



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

**Case References** : **LON/ 00AN/HMF/2020/0229  
V:CVP REMOTE**

**Property** : **Flat 49 College Court London W6 9DZ**

**Applicants** : **Mr C Bone  
Ms J Gahunia  
Mr J Harris**

**Representative** : **Mr A McClenahan  
Justice for Tenants**

**Respondent** : **Mrs N Fisher**

**Representative** : **Did not appear and was not represented**

**Type of  
Application** : **Application for a rent repayment order**

**Tribunal Members** : **Judge F J Silverman MA LLM  
Ms F Macleod MCIEH**

**Date of video  
hearing** : **10 May 2021**

**Date of Decision** : **13 May 2021**

---

## DECISION AND ORDER

---

### Decision and Order of the Tribunal

1. **The Tribunal makes a rent repayment order against the Respondent and in favour of Mr Bone in the sum of £10,800.**
2. **The Tribunal makes a rent repayment order against the Respondent and in favour of Ms Gahunia in the sum of £11,700.**
3. **The Tribunal makes a rent repayment order against the Respondent and in favour of Mr Harris in the sum of £6,317.95.**
4. **Additionally, the Tribunal orders the Respondent to repay to each of the Applicants the sum of £100 (total £300) representing the repayment to them of the fees paid by them to the Tribunal in respect of their application and hearing fees.**

### Reasons

- 1 This application made on 16 October 2020 is made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as Flat 49 College Court London W6 9DZ (the property) for the period 31 May 2019 to 30 May 2020 (Mr Bone and Ms Gahunia) and 5 February 2020 to 04 August 2020 (Mr Brown) during which time the property was unlicensed (page A49). The Respondent is the landlord and freehold owner of the property (page A46).
- 2 The subject property was required to be licenced being situated within an additional licensing area designated by the London Borough of Hammersmith and Fulham with effect from 05 June 2017 having three or more occupiers from two or more households (page A59). It had no licence during the entire period of the Applicants’ occupation and no application for a licence was made until 13 November 2020 (page R70).
- 3 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 4 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered however that the matter was

- capable of determination without a physical inspection of the property.
- 5 The hearing took place by way of a CVP video hearing (to which neither party had objected) on 10 May 2021 at which the Applicant tenants were represented by Mr A Mcclenahan of Justice for Tenants.
  - 6 On 05 May 2021 the Respondent requested an adjournment of the hearing citing as a reason the recent death of a family member. That request was reluctantly refused as no evidence of the death was supplied and the request was made less than a week before the hearing. On the morning of the hearing the Tribunal received from the Respondent's representative a copy of a death certificate in Indonesian (no translation supplied) which recorded the death of a named person (said to be the Respondent's sibling) on 04 April 2021 together with a renewed request for an adjournment. The death occurred more than a month before the first request for an adjournment was made on 05 May 2021. The Tribunal extends its sympathies to the Respondent for her loss but considers that her request for an adjournment could and should have been made earlier and that it was now too late to postpone the hearing. Although the Respondent's representative did not attend the hearing, saying he had no instructions to do so, and the Respondent was not present herself, the Tribunal had the benefit of the Respondent's witness statement with supporting documents and extensive written submissions from her representative all of which were taken into account by the Tribunal in making their decision.
  - 7 In paragraphs 9, 35 and 54 of the Respondent's witness statement (pages R2-5 and R10) she admits that the property required a licence and that it did not have one during the entire period of the Applicants' occupation.
  - 8 All the Applicants had prepared witness statements for the Tribunal and gave oral evidence to the Tribunal who asked supplementary questions to clarify some points of the evidence.
  - 9 During the time when the Applicants lived at their property it was for each of them their only residence. Mr Bone lived at the property between 25 August 2018 – 30 May 2020, Ms Gahunia from 15 May 2019 - 30 May 2020 and Mr Harris from 05 February 2020 – 04 August 2020. Their evidence that there were at all times a minimum of four unrelated persons living at the property during their occupation was agreed by the Respondent (page R5 para 8). The identity of the fourth tenant changed from time to time and vacancies were advertised on Spare Room.
  - 10 After leaving the property both Mr Bone and Ms Gahunia experienced difficulty in recovering their respective deposits from the Respondent and needed to engage in an adjudication which awarded them the return of their deposits in full. This award puts to rest any suggestion by the Respondent that the tenants had left the property without having paid their rent in full (page R6).
  - 11 All Applicants confirmed that the property was a single storey floor 4 bedroom apartment on the second floor of a purpose built

- mansion block. The tenants shared kitchen and bathroom facilities. There was no separate living room.
- 12 All Applicants included copies of their tenancy agreements in the hearing bundle (pages A12 -18).
  - 13 Proof that the Applicants each paid the rent to the second Respondent is contained in their rent schedules and bank statements (pages A26-44).
  - 14 The local authority confirmed that the property was subject to the HMO licensing scheme, that it had never had a licence nor had an application for a licence been made during the period of the Applicants' occupation (page A49).
  - 15 The Tribunal is, therefore, satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that she had been in control or management of an unlicensed house.
  - 16 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in favour of Mr Bone for the period 31 May 2019 to 30 May 2020 and to Ms Gahunia for the period 31 May 2109 to 30 May 2020 and to Mr Harris for the period 05 February 2020 to 04 August 2020.
  - 17 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44 of the Act.
  - 18 None of the Applicants has been in receipt of any benefits or universal credit during the periods which are the subject of these proceedings.
  - 19 The Respondent's assertion that she was unaware of the need to obtain a licence is not a defence under the Act.
  - 20 Although the rent payable by the Applicants was inclusive of utility services there is no evidence before the Tribunal of the proportion of rent (if any) attributable to those services. Similarly, the Respondent has not produced any evidence (eg receipted bills, bank statements) to substantiate her stated outgoings for the property (page R10). The Tribunal therefore makes no deductions for them.
  - 21 According to the Applicants the property was inadequately maintained and in disrepair. The Tribunal heard evidence of an infestation of pigeon mites (A114) and of damage caused by an ingress of water which flooded the building (see photos pages A115-116). The tenants also complained of inadequate fire safety precautions and of the unsuitable storage of sulphuric acid on the premises. The Tribunal also noted other management failures including the lack of a gas safety report or EPC, the difficulty in contacting the Respondent and her failure to supply a How to Rent Guide (two of the Applicants were first time renters ).
  - 22 The Tribunal did not have details of the Respondents' financial circumstances. No evidenced plea of financial hardship has been made in these proceedings. It notes however that despite the Respondent's assertion in her witness statement that she does not own multiple properties (para 51 page R10) she does appear to own several other rental properties in Greater London (See

Applicants' response para 6 page 1 and Exhibits A and B which show Land Registry evidence of the Respondent's ownership of three other properties (other than her residential address) and their listings on Spare Room).

- 23 The Respondent's submissions suggested that the Tribunal should not follow the recent Upper Tribunal case of *Vadamalayan v Stewart* (2020) UKUT 183 (LC) on the grounds inter alia that the cited decision was made per incuriam ( R7 para 22). The Tribunal rejects this contention. The Respondent argued that the *Vadamalayan* decision runs contrary to the provisions of the Housing Act 2004. The current application is made under the more recent and more stringent provisions of the Housing and Planning Act 2016 and it is suggested that the Respondent may have erred in her interpretation of the recent precedent to which she refers. The Tribunal accepts that the guidance of *Vadamalayan* does apply to this case and therefore treats the starting point of the award as the full amount claimed, subject to possible deductions as discussed above. It does not find any circumstances in the present case which would cause it to depart from a recent precedent set by a superior court.
- 24 Mr Bone is asking the Tribunal to make an order in the sum of £10,800 which represents the amount of rent paid by him to the Respondent during the period 31 May 2019 to 30 May 2020 (page A5). Ms Gahunia is asking the Tribunal to make an order in the sum of £11,700 representing the rent paid by her to the Respondent during the period 31 May 2019 to 30 May 2020 (page A5) . Mr Harris is asking the Tribunal to make an order in the sum of £6,317.95 which represents the amount of rent paid by him to the Respondent during the period 05 February 2020 to 04 August 2020 (page A5). Additionally the Applicants ask for the return of their application fee (£100) and hearing fee (£200).
- 25 For the reasons cited above the Tribunal makes no deductions to the amount claimed by the Applicants and accordingly awards Mr Bone the sum of £10,800, Ms Gahunia the sum of £11,700 and Mr Brown the sum of £6,317.95 under this Order. Additionally, the Respondents are ordered to repay the sum of £100 to each Applicant in reimbursement of their share of the application and hearing fees.

#### Relevant Law

#### Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 ("the Act ") provides:

“(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).

Amount of order: local housing authorities

16. Section 44 of the Act provides:

(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.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of 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 the amount of rent paid under the tenancy for that period less 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.”

**Name:** Judge F J Silverman as Chairman      **Date:** 13 May 2021

Note:  
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to [rplondon@justice.gov.uk](mailto:rplondon@justice.gov.uk).
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.