



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

**Case reference** : **LON/00BC/HMF/2020/0060**

**HMCTS code** : **V: VIDEO**

**Property** : **Flat 2, 94 Belgrave Road, Ilford, IG1 3AL.**

**Applicants** : **Mr. Thomas Lascar-Awolesi.**

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

**Respondent** : **Mr. S. Ahmed.**

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

**Type of application** : **Application for a Rent Repayment Order (“RRO”) by tenant Sections 41 of the Housing and Planning Act 2016**

**Tribunal members** : **Judge Hamilton-Farey  
Tribunal Member Mrs. L. Crane.**

**Date of Hearing** : **12 March 2021**

**Date of decision** : **18 March 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 not 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 before the tribunal at the hearing were;

1. The applicants' application, and bundle, that included witness statements from Karolina Mulkka and Devin Mbogo, neither of whom appeared at the hearing.
2. The respondent's bundle, that included witness statements of Ms. Marzol (a tenant) and Mrs. Ahmed. In addition, we received a separate file containing witness statements from
  - a. Ms. N. Aung
  - b. Mr. E. Ali
  - c. Mr. R. Sees
  - d. Mr. K. Stride

None of the above attended the hearing to give evidence

At the hearing Mr. Lascar-Awolesi represented himself as did Mr. Ahmed. Mr. Ahmed called Ms. Marzol (a tenant of the premises) and his wife spoke to their statements and were cross-examined by the applicant and the tribunal.

## **Decisions of the tribunal**

1. The tribunal determines that the applicants are entitled to a Rent Repayment Order in the sum of £1,413.00.

## **The background**

2. The tribunal received an application dated 20 April 2020 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order ('**RRO**') in respect of Flat 2, 94 Belgrave Road, Ilford, IG1 5AL ('**the Property**'). The London Borough of Redbridge is the local housing authority.
3. The tribunal issued directions on 26 November 2020 following a telephone case management conference. These required the parties to supply copies of documents on which they wished to rely, including witness statements if appropriate.

## **The Applicant's Case:**

4. The applicant says that in respect of the period from 29 November 2018 until 28 April 2019 he occupied a small room in the property, which was converted into 7 rooms. During that time that he paid rental of £3,425.00 including his deposit of £600.00. He accepts that he had financial difficulties and that he was unable to pay all of the rent due and was therefore in arrears when the tenancy ended on 28 April 2019.

5. The applicant also says that he was illegally evicted by the landlord and that the landlord's wife harassed him by forcing entry into his room whilst he was absent (but friends were present), and that he was not served with an eviction letter. He says that this made him question the legitimacy of the landlord and license of the property. During the hearing, the tribunal was provided with some video recordings apparently taken during the illegal eviction.
6. On 18 May 2020 the applicant received an email from the Private Sector Licensing department of the Local Housing Authority. This informed him that the property had had a Selective Licence since 1 October 2018, but did not have a licence for an HMO. The respondent did apply for an HMO licence, but this was not until after complaints were made to the LHA and after the tenancy had ended.
7. With respect to the money claimed under the RRO, the applicant said that his deposit had not been returned to him and he had therefore included the £600.00 in the claim.
8. In his summing up the applicant said that he realised that the lack of license was not the fault of the respondent and that he had made an honest mistake.

### **The Respondent's Case:**

9. The respondent, Mr. Ahmed said that the property comprised five rooms not seven as stated by the applicant. He said two had their own shower/w.c. and three did not. There was one bathroom shared by these three tenants and two kitchens shared by all occupiers, including the office user on the ground floor.
10. Mr. Ahmed said that he was not aware that the selective license he had held since 2018 was the incorrect one, but when he was made aware, he applied for the correct HMO licence, which was granted in 2019. It appears from the evidence before us that the selective licence granted in 2018 related only to Flat 1 and not the whole building and therefore the property did not have a valid license during the relevant period.
11. From this it is clear that the property required a mandatory license and from the respondents own evidence on page 5 of his bundle dated 31 January 2021, he indicated that he had made an application for the mandatory license.
12. He confirmed to the tribunal that he had been a landlord for nine years and only had one property.
13. He called his first witness Ms. Marzol.

### **Ms. Marzol's evidence:**

14. Ms. Marzol said that she had been a long-standing tenant of the respondent and she disagreed with some of the statements made by the applicant. In particular she said that she had had a conversation with the applicant in which he had told her he had received his deposit back and would be vacating the property.
15. She was not present during the eviction and could not therefore give any details.
16. Mr. Ahmed then called his wife to give her evidence.

**Mrs. Ahmed's evidence:**

17. Mrs. Ahmed said that she dealt with the property on behalf of her husband due to his ill-health. She said that she had never entered the property without consent, but that the applicant had said that he would move out of the property once he had received his deposit, and arranged to leave on the 28 April. She also said that she attended the property to take an inventory and receive the keys, but that the applicant was still in occupation. She denied that she had served a S.21 Notice on the applicant and had attempted an illegal eviction, and that she had harassed the applicant.

**The tribunal's decision and reasons**

18. The tribunal has reached its decision on the basis of the evidence in the bundles before it at the start of the hearing, and the respondent's witness evidence. The relevant legal provisions referred to in the tribunal's decision and reasons are set out in the Appendix to this decision.
19. It was accepted the parties that
  - the property was one which required a selective HMO licence during the period the subject of the application, being a property in multiple occupation ('HMO') which required selective licensing, and
  - that although there was a selective license in place there was no mandatory HMO license in place and the landlord had therefore committed an offence.
  - That the applicant had paid the rent stated in the application.
20. We can criticise the landlord to not understanding or knowing the correct regulations pertaining to his property, and the apparently non-professional way in which he approaches his management. It might be prudent for the landlord to take some professional advice in relation to the management of residential properties.
21. We are satisfied from the evidence we have read and heard that an RRO in favour of the applicant should be made.

22. The issue before the tribunal was the quantum of any RRO, taking into account any reasonable excuse, the conduct of the landlord and his financial circumstances.

### **Factors that may be taken into account in assessing quantum**

23. Section 72(5) of the 2004 Act contains a statutory defence of 'reasonable excuse' to the offence of being in control/management of an unlicensed HMO.
24. Section 44(4) of the 2016 Act provides that in determining the amount of any RRO the tribunal must, in particular, take into account
- (a) The conduct of the landlord and tenant,
  - (b) The financial circumstances of the landlord

### **Quantum**

25. The tribunal is not persuaded that the applicant did not receive his deposit from the respondents. We come to this conclusion on the basis that he would not have left the property without it and could presumably have applied to one of the deposit-holding services that the respondent must have used under the relevant statutes.
26. When calculating any RRO the starting point is the rent paid for the relevant period of up to 12 months prior to the application, assuming that the applicant had paid all of the rent due.
27. It is not disputed that the applicant paid £2,825.00 in rental during the period under consideration. However, there was a lack of evidence before us in relation to the deposit return, but we prefer the evidence of the respondent.
28. We were not persuaded by the audio recordings presented to us, because it could not be confirmed that it was the landlord's wife speaking, and the sound quality was very poor.
29. We also take into consideration that the respondent is not a 'professional landlord' this being his only property; that the landlord was naïve and as stated by the applicant, had made an honest mistake.
30. In the circumstances we consider that a reduced RRO should be made to the applicant. We award 50% of the net rent paid (less the deposit) a total of £1,413.00 which should be paid to the applicant by the respondent within 28 days of the date of this decision.

### **Fees**

- 31.** As the tribunal has made an RRO in favour of the applicants it is appropriate that they should have their fees refunded.

**Name:** Judge Hamilton-Farey      **Date:** 18 March 2021.

### **Rights of appeal**

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).

### **Appendix of Relevant Legislation**

#### **Housing Act 2004**

##### **55 Licensing of HMOs to which this Part applies**

(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, and
- (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3)The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4)The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

## **56 Designation of areas subject to additional licensing**

(1) A local housing authority may designate either -

(a) the area of their district, or

(b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

## **61 Requirement for HMOs to be licensed**

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

## **72 Offences in relation to licensing of HMOs**

(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 (see section 61(1)) but is not so licensed.

(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,

## **Housing and Planning Act 2016**

### **40 Introduction and key definitions**

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and committed an offence to which this Chapter applies.

(2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –

(a) repay an amount of rent paid by a tenant, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **41 Application for rent repayment order**

- (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.
- (3) A local housing authority may apply for a rent repayment order only if –
- (a) the offence relates to housing in the authority's area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

#### **43 Making of a rent repayment order**



- (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 had 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 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).

**44 Amount of order: tenants**

(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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	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 –
  - (a) the rent 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,
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.