



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

Case Reference : **LON/00BG/HMF/2019/0026**

Property : **Flat 5, 123-125 Whitechapel Road,
London E1 1DT**

Applicant : **Mr Pietro Giusto**

Representative : **Mr Muhammed Williams, Housing
Advisor, London Borough of Tower
Hamlets**

Respondents : **Mr Arwin Taheam (1)
Mr Ajay Taheam (2)**

Representative : **Not known**

Type of Application : **Application for a rent repayment
order by the tenant**
Sections 40, 41, 43, & 44 of the Housing
and Planning Act 2016

Tribunal Members : **Judge N Hawkes
Mr A Harris LLM FRICS FCI Arb**

**Date and venue of
hearing** : **16 October 2019 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **17 October 2019**

DECISION

Decision of the Tribunal

The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £9,000.

The application

1. By an application dated 20 June 2019, the Applicant tenant (Mr Pietro Giusto) applied for a rent repayment order against the Respondent landlords (Mr Arwin Taheam and Mr Ajay Taheam).
2. On 8 July 2019, the Tribunal issued Directions leading up to a final hearing which took place on 16 October 2019.
3. The Applicant did not attend the hearing in person but he was represented by Mr Muhammed Williams, a Housing Advisor employed by the London Borough of Tower Hamlets (“the Council”). Mr Williams was accompanied by Mr Francis Mendy, a Housing Standards Officer with the Council. Mr Williams explained that, as a result of factors which included difficulty in taking time off work, the Applicant was unable to attend the hearing and that he consented to Mr Williams attending on his behalf.
4. The Respondents did not attend the hearing and they were not represented. The hearing was listed to commence at 1.30 pm but Tribunal waited until 1.45 pm before starting the hearing, in case the Respondents had been delayed. However, the Respondents did not appear and no reason was provided by the Respondents for their absence. The Respondents have also entirely failed to comply with the Tribunal’s Directions.
5. Mr Williams confirmed the truth of the matters which are set out in his witness statement dated 27 June 2019 and Mr Mendy confirmed that he had sent correspondence from the Council to the Respondents which is exhibited to Mr Williams’s witness statement. Mr Williams invited the Tribunal to also rely upon the unchallenged evidence which is set out in the Applicant’s witness statement dated 30 August 2019 (which has a signed statement of truth attached) and upon the documentary evidence which has been provided by the Applicant in support of his application.

The Tribunal’s determinations

6. Section 40 of the Housing and Planning Act 2016 (“the 2016 Act”) provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

7. Statutory guidance for local housing authorities concerning rent repayment orders under the 2016 Act was published on 6 April 2017 (“the Statutory Guidance”). The Tribunal has had regard to the Statutory Guidance in determining this application.
8. Section 41 of the 2016 Act provides:
 - (1) *A tenant ... 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.”*
9. Section 43 of the 2016 Act provides:

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.*
10. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 95(1) of the Housing Act 2004 (“the 2004 Act”) of the control or management of an unlicensed house. It is the Applicant’s case that the Respondents are his landlord; that they committed this offence from 12 June 2017 until 8 July 2019; that the Applicant was a tenant of the property for a period of nine months during which the property required a licence but was unlicensed.
11. The Applicant seeks a rent repayment order (“RRO”) in respect of rent which he states that he paid to the Respondents from 7 September 2018 until 18 June 2019, in the total sum of £11,313.78.
12. In respect of an offence under section 95(1) of the 2004 Act, the amount of any RRO must relate to rent paid by the tenant in respect of a period, not exceeding of 12 months, during which the offence was being committed (see section 44(2) of the 2016 Act).

13. By section 44(3) of the 2016 Act, the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period, less any relevant award of universal credit paid to any person in respect of rent under the tenancy during that period.
14. Having heard oral evidence from Mr Williams and Mr Mendy and having considered the Applicant's written evidence and the documentary evidence which is relied upon in support of his application, the Tribunal makes the determinations which are set out below. The Tribunal has considered the identity of the Applicant's landlord and each of the issues which were identified to the Annex to the Tribunal's Directions.

The identity of the Applicant's landlord

15. As stated above, section 40(2) of the 2004 Act provides that an RRO is an order requiring "the landlord" under a tenancy of housing in England to repay an amount of rent paid by a tenant.
16. The Applicant has produced various documents which were provided to him by Futurepad London Residential Lettings and Property Management (the landlord's managing agents) in connection with the letting of the property, but not a written tenancy agreement.
17. Mr Williams and Mr Mendy both gave oral evidence, which the Tribunal accepts, that during the course of Council's inspection of the property Mr Arwin Taheam expressly confirmed that he is the Applicant's landlord. Mr Williams does not believe that the Applicant was provided with a written tenancy agreement.
18. Mr Arwin Taheam and Mr Ajay Taheam are the joint freehold owners of the property and Mr Ajay Taheam has not sought to challenge the assertion which is made at paragraph 2 of the Applicant's witness statement that both he and Mr Arwin Taheam are the Applicant's landlord. It appears from an email to the Council dated 10 July 2019 that Mr Ajay Taheam has been involved with the property in connection with the licensing issue.
19. In all the circumstances, the Tribunal is satisfied beyond reasonable doubt that both of the Respondents are the Applicant's landlord.

Whether the Tribunal is satisfied beyond reasonable doubt that the Respondents have committed a relevant offence?

20. Mr Williams gave evidence, which the Tribunal accepts, that the property required a licence from at least 12 June 2017 but that it was unlicensed until 8 July 2019.

21. Mr Williams stated that the Council advised the Respondents of the need to apply for a licence by letter dated 12 June 2017. It is stated in this letter that the area in which the property is situated was designated a selective licencing area from 1st October 2016. It is not, however, known whether the property was let prior to 12 June 2017.
22. Further letters were sent by the Council to the Respondents concerning the need to apply for a licence but it was not until 8 July 2019, the date of a formal interview prior to starting criminal proceedings, that Mr Arwin Taheam applied for a licence. This is notwithstanding that, by an email dated 4 April 2018 responding to correspondence from the Council, Mr Arwin Taheam had stated "*I will collect all necessary paperwork & make the necessary applications tomorrow.*" The Respondents have not sought to respond to these Tribunal proceedings denying that an offence under section 95(1) was committed.
23. On the basis of Mr Williams's oral and written evidence, and the correspondence relied upon on support, the Tribunal is satisfied beyond reasonable doubt that the offence under section 95(1) of the 2004 Act of the control or management of an unlicensed house was committed by the Respondents from 12 June 2017 until 8 July 2019.

Did the offence relate to housing that, at the time of the offence, was let to the tenant?

24. The Tribunal has been provided with the Applicant's witness statement and evidence of rent payments. The Tribunal is satisfied on the basis of the Applicant's evidence that the offence related to housing that, from 8 September 2018 until an application for a licence was made on 8 July 2019, was let to the Applicant.

Was an offence committed by the landlord in respect of the period of 12 months ending with the date the application was made? What is the applicable period?

25. The application was made in June 2019. Accordingly, the offence was committed by the Respondents within the period of 12 months ending with the date on which the application was made.
26. The applicable period in accordance with section 44(2) of 2016 Act is 7 September 2018 to 8 July 2019. The Tribunal accepts the evidence put forward by the Applicant that he paid rent to the Respondents in the total sum of £11,313.78 during this period.

The exercise of the Tribunal's discretion

27. Subsection 43(1) of the 2016 Act gives the Tribunal a discretion as to whether or not to make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a relevant offence.
28. In the present case, given the nature and seriousness of the offence and the length of time during which the offence was committed, it is clearly appropriate for the Tribunal to exercise its discretion to make an RRO.

The maximum amount of the rent repayment order

29. The Tribunal's Directions require the parties to provide details of any universal credit/housing benefit paid to the Applicant. No party asserts that the Applicant was in receipt of universal credit/housing benefit during the applicable period. The Tribunal is therefore satisfied that the maximum amount of the RRO is £11,313.78.

The amount of the RRO in the present case

30. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that, in certain circumstances, the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
31. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(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.

32. During the course of the hearing, reference was made to two decisions of the Upper Tribunal, namely, *Parker v Waller [2012] UKUT 301 (LC)* and *Fallon v Wilson [2014] UKUT 0300 (LC)*. These decisions concern the amount of a rent repayment order under the provisions of the 2004 Act which apply when a relevant offence started to be committed before 6 April 2017.

33. The Tribunal considers that *Fallon v Wilson* and *Parker v Waller* remain relevant authorities under the 2016 Act and the Applicant's representative did not seek to disagree as a matter of legal principle.
34. Accordingly, the Tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made, (ii) the benefit obtained by the tenant in having had the accommodation is not a material consideration (iii) the Tribunal has a general discretion which must be exercised judicially and (iv) the net benefit received by the landlord from the letting is a material consideration.
35. The Respondents have not sought to engage with these proceedings and have provided no evidence. Accordingly, there is no evidence before the Tribunal to the effect that the Respondents incurred expenses in connection with the letting of the property to the Applicant.
36. In determining the amount of the RRO in this case, the Tribunal has had regard to the oral and written evidence which it has received and to all the circumstances of the case. The Tribunal has, in particular, placed significant weight upon:
 - (i) The length of time during which the offence was committed notwithstanding the extensive correspondence from the Council to the Respondents which is exhibited to Mr Williams' witness statement.
 - (ii) The unchallenged evidence at paragraph 5 of the Applicant's witness statement that, in November 2018, the property was flooded and that the building was also infested with rats.
 - (iii) The absence of any remorse or engagement with these proceedings on the part of the Respondents.
 - (iv) Mr Williams' evidence that the Respondents failed to comply with a notice which was served on the Respondents on 30 July 2019 requiring them to provide specific information including fire and gas safety certificates.
 - (v) Oral evidence given to the Tribunal by Mr Mendy, which the Tribunal accepts, that at the time of his inspection on 15 May 2019 the property was in a reasonable condition, save for minor items of disrepair and that there were no fire safety hazards. Mr Mendy informed the Tribunal that no concerns

were raised by the Applicant concerning a rat infestation at that point in time.

- (vi) The Respondents are not known to let more than one property.

37. In all the circumstances, the Tribunal determines that it is appropriate to make an RRO in favour of the Applicant in the sum of £9,000, representing approximately 80% of the maximum amount of the RRO.

Name: Judge Hawkes

Date: 17 October 2019

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).