



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

**Case Reference** : **LON/00AT/HMF/2021/0267**

**HMCTS** : **V: CVPREMOTE**

**Property** : **1 Kingsleigh Close, Brentford,  
Middlesex, TW8 0PA**

**Applicants** : **Daniel Crowe  
Ella-Louise Baulcomb  
Alexandra Elderfield  
Thomas Briggs**

**Representative** : **Sally Aitchinson**

**Respondents** : **Jason Raja Sivam  
Ponniah Sivam  
Alpha Estates.net Limited trading  
as Sutherland Estates**

**Representative** : **Shehnaz Khan**

**Type of Application** : **Application for a Rent Repayment  
Order by Tenant – Sections 40, 41,  
43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Member** : **Judge Robert Latham  
Christopher Gowman MCIEH**

**Date and Venue of  
Hearing** : **29 March 2022 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **31 March 2022**

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**DECISION**

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

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which we have had regard are specified at [2] below.

### **Decision of the Tribunal**

1. The Tribunal makes a rent repayment order against the First and Second Respondents in the sum of £12,342, which is to be paid by 22 April 2022.
2. The Tribunal has no jurisdiction to make a RRO against the Third Respondent.
3. The Tribunal determines that the First and Second Respondents shall also pay the Applicants £300 by 22 April 2022 in respect of the reimbursement of the tribunal fees paid by the Applicants.

### **The Application**

1. By an application, dated 8 November 2021, the Applicants seek a Rent Repayment Order (“RRO”) against the Respondents pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The application relates to the accommodation which they occupied at 1 Kingsleigh Close, Brentford, Middlesex, TW8 0PA (“the Property”) between 10 July 2018 and 9 July 2021.
2. On 8 December 2021, the Tribunal gave directions pursuant to which:
  - (i) The Applicants have filed a Bundle of Documents totalling 338 pages to which reference will be made in this decision, together with a Reply.
  - (ii) The Third Respondent has filed a Statement of Case and a number of supporting documents.

### **The Hearing**

3. The Applicants, Mr Daniel Crowe, Ms Ella-Louise Baulcomb, Ms Alexandra Elderfield and Mr Thomas Briggs, all attended the virtual hearing. They were represented by Ms Sally Aitchinson, a Solicitor, from Legal Road Limited. Legal Road Limited is a legal services company. They are funded under a Damages Based Agreement, namely 30% of any RRO.

4. The four Applicants have all made witness statements. They are all in their twenties. All have been employed or self-employed. Some were furloughed during Covid-19. None received any universal credit or housing benefit during the period for which they are claiming a RRO. Ms Aitchinson called the four tenants to give evidence.
5. Ms Shehnaz Khan, an employee with the Third Respondent, appeared on behalf of the Third Respondent. She stated that she was also representing the First and Second Respondents. Ms Khan gave evidence. She amplified on the matters pleaded in the Respondents' Statement of Case.
6. The First and Second Respondents have played no part in these proceedings. They have apparently adopted the attitude that they had appointed the Third Respondent to manage the property and that the current application had nothing to do with them. This approach did not commend them to the Tribunal. Any landlord must accept their personal responsibility in respect of the letting of any property that they own.

### **Preliminary Issues**

7. The Property is jointly owned by Jason Raja Sivam and Ponniah Sivam. We were told that they are son and father. The application form names the First Applicant as "R J Sivan". We amend the application to record his full name.
8. The relevant tenancy agreement (at p.74) names the First Respondent as landlord. We are satisfied that The First Respondent was also acting as agent for the Second Respondent and that both are jointly and severally liable for any RRO.
9. Sutherland Estates is the trading name of Alpha Estates.net Limited. We amend the application to correctly record the title of the Third Respondent.
10. The Third Respondent have no legal interest in the Property. They have managed the Property on behalf of the First and Second Respondents. A RRO can only be made against a landlord (see *Kaszowska v White* [2022] UKUT 11 (LC)). It is not open to this Tribunal to make any RRO against the Third Respondent.

### **The Background**

11. The Property at 1 Kingsleigh Close is an end of terrace house on three floors with four bedrooms, a living room and a kitchen. There is a bathroom/toilet, two shower rooms/toilets and a fourth toilet. The Applicants occupied the Property between 10 July 2018 and 9 July 2021 pursuant to three tenancies (i) dated 10 July 2018, at a rent of £2,200 pm (at p.47); (ii) 10 July 2019, at a rent of £2,244 pm (p.61); and (iii) 10 July

2020, also at a rent of £2,244 pm (p.73). The Applicants shared the living room, kitchen and bathroom/shower facilities. There is also a garden. The Applicants apportioned the rent between them depending upon the size/quality of the room and their individual rents ranged from £526 to £581 pm.

12. The lettings were arranged by the Third Respondent who also managed the Property after it was let, receiving a management fee of £120 pm. Ms Khan was instructed by the First Respondent. It is the only property which they have managed on behalf of the Sivam family. The Applicants have not complained about any disrepair to the Property. Equally, the Respondents have not complained of any rent arrears. Ms Khan stated that she has visited the Property on some two occasions.
13. The Property only required an HMO licence from 1 August 2020 as a result of an Additional Licensing Scheme introduced by the London Borough of Hounslow (“Hounslow”) (see p.114). Hounslow state that they consulted on their proposals between October and December 2019. On 17 March 2020, Hounslow’s Cabinet considered the response to the consultation. Having agreed to adopt the Scheme, Hounslow published a Public Notice. The scheme extends to all HMOs occupied by three or more persons in two or more households sharing bathroom, toilet and/or kitchen facilities.
14. Sutherland Estates is a small family business of Estate Agents. It is based in West Ealing. There are four employees and the firm manage some 500 properties. The majority of these are in Ealing, with only a minority in Hounslow. Ms Khan described how she seeks to keep up to date with the changing legislation that applies to private lettings. When the maximum deposit was reduced to five weeks rent, she reimbursed one week’s rent to the tenants. On 23 March 2020, the first Covid-19 lockdown was imposed. The staff were furloughed. Ms Khan stated that their priorities were to ensure that urgent repairs were arranged and that their tenants were able to pay their rents. The firm assisted their tenants to apply for universal credit.
15. Ms Khan admitted that the firm were unaware that Hounslow had introduced the Additional Licencing Scheme. Her firm have not had any previous involvement with RROs. They assist their clients to apply for HMO licences but would not act as a licence holder themselves. Ms Khan asked the Tribunal to have due regard to the impact of Covid-19.
16. The Applicants only became aware that the Property required an HMO licence towards the end of their tenancy. Apparently, Ms Elderfield’s mother had suggested that the Property might require a licence. They had had no cause to complain to Hounslow about their living conditions.

## **The Housing and Planning Act 2016 (“the 2016 Act”)**

17. Section 40 of the 2016 Act provides:

“(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.”

18. Section 40(3) tabulates seven offences. These include the offence of “control or management of an unlicensed HMO” under section 72(1) of the 2004 Act.

19. Section 41 deals with applications for RROs. The material parts provide:

“(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.

20. Section 43 provides for the making of RROs:

“(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).”

21. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides:

“(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.

22. Section 44(4) provides:

“(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.”

### **The Housing Act 2004 (“the 2004 Act”)**

23. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that a building or a part of a building meets the “standard test” if:

- “(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
- (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
- (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
- (d) their occupation of the living accommodation constitutes the only use of that accommodation;
- (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
- (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.”

24. On 1 August 2020, Hounslow’s Additional Licencing Scheme came into force. The Scheme extends to all HMOs occupied by three or more persons in two or more households sharing bathroom, toilet and/or kitchen facilities.

25. Section 72 specifies a number of offences in relation to the licencing of HMOs. The material parts provide (emphasis added):

“(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.

.....

(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) (a temporary exemption notice), 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).

26. Section 263 defines the concepts of “person having control” and “person managing”:

“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.

(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.

(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises–

(a) receives (whether directly or through an agent or trustee) rents or other payments from–

(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and

(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;

and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

### **Our Determination**

27. Our starting point is section 263 of the 2004 Act (see [23] above). We are satisfied that the First and Second Respondents fall within the statutory definitions the “person managing” the property. The First and Second Respondents received the rent from the persons who were in occupation of the property through their managing agent, the Third Respondent.

28. The Tribunal is satisfied beyond reasonable doubt that the First and Second Respondents committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) The Property was an HMO falling within the “standard test” as defined by section 254(2) of the 2004 Act which required a licence (see [37] above):

(a) it consisted of four 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.



(ii) From 1 August 2020, the Property required licence under Hounslow's Additional Licencing Scheme.

(iv) The Respondents had not licenced the HMO as required by section 61 of the 2004 Act. This is an offence under section 72(1).

(v) The offence has been committed between 1 August 2020 and 9 July 2021, when the Applicants vacated the Property.

29. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that the Applicants were not in receipt of any universal credit during the period that they claim their RRO.

30. The Applicants seek a RRO in the sum of £24,684 based on the rent which they paid during the relevant 11 month period of their tenancy. The tenants paid for the utility bills and council tax.

31. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord: There has been no criticism of the conduct of the landlord. There is no evidence that the First and Second Respondents are professional landlords. The house was let in a good condition. There were ample facilities for the four tenants. There has been no problem of disrepair.

(ii) The conduct of the tenant: There is no criticism of the conduct of the tenants.

(iii) The financial circumstances of the landlord: No evidence has been adduced that the RRO should be reduced on financial grounds.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.

32. We have had regard to the recent decisions of the Upper Tribunal including Judge Cooke in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); the Deputy Chamber President, Martin Rodger QC, in *Ficcara v James* [2021] UKUT 38 (LC); and the Chamber President, Mr Justice Fancourt in *Williams v Parmar* [2021] UKUT 244 (LC). We note that the relevant factors which we should take into account are not limited to those mentioned in section 44(4).

33. The First and Second Respondent have not played any active role in these proceedings. Indeed, on 17 February 2022, a Procedural Judge indicated that they might be debarred from participating in the hearing. There has been no acceptance on their behalf of their responsibility to ensure that their property is licenced. Ignorance of the law is no excuse.
34. However, the Tribunal has regard to the fact that the First and Second Respondent's arranged for Sutherland Estates to manage the property. Ms Khan readily accepted her responsibility as managing agent for failing to ensure that the Property was not licenced. We have due regard to two important factors:
- (i) the Additional Licencing Scheme came into force after the third tenancy agreement was granted. However, we suspect that any internet search before that tenancy was granted, would have found reference to the forthcoming Scheme.
- (ii) The impact of Covid-19. We accept the evidence of Ms Khan that her priorities were to ensure that urgent repairs were executed and that tenants were able to pay their rent.
35. Having regard to all the relevant factors, we make a substantial reduction in the RRO which we would otherwise have been minded to make. The maximum award would have been £24,684. We make a 50% reduction and make an award in the sum of £12,342.
36. The Applicants have succeeded in their application. It is therefore appropriate to order that the First and Second Respondents refund to them the tribunal fees which they have paid.

**Judge Robert Latham**  
**31 March 2022**

### **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.