



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

Case reference : **LON/00BA/HMK/2020/0035**

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

Property : **28 Richmond Avenue, London SW20 8LA**

Applicant : **Sarah Cousins**

Representative : **None**

Respondent : **Helen Wang**

Representative : **None**

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 H Carr
Mrs J Mann MCIEH**

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

Date of decision : **26th October 2021**

DECISION

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 47 pages, a bundle of 13 pages from the Respondent, the contents of which have been noted. The parties also provided further information in response to requests from the tribunal.

Decision of the Tribunal:

The Tribunal determines not to make a Rent Repayment Order

The application and procedural history

1. The applicant made an application for a Rent Repayment Order on 17th July 2020. The applicant alleges that the landlord has committed the offence of controlling or managing an unlicensed HMO.
2. The applicant seeks a RRO for the period 23rd April 2019 – 20th February 2020 in the sum of £8,000. This represents ten months' rent at £800 pcm.
3. The Tribunal issued directions on 1st February 2021.

The hearing

4. The hearing took place via video on 20th August 2021. The applicant attended and gave evidence, and the respondent attended and gave evidence. There were serious gaps in the evidence provided by both parties. The tribunal asked the parties for further information which they sent after the hearing. The tribunal did this because neither party was represented and it considered it was in the interests of justice to provide this further opportunity.

5. Both parties were given an opportunity to comment on the information the other provided.

6. The tribunal notes that the material has been provided in a piecemeal fashion which has inevitably resulted in a delay in the issuing of this decision.

The issues

7. The issues that require to be decided by the tribunal are:
 - (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?

 - (b) If the tribunal determines to make a Rent Repayment Order:-
 - What is the applicable 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 applicants and the respondent and of the financial circumstances of the respondent?

The Law

8. Part 2 of the Housing Act 2004 (“the Act”) provides for LHAs to licence HMOs in their areas.

9. Section 55 of the Act sets out which HMOs require licensing
 - (1) This Part provides for HMOs to be licensed by local housing authorities where—
 - (a) they are HMOs to which this Part applies (see subsection (2)), and

(b)they are required to be licensed under this Part (see section 61(1)).

(2)This Part applies to the following HMOs in the case of each local housing authority—

(a)any HMO in the authority’s district which falls within any prescribed description of HMO,

10. The prescribed description of HMOs is set out in Paragraph 4 of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

11. An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—

(a)is occupied by five or more persons;

(b)is occupied by persons living in two or more separate households; and

(c)meets—

(i)the standard test under section 254(2) of the Act;

(ii)the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii)the converted building test under section 254(4) of the Act.

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

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

13. The persons responsible for licensing are set out in s.72(1) of the Housing Act 2004

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.263 Meaning of “person having control” and “person managing” etc.

(1)In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—

(a) receives (whether directly or through an agent or trustee) rents or other payments from—

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

The background and chronology

14. 28 Richmond Avenue is a three storey 5 bedroom house constructed in the early 20th century. It has a shared bathroom with shower and WC, a separate additional WC, a shared kitchen and a shared lounge. There is a further room on the ground floor, three bedrooms on the first floor and one

on the 2nd (attic) floor. The rooms in the property were let out individually and the applicant occupied the attic room on the top floor of the house

15. The applicant signed what is described as a room rental agreement on 23rd April 2019. The landlord named in the agreement is Helen's Home Ltd. The agreement was signed by Helen Haijuan Wang as the landlord's agent. The monthly rent was £800 payable two months in advance. The agreement suggested that there was no security of tenure. Ms Wang told the tribunal she had been advised to use a licence as it was easier to evict people.
16. The applicant raised concerns about the conditions within the property and the terms of her rental agreement with Merton Council in early 2020. This prompted a visit to the property by Maya Rhodes, an EHO with Merton Council, discussed below.
17. The applicant terminated her tenancy on 20nd February 2020 having paid rent till the end of the month.
18. Ms Wang is the tenant of the property and the director of Helen's Homes a letting agency. She manages the property on behalf of the freehold owner Ms Annabel Skinner. She receives an income from the property of £3200 less bills and pays rent of £2,300 pcm. Ms Wang said in evidence that Bills for the property were £400-500 pcm but provided no invoices or bank statements.

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

Arguments of the applicant

19. The applicant gave evidence as follows:

The property was an unlicensed HMO.

20. The applicant told the tribunal that when she moved into the property there were four other people living there. She did not know those people personally and was hazy on the details. She was not able to say that the people occupied the property as their only or principal home with any certainty although she presumed that they did.
21. In July 2019 one individual moved out of the ground floor room of the property and in August 2019 a young woman moved into the room that person had vacated. When the applicant talked to her she told her that her

boyfriend was moving in/ The applicant was very concerned that this meant that six people would be living in the property.

22. The applicant said that she was concerned about the number of people living in the house and was concerned for her own and her housemates' safety. She raised the issue of rooms being let to couples with the respondent as she was concerned that mean that the property became overcrowded,
23. She considered that facilities in the house were inadequate for the numbers living there and looked to move elsewhere. Because she was aware that the respondent had made it difficult for others leaving the property, she contacted the local council for guidance on her rights and particularly about refunding the deposit.
24. When she spoke to the council she asked if the property was licensed and they confirmed that it was not and that they were aware of the property because another occupier had spoken to them and were in the process of arranging an inspection.
25. Maya Rhodes, Environmental Health Officer with Merton Council visited the property on 11th February 2020. The applicant told the tribunal that she immediately advised that there were safety concerns within the property including a risk of fire and a lack of adequate fire safety measures. In particular she told Ms Cousins that in the event of a fire she would not have a safe means of escape from her second floor attic room and she was concerned that the alarm would not be audible on the second floor. The Fire Service inspected the following day. Ms Cousins was not present during the Fire Service inspection and was not aware of any subsequent enforcement action regarding fire safety risks.
26. Merton Council provided the applicant with a report on the property. This included information that 6 people were resident in the property on the date that Ms Rhodes visited the property.
27. Ms Rhodes did not attend the tribunal nor did she provide a signed statement of truth. The tribunal was not provided with any information about further action being taken by the authority.

Argument of the respondent

28. The respondent accepts that she received rent from the applicant and is therefore a person in control or managing the property.
29. The respondent argues that the property did not require licensing as there were never more than four occupiers in the property. After the tribunal she provided some email correspondence between herself and Ms Skinner in which it was agreed that no more than 4 people would live in the property. The respondent pointed out

to the freeholder that having more people in would mean that the property required improvements of around £15K and would also require a licence. That correspondence was dated August 2018.

30. The respondent said that there were never more than four residents as far as she was aware; if there were more it was because friends and partners were staying over. She considered that the applicant should have done more to alert her to any problems and in particular excess numbers in the property
31. The tribunal asked the parties about the living arrangements in the property. The applicant says that the additional room on the ground floor was used as a bedroom and had a lock on it and that the four bedrooms were also let out. The respondent said that the third bedroom on the first floor was very small and was rarely rented out. She said that the ground floor room was not rented out.
32. The parties told the tribunal that there were locks on all of the bedrooms and the additional room on the ground floor also had a lock. The respondent said that the tenants did not always use the locks. After the tribunal the respondent provided pictures of the locks and told the tribunal that the bathroom had a lock which could be opened by residents' room keys.
33. After the tribunal the applicant provided WhatsApp messages from the respondent to the occupiers of the property. The messages indicated that there were four people in addition to the applicant and the respondent on the Whats App group for the house.
34. Also after the tribunal the respondent provided an unredacted copy of information she had provided to Merton Council which she said confirmed that there were no more than four occupiers.
35. She did not provide copies of the rental agreements. Nor did she provide bank statements setting out the rental income from the property.
36. The respondent also provided a further statement. In it she explained the following:
37. On 21st April 2019 Sarah moved in. At that time there were 3 other occupiers (Caitlan, Luke and William). Mathilde checked out before Sarah moved in.
38. In June 2019 Laetitia replaced Caitlan. So, the 4 tenants at that time were Sarah, Luke, William and Laetitia.
39. In July 2019 Louis and Courtney replaced Luke and Laetitia. So at that time the 4 tenants were Sarah, Louis, William and Courtney. The respondent says that she let Laetitia move out early because Laetitia and Sarah were not getting on.
40. Courtney's tenancy agreement was to a sole person. She was allowed visitors but only occasionally. The respondent knew Courtney had a boyfriend. However, he was not

a tenant. The respondent said that she met Courtney and Nathan (Courtney's boyfriend) when she was viewing the room. She learned from Courtney that her boyfriend had a house in Epsom. Some weekends he would join her and some weekends she would join him.

41. The respondent's explanation of the Whatsapp message was that the respondent messaged the prospective tenants to view Luke's Room on Saturday or Sunday. Courtney requested to switch the view on week day as her boyfriend Nathan joins her on Sunday. The respondent therefore switched views to Monday and included Nathan in the message
42. From August 2019 to January 2020 the occupiers remained the same.
43. In February 2020 Aston replaced William. So the four tenants at that time were Aston, Sarah, Louis and Courteney.
44. The respondent explained that Jessica resided in the property on the basis that she needed a place in the Wimbledon area for a temporary stay. She said her husband and child live in Spain. She only requires accommodation a couple of days per month while she worked in Wimbledon. Jessica mostly works and lives in Spain with her family.

The decision of the Tribunal

45. The tribunal is not satisfied beyond reasonable doubt that the respondent has committed the offence of controlling or managing an unlicensed HMO.

The reasons for the decision of the Tribunal

46. Initially the tribunal was faced with very limited information. Further information was provided but, particularly by the respondent, this was on a piecemeal basis. The tribunal was surprised at the lack of formal records provided by the respondent. She must understand that being a landlord is a serious business which requires proper care and attention. The tribunal was also concerned about the fire safety of the property and urges the respondent to get expert advice to ensure that the occupants, particularly the occupant of the attic room, are not at risk.
47. The tribunal decided to allow the parties to submit further evidence about the numbers of occupiers of the property and whether or not those occupiers occupied the property as their only or principal home.
48. The respondent provided further information after the date by which the tribunal had requested it. The tribunal decided, because the respondent was not represented, because she did not have English as her first language and her English

was very poor, and because of the seriousness of the matter before it, to consider the material provided.

49. The tribunal is required to find beyond reasonable doubt that the offence has been committed. This is a high standard of proof and in these circumstances the applicant was unable to provide the necessary evidence to the required standard of proof. The tribunal determined that it could not find beyond reasonable doubt that more than four occupiers occupied the property as their only or principal home during that period.
50. The tribunal doubted the assertion by the applicant that everyone in the property occupied it as their only or principal home. Even at the time of the hearing there was oral evidence to suggest that at least one of the occupiers had a home abroad. In the subsequent statement provided by the respondent the evidence suggested that one of the occupiers relied upon by the applicant had her principal home in Spain and that the boyfriend of one of the other occupiers had his principal home elsewhere as well. The applicant had made it clear that she did not have details about the other occupiers which would allow her to rebut this statement.
51. The tribunal therefore considered that there was insufficient evidence to show beyond reasonable doubt that more than four of the occupiers relied upon by the applicant occupied the property as their own or principal homes.
52. The tribunal heard contradictory evidence from the parties on the numbers in the property. The tribunal spent some time examining the evidence of occupancy provided by the parties. The tribunal placed some weight upon the information provided by the EHO on her inspection form dated 11/02/2020 which referred to six occupiers but unfortunately the names of the occupiers were redacted. The form showed that on that date,
 1. A couple occupied the ground floor room
 2. Sarah Cousins occupied the 2nd floor room
 3. X occupied the box room
 4. Y occupied the first floor room
 5. And a final occupier who was not available to be interviewed.
53. Whilst this evidence was helpful there was a lot missing. Without the names of the alleged occupiers it was difficult for the respondent to explain the circumstances of their occupancy. There was no further information provided by the EHO, such as the date of commencement of the occupation, the status of the occupation etc. No room agreements were provided.

54. The respondent's oral testimony in response to the information provided by the EHO was also not very specific.
55. The respondent said that if the box room was occupied then the ground floor room would be empty. She said that tenants were allowed to have guests for short stays/dinner parties and that when she was aware of the boyfriend staying for longer periods than agreed she spoke to the tenant and they told her they wanted to leave so the respondent gave them notice and they moved out straight away.
56. The tribunal was also provided with an unredacted notice that the respondent provided to the EHO. This listed the occupiers after the applicant had left as;
 1. Louis Ekow Dankwa
 2. Aston Bishop
 3. Jessica Galan
 4. Johnny Correla
57. The tribunal accepts the evidence of the respondent that Jessica Galan's residence was not as her only or principal home and was irregular.
58. The details of the WhatsApp group provided by the applicant for 28 Richmond Avenue indicated that there were four occupiers once the applicant had left. It also showed other names at various times during the applicant's occupancy. Unfortunately the WhatsApp group could only provide confirmation of membership as at the date of 22nd February 2020 and not the membership at earlier times.
59. The respondent's subsequent statement provided a response to the issue of the WhatsApp group. In particular it shows that the boyfriend of Courtney did not occupy the property as his only or principal home and provided an explanation as to why he was included in the message. The tribunal decided that the response was sufficient to cast doubt on the number of occupiers as revealed by the WhatsApp group and that the applicant had no evidence to rebut the respondent's statement.
60. In the circumstances of the case therefore the tribunal was not satisfied beyond reasonable doubt that there were more than four occupiers of the property who occupied it as their only or principal home during the period in dispute.

Name: Judge Carr

Date: 26th
October 2021

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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.

4.