



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

**Case Reference** : **LON/00AH/HMF/2019/0023**

**Property** : **85 South Norwood Hill, London  
SE25 6BY**

**Applicants** : **Dylan Holdsworth  
Rachel Walkes-Gordon  
Jacob Morris  
Susan Baker  
Wesley Gregory**

**Respondent** : **Mosruz Zaman**

**Type of Application** : **Rent Repayment Order**

**Tribunal** : **Judge Daley  
Mr R Shaw FRICS**

**Date and Venue of  
Paper Determination** : **15 October 2019;  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **15/10/19**

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**DECISION**

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**The Tribunal makes an order for a rent repayment order in the total sum of £24,621.12.**

The relevant provisions in the Housing Act 2004 and Section 41 of the Housing and Planning Act 2016 relating to rent repayment orders are set out in an Appendix to this decision.

**Background**

1. On 5 June 2019 the Applicant applied for a rent repayment order in respect of the premises known as 85 South Norwood Hill, London

SE25 6BY (“the premises”). The premises were described as a 3 Storey seven bedroom House.

2. On 9 July 2019 the Tribunal made directions for the preparation of this case and the hearing of the application. On 29 July 2019, the Applicant’s representative “Justice for Tenants” wrote to the Tribunal to request that Mr Wesley Gregory be joined as an applicant an order granting that request was made on 27 August 2019.
3. In paragraph 4 of the Directions ( 9.07.2019), the Tribunal set out a number of issues to be determined that is -: Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences including section 72(1) control or management of an unlicensed HMO; (2) whether the offence related to a house that was let to the tenant;(3) Whether the offence was committed by the landlord in the period of 12 months ending with the date the application was made.
4. The Directions required the landlord to provide a response to the application by 6 August 2019.
5. On 14 August 2019, the Tribunal wrote to the Respondent Mr Zaman, noting that the Respondent had failed to comply with the directions and requiring him to write to the Tribunal and the Applicant setting out what their position was and how they intended to comply with the Directions. The letter informed him that a failure to comply by 4 September 2019 may result in the Respondent being barred from participation in this application.
6. As neither party requested a hearing, the matter was set down for a paper determination. No correspondence was received from the Respondent.

### **The Background**

7. The Applicants were represented by Justice for Tenants who provided details of the allegation. They stated that the Respondent was a person who in accordance with Part 2 of Section 72 (1) of the Housing Act 2004 had control of the premises as a unlicensed Home in Multiple Occupation.
8. Within the bundle of documents the Tribunal had sight of a licence agreement for each of the Applicants signed by the Respondent as Landlord, an email dated 4 June 2019 from Donna Hamilton an environmental health officer employed by the London Borough of Croydon (the borough in which the property was situated). In the email she confirmed, in response to a query from the Applicants’ advisor that the property did not have a license. The Tribunal also had sight of an office copy entry of the title for the premises which confirmed that the Respondent was the owner of the premises.

9. The Tribunal also sight of the bank statements for each of the tenants. The Applicants' also provided copies of a Housing Act 2004 notice which had been served under schedule 1, 2 in relation to fire hazards at the premises.
10. There was no representations sent to the Tribunal by the Respondent, accordingly the Tribunal determined the application on the basis of the documents before it.

### **The Decision of the Tribunal**

11. The Tribunal is satisfied beyond reasonable doubt that the premises were required to be licensed pursuant to section 72(1) of the Housing Act 2004. The Applicants provided detailed evidence concerning the occupancy of the premises and the fact that it was unlicensed by the Respondent. The Tribunal accepted that from the period of 20 August 2018 being the earliest dated on the licence the premises was a House in Multiple Occupation which required a licence.
12. The Tribunal also accept that the property was poorly managed, due to the lack of compliance with fire regulations.
13. The Tribunal has awarded each tenant in the sums set out in the schedule below. The sums in the schedule reflect the sums actually paid by the tenants, which at times were less or exceeded the contractual rent, as the tenants had tenancies which started in August 2018 or later the payments may be less than 12 months.

Dylan Holdsworth From 20/08/2018	Rachel Walkes-Gordon From 1/9/2018	Jacob Morris From 20/08/2018	Susan Baker From 15/09/2018	Wesley Gregory
£600.00 PCM month	£550.00 PCM	£600.00 x 9 PCM	£563,33 PCM month	£476.67 PCM month
£6590.00	£4400.00	£5590.00	£4704.43	£3336.69

14. The Tribunal makes an order for the Respondent to reimburse the Applicant's hearing fees pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**Name:** Judge Daley

**Date:** 15 October 2019

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **Section 72 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.
- (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 the appropriate 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 (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

**Section 73 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 house 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.

(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 the whole or part of the house, 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 the whole or any part or parts of the house,

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) ...

(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) ...
- (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 the whole or 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”) (S.I. 2013/376) 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.

**Section 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 the whole or any 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) ...
  - (b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii), ...
- (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 house 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) ...

(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) ...

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) is, until recovered by them, 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) ...
- (15) ...
- (16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.