



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

Case reference : **LON/00AE/HMF/2020/0174**

HMCTS code : **V: CVPREMOTE**

Property : **25 Cornwall Gardens, London NW10
2QX**

Applicant : **Michael Stewart (1)
France Huyard (2)**

Representative : **Michael Stewart**

Respondent : **Ali Mohamed**

Representative :

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

**Tribunal
member(s)** : **Judge D Brandler
Antony Parkinson MRICS**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **1st June 2021**

Date of decision : **1st June 2021**

DECISION

Decision of the tribunal

**(1)The Respondent shall pay to the Applicants a Rent
Repayment Order in the total sum of £10,800.00.**

(2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. The tribunal received an application dated 2nd September 2020 under section 41 of the Housing and Planning Act 2016 from the Applicant tenants for a rent repayment order (“RRO”).
2. The application alleged that Mr Ali Mohamed (“the Respondent”), the freehold owner of the property, had failed to obtain a licence for 25 Cornwall Gardens, London NW10 2QX (“the property”) in breach of the HMO licensing requirements operated by Brent Council (“The Council”).
3. The history of the occupancy is briefly as follows. The Applicants, who are a couple, entered into a one-year fixed term AST agreement dated 26th May 2018 with the Respondent from 26th May 2018 to 25th May 2019. At the commencement of the agreement the Applicants paid £1700.00 which, according to the contract, was payment of the first and last month’s rent. No deposit was paid. The monthly rent was £850.00. At the end of the fixed term the tenancy became a statutory periodic one. The Applicants moved out of the property on 16th October 2019. The property is a five-bedroom house on two floors. The rooms were served by one small shared kitchen with one oven, a small table and two chairs. Each room had ensuite bathroom facilities, other than the Applicants’ room. The Applicants were allocated a bathroom situated across a communal corridor from their room. This was sometimes used by other occupiers of the house or their visitors.
4. The Applicants seek to recover by way of a RRO under s.44 of the Housing and Planning Act 2016 (“The 2016 Act”) the rent for the period from 2nd September 2018 to 2nd September 2019. The sum claimed is £10,800.00.
5. On 15th February 2021 the Tribunal issued directions [32-39].
6. The Respondent has played no direct part in these proceedings and failed to comply with the Tribunal’s directions. On 18th May 2021 he sent an email to the Tribunal which included personal information and photographs. This was referred to a Procedural Chair and a letter was sent to the parties on 20th May 2021 which directed that the Respondent re-submit his email to the Applicants by 25th May 2021,

having removed photographs and any personal circumstances that he does not wish to disclose.

7. On the morning of the hearing the Tribunal panel were forwarded an email from the Respondent dated 26th May 2021 in which he sets out a very vague request to adjourn the matter for 6 months at which point he says he may be able to “*think a little clearer, see the light of day, read all the correspondence and bundles, and prepare*”. No medical evidence was submitted to support such a request. He goes on to ask that if the matter cannot be adjourned, then “*please conclude this matter in my absence as I certainly will not be able to attend the hearing listed for June 2021*”.
8. It was noted that the Respondent has been informed of the timetable of these proceedings from 15th February 2021, that he had failed to comply with directions and that other than this vague email no submissions had been made. Nor had any medical evidence been submitted to support an adjournment. The Tribunal having considered his submission found that it was not in the interests of justice to delay, and permission to adjourn was refused.

THE HEARING

9. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
10. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The Applicants’ Bundle consisted of 106 pages. Other than the email referred to above, the Respondent has submitted nothing else.
11. The Applicants both attended the hearing remotely by video connection. Mr Stewart presented their application. Also present at the hearing was Charlotte Vossen, a witness for the Applicants. Ms Vossen had occupied a single room on the ground floor of the property from 16th June 2018 until 20th March 2019.
12. In oral evidence Ms Vossen confirmed that when she had moved into the property there were already 2 couples occupying two of the double rooms, and the other single room was occupied by Biko, the Respondent’s builder. In or around July/August 2018 the last double room became occupied by another couple. She confirmed that throughout the period from August 2018 until she moved out on 20th

March 2019 there had been 8 occupants in the property from five separate households.

13. Mr Stewart's oral evidence in terms of the occupancy of the property is set out in his occupancy table for the period. He confirms that after Ms Vossen moved out of her single room, a new tenant had moved into that room by the end of the month. As set out in the occupancy table, that new tenant was known to him as Adam. [96-97]
14. He also relies on evidence obtained from Alex Pang, an enforcement officer employed by L.B Brent. In particular Mr Pang's email dated 2nd September 2020 in which he confirms that he visited the property with two colleagues on 2nd September 2019 and "*witnessed it being occupied as a House in Multiple Occupation (HMO) but was without an HMO Licence*" [50]. He goes on to confirm that their "*investigation found that the owner Mr Ali Mohamed was the person in control and the person managing the above property on 3/9/2019. Mr Mohamed has had a HMO licence at another property on the same road therefore he had knowledge of the HMO Licensing Schemes in Brent. The Council has served a Financial Penalty notice under S249 of the Housing Act 2004 on Mr Mohamed for the following offences dated 3/9/2019: - S72 failed to apply for a Mandatory HMO Licence, and - S34 failed to maintain the property as required under The Management of Houses in Multiple Occupation (England) Regulations 2006*".
15. The details of the failure to comply with the above breaches were that the respondent failed to display his name address and phone number in the property; failed to produce a valid BS5839 fire alarm test certificate as evidence that the fire alarm system was tested and maintained in good working order; failed to ensure a suitable fire action notice was clearly displayed; failed to ensure the fire safety provisions within the property complied with LACORS fire safety guidance, by failing to ensure all bedroom doors and the kitchen door were fire doors; failed to provide adequate shared amenities for the 7 persons sharing 1 cooking facility; failed to supply the gas safe certificate being valid on 03/09/19 to the Council within 7 days of a written request [54].
16. Mr Pang confirms that the Respondent subsequently submitted an HMO Licence application for the property on 11th September 2019.
17. In Mr Pang's email dated 1st March 2021 he confirms that "*Council records show Mr Mohamed has a good knowledge of licensing requirements in Brent; having held previous licences and he has dealt with the property licensing Private Housing Services (PHS) department on many occasions, he was aware of licensing regulations and had access to information by either visiting the Council's website on licensing, or contacting PHS by telephone or email. On the offence date there was a nationwide Mandatory HMO licensing scheme in operation, and since 1/1/2015 Brent has a borough-wide Additional HMO licensing scheme applicable on all HMOs which do not meet the criteria in the Mandatory scheme. Mr Mohamed was the owner and*

the person receiving rent from the property. When we carried out an inspection at the property on 3/9/2019, we collected evidence that it was occupied by more than 3 persons from more than 1 household who were sharing a communal kitchen, it was a HMO. There was no HMO licence application received or a licence in operation.”

18. Mr Stewart confirmed and provided evidence that the full rent of £850 per month had been paid during the relevant period [24-31].
19. He also confirmed that although the tenancy agreement provided that utilities were included in the rent, there had been problems with the internet which was unreliable and slow, and that they had instead relied on their internet provided by way of their mobile telephone contract. In relation to Council Tax which was included in the rent, Mr Stewart says that the Respondent would have had to pay Council Tax whether he had tenants or an empty property, and in terms of utilities, he is unaware of costs.
20. Also in oral evidence, Mr Stewart referred the Tribunal to an Enforcement Notice dated 19th September 2011 that he had found on the internet in relation to the property in relation to the Respondent's breach of planning control. That followed the change of use of the property from a single family dwelling house to an HMO [57]. Evidence of service upon the Respondent is included in the bundle [60].
21. A further document evidences the Respondent's appeal against the notice of 19th September 2011. The appeal failed on 1st February 2012 and paragraph 9 notes that subject to the variation set out in that paragraph the appeal is dismissed and the enforcement notice is upheld [62-63].

FINDINGS

22. The Tribunal were satisfied beyond reasonable doubt that the Respondent was in breach of his requirement to licence the property under the HMO licensing schemes managed by the Council.
23. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.
24. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.
25. There is no evidence before the Tribunal to question the conduct of the Applicants. They confirm that they have paid their rent regularly and on time. The documentary evidence confirms that assertion.
26. In relation to the conduct of the Respondent the tribunal finds as follows:-

- a. The Respondent as committed s.234 offences under the management of Houses in Multiple Occupation (England) Regulations 2006 by failing to make available his name, address and telephone contact number to each household in the HMO and failed to clearly display such information in a prominent position.
 - b. He failed to produce to the Council when requested a copy of a valid BS5839 fire alarm test certificate as evidence that the fire alarm system was tested and maintained in good working order
 - c. He failed to ensure a suitable fire action notice was clearly displayed in the property
 - d. He failed to ensure the fire safety provisions within the property complied with the LACORS fire safety guidance, ensuring all bedroom and kitchen doors complied with the FD30S standard and such fire doors were not key lockable on the inside, were fitted with a self-closing mechanism and fitted with intumescent smoke strips to both sides and the top of the door.
 - e. The number of shared amenities were inadequate for the number of occupiers: there were 7 persons sharing 1 cooking facility
 - f. He failed to supply a copy of the Gas Safe certificate being valid on 03/09/2019 to the Council within 7 days of a written request
 - g. From 19th September 2011 when an enforcement notice was issued to the Respondent, he has been aware that he is breach of planning control in relation to the property
 - h. He has another property in the same road as the subject property for which he did apply for a licence and he is aware of licencing requirements.
 - i. He has failed to engage with these proceedings.
27. The Tribunal could not make any assessment of the Respondent's financial circumstances because he provided no evidence. The Tribunal is aware that the property was purchased by the Respondent on or around 09.01.1997, and that the title deed shows no charges against that property [90].
28. In relation to utilities which are said to be included in the monthly rent, the Respondent has provided no detail of his expenditure which could have been considered by the Tribunal. The Tribunal find that he would have had to pay Council Tax even if the property was empty; the promised internet was unreliable; and the any other utility payments are unknown. No deductions due to lack of evidence on these issues.
29. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the evidence of the landlord's conduct, we consider that the award should not be reduced. Accordingly, we find that an RRO should be made against the Respondents in the full sum sought £10,800.00 which should be paid to the Applicants.

30. The Respondent is also ordered to pay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Tribunal Judge Brandler **Date:** 1st June 2021

ANNEX - RIGHTS OF APPEAL

1. 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.
2. 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.
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 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.

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.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(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 (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—

- (a) repay an amount of rent paid by a tenant, or
- (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

| Act | section | general description of offence |
|-------------------------------------|---------------------------|----------------------------------------------|
| 1 Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| 2 Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |
| 3 Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| 4 | section 32(1) | failure to comply with prohibition order etc |
| 5 | section 72(1) | control or management of unlicensed HMO |
| 6 | section 95(1) | control or management of unlicensed house |
| 7 This Act | section 21 | breach of banning order |

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority 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.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 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.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

| <i>If the order is made on the ground that the landlord has committed</i> | <i>the amount must relate to rent paid by the tenant in respect of</i> |
|---------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| an offence mentioned in row 1 or 2 of the table in section 40(3) | the period of 12 months ending with the date of the offence |
| an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3) | a period, not exceeding 12 months, during which the landlord was committing the offence |

- (3) The amount that the landlord may be required to repay in respect of a period must not exceed—
- (a) the rent paid in respect of that period, less
 - (b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.
- (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.