



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

**Case Reference** : **LON/00BB/HMF/2020/0083**

**HMCTS Code** : **V:SKYPEREMOTE**

**Property** : **97 Chandos Road, London E15 1TT**

**Applicant** : **Ms. Iyabo Oba**

**Representative** : **Mr George Penny**

**Respondent** : **Ms Ezinne Edomobi**

**Representative** : **Ms Georgia Whiting**

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

**Tribunal Members** : **Judge Daley  
Ms S Coughlin MCIEH**

**Date of Hearing** : **4 February 2021, and 22 February 2021 for  
Tribunal deliberation**

**Date of Decision** : **11.04.2021**

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**DECISION**

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**Decision**

The Tribunal makes a rent repayment order in favour of the Applicants for varying amounts, totalling £4918.38

**Introduction**

1. This is an application by the Applicant Ms Oba for a Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house that she occupied was required to have a mandatory licence from London Borough of Newham, but was not licensed. Ms Oba vacated the property on 6 January 2020 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 9 June 2020.
2. The Tribunal issued Directions on 21 October 2020, These Directions set out how the Applicants should prepare and the relevant documents to be provided. There was also detail in how the Respondent should prepare including any financial circumstances which the Respondent wished the Tribunal to take into account in terms of both her personal financial circumstances and evidence of any outgoings such as utility bills paid in respect of the property, along with any other relevant representations and documents.
3. The Applicant was represented by Flat Justice who made written submissions on her behalf in the form of a skeleton Argument.
4. The Respondent, Ms Edomobi who was also represented by counsel produced a written skeleton argument which was emailed to the Tribunal during the hearing.

### **Property Inspection**

5. 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 it is a Three Bedroom terraced house.

### **Relevant Law**

7. Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:
  - (1) 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 —
    - (a) 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.
8. Section 40(3) of the 2016 Act lists 7 categories of offence and 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.'*
9. 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.'*

10. 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).
11. Section 44 of the 2016 Act sets out the amount of order:
  - (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 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—
    - (a) the rent paid in respect of that period, less
    - (b) 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.

## **The Applicants' Submissions**

12. The Applicants provided copy tenancy agreement that ran from 6 April 2019 to 6 April 2020. The monthly rent of £700.00 included gas, electricity, water and internet bills. The Applicant vacated the property on 4 January 2020
13. During this time, the property had not been licensed as confirmed by an email dated 25 November 2020 from London Borough of Newham. This email stated that a licence was applied for on 20 November 2019.
14. The Applicants alleges that two offences are alleged to have been committed by the Respondent which were a licensing offence and an eviction offence.
15. In respect of the alleged eviction offence the Applicant relied upon an email sent on the 17 December 2019, in which the Respondent stated that she needed the Applicant to vacate the house by 6 February 2020 and applies for a Rent Repayment Order for 12 month's rent at 700pcm.
16. In respect of the licensing offence the Applicant stated that the property was licensable under the borough's Additional Licensing Scheme applicable to all HMO's. Alternatively, if the property was not an HMO then it was in any event licensable under the borough's Selective Licensing Scheme which was applicable to all privately rented properties in the area which were not licensable as HMO's. It was also submitted that if the property was an HMO, the offence of failure to licence was not ended by the application for a Selective licence, an incorrect licence being equivalent to no licence at all.

If the property is an HMO then the application is for a period of 9 months at £700 pcm for the licensing offence. If the property is not an HMO, as the licence was applied for on 20.11.2019 then the correct amount of a rent repayment award was 7 month's rent at £700 pcm, and 14 days at £23.01 per day in the total sum of £5,222.14.

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

17. The Respondent made submissions in her Skeleton Argument dated 4 February 2021 in which the Respondent stated that the Applicant was a lodger. She also submitted that the two other occupiers were not living at the property as their only or principal home.
18. In the Skeleton Argument it was stated that Section 254 of the Housing Act applied and as a result the property was not subject to the additional licensing scheme. In respect of the alternative submission of the applicant, that is that the property was licensable under the Selective licence scheme, the Respondent placed reliance on the fact that the respondent was a residential landlord, and that for this reason the property was not licensable under a selective licence scheme. The Respondent also averred that she had a reasonable excuse under section 75(5) of the Housing Act 2004 as she had an honest belief that the individuals were not occupying the property as their only or main home.
19. The Respondent also rejected the Applicant's claim in respect of an unlawful eviction, in that she asserted that her email asking the applicant to vacate the premises sent on 17 December 2019, did not amount to an offence under the Protection from Eviction Act 1977.

### **The Hearing**

#### **The Applicant's case**

20. We heard evidence from Mr Penny on behalf of Ms Oba, he set out that there was an additional licensing scheme in the London Borough of Newham. Mr Penny referred to a public notice advising that the London Borough of Newham had designated an area for Additional Licensing under Section 56 of Housing Act 2004. The designation applies to all houses in Multiple Occupation ("HMO") that are privately rented and occupied under a tenancy or a licence unless it is an HMO that is subject to mandatory licensing under section 55(2) of the Act or is subject to any statutory exemption. The designation came into force on 1 January 2018.
21. In the alternative the Respondent's premises was licensable as it was in an area designated for a Selective licence under Section 80 of Housing Act 2004, which stated that -: "The designation applies to any privately rented property that is not a licensable house in multiple occupation, and is occupied under a tenancy or a licence".
22. Mr Penny provided evidence by way of a map that the premises were within the designated area, for both the Additional Licence and the Selective Licence.
23. He referred to the licence agreement and the fact that it stated that the respondent could enter the premises only upon reasonable notice to inspect the condition. He

- referred to Street -v- Mountford which established the exclusive possession test. This meant that Ms Oba had exclusive possession of the room that she occupied.
24. He also referred to the licence agreement of Ms Galea and Ms Oba which were in identical terms. Additionally, he referred to email correspondence dated 6.08.19 from Ms Edomobi in which she instructed Ms Oba to set up a direct debit. He stated that for all of these reasons the Tribunal could be satisfied that the premises were occupied by three separate households as an HMO. He invited the Tribunal to reject the submissions that Ms Galea and Ms Fabri's principal homes were in Malta. He referred to Section 259 of the Housing Act 2004.
  25. We then heard from Ms Iyobo Oba who set out how she came to occupy the premises and the details of the other occupants throughout the period of her occupancy. She stated that she had met Ezinne Chioma Edomobi, at a running club, and she had been looking for somewhere to live, and Ms Edomobi had been looking for a tenant. She stated that the property was shared with two other sharers and facilities such as the kitchen and bathroom was shared by all sharers.
  26. Ms Oba stated that when she moved into the premises, she was not given a copy of the Government's "How to Rent" guide, there were no displays of managing agent's details, and there was no fire alarm system or Electrical Inspection Condition Report which would have been required with the HMO.
  
  27. Ms Oba stated that in July 2019, Ms Edomobi told the tenants not to tell anyone that we were tenants, she was to say that they were friends because the landlord needed to switch the mortgage.  
The table showed that during Ms Oba's occupancy from June 2019, save for a very short period in October 2019, the premises was occupied by two other occupiers, firstly Leontine Fabri and Martina Galea and after Ms Fabri tenancy ended by Gabrielle Ledun.
  28. Ms Oba told the Tribunal that in October 2019, she had cause to complain about a mouse in the premises. She was disappointed about Ms Edomobi's response which she saw as being less than helpful. She stated that Ms Edomobi did not like being asked to deal with repairs at the property. The infestation was attended to, however on 17 December Ms Galea reported seeing rats in the premises.
  29. On 30 November 2019, someone reported Ms Edomobi to Newham Council. Ms Oba stated that she was wrongly accused of doing so. She stated that on 17 December 2019 she was given what purported to be an Eviction notice. Ms Oba provided WhatsApp messages in support of her evidence. She stated that it had become tense and there had been harsh conversations, and a very frosty atmosphere whenever Ms Edomobi had attended the property to collect her post. Ms Oba stated that she had moved out to protect her well-being, and that after she had left the property she had stayed with friends in London.
  
  30. In answer to questions from the Tribunal Ms Oba, stated that Ms Edomobi worked in Europe during the week and that she stayed at her parents' house when she returned to the UK during the weekend. She accepted that she had originally got on well with Ms Edomobi, and that Ms Edomobi had spent the occasional night at the property, however she denied that Ms Edomobi had lived at the property or occupied it as a home. She stated that Ms Edomobi had slept in the lounge on the sofa, and that usually this room was used in common by all tenants.

## The Respondent's case

31. Ms Edemobi stated that she had met Ms Oba who was part of the same running club, she stated that she had gone to school with Ms Oba's younger sister. She stated that she had a spare room in her house, and that she was working in Europe in Germany and Sweden. She had spoken with Mr Dauda, who was a mutual friend and he had strongly advised her against doing so. In respect of Ms Fabri she stated that she had allowed Ms Fabri to stay at the property because she had been frightened of her landlord who had been arrested for a sexual offence.
32. She stated that she had let Gabrielle Ludun stay at the property as she had come to do a course and had difficulty finding somewhere to stay. Ms Edemobi stated that she had stayed at the property most weekends that she was in London but she did not necessarily return every week. It was however her principal home as she did not have a place in Germany or Sweden, and whilst abroad she stayed at a hotel where she was provided with a long-term resident's rate. She stated that she would arrive from the airport on a Thursday and would speak to everyone, sometimes they would have lunch or dinner together and would sit and chat. She would then return to work via the airport leaving at about 3.00 am on Monday morning.
33. Ms Edemobi stated that before Martine was at the property, she had stayed in the room downstairs. Afterwards she had slept on the sofa. With regard to her clothes, they were left in the different occupants' rooms, although some clothes were at her parents' house whilst others had been left at the hotels that she stayed at whilst abroad.
34. Ms Edemobi stated that it had not been her intention to sign an agreement with Ms Oba, as it had been an informal arrangement, however as Ms Oba had wanted an agreement, she had searched on google and had pulled an agreement off the internet. In answer to questions from Mr Penny she did not agree that the lodger agreement amounted to a tenancy. She stated that the occupancy was very informal and temporary. She denied that she had only stayed at the property on two occasions, although she stated that because of her parents' health she sometimes stayed with her parents. In answer to a question from Mr Penny, she stated that she had asked the occupiers to say if asked that they were just her friends as she did not want to complicate her mortgage renewal.
35. Ms Edemobi stated that the other occupants had been frightened of Ms Oba who had been passively aggressive in particular Leonie had not wanted to stay at the property because of Ms Oba. She stated that Ms Oba had been untidy and had also broken things. However, this was not the reason why she had asked her to leave. She had asked her to leave because she had needed to get her property back so that her parents could live there. She stated that the reason why she had applied for a selective licence was because she had been advised to by Newham Council.
36. Ms Edemobi had set out her financial position to the tribunal. She stated that she had been out of work whilst Ms Oba had been in the property and provided an email from her accountant which stated that she was not working from 18/06/2019 to 28/06/2020 She said that she had nevertheless continued to be away in Europe during that time working on a project, but unpaid. She had received some financial support in respect of flights and hotels, however this had all stopped in January 2020. Ms Edemobi was asked about a company that she had shares in Edominion. She stated that her mother was a shareholder and her sister and her dad it was a family company.

37. The Tribunal heard from Mr Rasheed Dauda, who gave evidence on Ms Edemobi's behalf, he gave limited evidence in that he had advised Ms Edemobi against renting the property as he had thought it was unwise to rent to friends.

### **Closing Submissions**

38. The Tribunal heard from both Counsel in closing, they had both provided written Skeleton Arguments. Mr Penny stated that the material facts are that there were 3 bedrooms at the property and all three were occupied. The second material fact was that there was a contract/ a tenancy agreement and the occupants were paying rent. Ms Edemobi relied upon the fact that she was receiving her post at the subject address, however this was not evidence of living at the property as this was a correspondence address. Even though Ms Edemobi might have stayed at the property occasionally it was at the good grace of the tenant.

39. In paragraph 2.1 of his Skeleton Argument he stated:- "The Subject Property was not correctly licensed at any time during the Applicant's occupation of the premises. In an email dated 27/01/2020, Sarah Crisp, an Assistant Licensing Officer of the Property Licensing Group at the London Borough of Newham confirmed that though a licence application was made on 20/11/2019, no other licence application was made.

40. In respect of the rent repayment order Mr Penny stated that the starting point was 100%. During a period not exceeding 12 months in which the landlord was committing the offence, in his Skeleton argument he referred to *Vadamalayan v Stewart*[2020] UKUT 0183 as authority for this proposition. He stated that the factors that were to be taken into account were (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. Mr Penny referred to the unlawful eviction. He also referred to the conduct of Ms Edemobi in attempting to conceal the tenancies and also in not providing the tenants with the necessary information in respect of the safety certificates.

41. At Paragraph 4.13, Mr Penny referred to the starting point as being 100% and in his submissions the "complete absence of mitigating factors, and the multiple aggravating factors, the correct award is the full amount applied for of £12,600, broken down as follows: 9 months at 700pcm = £6300 for the licensing offence, plus a further £6,300 for the eviction offence.

42. He stated that in the alternative, should the tribunal conclude that the property was licensable under the Selective Scheme and that the license application of 20/11/2019 accordingly ended the HMO licensing offence, the correct amount is the full amount applied for of £11,499.13, broken down as follows 7 months at 700pcm (£4,900) + 14 days at £23.01 (£322.14) = £5,222.14 for the licensing offence plus a further £6,300 for the eviction offence.

43. Ms Whiting referred to the fact that there were two offences alleged by the Applicant, in respect of the additional licensing scheme all landlords who let a property occupied by three to four non-related occupiers that are sharing some basic facilities or amenities such as a kitchen or bathroom to have a licence. However, she stated that this needed to be considered in the light of Section 254 of the HA 2004 which provides that a house in multiple occupation will only include individuals where they are occupying the accommodation as their only or main residence. She stated that Leontine Fabri's main or only residence was in Malta

and she did not have a licence agreement. In respect of Martina Galea she was only residing in the property temporarily whilst studying on a short educational course, with her main residence in Malta.

44. In the alternative Ms Whiting submitted that if the Tribunal rejected this submission the Respondent had a reasonable excuse for not having licence the property as she had an honest belief that the two occupants were not residing in the property as their main or only home. She also submitted that there was a reasonable excuse from the date that the selective licence was applied for.
45. In respect of the Selective licence, Ms Whiting stated that this should fail as this did not apply where there was a landlord in residence even if she stayed at other properties occasionally
46. In respect of quantum, she stated that the Tribunal still remained a discretion under *Vadamalayan v Stewart*[2020] UKUT 0183. In respect of the claim for damages for unlawful eviction, Ms Whiting stated that this claim was entirely misconceived on two grounds firstly the applicant was an excluded occupier and secondly there was no eviction as alleged in paragraph 22 she stated “ In particular the suggestion that a landlord could in any way be liable for a criminal offence merely by requesting that a tenant vacate the property is simply not tenable.”
47. She stated that a politely worded email requesting that the tenant should leave the property could not in law amount to an eviction.

## **Tribunal Decision**

48. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the objectives of the statutory provisions concerning rent repayment orders.

### *Alleged offence of illegal eviction*

The Tribunal has considered whether Ms Oba was unlawfully evicted and, in this regard, we have considered Section 1(2) and (3) of the Protection from Eviction Act 1977. We consider that this requires something more than the email sent by Ms Edemobi informing Ms Oba that she required her to leave the property and consequently we do not consider that an offence has been committed in this respect.

Alleged offence of failure to licence.

49. 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 and 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) Determination of the amount of any order.



50. It is important to note that the fact that the Applicant will have had the benefit of occupying the premises during the relevant period is not a material consideration.
51. We are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.
52. There is no evidence before us that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
53. We find beyond reasonable doubt that the Respondent's premises were licensable as it was in an area designated for a Selective Licence under Section 80 of Housing Act 2004, which stated that -: " The designation applies to any privately rented property that is not a licensable house in multiple occupation, and is occupied under a tenancy or a licence" . We noted that once the premises were occupied by three individuals, that the conditions for an application for an Additional licence were met.
54. We heard evidence from Ms Edemobi that throughout Ms Oba's occupation she had lived at the property. We noted that there was no room which was available for her exclusive occupation, or which was reserved for her, we noted that there was nowhere to keep her belongings such as her clothes.
55. We also find that the evidence which we saw such as the emails, WhatsApp messages and licensing agreement, and the practical arrangements to care for the garden and to deep clean the premises on Ms Oba's departure, are all inconsistent with Ms Edemobi's occupation of the premises as a resident Landlord. Further we find that Ms Galea and Ms Fabri occupied the property as their principal home, as it was their only home in the UK.
56. We also preferred the evidence of Ms Oba which we found to be clear and consistent. We therefore conclude that Ms Edemobi was not a resident landlord.
  
57. We determined that the property was unlicensed. The Tribunal saw a copy of an email dated 27. 01.2020 from the London Borough of Newham confirming that a licence had not been applied for prior to 20 November 2019 and thus the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. The Tribunal in reaching this decision has considered that there is evidence before it that the premises was, during the period that Ms Oba occupied the property occupied by at least two other tenants. The Respondent in her evidence bundle produced a witness statement from Leontine Fabri, although she was not available to be cross examined on this statement. Ms Fabri stated that she had been provided the accommodation rent free, and that she offered to pay the bills.
58. We noted that at the time of Ms Oba's occupancy on 6 April 2020 until 2 May 2019 there were only two people living in the property making up two separate households, it was clear when Ms Oba moved into the premises in April 2019, that the premises were caught by the Selective Licence Scheme, arguably the designation changed once there were three people living in the premises, however we are satisfied that at the point of Ms Oba's occupancy from 6.4.2019 onward, the Respondent should have applied for a Selective Licence. However we consider that the Respondent was in breach of Section 72(1) or Section 95(1) of the Housing Act 2004. Further we find that even if Ms Edemobi should have applied for an additional licence, there was a degree of fluidity concerning the occupancy, which

we find provides Ms Edemobi with a reasonable excuse, even if she applied for the wrong licence.

59. In accordance with section 41(2), the Respondent was committing the relevant offence from 6 April 2019 to 20 November 2019, when the property was let to the Applicant prior to the Respondent applying for a licence.

60. The Tribunal was satisfied that on the evidence, there was no ground on which it could be argued that it was inappropriate to make a rent repayment order in the circumstances of the present case.

61. The Tribunal determines that a Rent Repayment Order should be made for the period 6 April to 21 September 2019 for the Respondent's failure to apply for a Selective License.

62. The starting point under Section 44 of the 2016 Act is the maximum payable and the Tribunal finds that there is nothing in the conduct of the parties that needed to be taken into account. This is the sum of £5,222.14 for the licensing offence.

63. In accordance with *Vadamalayan v Stewart*[2020] UKUT 0183, We have not made deductions for the Respondent's expenses in relation to the premises or for the mortgage payment.

64. We consider that it is appropriate to make deductions for the utility bills and have made the following deductions.

Utility Bill	Daily Rate	Total	Applicant's share
Thames Water	£0.67.5	£154.58	£51.53
Gas Bill	£0	£440.91	£146.97
Octopus Energy	£0	£355.87	£72.95
TV Licence	£12.54 (monthly)	£96.93	£32.31
		Total deduction	£303.76
Rent repayment		£5,222.14	
Less deduction		£303.76	
		TOTAL Due	£4,918.38

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Payment in the sum of £4918.38.71 should be made in full within 28 days of the date of this decision.

65. *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.*

Tribunal Judge Daley

12.04.2021