



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

Case Reference : LON/OOAC/HMK/2019/0064

Property : 20A Shirehall Close Hendon NW4 2QP

Applicant : Jordan Nethercliffe, Sona Fiedorova, Undine Liva Seglina, Yasmin Carter-Morgan

Representative : Ms Hicks

Respondent : Joshua Conway

Representative :

Type of Application : Application for a Rent Repayment Order

Tribunal Members : Judge Shepherd
Louise Crane MCIEH

Date of Decision : 26th November 2021

1. This is an application for a rent repayment order made pursuant to section 41 of the Housing and Planning Act 2016. The application is made by four applicants, Jordan Nethercliffe, Sordan Fiedorova, Undine Liva Seglina, Yasmin Carter Morgan. All of the applicants were former joint tenants of premises at 20A Shirehall Close, London NW4 2QP (“The premises”). Their landlord was Joshua Conway (“The Respondent”).
2. The hearing took place on 26 November 2021 after a considerable delay caused largely by the pandemic. The premises consist of a three-bedroom

upstairs flat with one kitchen one living room one bathroom and a secondary WC. The premises are located in Barnet.

3. The principal allegation in the application is that the Respondent failed to license the premises during the tenancy. The relevant period is from 17th of September 2018 to 16th of September 2019. During this period the premises were not subject to a licence notwithstanding the fact that they were a house in multiple occupation (HMO). There was no dispute that the premises were an HMO. The Respondent's defence was based on him having a reasonable excuse for failing to license the premises because he says he was advised by an estate agent that he did not have to do this because the premises were not an HMO. He realised this was not the case when the local authority contacted him on 25 July 2019 informing him that the premises may be an HMO. He was advised to apply for a Temporary Exemption Notice which he did and the exemption notice applied with effect from 7 August 2019. This notice was given by the local authority on the basis of an assurance by the Respondent that he was moving back into the premises and therefore a licence would not be required in the future. The Tribunal have been unable to determine whether the Respondent actually moved back into the premises or whether he let it out again because the Respondent chose not to attend the hearing.
4. It was to say the least very surprising that the Respondent chose not to attend the hearing. He had adequate notice of the hearing as confirmed by the Tribunal's clerk and for whatever reason chose not to come. He had previously provided a witness statement and a bundle of documents in his defence.
5. The Applicants were represented at the hearing by Lara Hicks of Counsel. Only one of the applicants attended the tribunal to give evidence. This was Yasmin Carter - Morgan. The Tribunal were told that the other applicants were either abroad or were unable to attend for medical reasons. The Applicants' solicitor was informed that it was not appropriate for the applicants to be represented by only one of their number and all of them

should have attended the hearing. As it turned out however because the Respondent did not attend this did not affect the proceedings. If the Respondent had attended he may have wanted to cross examine all of the applicants and would not have been able to do so if they had not attended. If the applicants had genuine reasons for not attending then evidence should have been provided.

6. The Tribunal does not accept the Respondent's evidence that he received incorrect advice as regards the HMO. In fact it seems tolerably clear that he was aware that the premises were an HMO and he had sought to evade the issue. There are a number of factors that have led the tribunal to this conclusion not least the fact that the respondent did not demonstrate his worth by attending the tribunal hearing. The Tribunal also notes the evidence obtained by the Applicants with regard to the Respondent's LinkedIn account. This showed that the Respondent was holding himself out as the director of Vale Investments who were said to be property consultants specialising solely in the acquisition of investment and development projects in Greater London. In addition, the LinkedIn account references the fact that the company's main areas of activity and interest included HMOs, hostels and hotels. If indeed Vale Investments were involved in HMOs then they would surely be aware of the licensing provisions. If they are not aware of the licensing provisions they ought not to be practising in that area at all. In any event these issues could not be explored with the Respondent because he chose not to attend which is in itself demonstrative of his poor conduct in this matter.

7. The tribunal have no hesitation in making a rent repayment order in this case the period of the rent repayment order is 10 months and 21 days leading up to the exemption notice. The rent was £1800 per month. If the Tribunal could have awarded a 100% rent repayment order it would have done so but the provisions of the Act are such that once an exemption notices has been given this effectively stops the clock. The amount of the rent repayment order is £19,350 which should be paid by the Respondent to the Applicants' solicitors

within 14 days. There was no evidence as to the Respondent's financial circumstances and there were no rent arrears to deduct from the rent repayment order.

8. The Applicants' Counsel raised the issue of costs. It is of course open to the Applicants to apply for their costs in this case pursuant to regulation 13. If they wish to do they should make an application to the Tribunal with a costs schedule copied to the Respondent by 4 pm on 3rd December 2021. If the Respondent opposes the making of a costs order he shall provide his written objections by 4 pm on 10th December 2021. The Tribunal will then reach a decision as to the question of costs.

Summary

9. The Respondent is to pay a rent repayment order of £19,350 to the Applicants' solicitors by 4 pm on 10th December 2021.

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
3. 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.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.