



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

**Case reference** : LON/00BJ/HMF/2020/0150  
**HMCTS code:** : V:VIDEOREMOTE  
**Property** : 58 Selkirk Road, London SW17 0ES  
**Applicants** : Chiara Chiessi  
**Representative** : In person  
**Respondents** : (1) Jan Ahmed and (2) Rizwan Alam  
**Representative** : N/A  
**Type of application** : Rent repayment order  
**Tribunal members** : Judge Tagliavini  
Mr C Gowman BSc (Hons)  
**Venue & date  
of hearing** : 10 Alfred Place, London WC1E 7LR  
V: VIDEOREMOTE  
19 February 2021  
**Date of decision** : 29 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 consented to by the parties. The form of remote hearing was **V:VIDEOREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The tribunal was referred to the applicant's bundle of documents numbered 1 to 53. The order made is described at the end of these reasons.

## **Summary of decisions of the first-tier residential property tribunal**

- (1) The tribunal makes a rent repayment order in the sum of £2,395. The sum of £2,395 is payable by Jan Ahmed as the freehold owner and superior landlord of the subject property at 58 Selkirk Road.**
- (2) The tribunal directs Mr Jan Ahmed to reimburse to the applicant the application and hearing fee in the total sum of £300.**
- (3) Both sums identified in (1) and (2) above are to be paid within 28 days of the date of this decision.**

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## **The application**

1. In an application dated 07/08/2020 seeking a rent repayment order (RRO) in the sum of £2,865 for the 5 months period commencing 19 March 2019 under the provisions of section 41 the Housing and Planning Act 2016. The applicant asserts that the respondent has committed an offence under section 72(1) of the Housing Act 2004 as he failed to obtain a licence for the subject property said to be a large house in multiple occupation (HMO) located in the London Borough of Wandsworth. In her application, the applicant also asserted that an offence had been committed under section 1 of the Protection from Eviction Act 1977 due to the harassment from the management agent by entering her room unannounced and failing to carry out repairs.

## **Background**

2. The subject property comprised a Victorian house comprising 5 bedrooms with shared use of kitchen and bathroom/w.c. At the time of her occupation during the period 19/03/2019 to 19/08/2019 the other bedrooms were occupied by 4 other unrelated tenants. In her application the applicant asserted that she had found the tenancy advertised on Spareroom and had signed a 'Licence to Occupy' which named the Licensor as Nest Estates Limited allowing her to occupy room 5 at a rent of £470 per month. \*

*\*The applicant was unable to provide a copy of her own 'Licence to Occupy' Agreement but relied upon a similar agreement that had been provided to the other occupiers and witnesses.*

3. The first respondent Jan Ahmed is the freeholder owner and superior landlord of the subject premises. The second respondent Mr Rizwan Alam is alleged to be the director of the managing agent/letting company Nest Estates Limited who was named as the Licence Holder on the applicant's Agreement to Occupy. Although the applicant named Nest Estates Limited in the heading of her documents, her application to the tribunal named Rizwan Alam as the director of Nest Estates Limited as the second respondent. This designation was used by the tribunal in its directions dated 16 November 2020, in which Jan Ahmed was named as the first respondent and Rizwan Alam as the second respondent and confirmed by the applicant in her statement dated 02/01/2021 as 'the person managing' the subject property.
4. On 18 September 2020, the London Borough of Wandsworth was said by the applicant to have imposed a financial penalty on the second respondent, (although it was not clear whether this was imposed on Rizwan Alam or on Nest Estates) for operating an unlicensed HMO contrary to section 72 of the Housing Act 2004. A fine of £4,000 was imposed by the local authority.
5. In addition, the tribunal has received and determined applications for a RRO in respect of the subject property under case references *LON/00BJ/HMF/2020/0031* on which the applicant relied and more recently *LON/00BJ/HMF/2020/0093* which has subsequently been determined by the tribunal since the hearing and determination of this current application.

### **Preliminary matters**

6. Despite a copy of the application, the tribunal's directions and notice of hearing and joining instructions being sent to the respondents, no correspondence was received from either respondent until 18 February 2021. In an email dated 18 February 2021, Mr Jan Ahmed complained he had not received the applicant's bundle of documents and that he had been waiting for this before he responded to the claim. A copy of the applicant's bundle was immediately sent to Mr Ahmad by the tribunal and he was informed that an application for an adjournment could be made at the hearing.

### **The applicant's case**

7. In support of the applicant's case the tribunal was provided with a signed and dated witness statements from the applicant as well as the four other tenants who occupied the premises at the same time as the applicant, namely Amit Kumar (12/12/2020); Marenza Piersa (02/01/2020); Nsobai Zereth (15/12/2020) and Jacob Jewitt-Jalland (16/12/2020). All of these witness statements contained a Statement of Truth. The tribunal was also provided with evidence of the applicant's rental payments of £2,395 including payment of the deposit of £470, of which £425 was returned with £45 being withheld as a 'cleaning fee.'
8. The tribunal heard oral evidence from the applicant and three of the other occupiers all of whom confirmed the occupation of five unrelated persons

within the subject property during the period for which the applicant sought a rent repayment order. The applicant and her witnesses also complained of unannounced viewings of her rooms having taken place by the Licensee (Nest Estates), a slowness to carry out repairs and a failure to display electrical and safety certificates.

9. The applicant relied on the tribunal's decision in *LON/00BJ/HMF/2020/003* in which both respondents Mr Jan Ahmad and Nest Estates Limited were represented by counsel. In that application the tribunal found a section 72(1) offence had been committed by Mr Jan Ahmed and Nest Estates Limited and apportioned the RRO evenly between them.
10. In this application, Nest Estates were not joined as a respondent but instead Rizwan Alan was named as the second respondent and the applicant asserted Mr Alam was a director of Nest Estates. However, the applicant did not provide proof of Mr Rizwan Alam's connection to Nest Estates Limited as a director or otherwise or evidence from the London Borough of Wandsworth in respect of any failure by him to obtain a licence or details as to whom the financial penalty had been made against i.e. whether Nest Estates Limited or Rizwan Alam as the applicant seemed to treat Nest Estates and Rizwan Alam as one and the same legal entity in her application although in law they are distinct and separate entities. A copy of the freehold ownership by Jan Ahmad of the subject property was also provided to the tribunal.

### **The respondent's case**

11. The second respondent did not participate in this application and provided no documentary or oral evidence to the tribunal. Mr Jan Ahmed did appear at the hearing of the application and stated he did not want an adjournment but wanted to 'just get it over with.'
12. In his oral evidence to the tribunal Mr Ahmed stated he should be liable for only 50% of any RRO made by the tribunal as previously determined and apportioned in its previous decision; *LON/00BJ/HMF/2020/003*. However in application *LON/00BJ/HMF/2020/003* Nest Estates Limited was named as the second respondent rather than Rizwan Alam and counsel for Nest Estates Limited confirmed that a HMO licence had not been applied for during the period 1/10/18 to 18/6/19 and conceded that, if the premises were occupied by 5 or more persons, the subject property would require an HMO licence.
13. Mr Ahmad told the tribunal that he owned 7 properties in total, which he operated as 'buy to lets' although all had mortgages on them. He also stated he had a standard letting agreement with Nest Estates Limited in which it was agreed he would receive a fixed rental income.

## **The tribunal's decision and reasons**

14. The tribunal is satisfied that the subject property was operated by the first respondent as a HMO and therefore required a licence, as it satisfied the definition of an HMO as it fell within the 'standard test' as defined by section 254(2) of the 2004 Act which stated:
  - (a) it consisted of five units of living accommodation not consisting of self-contained flats;
  - (b) the living accommodation was occupied by persons who did not form a single household;
  - (c) the living accommodation was occupied by the tenants as their only or main residence;
  - (d) their occupation of the living accommodation constituted the only use of the accommodation;
  - (e) rents were payable in respect of the living accommodation; and
  - (f) the households who occupied the living accommodation shared the kitchen, bathrooms and toilets.
  
15. The tribunal also finds that the subject property fell within the prescribed description of an HMO that requires a licence if:
  - (a) it was occupied by five or more persons;
  
  - (b) it was occupied by persons living in two or more separate households; and
  
  - (c) it met the standard test under section 254(2) of the 2004 Act.
  
16. The tribunal is also satisfied and is sure that a HMO licence was not held in respect of the subject property during the 5 months period of occupation by the applicant. Therefore, the tribunal is sure that an offence was committed by the respondents pursuant to section 72(1) of the Housing Act 2004 during a period for which a rent repayment order is sought.
  
17. The tribunal is satisfied that Mr Jan Ahmed as the freeholder of the subject premises, falls within the definition of a 'person having control' of the subject premises and received a 'rack rent' in respect of the subject property. Therefore, Mr Jan Ahmed is liable for the payment of a RRO under the provisions of section 263 of the Housing Act 2004 as a person having 'control' of the subject premises.
  
18. However, the tribunal is not satisfied as to the status of Mr Rizwan Alam as the alleged director of Nest Estates Limited as no evidence was provided to the tribunal to support this assertion. Further, the tribunal does not accept that even if Mr Alam had been shown to be a director of Nest Estates Limited the tribunal determines that a RRO cannot properly be made against him in his

personal capacity, although the tribunal in *LON/00BJ/HMF/2020/0031* had in that application made a RRO against Nest Estates Limited as well as Mr Ahmed.

19. Although the applicant complained of harassment by the employees or contractors of Nest Estate Limited, there was no evidence of either respondent's personal involvement in these actions. Further, the nature and number of the acts complained about by the applicant did not, in the tribunal's view amount to harassment or a breach of the Protection from Eviction Act 1977.
20. Having determined that a RRO should be made, the tribunal went on to consider whether any reduction in the amount to be paid should be made. The tribunal is not satisfied that any deductions are merited as it finds Mr Ahmed is an experienced landlord and did not demonstrate to the tribunal that he had actively concerned himself in the statutory licensing requirements or how the subject property was being managed. Further, the tribunal had no documentary evidence from Mr Ahmed to substantiate his financial commitments in respect of his property portfolio. The tribunal was satisfied that Mr Ahmad had continued to receive a rental income from the subject property during the period for which the RRO is sought.
21. Therefore, tribunal makes a rent repayment order in the sum of £2,395 and directs that this is to be paid by Mr Jan Ahmed, as the freehold owner of the subject property at 58 Selkirk Road. The tribunal also directs Mr Ahmed is to reimburse to the applicant the application and hearing fee in the total sum of £300. Both the RRO and reimbursed fees are to be paid within 28 days of the date of this decision.

**Name: Judge Tagliavini**

**Date: 29 March 2021**

### **Rights of appeal from the decision of the tribunal**

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).