



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

Case reference : **LON/00BA/HMF/2020/0029: HMCTS
VIDEO REMOTE**

Property : **21 Trinity Road, London SW19 8QT**

Applicant : **Ms Gurkupal Kaur Bawa**

Representative : **Mr M Collard, counsel**

Respondent : **Ms Elizabeth Suarez**

Representative : **In person**

Type of application : **Rent Repayment Order -s 72(1) Housing
Act 2004**

Tribunal member : **Judge Tagliavini
Mr P Roberts DipArch RIBA**

Venue : **10 Alfred Place, London WC1E 7LR
HMCTS: Video Remote**

Date of hearing : **30 November 2020**

Date of Decision : **1 December 2020**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **HMCTS: VIDEO REMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in three bundles of documents (i) the applicant's bundle pp 1 to 227 (ii) the respondent's bundle pp 1 to 37 and (iii) the applicant's Reply bundle pp 1 to 61 the contents of which, the tribunal has noted. The order made is described at the end of these reasons.

Summary of decisions of the first-tier residential property tribunal

- (1) The tribunal finds an offence under section 72(1) of the Housing Act 2004 has been committed and makes a rent repayment order in the sum of £7,690.80 to be paid by the respondent to the applicant.**
 - (2) The application and hearing fee totalling £300 are to be reimbursed by the respondent to the applicant.**
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The application

1. This is an application dated 26/2/2020 made under the provisions of the Housing Act 2004 and the Housing and Planning Act 2006. The applicant asserts that the respondent had committed an offence under section 72(1) of the 2004 Act in that she had the management and control of an unlicensed house in multiple occupation (HMO) for which a mandatory licence was required in accordance with the 2004 Act. The applicant therefore seeks a rent repayment order for a 12 months period in the sum of £9,000.

Background

2. In a tenancy agreement dated 17 May 2017 the respondent agreed to let to the applicant a room at 21 Trinity Road, London SW19 8QT ('the subject premise') for a term of six months at a monthly rent of £750. The premises comprise of a three storey house in which 6 bedrooms were let to various occupants with shared use of kitchen, toilet and bathroom facilities during the course of the applicant's occupation from 17/05/2017 to 28/02/2019.

The applicant's case

3. The applicant relied upon two bundles of documents in support of her application at the video hearing of in addition to her oral evidence. At the hearing Mr Collard for the applicant, informed the tribunal that Ms Bawa was relying only on the offence under section 72(1) of the 2004 Act having been committed and not upon any allegation of unlawful eviction despite having been given less than two months' notice or harassment. Consequently, Ms Bawa was seeking a rent repayment order for the period 1 March 2018 to 28 February 2019.
4. In counsel's skeleton argument it was asserted that the subject property was an HMO as it had three floor, 6 tenants from different households who shared washing, toilet and cooking facilities. Therefore, the subject property comprised a large HMO for which a licence was mandatorily required pursuant to section 254(2) of the Housing Act 2004 which describes an HMO as:

'A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

5. The absence of a licence was confirmed in correspondence from the responsible local authority, the London Borough of Merton.
6. In support of the applicant's case the tribunal was referred to a number of messages from the 21 Trinity Road WhatsApp group said to have been created by the respondent for the residents of 21 Trinity Road. It was said by the applicant that these messages showed that there were numerous tenants in the property at the time of her occupation. Ms Bawa accepted she did not have copies of any tenancy agreements other than her own although relied also on a witness statement of Eleanor Chalmers dated 15 October 2020 who had been a tenant at the subject property between April 2017 and August 2017 together with numerous other occupiers.
7. In support of her assertions Ms Bawa compiled a list of the other occupants in the premises with the names and approximate dates of their occupation and the room in which they resided.
8. The tribunal was also provided with a schedule of the rental payments she had made to the respondent supported by copies of bank statements.
9. In her oral evidence Ms Bawa told the tribunal that she had found the subject property being advertised on a shared letting website and had corresponded with the respondent's brother, Augusto about the tenancy she subsequently entered into. Ms Bawa told the tribunal that apart from the respondent's brother there were no other family members of the respondent in occupation and that the property was not being used as a family home but as an HMO.

The respondent's case

10. In the statements provided to the tribunal and in her oral evidence Ms Suarez denied that the subject premises was let as an HMO. Ms Suarez asserted that her brother, mother and niece usually occupied the property and that the applicant had only been granted a six month tenancy as a temporary financial measure to offset the loss of family contribution to the upkeep of the property while her family members had returned to Bolivia for family reasons.
11. Ms Suarez challenged the reliability of the messages in the WhatsApp group chat and variously denied having sent the messages or that the various messages were from other occupiers of the property. In support of her assertions the tribunal was provided with witness statements from a family friend and resident at the property Philip Kendall dated 2 October 2020 and Augusto Vilaseca dated 2 October 2020. Mr Vilaseca also gave oral evidence to the tribunal in which he stated he had occupied a room at the property until about the end July 2018 when he had left and moved in with his girlfriend. He told the tribunal that he had contributed about £7,000 to the purchase of the subject property although accepted that neither his or the names of other family members who had contributed to the purchase of the property appeared on the Land Registry documents. Mr Vilaseca stated that he recognised some of the names of other occupiers in the WhatsApp group 'chat' but did not accept that the subject property had been let by the respondent as an HMO.
12. Ms Suarez told the tribunal that the subject property had been purchased by family members to provide them with a family home. Ms Suarez accepted that she had never lived in the property but resided in a property nearby with her three children. Ms Suarez denied owning any other properties and denied having let flats to tenants. Ms Suarez explained to the tribunal that Brillatina Properties Services used on her headed notepaper and giving her home address of 9 Herbert Road, London SW19 3SQ had been an unsuccessful cleaning property management company which had never really been able to function due to unforeseen difficulties.
13. Evidence of mortgage arrears were provided to the tribunal as well as the grant of the renewed planning application to build a rear side extension at the subject property.

The tribunals' findings

14. The tribunal finds the evidence of Ms Suarez and that of her brother Augusto Vilaseca to be vague, unreliable and not credible where it conflicts with that of the appellant. The tribunal finds that the witness statement of Philip Kendall confirms his occupancy of the subject property until 16/02/2019 and was otherwise limited to dealing with allegations made by the applicant of the respondent's behaviour. The tribunal finds and the respondent did not disagree that a tenancy was entered into with the applicant for the sole use of one bedroom and share used of kitchen, toilet and bathroom facilities.
15. The tribunal finds and the respondent did not seek to assert otherwise, that rent of £750 per month was paid for the duration of the applicant's occupation.

16. The tribunal finds that Ms Suarez let the subject property to multiple single occupants and that as soon as one vacated, another tenant was found to replace them as soon as possible.
17. The tribunal finds that the respondent's brother was also an occupant at the subject premises until 31/07/2019 and that the rooms alleged to have been used by the respondent's mother, her friends and her nieces as well as for storage of equipment were all let to various occupiers at a rent.
18. The tribunal finds Ms Suarez has demonstrated little compliance with the requirements of being a landlord in order to ensure the safekeeping of deposits with a tenancy deposit scheme or similar, the requirement of the service of the correct notice and period for a valid termination of an assured shorthold tenancy or the requirement to obtain a licence when operating or controlling an HMO.
19. The tribunal finds that Ms Suarez has made a substantial profit from the letting of the subject property and finds that the current interest only mortgage repayments of £1,429.22 as of 20 April 2020 on an outstanding capital sum in the region of £640K represents less than 50% of the value of the subject property.
20. The tribunal also finds that the evidence recorded in the WhatsApp chat group, created by the respondent for the occupiers of the subject property, to be reliable and provides the best evidence of the persons resident at the subject premises and the date of their occupation. The tribunal finds that the WhatsApp chat group for 21 Trinity was intended by the respondent as a tool by which she could manage the property and was used to remind the occupiers that rent was due at the beginning of the month in accordance with the tenancy agreements.
21. The tribunal finds that the applicant's documentary and oral evidence on the matter of the occupants was vague and unclear with limited details of names, dates and rooms and was therefore not found to be sufficiently reliable. However, the tribunal finds from the WhatsApp group chats that the tenants in occupation during the period for which a rent repayment order is claimed were as follows:
 - (i) Ms Bawa: in residence as at 17/05/17 to 28/02/19
 - (ii) Augusto Vilaseca: in residence at 17/05/17 to 31/07/2018 and replaced by Ariel 01/08/2018 to 06/01/2019
 - (iii) Philip Kendall: in residence at 17/05/2017 until 16/02/2019
 - (iv) Kostas: in residence on or before 08/02/2018 and remained in residence after 28/02/2019
 - (v) Dimitris: in residence from 08/02/18 and remained in residence after 28/02/2019

22. The tribunal finds that there were also other occupiers at the property but cannot be sure of the dates of their occupancy from the evidence provided. Therefore, the tribunal finds that during the period 1 March 2018 to 6 January 2019 (312 days) the subject property was being occupied by 5 persons comprising 5 households with shared use of kitchen, bathroom and w.c. of whom at least four persons paid rent. The tribunal also finds that the subject property was in the control and management of the respondent during this period and finds that the property required a mandatory licence as an HMO and that Ms Suarez neither held or had applied for such a licence during this period.
23. Therefore, the tribunal finds and is sure that an offence has been committed under section 72(1) of the 2004 Act and that a rent repayment order should be made. Further, the tribunal finds that the conduct of Ms Bawa does not give rise to any reason for deductions to be made.
24. The tribunal finds that Ms Suarez is an experienced landlord and the owner of two highly valuable properties in which there is considerable equity. The tribunal finds that Ms Suarez has failed to provide good reason why any deduction from the sum payable should be made and therefore the tribunal declines to do so.
25. In conclusion the tribunal finds that a rent repayment order in the sum of £7690.80 (£24.65 per day x 312 days) is payable by the respondent to the applicant.

Rule 13 costs and reimbursement of fees

26. The tribunal determines that it appropriate to order that the respondent to reimburse the applicant with the application and hearing costs totalling £300. However, the tribunal finds that the respondent's conduct in seeking to defend the claim against her does not meet the criteria for an award of costs under rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Name: Judge Tagliavini

Dated: 4 December 2020

Rights of appeal from the decision of the tribunal

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).