



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

Case reference : **LON/00BJ/HMF/2020/0106**

HMCTS code (paper, video, audio) : **P: PAPERREMOTE**

Property : **151 Totterdown Street, London SW17 8TE**

Applicant : **Robert Nelson-Sice; Samuel Baldwin; Lowri Davies; Julia Avery and Edward Milne**

Representative : **Justice for Tenants**

Respondent : **Foundation Property Management Limited (1)
Manzar Alam and Muhammad Salman (2)
Naeem Khalid and Asma Qadir (3)**

Representative : **For (1) and (2) AMJ Legal Solicitors Limited
For (3) Noble Law Solicitors**

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

Tribunal member(s) : **Judge Dutton
Miss M Krisko BSc(Est Man) FRICS**

Venue : **Remote paper determination**

Date of decision : **9 February 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 P:PAPERREMOTE. 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 150 pages, the contents of which have been noted.

The Tribunal finds that the first and third Respondents have breached section 72(1) of the Housing Act 2004 (the 2004 Act) and determines that the Respondents must pay to the Applicants by way of Rent Repayment Orders the sums, as apportioned below, being a total award of £35,845. This sum is to be apportioned between the applicants as follows:

Mr Nelson-Sice - £7,648, Mr Baldwin - £6,654; Ms Davies - £8,780; Ms Avery - £5,400 and Mr Milne - £7,363. The total is £35,845 of which £1,800 shall be paid by the first respondent and the balance by the third respondents on a joint and severable basis.

In addition, the tribunal order the respondents to refund to the applicants' representative, Justice for Tenants, the application and hearing in the sum of £300, again in the proportions set out below.

BACKGROUND

1. On 23 June 2020 the applicants through their representative, Justice for Tenants, commenced proceedings against the three respondents seeking to recover rent paid in the period 30 July 2018 to 29 July 2019, totalling £35,845.
2. Annexed to the application were a number of documents 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 Statements, we were provided with a number of exhibits, 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, in the form of copy bank statements and land registry documents. In addition to these items the photographs, company information in respect of the first respondent, previous tenancy agreements and correspondence relating to disrepair were of assistance. We have considered these in reaching our decision.
4. For the first and second respondents we were provided with a witness statement of Mr Muhammad Salman a director of the first respondent company, with Mr Manzar Alam. Annexed to this statement were a number of exhibits, including extracts from an alleged text exchange between Mr Baldwin and presumably Mr Salman, a commission statement for the first respondent with Mr Rana Usman Afzal Khan, who is the husband of Asma Qadir and copies of what purport to be statements of rent received by the

first respondent and transferred to Mr Khan over the period which appears to be January to June 2019.

5. On behalf of the third respondents we were supplied with two statements by Mrs Qadir, the first dated 11 December 2020 and the second dated 26 January 2021.
6. We have noted all that has been said and have taken the contents into account in reaching our determination.

EVIDENCE

7. For the applicant it is said that the Property, 151 Totterdown Street, London SW17 8TE (the Property), is a three-storey terraced house with 5 bedrooms. It is alleged that the Property meets the standard test as an HMO as set out at section 254 of the Housing Act 2004 (the 2004 Act) and should have been licensed under the provisions of section 61 of the Act. However, it is alleged that the Property has at no time been licensed, as confirmed by correspondence from the London Borough of Merton and that accordingly an offence under s72(1) of the 2004 Act has been committed.
8. The application sets out the rent said to have been paid by the five applicants, all of whom, it is said, occupied the Property in the period 30th July 2018 to 29th July 2019. A copy of the tenancy agreement is included showing a manuscript addition of Mr Baldwin dated 17 December 2018.
9. We were provided with spreadsheets showing the rent paid by each tenant. These record that Mr Nelson-Sice had paid £7,648, Mr Baldwin £6,654, Ms Davies £8780, Ms Avery £5,400 and Mr Milne £7,363. To support these payments we were provided with copies of bank statements for each tenant.
10. The register of title for the Property, under title number TGL 1010966 shows that as at 1 June 2020 the registered proprietors were Naeem Khalid and Asma Qadir, they apparently having owned the Property since August 2002. There is evidence of an interim Charging Order against Mrs Qadir's interest, but nothing was made of this in the statements she made in this case. We should say that Mrs Qadir says Mr Khalid is not a co-owner of the Property. Apparently, his name should have been removed from the register.
11. An email From the London Borough of Merton dated 4th June 2020 (Paul Aitken) confirms that the Property has no HMO licence and that there are no applications in the system. The search of Companies House confirms that the directors of the first respondent are indeed the second respondents. There are also included copies of tenancy agreements for the Property showing the first respondent as the agent and Mr Khan, Mrs Qadir's husband, as the landlord. These are for the periods 28 July 2016 to 27 July 2017 to 5 tenants, including Mr Sice and Mr Milne and a second agreement for the period 30th July 2017 to 30th July 2018, again for 5 tenants, including Mr Sice, Mr Milne and Mr Baldwin. None bear signatures.
12. The first and second respondent, through Mr Salman's statement, states that the first respondent did act as the landlord's agent collecting rent and

organising repair for the monthly fee of £150. An attempt to get vacant possession of the Property was made on 1 December 2018 but as the applicants had a twelve month agreement from 30th July 2017 this was abortive. It is said that Mr Baldwin came to the first respondent in December 2017 to be added to the agreement and said that he was a cousin of the other tenants. Whether this was said or not, it is accepted by Mr Salman that he not a relative of the other tenants. It is said that it was not until Mr Baldwin was added to the agreement in December that the Property was occupied by 5 people and that until then it was not an HMO. Accordingly, it is said that some £14,135.15 was rent received in the period to 17 December 2018 when an HMO licence was not required and that accordingly the maximum sum payable is, in fact, £21,748.85.

13. Mr Salman's statement addressed what he considered was the relevant law. He referred to the conduct of the applicants, in particular Mr Baldwin allegedly misleading the first respondent that he was related to the other tenants. There are allegations that damage was done to the Property. Reference is made to photographs but none seem to be included with the copy we had. Mr Salman went on to seek to discredit Mrs Qadir's statement concerning an alleged Rent Guarantee agreement and the involvement of Mr Khan with the Property and that he apparently owned another property at 2 Brightwell Crescent SW17 9AE, which was managed by Mr Salman.
14. Mrs Qadir's statements addressed her sole ownership of the Property and that she had no contact with the applicants, receiving the rent under what she termed a Rent Guarantee agreement. The said agreement is headed Assured Shorthold Tenancy Agreement dated 20 July 2018 showing Mrs Qadir as the landlord and the first respondent as managing agent. The purported period is 20 July 2018 to 20 July 2019 at a rental of £2,850 per month said to be a rent guarantee. This agreement has a provision against assignment or subletting and letting others live at the Property, which is to be used as a single private dwelling. There is an indecipherable signature, but no tenants' names are recorded.
15. Her statement goes on to say that in 2017 she and her family decided to move to Pakistan and that they needed to rent the Property out. At this time she said she contacted the first respondent to let the Property on the basis that she had rental security as provided for by the Rent Guarantee agreement referred to above. It would seem that the copy exhibited is a renewal, as the period for which the Property was placed with the first respondent appears to be from July 2017 to July 2019.
16. In November 2018 it seems the family returned from Pakistan and wished to take possession of the Property, but for the reasons referred to above (a 12 month letting agreement) they were not able to do so. Her statement went on to say that she is a teacher with 5 children and could not afford £35 extra. She says her husband has lost his business in Pakistan. We have noted the contents of her second statement, which in truth adds little other than to criticise the first respondent.

17. Buy an undated response the applicants, through Justice for Tenants, responded to the evidence submitted by the respondents. We have noted all that was said. The response asserts that there is no evidence to remove Mr Naeem Khalid as respondent as no documentation has been produced to show he is not still a registered proprietor. Following Upper Tribunal decisions, which are cited, it is said that property owners can be named as respondents. The Rent Guarantee agreement is challenged, and reference is made to the statements to Mr Khan, Mrs Qadir's husband, showing money being paid with only 'small deductions'. It is suggested that the first respondent may not be a landlord under the provisions of s40 of the Housing and Planning Act 2016 (the 2016 Act) but would meet the definition of a person having control under the 2004 Act. If the first respondent is not a landlord under the 2016 Act, then the directors would not be personally liable.
18. The response moves to deal with matters raised in Mr Salman's statement and again we have noted all that is said. It points out that Mr Baldwin appears to be a tenant on the agreement ending July 2018, having been at the Property, it would seem since July 2017. His addition to the subject tenancy agreement in December 2018 is explained on the basis that he was unsure as to his intentions and it was only when they became clear that he was added to the agreement. The rent however, it is said, was paid up to that time. The response seeks an award against all parties whom the tribunal believes can be respondents and aside from somewhat emotive language and what can only be described as unrealistic similes of conduct and fictitious scenarios, argues for a 100% recovery following the UT case of Vandamalyan v Stewart. Repayment of the tribunal fees is also sought.

FINDINGS

19. The first and second respondents appear to accept that the Property is one to which mandatory licensing applies. We are told by reference to the email from the Council that the Property does not have a licence and one is not in the pipeline. Mrs Qadir does not in truth address the issue in any degree. She appears to suggest that the first time the Property was to be let was in 2017, when she and her family intended to visit Pakistan. Further she says in her witness statements that she had no dealings with the first respondent other than the alleged Rent Guarantee agreement and certainly no dealings with the applicants.
20. On the relationship between Mrs Qadir and the first respondent we find that her statements are disingenuous. On the basis of the tenancy agreements produced by the applicants in their original paper work, which does not appear to be challenged by any respondent, it is clear that the Property was being let to 5 people from July 2016 and accordingly her assertions that she did not seek to let the Property until 2017 are, on the face of it false. She does not appear to suggest that her husband was acting without her knowledge indeed it is noted that Mrs Qadir has a business with her husband Mr Khalid (Home Savers(UK)Limited).The purported Rent Guarantee agreement is challenged by Mr Salman and we prefer his evidence on the point as the agreement itself is unconvincing. It bears no details of any tenants, records

the first respondent as an agent and for a letting is so restrictive as to prevent the first respondent from actually letting the property to others. It seems to us that it is a sham. Its existence is certainly denied by Mr Salman.

21. We do accept that the first respondent was an agent for Mrs Qadir, and it would seem her husband Mr Khan, that the company managed the letting, received the applicants rent and accounted to Mr Khan, having deducted what is, to be fair, a small sum of £150 per month and dealt with some repairs.
22. The suggestion by the first and second respondents that Mr Baldwin did not take up occupation until December 2018 is, we find false. His name appears on the agreement ending July 2018 and we accept the response in which the explanation as to Mr Baldwin's involvement is set out at paragraphs 10 – 12. It is a pity that a witness statement was not obtained from Mr Baldwin but we accept that the evidence is clearly that 5 people were living at the Property for the 12 months in question and somewhat strangely, in his witness statement Mr Salman accepts that Mr Baldwin was paying rent from 30th July 2018 (see paragraph 6). The suggestion that he was a cousin whilst raised by Mr Salman is soon dropped.
23. We should perhaps comment on the position of Mr Khalid. Mrs Qadir says he should not be on the title. She has had, indeed as has Mr Khalid, more than enough time to have dealt with this position, but neither has. Accordingly, on the evidence before us we find that both Mrs Qadir and Mr Khalid are the registered proprietors of the Property, and were, at the time of the alleged offence.
24. 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 30th July 2018 to 29th July 2019, as provided for under s41(2) of the 2016 Act. The amount of rent paid is not challenged by the first or second respondent save as to Mr Baldwin's period of occupancy and not addressed by Mrs Qadir. She says she did not received rent directly from the applicants. We accept that. However, it is clear that rent was paid to the first respondent, as agent for Mrs Qadir and the rent was passed across to Mrs Qadir's husband for her benefit, she, accepting, that she received what she refers to as the guarantee rent of £2,850 per month. The statements of account produced by Mr Salman are not challenged as to their authenticity, notwithstanding that Mr Salman's statement is made more than a month before Mrs Qadir's second statement. There is no "reasonable excuse" in the witness statements put to us on behalf of the respondents, other than Mrs Qadir's statement that she had no dealings with the applicants and the Rent Guarantee agreement, which we have rejected.
25. We find therefore that Mrs Qadir was the person in control and managing the Property at the time of the offence. She, with Mr Khalid, would have been the party who should have applied for a licence, but she did not do so and still has not. Further she is liable as a person managing the Property as provided for at s263(3)(b) of the 2004 Act.

26. A question for us is whether the first and second respondent have any culpability. It seems clear to us that under the 2004 Act the first respondent is a party have control and managing the Property (s263 of the 2004 Act). As to the second respondent we consider that s251 of the 2004 Act would apply. This section makes directors liable as it is clear that the offence was with the consent of and the connivance of the seconds respondents, as directors of the company.
27. We have considered what has been said about the alleged conduct of the tenants, as set out in the statement of Mr Salman. The allegation of misleading conduct on the part of Mr Baldwin is rejected for the reasons we have set out above. No photographs of the Property allegedly showing damage where produced.
28. The allegations of conduct are between the respondents. There are cross allegations which we do not propose to consider, at least no further than we have made findings on same as set out above.
29. We conclude that there is no conduct we should take into account, on either side, in assessing the amount of the RRO to made in this case.
30. As to the landlord's financial circumstances, other than a statement that Mrs Qadir is a teacher with 5 children there is nothing we an consider. It would appear that either she, or Mr Khan own another property for which the first respondent acts as agent, but we have been given no information which we can take into account. We do accept that no respondent has been convicted of an offence to which the 2016 Act applies.
31. Our findings are this. We consider that it is possible to find more than one party being responsible for the control and or management of the Property. Further, following the *Vadamalayan v Stewart and others* (2020) UKUT 0183 (LC) decision, the reductions that could before be made, now cannot be made. There is no evidence of any payments that we can take into account to ameliorate the sum claimed.
32. In those circumstances we find that the appropriate decision is to make an RRO against the first respondent, as having control of the premises and thus a landlord, in the sum of £1,800, being the share of the rent that was received. This sum should be paid within 28 days. We do so as we consider that the first respondent can be considered a landlord under the terms of the 2016 Act. We do not consider we can extend that definition to the second respondents, hence no award.
33. In respect of the third respondent, Mrs Qadir and Mr Khalid we find that they were the persons managing the premises and thus a landlord and that the sum of the RRO should be £34,045, being the balance of the rent paid in the 12 month period. This sum should be paid within 56 days. We are satisfied that they fall within the definition of 'landlord' under the 2016 Act and have culpability under the 2004 Act as we have referred to above.
34. In addition, we award the applicants the sum of £300, being the application fee and hearing fee, payable as to £50 by the first respondent and £250 by

the third respondents. The refund of the fees to be made to the applicants representative Justice for Tenants, for them to allocate as is appropriate.

Tribunal Judge Dutton

9 February 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.