



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

**Case reference** : **LON/00BA/HMF/2020/0127**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Property** : **20D Tabor Grove SW19 4EB**

**Applicant** : **Konstantin Zasnov**

**Representative** : **N/A**

**Respondent** : **Renato Sassone Corsi**

**Representative** : **Dale Timson Counsel**

**Type of application** : **Application for a Rent Repayment  
Order by tenant. Sections 40,41, & 44 of  
the Housing and Planning Act 2016**

**Tribunal members** : **Judge Carr  
Mr Cairns**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **6<sup>th</sup> April 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 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. The documents that the tribunal was referred to are in a bundle from the Applicant comprising 176 pages, a witness statement from the Respondent and a response bundle from the Applicant of 30 pages, the contents of which have been noted.

### **Decision of the Tribunal**

- 1. The Tribunal determines to make a Rent Repayment Order of £9,200.**
- 2. The Tribunal determines to order the Respondent to reimburse the Applicants the application and hearing fees of £300 within 14 days of receipt of this decision.**

### **The application and procedural history**

- 3. The Tribunal received an application for a Rent Repayment Order on 14<sup>th</sup> July 2020 from the Applicant dated 1<sup>st</sup> July 2020. The Applicant alleges that the landlord has committed (i) the offence of controlling or managing an unlicensed HMO and (ii) the offence of illegal eviction or harassment of occupiers.**
- 4. The Rent Repayment order sought is for a period of 11 and half months from until June 2020 and totals £9200. This is made up of monthly rent payments for 11 months at £800 pcm and a payment of £400 for two weeks in June 2020.**
- 5. The Tribunal issued directions on 21<sup>st</sup> October ~~2020~~2020.**

### **The hearing**

- 6. The hearing took place via video on 5<sup>th</sup> February 2021. The Applicant appeared in person and represented himself. The Respondent attended and**

was represented by Mr Dale Timson of Counsel instructed by Gregsons Solicitors.

7. During the hearing the Respondent made various concessions:
  1. He conceded that he was in control of the property that is the subject of the application.
  2. He conceded that more than four people were resident in the property during the relevant time and that they did not form a single household.
  3. He conceded that the maximum amount that can be ordered under s. 44(3) of the Housing Act 2004 is £9,200
8. The tribunal was satisfied that the property was an HMO which required mandatory licencing and that the property was not licensed.
9. The issues that require to be decided by the Tribunal are therefore:
  - (a) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of being someone in control of or managing an HMO which is required to be licensed and is not so licensed?
    - In particular is the property an HMO which requires to be licenced?
  - (b) If the respondent committed the offence, is the tribunal satisfied that he had a reasonable excuse defence?
  - (c) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of the offence of illegal eviction or harassment of occupier
  - (d) If the tribunal determines to make a Rent Repayment Order:-
    - What is the applicable 12-month period?
    - What is the maximum amount that can be ordered under s.44(3) of the Act?
    - What account must be taken of the respective conduct of the Applicant and the Respondent?

### **The relevant law**

10. The relevant sections of the Housing Act 2004 are as follows:

**s.72(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 but is not so licensed.

**s.72(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

**s.254 (1)** For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if—

(a) it meets the conditions in subsection (2) (“the standard test”);

(b) it meets the conditions in subsection (3) (“the self-contained flat test”);

(c) it meets the conditions in subsection (4) (“the converted building test”);

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e)rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f)two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

- 11.** The relevant sections of the Protection from Eviction Act 1977 are as follows:

### **Section 1**

(1)In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3)If any person with intent to cause the residential occupier of any premises—

(a)to give up the occupation of the premises or any part thereof; or

(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

### **The background and chronology**

- 12.** 20D Tabor Grove is an end terraced house made up of three floors, the ground floor, first floor and second floor. There is a garage at the front of the house and a back garden. Inside the house on the ground floor, there is a hallway leading to a kitchen and there is a toilet. On the first floor there are 2 bedrooms and 1 bathroom (with a shower and toilet). On the 2nd floor there are 2 bedrooms and 1 bathroom (with a bath shower and toilet). There are no locks on the bedroom doors. This description is taken from

the evidence of the Applicant, but no issues have been raised with the description by the Respondent.

13. The Applicant, together with his partner, commenced renting a room at 20D Tabor Grove in May 2018.
14. The Applicant signed an agreement with Polar Choice Ltd. The Applicant says that Polar Choice Ltd is the company that the Respondent had an agreement with to find tenants and process rent payments.
15. The agreement, the first of four, was signed on 3<sup>rd</sup> May 2018. It granted a licence for the period of 4 months from 1<sup>st</sup> May 2018 to 31<sup>st</sup> August 2018. The second agreement was signed on 12<sup>th</sup> June 2018 and extended the original agreement to 31<sup>st</sup> May 2019. The third agreement extended the original agreement until 31<sup>st</sup> November 2019 and was signed by the Applicant on 20<sup>th</sup> February 2019 and Polar Choice on the 18<sup>th</sup> March 2019. The 4<sup>th</sup> agreement extended the agreement to 31<sup>st</sup> March 2020. The Applicant was informed via a Whats App message that the agreement would subsequently roll over as a periodic licence.
16. The Applicant made rent payments to Polar Choice Ltd from May 2019 until April 2020. At that stage Polar Choice said that the Applicant was in future to deal directly with the Respondent. The Applicant paid rent directly to the Respondent for May 2020 and for two weeks in June 2020. He had no written agreement in place with the Respondent.
17. During the relevant period the Applicant states that there was at least 5 people living at the property and at certain times there were 6 people. He also states that all the occupiers occupied the property as their only or main residence. He provides no evidence or witness statements substantiating this.

**Did the Respondent commit the offence of controlling or managing an unlicensed HMO?**

*Arguments of the Applicant*

18. The Applicant states that the house was an HMO and that the Respondent was the owner of the property. The arrangement was that Polar Choice collected the rent from the occupiers and then transferred it to the Respondent. The Applicant states that whenever there was a delay with rent payments the Respondent attended the property. After the arrangement

with Polar Choice broke down the Respondent received the rent from the Applicant directly.

19. The Applicant refers in his evidence to several occasions when the Respondent directly dealt with the property. As the Respondent has agreed that he was in control of the property there is no need to deal with these matters. More relevant to the dispute are the occasions when the Respondent visited the property in order to inspect it.

#### *Arguments of the Respondent*

20. In connection with the alleged offence, the Respondent raises only one matter. The Respondent refers to the definition of HMO at s.254 of the Housing Act 2004 and argues that the Applicant has not proved beyond reasonable doubt that the other occupiers occupied the property as their only or main residence as required by the statute.
21. The Applicant's response to this was to restate that the property was the only or main home of all the occupiers. He pointed to the fact that they all remained there during lockdown, other than the occupier who lost her job and could no longer pay the rent.
22. Counsel for the Respondent said that whilst he accepted the argument at the property was the occupiers only or main home after lockdown that there was no evidence beyond reasonable doubt for the period before that time.

#### **The decision of the Tribunal**

23. The Tribunal determines that the Respondent committed the offence of controlling or managing an unlicensed HMO.

#### **The reasons for the decision of the Tribunal**

24. As a result of the concessions made by the Respondent the only issue that the Tribunal is required to determine is whether the property was the only or main residence of the other occupiers of the property.
25. The Tribunal relies on the decision of Judge Cooke in *Opara v Olasemon* [2020] UKUT 96 . What was at stake in that appeal was whether the occupiers, other than the applicant were living in the property as their only or main residence. Judge Cooke determines that the tribunal is entitled to draw inferences from the evidence. She makes it clear that for a matter to be proved to the criminal standard of proof, does not require it to be

proved 'beyond any doubt at all' but that inferences can be drawn about the circumstances of the other occupiers.

26. The Tribunal considers that it was entitled to infer from the circumstances of the case that the occupiers of the property occupied it as their only or main property. The Tribunal was particularly persuaded by the fact that on lockdown all of the residents remained at the property. The Tribunal notes that Counsel for the Respondent conceded that from lockdown in March 2020 the occupiers occupied the property as their only or main residence. The tribunal would go further. It infers from this behaviour that prior to lockdown the property was all of the residents only or main home.

### **Does the Respondent have a reasonable excuse defence?**

#### *Arguments of the Respondent*

27. The Respondent argues that he had a reasonable excuse defence to the offence.
28. The Respondent says that on 27<sup>th</sup> April 2018 he entered into a tenancy agreement with Mr Leon Hart and Miss Paula Acevedo for a period of 36 months at a monthly rent of £2,200. That agreement was an AST and stipulated that the property was only to be used as a private residence for the occupation of the tenant and that no more than four people were to live in the property at any one time. The agreement commenced on 2<sup>nd</sup> May 2018 and the Respondent received regular monthly payments from that date until April 2020. The Tribunal were provided with a copy of the agreement.
29. The Respondent told the Tribunal that he had little involvement with the property, and he did not know about the Applicant's occupation. His understanding was that the tenants would pay the rent and would arrange for the rooms in the property to be sublet.
30. The Respondent argued that his behaviour was consistent with the terms of his agreement with Mr Hart and Ms Acevedo. He entered into that agreement in good faith and expected Mr Hart and Ms Acevedo to abide by the terms of that agreement
31. The Respondent says he was not aware that there were more than 4 people living at the property until 19<sup>th</sup> April 2020. Although he had visited the property prior to that date he told the Tribunal that he was simply inspecting the condition of the property. He drew no conclusions from the presence of a bed in the living room about the numbers of people occupying the property. Checking on occupation numbers was not the purpose of his visit.



- 32.** The Respondent argues that he found himself in circumstances which were entirely out of his control. He had signed a contract with the tenants. When he discovered that the property was occupied by more than four people he was unable to apply for an HMO licence as the property was not suitable for multiple occupation. At that stage he had little option other than to ask the occupiers to leave, which he did, and they all agreed to.
- 33.** Counsel for the Respondent argues that this is an unfortunate case, suggesting that both parties have fallen victim to the actions of the tenants and Polar Choice. The Respondent found himself in an impossible position and the Tribunal is asked to consider the actions of the Respondent in that light. Counsel submits that the actions of the Respondent were reasonable and proportionate and that he did all that he could, in very difficult circumstances. Counsel submits that that circumstances that the Respondent found himself in were the epitome of a reasonable excuse.
- 34.** Counsel for the Respondent also argued that it was important for the Tribunal to understand the events in the context of the circumstances of the letting. He argued that the following factors were relevant in determining whether there was a reasonable excuse defence:
- The Respondent is an elderly gentleman of 79 years;
  - During the relevant periods he spent 9 months of the year outside of the UK ;
  - The Respondent had let the property to the tenants under an assured shorthold tenancy. That tenancy agreement prevented the property from having more than four occupiers. It is notable in that respect the property only consists of three bedrooms and a lounge;
  - In breach of that tenancy agreement, the tenants deliberately took steps resulting in the property being occupied by more than four people.
  - The Respondent did not become aware of there being more than four occupiers until 19 April 2020 at which point he immediately began taking steps to attempt to resolve the situation [
  - The Respondent's email on 24 April 2020 clearly shows his intention from the outset when he stated "I am not interested in running an illegal HMO".

*Arguments of the Applicant*

- 35.** The Applicant argues that the Respondent had far more to do with the running of the property than he suggests. He attended the property whenever there were difficulties and his reaction to the occupiers when he attended in April 2020 suggests that he was not surprised to find the number of occupiers that he found. His concern was entirely with whether he was going to get his rent.

36. The Applicant says he saw no confrontation with Paula from Polar Choice about the number of occupiers in the property.
37. In the opinion of the Applicant the Respondent was fully aware of the letting arrangements for the property and therefore does not have a reasonable excuse defence.

### **The decision of the Tribunal**

38. The Tribunal determines that the Respondent has no defence of reasonable excuse.

### **The reasons for the decision of the Tribunal**

39. The Tribunal finds that the agreement between the Respondent and his tenants was a rent to rent agreement despite the fact that the formal agreement was an AST.
40. The Tribunal has listened carefully to the arguments of the Respondent. It understands that he believes himself to be as much a victim of the poor practices of his tenants and Polar Choice as the Applicant. He believes that the agreement he signed is sufficient to absolve him of responsibility. He relies in particular on the clause limiting occupation.
41. The Tribunal does not accept that the Respondent had a reasonable excuse. It draws particularly on three facts that the Respondent relies on in his own defence.
42. The first is the agreement that he signed with Polar Choice. For the Respondent the point is that the agreement demonstrates that by signing the agreement he was ensuring, as far as he could, that the property would not be occupied by more than four people.
43. However the Respondent told the Tribunal that he knew that the tenants were not going to occupy the property and were going to sublet the rooms to other occupiers. This contradicts the arrangement he made with the tenants. The agreement says that the tenants would occupy the property as a residence. It is difficult to understand the reliance that the Respondent says he placed on the agreement when he knew that a key fact was not accurate.
44. The second fact was the inspection of the property that he undertook. He told the tribunal that he did not take note of the bed in the living room because that was not the purpose of his inspection.
45. The third fact is the communications between the Applicant and the Respondent after Polar disappeared. The Respondent appeared to the Tribunal to be most concerned about the income that the property produced rather than worrying that there had been a breach of the agreement and that the property had been occupied by more than four people.

46. The Tribunal concludes that the Respondent set up an intermediary which relieved him, or so he thought, of responsibility for the number of people living in the property.
47. The Tribunal also considers that it was open to the Respondent to take more proactive steps to ensure that his property was occupied legally. So for instance he could have insisted on inspecting the agreements that the tenants used for subletting, he could have insisted on having an accurate list of occupiers and he could have been more rigorous in his inspections.

### **Did the Respondent commit the offence of harassment or illegal eviction?**

#### *The Applicant's argument*

48. The Applicant gave evidence about events from 1st April 2020 which he argues culminated in him and his wife leaving the property. ~~on~~
49. The Applicant argues that from the time the Respondent took over the property his messages and demands for rent increase were direct attempts to get the Applicant and his wife to give up living at the property. The Applicant argues that his behaviour destabilized his home and his life and were a direct interference with their peace and comfort.
50. His account of the relevant events is as follows:
  - On 19th April 2020 the Respondent attended the property giving no advance notice. He checked that everyone at the property had paid their rent. The Applicant sent an email to the Respondent which proved that he had paid rent for April 2020.
  - The Applicant also sent an email to Polar Choice asking for details regarding the transition to the Respondent. He received an email saying that all the occupiers should move out of the property on June 1st 2020 because Polar Choice were in dispute with the Respondent.
  - One of the other occupiers, replied to Polar Choice explaining that due to the coronavirus legislation a valid notice period would be three months.
  - On 29th April 2020 Paula emailed all the occupiers, copying in the Respondent, explaining that everything would remain as is was, but that in future the occupiers were to deal directly with the Respondent and pay him the rent directly.
  - On 30th April the Respondent emailed the Applicant instructing him to pay as usual at the start of the month and confirming that he would provide a contract.

- On 16th May 2020 the Respondent emailed saying that because he did not have an HMO licence he required everyone to leave the property.
51. On 31<sup>st</sup> May the Applicant received a message from the Respondent, demanding an increased rent of £925 pcm which represented a 15.6% increase. The Applicant then emailed the Respondent on 2<sup>nd</sup> June, attempting to negotiate a more reasonable rent increase. On 3<sup>rd</sup> June the Respondent replied saying that if the Applicant did not agree to the increased rent, then he was to leave the property.
  52. On 11<sup>th</sup> June 2020 the Respondent sent what the Applicant described as an intimidating message demanding the increased rent, refusing to provide a signed contract and making renewed threats of eviction.
  53. On 12<sup>th</sup> June 2020 the Applicant emailed the Respondent saying that following threats of eviction and unreasonable demands for rent, he would pay rent for the first half of June.
  54. The Applicant then found other accommodation and left the property.
  55. The Applicant provided the Tribunal with copies of correspondence following the Respondent taking over direct management of the property. In particular he provided a copy of a WhatsApp message dated 16<sup>th</sup> May 2020 when he was asked to find alternative accommodation, a text message from the Respondent saying that the rent would have to go up by £125 per month from 1<sup>st</sup> July 2020 and Whats App messages dated 11<sup>th</sup> June 2020 which included a message saying that the Applicant had to leave the property, that the Respondent would be coming in person to collect monies owing and that the Applicant should 'be off'.
  56. The Respondent argues that the conduct complained of does not come near the conduct encompassed by s.3A of the Protection from Eviction Act 1977.
  57. He argues that the Respondent tried to be helpful, offering time to the Applicant to find alternative accommodation and he asked the Tribunal to note the friendly tone of much of the communication. He suggests there was never any intention that the Applicant should leave when he did.

### **The decision of the Tribunal**

58. The Tribunal determines that the behaviour of the Respondent did not amount to illegal eviction/~~harrasment~~harassment.

### **The reasons for the Tribunal decision**

59. The Tribunal recognises that the period after Polar ceased to manage the property were difficult for the Applicant. He was very unsure of the status of

his occupancy, he was uncertain about how he could accept the argument of Counsel for the Respondent. He faced particular difficulties due to the impact of the pandemic. The tone of some of the messages sent from the Respondent were unpleasant.

60. Nonetheless the Tribunal agrees with the Respondent. The behaviour complained about, whilst demanding and unsettling, does not reach the standard required for an offence to have been committed under the Protection from Eviction Act 1977.

### **What is the appropriate amount for the RRO?**

61. The issues that require to be determined by the Tribunal to determine the quantum of the RRO in this case are as follows: Should a Rent Repayment Order be made? What is the maximum RRO that can be ordered? Should any deductions be made as a result of the conduct of the Respondent and/or the Applicant?
62. The Respondent pointed out that the Tribunal had a discretion whether or not to make a Rent Repayment Order. Counsel submitted that the issues raised in his arguments about reasonable excuse defence should be considered in connection with a decision by the Tribunal whether or not to make the order.
63. The Respondent raised no issue with the Applicant's assertion that the maximum RRO was £9200. Nor did he raise any issue with the conduct of the Applicant.
64. The Applicant was clearly concerned by the conduct of the Respondent. He gave evidence that he was very distressed by the Respondent's behaviour in demanding a large increase in rent and making threats about eviction.
65. The Applicant provided documentary proof of his payment of rent during the period of his claim.

### **The decision of the Tribunal**

66. The Tribunal determines to exercise its discretion and make a Rent Repayment Order. It makes no reduction to the amount of the Rent Repayment Order claimed by the Applicant.

### **The reasons for the decision of the tribunal**

67. The Tribunal considers that there is nothing in the particular circumstances of this case that would suggest that it exercise its discretion not to make an order. It has some sympathy with the Respondent due to his age and to his travels abroad, but does not consider that these absolve him from responsibility for the way his property is occupied. It also notes that the Respondent is an experienced landlord.
68. The Tribunal notes that –the case law makes the actual rent paid during the period of the claim the starting point for the Rent Repayment Order.
69. The Tribunal would make the following observations about the conduct of the Respondent.
70. Whilst it does not consider that the behaviour of the Respondent was sufficient to constitute an offence under the Protection from Eviction Act 1977, it does consider that it was sufficient to cause the Applicant distress.
71. It also considers that there were steps easily available to the Respondent to prevent the property being occupied illegally. It is insufficient to rely on an agreement with an intermediary.
72. The Tribunal is particularly concerned that the Respondent took no action to prevent the use of licences which leave the occupiers very insecure. It was open to the Respondent to acknowledge that the occupiers were tenants when he took over the management of the property. The Tribunal notes that he did not do this.
73. In the light of this determination, the Tribunal further determines that the Respondent repay the Applicant his application and hearing fees.

**Name:** Tribunal Judge Carr

Date: \_\_\_\_\_ 6<sup>th</sup>  
April 2021

### **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.

