



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

**Case reference** : **LON/00BG/HMF/2020/0155**

**HMCTS code  
(paper, video,  
audio)** : **V; CVPRemote**

**Property** : **Flat 1, Milton House, Roman Road,  
London E2 OHS**

**Applicant** : **Nicola McDermott**

**Representative** : **Justice for Tenants - Mr Alasdair  
McClenahan**

**Respondent** : **Arshad Ali**

**Representative** : **Not represented**

**Type of application** : **Application for a Rent Repayment Order  
by tenants Sections 40 – 44 Housing  
and Planning Act 2016**

**Tribunal  
member(s)** : **Judge Dutton  
Ms S Coughlin MCIEH**

**Venue** : **Video hearing on 16 March 2021**

**Date of decision** : **17 March 2021**

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**DECISION**

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**Covid-19 pandemic: description of hearing**

This has been a remote hearing which has been consented 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 no-one requested the same, and all issues could be determined on paper. The documents that the Tribunal were referred to are in a bundle of some 128 pages, the contents of which have been noted.

**The Tribunal finds that the Respondent has breached section 72(1) of the Housing Act 2004 (the 2004 Act) and determines that the Respondent must pay to the Applicant by way of Rent Repayment Order the sum of £3,280.00 within 28 days**

**In addition, the tribunal orders the respondent to refund to the applicant the application and hearing fees in the sum of £300, again within 28 days.**

## **BACKGROUND**

1. On 19 August 2020 the applicant through her representative, Justice for Tenants, commenced proceedings against the respondent seeking to recover rent paid in the period 1 April 2019 to 31 August 2019, (the relevant period) totalling £3,280.00.
2. Annexed to the application were a number of documents which were also contained in an indexed Evidence Bundle. This bundle contained details of the alleged offence, a property background, an expanded statement of reasons, the calculations of the monthly rent in respect of the occupancy of each applicant and a summary as to the conduct of the parties.
3. As well as these papers under the heading Exhibits, we were provided with a number of documents, some relevant to the matter we were required to determine, and some not. Of relevance were the directions, the application, the tenancy agreement, the rent payment calculation and proof of payment, and land registry documents. A photograph of the front elevation of the premises was included. We have considered these in reaching our decision.
4. In contrast the respondent has played no part in these proceedings. Letters have been sent by the tribunal to the address shown on the register of title at 24 Ellesmere Gardens, Ilford Essex IG4 5DA. It appears that attempts were made to contact him by email and telephone but to no avail. The party managing the lettings at the flat was City Move Estate Limited (CME) but the applicant chose not to include them as party.

## **EVIDENCE**

5. For the applicant it is said that the property, Flat 1, Milton House, Roman Road, London E2 0HS (the Flat), is a ground floor four bedroomed self-contained flat in a purpose-built block. There is a shared kitchen and bathroom. It is alleged that the Flat was occupied by at least 5 people in the relevant period.
6. It is alleged that the Flat is situated in an additional licensing area as designated by the London Borough of Tower Hamlets which came into force on 1 April 2019 covering the whole of Tower Hamlets, save

for certain areas, not relevant to the Flat, which were designated as selective housing. It is alleged that the Flat has at no time been licensed, as confirmed by correspondence from the London Borough of Tower Hamlets and that accordingly an offence under s72(1) of the 2004 Act has been committed.

7. The application sets out the rent said to have been paid by Miss McDermott in the relevant period. A copy of the licence agreement is included for the period 1 March 2019 to 31 August 2019. The Licence Agreement is titled House Share Licence and was issued by CME to Miss McDermott on 1 March 2019 with an end date of 31 August 2019. City Move Estate Ltd is described as an investment company in possession of the property and is referred to throughout the agreement as the Company. The agreement makes mention of a Landlord but fails to identify who that may be. This is the second agreement. The first being for a period of 5 months commencing on 26 October 2018 and expiring on 28 February 2019, on what would appear to be the same terms and with the same parties. It is said by Mr McClenahan that the agreement is a sham intended to reduce the perceived rights of the tenants and induce a lack of security for any tenant living there, who would frequently be of foreign origin and whose knowledge of the English language may be limited.
8. We were provided with a spreadsheet showing the rent paid by Miss McDermott and to support these payments we were provided with a copy of a bank statement showing the sums being paid to CME.
9. The register of title for the property, under title number EGL411100, shows that as at 18 August 2020 the registered proprietor was Arshad Ali he apparently having owned the Property, under the terms of a lease dated 12 June 2000 for a period of 125 years, since September 2005. In her evidence Miss McDermott informed the Tribunal that she had never met Mr Ali but that she remembered post arriving at the property addressed to him and that she had informed the Company when that happened.
10. The written submission on behalf of Miss McDermott addresses the meaning of persons having control and managing the Flat under the provisions of s263 of the 2004 Act. We noted all that was said. It is alleged that the respondent is the person having control as he would be the person entitled to receive the rack rent for the Flat, if let. It is also said that the respondent would also be the person managing the Flat as he would be the person receiving the rent, but for having entered into an agreement with another. It was accepted that no details of any arrangement between CME and the respondent could be provided.
11. As to conduct it is said that there were issues with the Flat, for example a lack of a Gas Safety certificate and fire safety.

12. In respect of deductions for utilities reference is made to the Upper Tribunal case of *Vadamalayan v Stewart* and the later decision of *Chan v Bilkhu* as to the need to have evidenced circumstances to deduct anything from the maximum award.

## **FINDINGS**

13. We are satisfied that the Flat is within an area of additional licensing and that Notice of such designation was issued by the London Borough of Tower Hamlets, with effect from 1 April 2019. A copy of the Public Notice was included in the bundle at page 88. The designation applies to all properties including flats, which are occupied by 3 or more persons comprising 2 or more households, irrespective of the number of storeys. The Notice requires that every house in multiple occupation must be licensed under section 61 of the 2004 Act.
14. The evidence from Miss McDermott is that throughout the relevant period 5 people were living in the Flat (see para 9 of the Expanded Reasons).
15. Failure to acquire a licence results in an offence under the provisions of s72(1) of the 2004 Act. Considering that section we find, beyond reasonable doubt, that the Respondent Arshad Ali is the person committing the offence as provided for at s72(2). No defence of reasonable excuse has been put to us.
16. Under the provisions of s263 we find he falls under the provisions of subsection (1) as having control as he would be the person entitled to receive the rack rent, he holding a long lease of the Flat. Further under the provisions of s263(3)(b) he is the person managing the Flat as he would have received the rent but for having entered into some form of agreement with CME by virtue of which that company received the rent. We cannot envisage an arrangement whereby the respondent would have allowed CME to rent out the Flat without some financial recompense.
17. Accordingly, we are satisfied beyond reasonable doubt that the offence of having control or management of an unlicensed HMO pursuant to s72(1) of the 2004 Act has been proved. Further, that the period in question is from 1 April 2019, when the licensing came into effect until 31 August 2019 when Miss McDermott vacated the flat. The application was made within 12 months of the commission of the offence, as provided for under s41(2) of the Housing and Planning 2016 Act.
18. The amount of rent paid is as set out in the licence agreement, namely £650 per month, rising we were told to £660 per month from 1 June 2019 as a cleaner was employed and the tenants had to pay towards that service. The total rent paid by the Applicant was £3280. We have not been provided with any details of utilities in respect of the property nor any details of the Respondent's financial circumstances.

We are not therefore making any deduction from the full amount of the rent paid.

19. In reaching our decision we have borne in mind the Upper Tribunal decision of *Rakusen v Jepsen and others* [2020} UKUT 0298 (LC) where the Deputy President found that that there is no requirement that the landlord be the immediate landlord of the tenant in whose favour the order is being sought.
20. Although there was some suggestion as to conduct on the part of the respondent, it does not seem relevant as we have ordered that the whole of the sum claimed be awarded. There is no conduct we should take into account on the part of Miss McDermott.
21. In addition, we award the applicant the sum of £300, being the application fee and hearing fee being payable by the respondent within 28 days.

Tribunal Judge Dutton

17 March 2021

### **ANNEX – 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 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 to 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 (ie 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.

#### [Extract from the 2016 Act](#)

##### 40 Introduction and key definitions

(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has 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 by that landlord.

<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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).

#### 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 the 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 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.

## **Housing Act 2004**

### **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.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.