



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

**Case Reference** : **LON/00AM/HMF/2021/0061**

**HMCTS Code** : **V: CVPREMOTE**

**Property** : **Flat, 1 & 2, 146 Albion Road, London N16 7 PA**

**Applicants** : **Mr. Edward Mair  
Mr. Aaron Skates  
Mr. William Fear**

**Representative** : **Mr. Mair lead- tenant.**

**Respondent** : **(i)Mehtap Djemal  
Mr Timur**

**Representative** : **Ronald Baker Solicitors – Marissa Lawrence  
and Christine Akhuetie**

**Type of Application** : **Applications for Rent Repayment Orders by  
Tenants  
Sections 40, 41, 43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Members** : **Judge Daley  
Mr Stephen Mason- Professional Member**

**Date of Hearing** : **20 August 2021**

**Date of Decision** : **1 October 2021**

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## DECISION

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- I. Covid-19 pandemic: description of hearing This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.
- II. The Applicants have produced two separate bundles of documents. Page references in this decision are to the electronic page number in the Bundle.
- III. **Decision**

The Tribunal makes a rent repayment order in favour of the Applicants for £13,300 (thirteen thousand, three hundred and four pounds) together with reimbursement of the hearing and application fee.

### **Introduction**

1. The Tribunal is required to determine this application which has been made under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order (“RRO”) in respect of Flat 1 & 2 146 Albion Road London N16 9PA (“the Property”). This is an application by three tenants, concerning a three-bedroom flat in a terraced building, above a shop for a Rent Repayment Order, under section 41 of the Housing & Planning Act 2016.
2. The property they occupied was required to have an additional licence from London Borough of Hackney. An additional licensing scheme came into force on 1 October 2018; however the property was not licensed.
3. The tenants, who are the Applicants in this matter were granted a shorthold assured tenancy commencing on 7 September 2019, which came to an end on 16 April 2020. The tenants applied to the First-tier Tribunal (‘FTT’) for Rent Repayment Orders on 9 October 2020. However due to the Coronavirus Pandemic, this matter was delayed.
4. The Tribunal issued Directions on 8 April 2021, under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6. (3)(b). These Directions set out how the Applicants should prepare and the relevant documents to be provided.
5. Directions set this matter down for hearing on 20 August 2021.

## 6. Property Inspection

7. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties, the Tribunal understands that the property is a 3-bedroom flat, in a terraced building above a shop, comprising 3 rooms with shared facilities.
8. The Tribunal makes no further assumptions regarding the condition of the accommodation, however the Tribunal noted that there was no dispute between the parties concerning this.

## 9. Relevant Law

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

a. 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 –

- i. 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.

Section 40(3) of the 2016 Act lists 7 categories of offence

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offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as:

’*Control or management of unlicensed HMO.* Section 72(1) of the 2004 Act provides:

’*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... but is not licensed.*’

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

Section 44 of the 2016 Act sets out the amount of order:

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.

If the order is made on the ground that the landlord has committed an offence under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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—

- ii. the rent paid in respect of that period, less
- iii. 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—

- iv. the conduct of the landlord and the tenant,
- v. the financial circumstances of the landlord, and
- vi. whether the landlord has at any time been convicted of an offence to which this

Chapter applies.

## **The Hearing**

### **The Applicants' Submissions**

10. The Applicants provided a copy tenancy agreement, for the rental of the three-bedroom flat with shared facilities, ( the kitchen and bathroom). This was a shorthold assured agreement with the term starting on 1 October 2019. The tenancy agreement was signed on line, on Open Rent tenancy agreement for a monthly rent of £1900.00 PCM. Mr Mair and Mr Skates signed the agreement, however the Applicant's contended that all three tenants resided at the property
11. During this time, the property was unlicensed as an HMO, and remained unlicensed until the Applicants left the premises. The premises were required to be licenced pursuant to a decision taken by the London Borough of Hackney. The subject property was required to be licensed under the additional licence scheme.
12. The Applicants received confirmation via the local authority, ( LB of Hackney's) Business & Technical support, which was confirmed in an email, dated 25 February 2021, that the property was unlicensed, and was in an area which was subject to a selective licensing scheme.

13. In his witness statement, William Fear provided details, of the occupants of the premises. His statement which was dated 23 February 2021, stated that he was not asked to sign the contract as “...the landlord assured Ted (one of my fellow tenants that) only two signatories would be necessary on the tenancy agreement even though three of us would be living there”
14. In paragraph two of his statement, he set out that he lived at the property from 07/09/19 to 06/04/20. During that time the property was shared by himself and two others, and he paid a monthly rent of £613.00.
15. The Tribunal was informed by Mr Mair, the lead applicant that he had known Mr Skates from university, and Mr Fear had been a friend of Aaron Skates. He stated that Mr Skates had started a job in London and Mr Fear had been undertaking a post graduate qualification.
16. He informed the Tribunal that he had found the property on a website called “Open Rent”. He stated that he had gone to view the property and had been shown around by Mr Djemal (the landlord’s son). The premises had 3 rooms, and a kitchen which also provided communal space. The accommodation comprised, two double rooms and a single room and a bathroom/shower room.
17. He stated that after viewing the property, he had decided that he wanted to rent the premises, and had contacted Mr Djemal. He had explained the fact that three tenants would be renting the property. Mr Djemal had stated that as both he and Mr Skates were employed, they should sign the tenancy agreement as only two signatories were needed.
18. He stated that as there was a prior relationship and friendship between the three tenants, they had trusted each other, and he had agreed that he and Mr Skates should sign the agreement, as they knew that Mr Fear would pay his share.
19. It had been agreed between the three tenants that the two tenants who were working would take the larger rooms. As Mr Skates was nearer the kitchen, he paid £20.00 more, whereas Mr Fears paid £20.00 less.
20. He stated that originally all tenants’ details had been provided to Open Rent. However, Mr Fears details were removed by the landlord.
21. He stated that the landlord had provided 3 beds, and three wardrobes. He had however, been provided only two sets of keys. Mr Djemal had told him to get a third set cut and send him the receipt and he would reimburse the costs. Mr Mair stated that he had not bothered to send him the receipt.
22. He stated that Mr and Mrs Djemal (the landlord) were both aware that there were three tenants living at the property as although there were no formal meetings between the landlord, Mrs Djemal, she had three other flats within the building, as such, both Djemal regularly attended the building. He accepted that they had not necessarily attended at the rented property, however, they would be doing small repairs or housekeeping.
23. During cross examination, Mr Mair denied that only two beds and wardrobes had been ordered. He stated that their status as three tenants had been fully disclosed to the landlord.
24. He also disagreed that they had told the landlord that they would have a friend staying over occasionally. He stated that they had previously rented properties as students, and they knew that they were allowed to have guest, so he would not have consulted the landlord about this. He accepted that Mr Skates had not been present at his meeting with the landlord, (prior to their renting the premises) on 7 September 2019.

25. He acknowledged, that he had paid the rent to the landlord after collecting it from the other tenants, so no direct payments had been made to the landlord by the others. Mr Mair accepted that although Mr Djemal had attended the property, he had not gone into the bedrooms.
26. Mr Mair stated that tenants had asked to bring the tenancy to an end by using the break clause within the agreement as Covid had meant that Mr Fear's lessons moved on line, it was also impractical for the other two tenants to work from home in the communal area of the flat. It had been agreed that the landlord would use the deposit, in lieu of notice.
27. Mr Mair provided the Tribunal with a bank statement which recorded the payments which had been made to "M Djemal." In the sum of £1900.00 PCM.
28. In his statement, Mr Fear provided details of the concerns of the tenants that there were no fire doors, even though the flat was on the third floor, and no fire extinguishing equipment had been provided. Neither was there a carbon dioxide alarm.

### **The Respondent's Submissions**

29. In written submissions, the Respondent set out that the landlord denied any awareness of Mr Fear as a tenant under the AST. However, at the hearing Mr Hope accepted on the landlord's behalf that Mr Fear had lived at the property, but it was denied that this had occurred with the Landlord's knowledge and consent.
30. Mr Timur Djemal, provided a witness statement to this effect and also gave oral evidence.
31. He stated that when he met with Mr Mair on 7 September 2019, he had informed him that he had a friend who would visit the property occasionally and stay over. He had assured Mr Mair that the property was now his home and that he could treat it as such. He stated that he had understood from this conversation that Mr Mair was asking about a friend staying occasionally.
32. Mr Djemal recalled that at that meeting which was attended by Mr Mair and Mr Skates, they had been provided with the EPC and the Gas Safety Certificate and the *How to Rent Guide*, which were all left on the table.
33. He stated that neither himself, or his mother had any knowledge that Mr Fears had been living in the property as a tenant. He referred to correspondence that the Applicant had sent to Hackney Council concerning Council tax which had not referenced Mr Fears.
34. In answer to questions, he accepted that the property had been advertised on Zoopla and Rightmove as a three-bedroom flat, or suitable for three tenants.
35. He was asked about the building in which the flat was situated. He stated that the building had a basement which had a studio flat, a Repair shop at ground floor level, and a 1 bedroom and studio flat on the second floor. The subject flat was on the third floor.

36. He denied that he had provided three beds and three wardrobes. He stated that a sofa had been in the third room, and this had subsequently been moved to the kitchen by the tenants. He said that Mr Mair had terminated the tenancy by text, and they had taken the deposit in lieu of notice. He had asked that the keys be left with the tenant of the studio flat.
37. Mr Mair, in his evidence stated that he had left a WI-FI booster device at the property, and after the tenancy had ended, had gone to collect this. Whilst at the property he had been told by the occupiers that three of them were living in the property, although only two had signed the tenancy agreement. Mr Djemal denied that this was the case.
38. Mrs Djemal in her evidence, confirmed that she had been unaware that the flat was being occupied by three tenants.
39. The Tribunal was told that the premises was now being managed by managing agents, and that it was let as a two-bedroom flat at a rent of £1600. PCM. Mrs Djemal explained the decrease in rent by saying that rents had gone down since the pandemic.
40. The Tribunal was informed that the majority of her properties, were one-bedroom flats so she was unaware of the licensing requirements as she did not need licenses for these properties.

## **Closing Submissions**

### **The Respondent's closing submissions**

41. Mr Hope, referred to his written submissions, and also referenced the applicant's written submission., and their comprehensive authorities which had been provided. In particular, he stated that the Tribunal should have regard to the degree to which there was an absence of knowledge, on the part of the landlord to the arrangements between the tenants.
42. In paragraph 10 of his closing submissions he stated - " The actual commission of the offence is irrelevant; and
43. 10.2. There is no relevant tenant conduct because if R did not know of WF's [ William Fear's] occupation no offence would have been committed. If the FTT rejects R's contention that it amounts to a defence, a reduction of at least 90% would be sought on this basis.
44. He referred to Mohammed and Waltham Forrest [2020] EWHC 1083, in which it was stated that -: It was necessary to establish the mental element of the offence ( the Mens Rea). In his submissions, he stated that if the Tribunal accepted Mrs Djemal evidence, that she did not know of Mr Fear's occupation, and an HMO had been created behind her back, then the strict liability of this offence would not apply.
45. This was because her lack of knowledge would be a reasonable excuse. He stated that although the Applicants' may have discharged the evidential burden, that is that the property was unlicensed, and required a license at the time it was rented, the burden to establish a defence of reasonable excuse only needed to be established on a balance of probabilities. The Tribunal had heard the evidence and there were points that he stated needed to be considered.
46. The application for a licence cost £900.00, it was not logical that the landlord would risk the £1900 per month for the sake of a saving of £900.

47. The tenants had a motive to conceal Mr Fear's occupation, and little to lose by doing so as they had a long-standing relationship of trust. The tenants also had a strong financial motive to conceal Mr Fear's occupation, as they stood to gain the return of the rent they had paid.
48. Factually there were only two sets of keys which pointed to the landlord knowing of and giving permission for only two tenants at the property, the Tribunal had also heard Mr Djemal's evidence that he had not provided three sets of furniture.
49. Mr Hope submitted that if the Tribunal accepted that the landlord was unaware of Mr Fear's occupation, and decided that nonetheless this was an offence of strict liability then the starting point of the deduction due to the tenant's conduct should be 90%.
50. Mr Hope, in answer to questions from the Tribunal, stated that he did not rely on the landlord's financial circumstances.

### **The Applicant's closing submissions**

51. Mr Mair, responded on behalf of the Applicants. He stated that the applicants had made their position clear; they refuted the respondent's case that the respondent had done everything possible to rent to two occupants, and an HMO had been created behind her back. The Advert for the flat made it clear that it was suitable for three tenants, also the wording in the tenancy agreement made it clear that it was suitable for up to three occupants.
52. Mr Mair submitted that the Applicant did not create an HMO behind the landlord's back and did not conceal Mr Fear's occupation. Mr Fear had completed the application form on Open Rents. However, his details had been removed by the landlord. He also referred to the fact that when he returned to the property to collect his belongings, he had been advised by the tenants that the landlord had also indicated to them that only two of the occupants were required on the tenancy agreement, which was the same thing that had happened to the Applicants.
53. He stated that there was a clear factual dispute for the tribunal to resolve. Mr Mair also referred to the Cost schedule which had been filed by the landlord and the fact that he was surprised to receive this.
54. The Tribunal explained that unless a specific order was made the tribunal was a no cost jurisdiction.

### **Tribunal Decision**

55. The Tribunal considered the application in four stages –

(i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.

(ii) Whether the Applicants were entitled to apply to the Tribunal for a rent



repayment order.

(iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.

(iv) And finally, the Tribunal was required to make a Determination of the amount of any order.

56. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.
57. The Tribunal in reaching its decision, also considered *Ficcara and Ors -v- James (2020) UKUT 289* and *Vadamalayan -v- Stewart and Others (2020) UKUT 0183*.
58. The Tribunal is required to take account of the conduct of both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
59. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
60. The Tribunal finds on the evidence before it, and on the admission of the respondents that the property was in an area covered by licensing provisions and that the premises required an additional licence.
61. The premises was unlicensed during the material period, and this means us the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. Having found the primary facts proved beyond a reasonable doubt, whether on a balance of probabilities the respondent had demonstrated that they had a reasonable excuse for failing to licence the property.
62. The Tribunal considered the submissions of both parties. It noted that Mr Djemal had acted as agent/representative for his mother in letting the property.
63. It considered that there was evidence that the flat was let as a three bedroomed flat, and that the level of rent charged reflected the occupation by three tenants, and that the subsequent reduction could not be solely attributed to reductions in rental values.
64. The Tribunal, considers that it is improbable that Mr Fear provided his own bed and wardrobe for the premises, it noted that he was a student who was renting a furnished property. Accordingly, the Tribunal found the Applicants' version of what had occurred at the meeting on 7 September 2019, to be more credible than the account given by the Respondent, it found that Mr Djemal agreed to provide three beds and wardrobes and therefore knew that the property would be occupied by three tenants.
65. The Tribunal finds that the landlord, having delegated this responsibility of to her son, had actual or ostensible knowledge that, three tenants would be occupying the premises.
66. The Tribunal accordingly finds t that the premises was occupied by three tenants and was not licensed during the periods 7 September 2019 to 6 April 2020 during the occupancy of the Applicants.

67. The Tribunal heard and accepted Ms Djemal evidence that she normally let 1 person units, as such it decided that she may have no knowledge of the licensing requirements, however, as a professional landlord it was up to her to make her own enquires. .
68. Having found that the landlord was aware, or ought on the information provided to have been aware, that three tenants were occupying the premises, we considered whether her lack of knowledge of the requirements did not amount to a reasonable excuse.
69. The Tribunal considered whether on the evidence before it a reduction from 100% of the rent paid ought to be made. Given its findings concerning the knowledge of the landlord, it found no reason to depart from the principles set out in *Vadamalayan -v- Stewart*. Accordingly the Tribunal determined to make an order for the full sum of rent paid.
70. The Tribunal therefore makes a Rent Repayment order in the sum of £13,300 (Thirteen thousand, and three hundred pounds) for the period 7 September 2019 to 6 April 2020. The Tribunal also makes an order for the cost of the Application fee of £100.00 and the hearing fee of £200.00 to be re-imbursed.

**71. Payment should be made in full within 28 days of the date of this decision.**

### **Right 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.

**Signed: Judge Daley**

**Dated: 1.10.2021**