



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

Case reference : **LON/00BG/HMF/2021/0075**

HMCTS code : **V: CVPREMOTE**

Property : **Flat 2 Bantry House, Ernest Street,
London E1 4QX**

Applicant : **Antonio Mateos Rodriquez (A1)
Vincenzo Moreno Luna (A2)
Costanza Lanni (A3)
Richard Kelly (A4)
Murat Tahan (A5)**

Representative : **Antonia Halker of Counsel**

Respondent : **Mohammad Abdul Kalam (1)
Joes Property Limited (2)**

Representative : **Steven Woolf of Counsel (for R1 only)**

Type of application : **Application for a rent repayment order
by a tenant
Sections 40,41,43 & 44 of the Housing
and Planning Act 2016**

Tribunal member(s) : **Judge D Brandler
Mr S Wheeler MCIEH, CEnvH**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **2nd August 2021**

Date of decision : **19th August 2021**

DECISION

Decision of the tribunal

(1) The 1st Respondent shall pay to the Applicants a Rent Repayment Order in the total sum of £20,374. This sum to be paid in the following proportions to the Applicants:

- (a) To Antonio Mateos Rodriguez (A1) the sum of £1,470**
- (b) To Vincenzo Moreno Luna (A2) the sum of £4,950**
- (c) To Costanza Lanni (A3) the sum of £4,950**
- (d) To Richard Kelly (A4) the sum of £1,260**
- (e) To Murat Tahan (A5) the sum of £7,744**

(2) The 1st Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. The tribunal received an application dated 2nd September 2020 under section 41 of the Housing and Planning Act 2016 from the Applicant tenants for a rent repayment order (“RRO”).
2. Directions were issued on 15/04/2021.
3. On 18/06/2021 the Tribunal granted permission for the 5th Applicant to be joined to the proceedings.
4. The application alleged that Mohammad Abdul Kalam (“R1”) holds the leasehold interest in Flat 2 Bantry House, Ernest Street, London E1 4QX (“the property”) and had failed to obtain a licence for the property in breach of the additional HMO licensing requirements operated by Tower Hamlets Council (“The Council”). The additional licensing which was necessary since 01/04/2019 required all properties located in St Dunstan’s ward occupied by three or more persons, to be licenced under an additional HMO licensing scheme.
5. The property is a ground floor three-bedroom flat with one kitchen and two bathrooms.
6. The history of the occupancy is briefly as follows. The Applicants entered into various tenancy agreements with R1, on various dates. They occupied the property for different and overlapping periods from 1st February 2019 to 3rd July 2021. It is alleged that the R1 was their landlord and Joes Property Ltd (“R2”) is the letting agent engaged by R1 to manage the property. The periods claimed by each applicant for a rent repayment order are detailed below:

7. Mr Antonio Mateos Rodriguez (“A1”) occupied room B in the property from 31/01/2020 until 31/03/2020 at a monthly rent of £735.00. He claims the full two months. He left the property around mid-March just before the first lockdown but paid the full two month’s rent as evidenced by bank statements.
8. Mr Vincenzo Moreno Luna (“A2”) and Ms Costanza Lanni (“A3”) are a couple and occupied room C in the property from 1/02/2019-22/09/2020 at a monthly rent of £900 for the room. They claim a rent repayment order from 22/09/2019-22/09/2020. Evidence of the rent paid by them is in the bank statements provided.
9. Mr Richard Kelly (“A4”) occupied Room B in the property from 25/08/2020-24/11/2020 at a monthly rent of £630. Evidence of rental payments has been provided for only two months.
10. Mr Murat Tahan (“A5”) occupied Room A from 7/02/2020-3/07/2021 at a monthly rent of £637 for 4 months, and thereafter at a monthly rent of £600 for the next 8 months. Evidence of rent paid has been provided.
11. On the morning of the hearing the tribunal were provided with a copy of a skeleton argument prepared on behalf of the applicants together with an authorities bundle.

THE HEARING

12. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
13. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the Tribunal. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The Applicants’ Bundle consisted of 308 pages.
14. The Applicants, their legal representative Ms Alvarez and their Counsel Antonia Halker all joined remotely by video connection. R1 and his counsel Steven Woolf joined remotely. R2 did not appear and did not contact the Tribunal to explain his absence.
15. In oral evidence the Applicants confirmed their occupation of the property and the rent paid by them. Some further evidence was adduced about other occupiers of the property who have not joined as applicants.

16. Ms Lanni told the Tribunal that two single males moved into the property around 15/02/2019 and occupied rooms A and B. These males were known to her as Arthur and Rodrigo. She said they had stayed in the property for around six months when they moved out. During the month of July 2019 she and her partner, A2, had the property to themselves. Then in August 2019, within days of one other, an Egyptian man named Mo and a Korean woman moved into Rooms A and B. The man stayed for about 4 months, the woman stayed until the end of the year. During the month of January 2020 no one occupied rooms A and B. During that month the couple had the property to themselves.
17. A2 and A3 moved out on 22/09/2020. The Tribunal was told by A5 that after they vacated room C, another Italian couple moved into that room and they stayed for about 5-6 months. Another couple Aziz and Mizpa moved into room C after them.
18. A4 also mentioned the replacement Italian couple, although he could not identify when they had moved in as he was away in Ireland visiting family around the time that A2 and A3 moved out.
19. Although the exact dates were not provided, and the details of others in the property were at times vague, the Tribunal accepted that this was a shared house in which young people came and went, did not know much about each other and were just getting on with their own lives. The Tribunal accepted that they would not have kept detailed notes, nor would they have anticipated this legal action, or that they would be asked to provide detailed evidence of who was occupying the property and for what period. The letting agent, R2, on the other hand would, or should, have known, but saw fit not to attend the hearing.
20. The Tribunal accepted the Applicants' evidence about the overlapping occupiers in the property and found that the only period during which there were only two people occupying the property were the month of July 2019 and the month of January 2020. The month of July 2019 is not a period claimed by any of the Applicants. The month of January falls within the period of claim of A2 and A3, and that month is deducted from the period claimed by them because there were not three people occupying the property.
21. R1 denies liability. He relies on a three-year AST guaranteed rental agreement between him and Globe Residential dated 12/09/2019. He says he does not know any of the Applicants and that none of them know him. He says he had no control over the property since that the agreement with Globe Residential was signed on 12/09/2019. Unfortunately, there is no date against the signatures on that agreement, but R1 says the signatures don't need to be dated, that the date on the front of the agreement demonstrates the valid date. He says that document absolves him of any responsibility as Globe Residential were in charge of the property.

22. R1 told the Tribunal that he had been under the impression that the property would be let to a single family and he believes that agreement binds Globe Residential to that. Since these proceedings have been issued, R1 has terminated his agreement with Globe Residential because, he says, they were in breach of the agreement. When asked how he had terminated this 3 year agreement, which on the face of it would still have been valid until 12/09/2022, R1 told the Tribunal that he had written them a letter, without any legal advice. He did not provide a copy of that letter and when asked why it was not available, he said just that he thought it was too late to include it in the bundle. He could not provide a date when he terminated the agreement, but said that he went into the office in Bethnal Green in July 2021. He could not confirm that was the date he had served the letter of termination and thought he may have served it earlier and then gone in again in July with a further copy. Having now terminated that agreement with Globe Residential, R1 confirmed that he had now let the property to “*different agents*”. R1 has also terminated the tenancies of all the remaining occupiers and a family has taken a tenancy at the property. R1 could not tell the Tribunal how he determined those tenancies or when.
23. R1 told the Tribunal that he does not make much profit from this property after taxes, and that his intention when he purchased the property was to provide accommodation for less fortunate people, such as to housing associations.
24. In response to the assertion that R1 is the landlord as he is named as such on the face of each of the tenancy agreements, R1 says that R2 had told him they were legally obliged to name him on that document. R2 did not attend the hearing, and so there was no opportunity to ask them about their role in the management of the property. In any event R1 has terminated his agreement not only with Globe Residential, but also with R2.
25. When asked about Joe Uddin from R2 and whether he still knew him. R1 confirmed he did and that he was still in the Bethnal Green Office, but not every day. He also confirmed that there were various agents using that office. Yet this was in the same month when A5 tried to find R2 at that office and was told they had gone away. A5 was unsuccessful in getting the overpaid utilities and deposit returned to him. A4 was also unsuccessful in this regard, having been fobbed off over the phone by the office.
26. R1 was referred to the signature of someone at Globe Residential, signing as “*landlord’s agent*”. R1 repeated he had nothing to do with the property.

FINDINGS

27. The Tribunal were satisfied on the balance of probabilities that R1 was the immediate landlord, as evidenced by the tenancy agreements upon which his name appears as "*The Landlord*", the "*first schedule*" dated 01/02/2019 signed by "*Landlord(s)' agent signature Globe Residential*", the holding deposit receipt dated 31/01/2020 which states "*landlord: Abdul Kalam*".
28. The Tribunal reject the assertion that the lease document dated 12/09/2019 between R1 and Globe Residential demonstrates that R1 is a superior landlord, and that Globe Residential are the immediate landlord. Such a finding would contradict the evidence on the face of the tenancy agreements, deposit receipts and schedules set out above. The Tribunal find that the lease document bearing the date of 12/09/2019 is a sham agreement. That assessment is supported by the date of the agreement which post-dates the agreement with A2&A3 at which time Globe Residential were described as agents as well as the haphazard way in which R1 says he terminated that AST agreement and the removal of the tenants from the property at that time. Also noted by the Tribunal was the assertion by R1 that he had instructed "*new agents*" since then.
29. The Tribunal finds that Globe Residential and R2 are both letting agents, instructed by R1 to deal with the day to day running of the property and the collection of rents from the tenants. This is evidenced by the tenancy agreements and the deposit receipt detailed above. In oral evidence, R1 referred on various occasions to them as agents, and sought to make a distinction between agency and agents. It was also of note that R1 said in oral evidence that Joe Uddin is still at the office in Bethnal Green, but that he is not there every day. He stated also that there are various agents in that building and that Joe Uddin was both Joes Properties Ltd and Globe Residential. In documentary evidence the two seemed to be interchangeable.
30. Having found that R1 is the immediate landlord, the Tribunal reject his argument that he did not receive the rent from the property. The lease states that he receives £13,500 pa, but the Tribunal find that document to be a sham and so disregard the terms therein.
31. The Tribunal found beyond reasonable doubt that R1 was the immediate landlord was in breach of his requirement to licence the property under the HMO licensing schemes managed by the Council. The requirement for additional licencing having been introduced Borough wide in Tower Hamlets from 01/04/2019. R1 admits he had not applied for a licence at any time.
32. The recent determination by the Court of Appeal in the case of *Rakusen v Jepson and others (2021) EWCA Civ1150* does not assist R1 in his defence to these proceedings, as the Tribunal find that he is the immediate landlord.

33. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.
34. The tribunal's findings in relation to the occupation of the property are detailed in the table at Annexe 1.
35. The periods claimed are detailed below with the qualifying periods during which there were at least 3 people occupying the property and for which there is evidence for rent paid:

	A1	A2	A3	A4	A5
Period of claim	31/01/2020-31/03/2020	22/09/2019-22/09/2020	22/09/2019-22/09/2020	25/08/2020-24/11/2020	07/02/2020-07/02/2021
Monthly rent demanded	£735	£450	£450	£630	£736 (4 months) £600 (8 months)
Qualifying period	2 months	11 months	11 months	2 months	12 months

36. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.
37. There is no evidence before the Tribunal to question the conduct of the Applicants. They confirm that they have paid their rent regularly and on time. The documentary evidence confirms that assertion.
38. In relation to the conduct of R1 the tribunal finds as follows:-
- a. R1 has used various tactics to try to avoid his responsibilities as a landlord, including the agreement with Globe Residential which the Tribunal find was a sham, and the removal of existing tenants from the property
 - b. R1 failed to obtain a licence as was required by the Council
 - c. R1 failed to return the utilities and deposit owed to the Applicants, or instructed R2 to avoid repaying those sums
39. The only evidence provided by R1 in relation to his financial circumstances was that the mortgage payments paid for the property are far less than the amount earned from the property. R1 confirmed in oral evidence that he owns other investment properties including a house, four flats and three commercial properties. This indicated to the Tribunal that R1 does not have restricted financial resources. His counsel argues that a RRO in the full amount exceeds the sum he earned from the lease with Globe Residential, in the sum of £1100 pcm. The Tribunal rejects the AST agreement with Globe Residential, as detailed above, and rejects the argument that R1 has income limited to £1100

pcm. Any lettings fees he would have had to pay to R2 are costs associated with being a landlord and are not deductible from any award.

40. In relation to utilities which are said to be included in the monthly rent, A5 tried to retrieve the overpaid utilities and the deposit from R2 at the Bethnal Green Office. He was told they were no longer there. In any event, it was not the landlord who paid utilities and so no deductions are made in that respect.
41. The Tribunal keeps in mind that a RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the evidence of the landlord's conduct, we consider that the award should not be reduced. Accordingly, we find that an RRO should be made against the R1, Mohammad Abdul Kalam, in the full sum sought £20,374 which should be paid to the Applicants in the following proportions:
 - (i) To Antonio Mateos Rodriguez (A1) the sum of £1,470
 - (ii) To Vincenzo Moreno Luna (A2) the sum of £4,950
 - (iii) To Costanza Lanni (A3) the sum of £4,950
 - (iv) To Richard Kelly (A4) the sum of £1,260
 - (v) To Murat Tahan (A5) the sum of £7,744
42. The 1st Respondent is also ordered to pay to the Applicants the sum of £300 being the tribunal fees paid by them in relation to this application.

Name: Judge Brandler **Date:** 19th 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 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.

ANNEXE 1

Occupancy table

	ROOM A	ROOM B	ROOM C
Feb 2019	Arthur (from 15/2/19)	Rodrigo from 15.2.19	A2 & A3 (1.2.2019-22.9.2020)
March	“	“	A2 & A3
April	“	“	A2 & A3
May	“	“	A2 & A3
June	“	“	A2 & A3
July	Empty	Empty	A2 & A3
August	Mo from Egypt	Korean woman	A2 & A3
September	“	“	A2 & A3
October	“	“	A2 & A3
November	“	“	A2 & A3
December	Empty	“	A2 & A3
January 2020	Empty	Empty	A2 & A3
February	A5 (from 7.2.20)	A1 from 31/01/2020	A2 & A3
March	A5	A1 to 31/03/2020	A2 & A3
April	A5	Empty	A2 & A3
May	A5	Empty	A2 & A3
June	A5	Empty	A2 & A3
July	A5	Empty	A2 & A3
August	A5	A4 (from 25/08/20)	A2 & A3
September	A5	A4	A2 & A3
October	A5	A4	New Italian couple for 5-6 months
November	A5	A4 (to 24/11/2020)	“
December	A5		“
January 2021	A5		“
February	A5		“
March	A5		Aziz and Mizpa
April	A5		“
May	A5		“
June	A5		
July	A5 until 3.7.21		

Appendix of relevant legislation

Housing Act 2004

Section 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.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(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,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 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).

Section 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.

Section 43 Making of 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 has 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 in accordance 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).

Section 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.

If the order is made on the ground that the landlord has committed

the amount must relate to rent paid by the tenant in respect of

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.