



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

**Case reference** : **LON/00AW/HMF/2020/0080**

**HMCTS code  
(Paper)** : **P:PAPERREMOTE**

**Property** : **Front Room, Basement Flat, 71 Holland  
Road, London W14 8HL**

**Applicants** : **Rasmus Maretti Wann Bengsten**

**Representative** : **In person**

**Respondents** : **Mr M Bartlett**

**Representative** : **Ms P Lopez**

**Type of application** : **Rent repayment order**

**Tribunal members** : **Judge Tagliavini  
Ms F Macleod**

**Venue & date  
of hearing** : **10 Alfred Place, London WC1E 7LR  
P: PAPERREMOTE  
11 February 2021**

**Date of decision** : **16 February 2021**

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**DECISION**

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## **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 **V:VIDEOREMOTE converted to P: PAPERREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote/paper hearing. Although the hearing was scheduled for 10 a.m. on 11 February 2021 the applicant was unable to connect to the HMCTS hearing as he did not have access to a computer or other suitable device. Further, the tribunal noted that the respondent's connection both in sound and picture was unreliable. Therefore, the tribunal converted the oral hearing to a hearing on the documents only. The tribunal was referred to the applicant's bundle of documents as well as a number of other documents on which the parties relied. The order made is described at the end of these reasons.

## **Summary of decisions of the first-tier residential property tribunal**

### **(1) The application for a rent repayment order is refused.**

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#### **The application**

1. This is an application dated 1 May 2020 seeking a rent repayment order (RRO) in the sum of £5,670 under the provisions of section 41 the Housing and Planning Act 2016. The applicant asserts that the respondent has committed an offence under section 72(1) of the Housing Act 2004 as he failed to obtain a licence for the subject property said to be a house in multiple occupation (HMO) located in The Royal Borough of Kensington and Chelsea during the period of his occupation from 2 October 2019 to 2 April 2020.

#### **Preliminary matters**

2. The hearing of the application had been scheduled to be held by way of a video conference through HMCTS on 11 February 2021. However, on the morning of the video hearing the applicant was unable to connect to the conference as he did not have the necessary electronic equipment that would allow him to do so. The respondent's representative Ms Lopez was able to connect to the video hearing although her audio connection was sub-optimal. Therefore, with the agreement of Ms Lopez and the tribunal having had regard to the provisions of rules 3 and 6 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, it was determined that this matter could be properly and fairly determined solely on the documents which had been provided by both parties.

#### **Background**

3. In the application the applicant asserted that he had occupied the front double room in the subject property under an assured shorthold tenancy agreement dated 23 September 2019 made between himself (also referred to as Mr Rasmus

Maretti) and the respondent landlord MJ Bartlett for the occupation of the front (double) room in the basement flat located at 71 Holland Road, London W14 8HL. The subject property comprised a self-contained flat with 3 bedrooms and shared use of kitchen facilities and was situated in a Victorian house that had been converted into 4 flats. Mr Bengsten sought a RRO for the period 2 October 2019 to 2 April 2020 in the sum of £5,670 plus his deposit of £200. In the application, Mr Bengsten also asserted that the conduct of the landlord had been poor and complained of a failure to return his deposit; requiring rental insurance and water damage.

### **The applicant's case**

4. In his application form Mr Bengsten had stated,

‘Besides me there was 2 other units in the basement, one of which occupied 2 or 3 people and another occupying 1 person. There might be a third unit as well, I did not see or talk to (sic) much to the people so not completely sure.’

5. In a further statement included in his bundle of documents, Mr Bengsten asserted:

‘In the basement flats alone, there was a minimum of three separate units at the time I lived there, 1 unit was me, another was a guy and later a girl and the third unit included 2 guys and 1 girl. All shared kitchen and entry area.....When moving in it was suggested they did not care how many people lived in each unit, regardless of what was on the contract.’

6. The evidence also relied upon by the applicant included a copy of his tenancy agreement and housing insurance document as well as proof of payment of his monthly rent. The documentary evidence also included an email dated 19 November 2020 from Hemma Naran of the Private Sector Housing and Health Practitioner from The Royal Borough of Kensington and Chelsea (RKBC) stating ‘I have checked my records and have found no record of an HMO licence being issued. For 71 Holland Road or the basement flat.’ that there was no HMO licence for the subject property.

7. However, no witness statement had been provided by Mr Bengsten detailing the identities of the other occupiers in the basement flat during all or part of the period of his occupation. Further, the tribunal was not provided with copies of the tenancy agreements of other occupiers or any other details of their occupation and no witness statements from these occupiers were made available to the tribunal. Further, Mr Bengsten did not make clear in his

application under which licensing scheme the subject property was alleged to have required a HMO licence.

### **The respondent's case**

8. The respondent relied on the witness statement of Ms Lopez dated 21 December 2020. In this she identified herself as a lettings manager and asserted that the subject property did not require a mandatory HMO licence as it had not meet the criteria of having 5 or more persons in occupation in 2 or more households. The respondent also relied upon an emailed letter dated 8 February 2021 from Hemma Naran of RBKC. This letter confirmed that RBKC did not operate an additional or selective licensing scheme and only properties that were occupied by 5 or more persons forming 2 or more households and are sharing facilities are normally required to apply for a HMO licence under part 2 of the Housing Act 2004 (mandatory licensing). This letter also stated that an inspection of the basement flat by RBKC on 2 December 2020 was found to be a self-contained unit occupied by 3 people from 3 households sharing kitchen facilities and therefore a HMO licence was not required.
9. The respondent also provided the tribunal with a hand drawn plan of the house showing that it comprised 4 self-contained flats with one flat on each of the four floors. A separate hand-drawn plan showed three bedrooms in the basement flat.

### **The tribunal's findings and decision**

10. The tribunal is required to consider whether the self-contained Basement Flat only comprised an HMO and not the whole of the property at 71 Holland Road containing three other self-contained flats.
11. The tribunal finds that the applicant has failed to establish beyond reasonable doubt that an offence was being committed under section 72(1) of the Housing Act 2004 during any part of the period for which Mr Bengsten claims a RRO.
12. The tribunal finds that the applicant has failed to establish the number, or identities of the occupiers in the subject premises during any period of his own occupation and that his assertions of who occupied the two other bedrooms in the basement flat are too vague and unpersuasive to meet the criminal standard of proof required for the alleged offence of failing to obtain a mandatory licence for a HMO under section 254 of the Housing Act 2004.
13. Therefore, the tribunal refuses the applicant's application for a RRO.

**Name: Lorna Tagliavini**

**Date: 16 February 2021**

### **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).