant awards of universal credit or housing benefit, and

(ii) was actually received by the appropriate person;

(c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;

(d) the conduct and financial circumstances of the appropriate person; and

(e) where the application is made by an occupier, the conduct of the occupier.

(7) In subsection (6) “relevant payments” means—

(a) in relation to an application by a local housing authority, payments of relevant awards of universal credit, housing benefit or periodical payments payable by occupiers;

(b) in relation to an application by an occupier, periodical payments payable by the occupier, less

(i) where one or more relevant awards of universal credit were payable during the period in question, the amount mentioned in subsection (2A)(a) in respect of the award or awards that related to the occupation of the part of the HMO occupied by him during that period; or

(ii) any amount of housing benefit payable in respect of the occupation of the part of the HMO occupied by him during the period in question

(8) A rent repayment order may not require the payment of any amount which—

(a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or

(b) (where the application is made by an occupier) is in respect of any time falling outside the period of 12 months ending with the date of the occupier’s application under section 73(5);

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

(9) Any amount payable to a local housing authority under a rent repayment order—

(a) does not, when recovered by the authority, constitute an amount of universal credit or housing benefit recovered by them, and

(b) until recovered by them, is a legal charge on the HMO which is a local land charge.

(10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

(11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder—

(a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and



(b) to do so in such instalments as are specified in the licence.

(13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.

(14) Any amount payable to an occupier by virtue of a rent repayment order is recoverable by the occupier as a debt due to him from the appropriate person.

(15) The appropriate national authority may by regulations make such provision as it considers appropriate for supplementing the provisions of this section and section 73, and in particular—

(a) for securing that persons are not unfairly prejudiced by rent repayment orders (whether in cases where there have been over-payments of universal credit or housing benefit or otherwise);

(b) for requiring or authorising amounts received by local housing authorities by virtue of rent repayment orders to be dealt with in such manner as is specified in the regulations.

(16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.