



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

Case reference : **LON/00BG/HMF/2021/0035**

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

Property : **69 Brabazon Street, London E14 6BL**

Applicant : **Mr Kishor Das**

Representative : **In person**

Respondent : **Mr Christopher Seymour**

Representative : **In person accompanied by his sister Mrs
D Harrison**

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

**Tribunal
member(s)** : **Judge Dutton
Mrs L Crane**

Venue : **Video hearing 31 August 2021**

Date of decision : **31 August 2021**

DECISION

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 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 70 pages, the contents of which have been noted.

DECISION

The Tribunal finds that the Respondent, Mr Christopher Seymour, 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 £4,550 within 28 days under the provisions of s.44 of the Housing and Planning Act 2016 (the 2016 Act)

BACKGROUND

1. By an application dated 31 January 2021 the applicant Mr Kishor Das, commenced proceedings against the respondent, Mr Christopher Seymour seeking to recover rent paid in the period 1 January 2020 to 31 December 2020 (the Period) totalling £4,550.00 for his occupancy of a room in the maisonette 69 Brabazon Street, London E14 8BL (the Property).
2. In the Applicant's first bundle we were provided with his statement, the directions, details of payments made for rent during the Period, copies of Whats' App communications, details of his medical history and a copy of the application. An addendum to this bundle was produced to us on the day of the hearing. This addendum contained an expanded statement, giving more information on the alleged offence of controlling or managing an unlicensed HMO, details of the additional licensing scheme imposed by Tower Hamlets and correspondence with the tribunal.
3. The respondent, Mr Seymour, had provided, somewhat late in the day, a letter setting out his position and details from Poplar Harca, the head landlord, confirming that the Property was a top floor three bedroomed maisonette.
4. We have noted all that has been said in these submissions and have taken the contents into account in reaching our determination.
5. Mr Seymour, both in his letter to the tribunal and to us at the hearing confirmed that, due to his lack of knowledge, he appreciated now that the Property was an HMO that required to be licensed. Indeed, he told us that he had applied for a licence approximately three months ago.

EVIDENCE

6. Mr Das told us that the Property, is a two-storey maisonette with 4 bedrooms, the living room being used as the fourth bedroom. This meant that there was no socialising space. It is situated in an additional licensing area of Tower Hamlets, which came into force on 1 April 2019 and is a borough wide scheme. This is not disputed.
7. The reason for Mr Das's claim centres around his concerns arising from the occupancy of the living room/bedroom by a family of three, including a toddler. This, he said, caused him sleepless nights, an inability to use the kitchen, resulting in him living on take away food. This in turn, he says, depleted his finances and caused him health issues, evidenced in medical records included in the first bundle. He said that he had tried to bring these problems to the attention of Mr Seymour but there had not been any positive action taken to reduce his concerns. He says that he brought to Mr Seymour's attention the need to licence the Property. This is set out in more detail in the first statement Mr Das produced.
8. In his second witness statement to an extent he repeated the matters contained in the first. It did set out in more detail the requirements for the Property to be licensed. The statement set out the occupancy of the Property, which was 6 people, one to each bedroom on the top floor and the family of three in the former living room. Finally, it listed the remedies sought, which we have noted.
9. At the hearing held on 31 August 2021 by video we heard firstly from Mr Das. He complained that Mr Seymour had not complied with the directions, which in turn meant that he was late filing his response. He told us that he was not given a tenancy agreement. Although the directions raised issues concerning an Improvement Notice and Prohibition Order, he was not aware of any such issues and relied solely on the allegation that Mr Seymour had breached s72(1) of the 2004 Act.
10. He clarified the rental position. Apparently for the first three months he had paid the rent to Mr Islam, as evidenced by his bank statements. Thereafter he had paid the rent directly to Mr Seymour. This was not denied by Mr Seymour who said that the rent was passed to him by Mr Islam. In one month, he had agreed to pay £50 extra in rent to reflect a contribution to a service charge demand Mr Seymour had received from Poplar Harca. He confirmed he had left the Property on 1 January 2021, having moved in in April 2018.
11. Mr Seymour told us that he accepted that the Property did require a licence and was unlicensed during the period for which Mr Das seeks a Rent Repayment Order (RRO). He told us that about three months ago he had made application for an HMO licence and would be changing one of the double bedrooms upstairs into living accommodation for socialising. He told us that none of his other tenants had made any complaint and that he had been renting the Property out for a number of years it seems, he having acquired the

Property from his mother when she had fallen on difficult times and could not pay the mortgage.

12. Whilst accepting that he was liable he told us that he had encouraged Mr Das to leave and had, in fact given him the November rent back and told him he could stay there rent free for a period until he found alternative accommodation. Mr Das declined this proposal and returned the rent to Mr Seymour.
13. Asked whether conduct was something we should consider Mr Das said this related only to Mr Seymour being reluctant to solve the problems with the family occupancy. In return Mr Seymour said he would not feel able to remove the family from the Property and that he had made little profit from the lettings, after the mortgage was paid and the service charges met.
14. As to financial circumstances Mr Seymour told us he was in employment as an engineer and that he made little profit from the Property. In answer to questions from us he confirmed that this was the only property he rented and that there were no services provided, the tenants having a meter for the gas. He confirmed that he was the registered proprietor of the Property.

FINDINGS

15. In this case it is not necessary for us to make any findings on the evidence as to the culpability of Mr Seymour as he accepts that the Property required a licence but that it was not so licenced. Accordingly, an offence under s72(1) of the Housing Act 2004 is made out. This brings into play the possible defences available under s72(4) and 72(5) of the 2004 Act. None are raised by Mr Seymour save that he was ignorant of the need to licence.
16. As to conduct we do not find that either party has acted in such manner that conduct is relevant. Mr Seymour has not been convicted for this offence, nor are we aware that he has any conviction for offences under the 2004 or 2016 Act. He denied he was a 'rogue landlord'.
17. As to the financial circumstances it would seem that Mr Seymour is in employment and is presumably receiving the rent from the other tenants, who have not joined with Mr Das in this application. We were not provided with any evidence of financial hardship and accordingly do not consider there is any hardship we can take into account in reaching our decision on the quantum of the RRO.
18. The amount to be claimed is not challenged and is £4,550. We therefore make an RRO in the sum of £4,550 which is to be paid within 28 days. There were no fees to be reimbursed. Mr Das raised the possibility of a claim for costs under the provisions of rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. He should consider that carefully as he is a litigant person, and any costs are limited. Further he should acquaint

himself with the Upper Tribunal case of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander [2016] UKUT (LC)* before making any application.

Tribunal Judge Dutton

31 August 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.

Act

section

general description of offence

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.