



FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER (RESIDENTIAL
PROPERTY)**

Case Reference : **LON/00AC/HMF/2018/0041**

Property : **Room 3, 141 Princess Park Manor, Royal
Drive, London N11 3FQ**

Applicant : **Mr J Snow**

Representative : **Ms C Anslow of counsel**

Respondent : **Holland Park Properties Ltd**

Representative : **Mr S Nehra (director)**

Type of Application : **Application by Tenants for a Rent
Repayment Order**

Tribunal Members : **Judge Simon Brilliant**
Mr Ian Holdsworth FRICS

**Date and Venue of
Hearing** : **20 March 2019**
10 Alfred Place, London WC1E 7LR

**Date of Written
Reasons** : **25 April 2019**

DECISION

Determination

1. The tribunal is satisfied beyond all reasonable doubt that, during the period 15 November 2017 until 9 May 2018, 141 Princess Park Manor, Royal Drive, London N11 3FQ (“the flat”) was a House in Multiple Occupation (“HMO”). The applicant is entitled to a rent repayment order as the flat was unlicensed. The amount we order to be paid back to the applicant by the respondent is £4,010.

Background

2. The flat, which is on two floors, is situated within a substantial up-market development. The flat has two bedrooms on each floor. The flat has a shared lounge, kitchen and bathroom.

3. On 19 October 2017, the respondent granted a one-year AST of room 3 in the flat to the applicant. Room 3 is on the upper floor of the flat. The tenancy was to run for a period of 12 months from 15 November 2017 until 14 November 2018. In fact, the applicant left flat 3 on 10 September 2018.

4. Companies House records the nature of the respondent’s business as “management of real estate on a fee or contract basis”. The sole director and shareholder is Mr Nehra.

5. Chapter 4 of the Housing and Planning Act 2016 makes provision for rent repayment orders to be made against a landlord where that landlord has committed certain offences.

6. It is common ground between the parties that if, at any material time, all four rooms in the flat were occupied as single households, the flat required licensing as an HMO. If only three of the rooms in the flat were so occupied, the respondent would not require such a licence.

7. It is also common ground between the parties that the flat was not licensed as an HMO. If it required such registration, a failure to register it would constitute an offence entitling the applicant to apply for a rent repayment order against the respondent. The legislation is set out in more detail below.

8. The applicant has made an application to the tribunal dated 12 November 2018 for a rent repayment order. The applicant’s case is that for at least some of the time during which he occupied room 3 under the AST there were occupants living in each of the four rooms. The respondent denies this, and asserts that during the time the applicant occupied room 3 under the AST there were occupants living only in three of the four rooms.

The legislation

9. Where students or friends share a flat, each of them is regarded as a separate household: s.258 Housing Act 2004.

10. ss.254-260 of the 2004 Act define a mandatory HMO. However, the London Borough of Barnet has elected to bring into effect additional licensing throughout the borough under powers given by s.56 of the 2004 Act . This means that an HMO in Barnet requires a licence where the property has two or more storeys, is occupied by four or more persons in two or more households and where some or all of the facilities are shared or lacking¹. As stated above, it is common ground that if there are four occupiers the flat fits into this category. By s.262(6)(a) of the 2004 Act an “occupier” means a person who occupies premises **as a residence** (emphasis supplied).

11. s.61 of the 2004 Act requires an HMO to be licensed. By s.72 of the 2004 Act a person commits an offence if he is a person having control of or managing an HMO which is required to be licensed, but is not so licensed. By s.263 of the 2004 Act a person has control of premises if he receives the rack-rent.

12. s.40(1) Housing and Planning Act 2016 confers powers on the tribunal to make a rent repayment order where a landlord has committed an offence, including a breach of s.72 of the 2004 Act. s.40(2)(a) of the 2016 Act provides that a rent repayment order is an order requiring the landlord to repay an amount of rent paid by tenant.

13. By s.43 of the 2016 Act, the tribunal may make a rent repayment order if satisfied, **beyond reasonable doubt** (emphasis supplied), that a landlord has committed an offence to which Chapter 4 of the 2016 Act applies (this includes a breach of s.72 of the 2004 Act).

14. By s.44(2) of the 2016 Act, the amount of the rent repayment order must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence. In this case the period is of 25 weeks from 15 November 2017 - 9 May 2018 (as explained below).

15. By s.44(3) of the 2016 Act in determining the amount of a rent repayment order 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 anytime been convicted of an offence to which Chapter 4 applies

The other tenants

Room 1

16. Mr Pate was granted a one-year AST of room 1 (on the lower floor of the flat) from 18 January 2017. He was granted a further one-year AST on 18 March 2018.

¹ See the London Borough of Barnet's Notice of Designation of an Area for Additional Licensing of Houses in Multiple Occupation (HMOs).

Accordingly, he occupied room 1 throughout the time that the applicant occupied room 3.

Room 2

17. Mr Cooper was granted a one-year AST of room 2 (on the lower floor of the flat) from 1 November 2017. In fact, he left room 2 on or around 9 May 2018. Accordingly, he occupied room 2 throughout some, but not all, of the time that the applicant occupied room 3.

Room 4

18. Mr Ali was granted a one-year AST of room 4 (on the upper floor of the flat) from 1 September 2016. The applicant's case is that after the expiry of Mr Ali's AST, and throughout the length of the applicant's tenancy, Mr Ali continued to occupy room 4 as a residence. The respondent's case is that although room 4 was used by Mr Ali for storage after his AST had expired, he had ceased to occupy room 4 as a residence prior to the applicant's tenancy commencing. He was simply using it for storage. As we explained above, occupation in this context means occupation as a residence, so that the use of room 4 for storage would not mean there were four people in occupation of the flat.

The applicants' evidence

19. The applicant made witness statements dated 17 January 2019 and 15 March 2019 respectively. He gave oral evidence. He relied upon a witness statement made by Mr Pate dated 9 November 2018. Mr Pate did not attend the hearing.

Texts

20. The applicant relies on screenshots of conversations texted from within a collective WhatsApp group, which included the respondent and the occupiers of the flat.

21. On 19 November 2017 (after Mr Ali's contractual tenancy had expired), a text was sent by an unknown person referring to an offer on gym membership (there is a gym within the development) which closed that day.

22. Mr Ali replied: *Awesome.*

23. The other party texted: *Something you'd be interested in? Back at the flat at 5 today so can chat then if you're around*

24. Mr Ali replied: *Yep I am! But am out at the moment ...*

25. On 1 December 2017, Mr Ali texted at 00:24: *Can we change the heating settings? Times etc. It is winter my room is freezing!*

26. On 11 December 2017, Mr Ali texted at 17:55: *Is there a valve that we can do that with ourselves in case it happens again?* (He was referring to the fact that the boiler had shut down because of low pressure). *Could they describe which one? I had a similar problem re-occurring downstairs*

27. Later, at 18:04 he texted: *I used to live in one of the flats downstairs and the pressure would would (sic) go down every now and then would have to go through the process of putting pressure up every now and then*

28. On 18 December 2017, Mr Ali texted at 21:36: *Hi folk I left my keys at my friend's! Is anyone at home?*

29. On 21 December 2017, Mr Ali texted at 21:43: *What date does our cleaner come in?*

30. On 11 January 2018, Mr Ali texted at 23:55: *I think the battery for, or the actual smoke alarm need servicing it is constantly bleeping (making it impossible to sleep but also needs looking at).*

31. 2 March 2018, Mr Nehra texted at 14:40: *your new hoover has arrived will deliver when weather is better thanks.* Mr Ali replied at 14:43: *Thanks*

32. On 12 March 2018, an unknown person sent a text about buying a TV for the flat for £60–£70. Mr Ali replied with a thumbs up emoji.

33. We need not set out each and every text message sent by Mr Ali, as the above gives the flavour of them. Suffice it to say that there are further text messages along the same lines between 12 April 2018 and 5 July 2018 annexed to the applicant's first witness statement. In particular, there is a text message dated 9 June 2018 when Mr Ali talks about recuperating at home after having had eye surgery.

34. The applicant also relies upon private texts between himself and Mr Ali between 15 June 2018 and 19 August 2018. These include texts concerning mislaid keys to the flat, leaving food on the table at the flat, the cleaning of the flat, the accidental loss of a black blazer in the flat, the need for more dishwashing tablets at the flat, and a red blanket belonging to the applicant which had been lost from the living room of the flat. It transpired that Mr Ali had taken it for sleeping in. The applicant's recollection is that Mr Ali slept in the flat for some 60 days whilst he was there.

Adverts

35. The applicant relies upon two adverts on the Internet regarding the letting of the flat. In each advert the flat is described as being a four bedroomed one. He also asserts that Mr Nehra, on behalf of respondent, was conducting viewings of room 2 after Mr Cooper left. He exhibited a text message from Mr Nehra dated 4 June 2018 referring to a viewing.

Mr Pate

36. Finally, the applicant relies upon a witness statement from Mr Pate dated 9 November 2018 in which he says: *The Applicant, two other tenants and I all resided in the Property.*

The respondent's evidence

37. Mr Nehra made a witness statement dated 8 March 2019. He gave oral evidence. He relied upon a witness statement made by Mr Ali dated 8 March 2019 and a further witness statement made by Mr Pate dated 8 March 2019. As already stated, Mr Pate did not attend the hearing. Nor did Mr Ali.

38. Mr Nehra denies that there were four tenants living in the flat during the currency of the applicant's tenancy. It was untrue that Mr Ali was occupying flat 4. The only other tenants were Mr Cooper and Mr Pate.

39. Mr Nehra says that he only conducted a viewing because he understood the applicant would be leaving shortly. He never had any intention of moving a fourth tenant into the property.

40. In his witness statement, Mr Ali says:

3. *After the 31st August 2017 I was given permission to retain the keys for the room I previously rented as I had several hundred books and journals in there for my work and was given permission and authority to enter the property and to gain access to my books, journals and items that were in the room but not to live there. It was on this basis that I visited the property. On a few occasions I did stay there for convenience after researching my books.*

4. *Over the period of September 2017 to September 2018 I would say I only visited the property some 10 to 15 times in entirety. I was not in residence in the property contractually or otherwise.*

41. In his second witness statement, Mr Pate says he seldom saw Mr Ali in the property, he was absent away at times for months. He did not feel he could be a witness to exactly who or how many people were under contract at the property and at what times.

42. Mr Nehra explained in his oral evidence that after Mr Ali's tenancy ended on 31 August 2017 he allowed him to use room 4 as a space in which to store his very considerable collection of books and journals. Mr Ali is an international journalist and he was also assisting the government in security matters.

Discussion

43. The story advanced by Mr Nehra and Mr Ali is very difficult to believe. Mr Nehra

accepted that he charged no rent or licence fee for Mr Ali's use of room 4 as a storage space. He could not really explain why he was prepared to allow such a rent void, save to say that since Mr Ali was involved in such worthwhile work for the government it was appropriate for him not to charge for the use of the room.

44. We do not find this a credible explanation. Moreover, we find from the text messages overwhelming evidence that Mr Ali was occupying flat 4 as a residence for a significant period of time whilst the applicant was living in flat 3.

45. We are satisfied beyond all reasonable doubt that the Respondent has committed a breach of s.72 Housing Act 2004 and that is open to us to make a rent repayment order.

Conclusion

46. An issue arose as to the date on which Mr Cooper's tenancy of flat 2 came to an end. It was only after that date that the number of tenants fell from four to three.

47. The applicant claims that the tenancy came to an end on 30 June 2018. But what matters is not when the tenancy came to an end, but when Mr Cooper ceased to occupy flat 2. We prefer Mr Nehra's evidence that Mr Cooper left in the first week of May 2018.

48. We are satisfied that the respondent is the alter ego of Mr Nehra, who is the controlling mind of respondent. Between them, they are a person/company of means and can fairly be described as professional landlords. Mr Nehra is the freehold proprietor of another flat in the development which cost £475,000 as far back as 26 March 2004. From our own knowledge of it and from the adverts referred to in paragraph 35 above, it is clear that the development is a high end one. Mr Nehra also told us that he owns and runs a nightclub in Leicester.

49. We consider it appropriate to order a repayment of rent paid between 15 November 2017 and 9 May 2018 when Mr Cooper left. This is a total of 25 weeks. We do not agree with the way in which the applicant has tried to calculate the amount to be repaid. We do not take account of the deposit which was paid upfront. The rent was £8,340 per annum. We will make an order in respect of 25 weeks out of the 52 weeks of the year, which comes rounded up to £4,010.00.

Name: Simon Brilliant **Date:** 25 April 2019

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.

- iii. 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.
- iv. 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.