



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

Case reference : **LON/00AU/HMF/2021/0166**

HMCTS code : **V: CVPREMOTE**

Property : **5 Tompion House, London EC1V 0HU**

Applicant : **Joshua WG Knight**

Representative : **Callum McLean, Counsel**

Respondent : **Smart Rooms Limited**

Representative : **-**

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 : **4th February 2022**

Date of decision : **7th February 2022**

DECISION

Decision of the tribunal

(1) The Respondent shall pay to the Applicant a Rent Repayment Order in the sum of £946.72. This sum to be paid within 28 days of the date of the decision.

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 07/07/2021 from Joshua WG Knight (“the applicant”) 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 22nd October 2021.
3. The application alleged that Smart Rooms Limited (“the respondent”) is the landlord who granted an assured shorthold tenancy for a room in 5 Tompion House, London EC1V 0HU (“the property”) and failed to obtain a licence for the property in breach of the additional HMO licensing requirements operated by Islington Council (“the Council”). The additional licensing requirements have been mandatory since 01/02/2021 and required all properties located within the London Borough of Islington occupied by three or more persons, to be licenced under an additional HMO licensing scheme.
4. The property is a three-bedroom flat with shared kitchen and bathroom facilities and a shared living room.
5. The history of the occupancy is briefly as follows. The applicant entered into a tenancy agreement with the respondent on 27/09/2020 for an initial period of one year. A deposit of £357 was paid. The rent charged was £714 pcm in advance. The applicant occupied room 2 in the property from 27/09/2020 until 22/05/2021. The application claimed a RRO for the period 01/02/2021 until 22/05/2021. However, at the start of the hearing, having provided further instructions to his counsel, the claim was reduced to a period of two months, being March and April 2021.

THE HEARING

6. 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.

7. 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 Applicant's Bundle consisted of 54 pages. The Respondent has failed to engage at all in response to this application.
8. The Applicant and his counsel, Mr McLean joined the hearing remotely by video connection.
9. On the morning of the hearing the Applicant's skeleton argument was provided to the Tribunal.
10. The Respondent did not join. The Tribunal were satisfied in accordance with Rule 34 of the Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013, that the respondent had been notified of the hearing by the Tribunal and that it was in the interests of justice to proceed to hear the application in their absence.
11. In oral evidence the applicant confirmed his occupation of the property and the rent paid by him at £714 per month. Evidence of the rental payments are included in the bundle and show payments of £715 per month. The applicant explained that this extra £1 per month was made in error by him when setting out the payment. £714 pcm is the relevant amount for this application.
12. The applicant explained the occupation of the property during the months of March and April 2021 as follows:
 - (a) He occupied room 2. Room 1 was occupied by a tenant called Nico who moved out of the flat some time towards the end of April 2021 and he was replaced by a tenant called Emily some two weeks later. The applicant explained that he had only shared the flat with Emily for a matter of days. He was pressed on the meaning of "towards the end of April", but he could not remember the exact date. He said that he was sure that Nico was still there on 20th April 2021.
 - (b) Room 3 was occupied by a tenant called Tim who moved in at the beginning of February 2021 and moved out a few days after Nico in April 2021. Tim and Emily did not occupy the property at the same time.
13. The applicant agreed after giving this evidence that his claim should be limited to the period 01/03/2021-20/04/2021.
14. He confirmed that the deposit had not been returned since he moved out. He also confirmed that when he moved into the property, he was not given the "how to rent" booklet, nor was he given a gas safety

certificate. The only things he was given when he moved in were the tenancy agreement and the key to the property.

15. In relation to utilities, which are said to be included in the rent, the applicant confirmed that there were no problems with gas, electricity or water, but that the internet had been cut off for a few days during the relevant period. He had not raised this with the landlord as his flatmates had done so and after a few days this had been reinstated.
16. Evidence in the bundle from the Council confirms that there was no HMO licence in place, nor had any application for a licence been made by the date of that email, 27/04/2021.

FINDINGS

17. The Tribunal finds that the respondent landlord had control of the property and received rental payments from the applicant.
18. During the relevant period of 01/03/2021-20/04/2021 three people occupied the property and shared facilities and the property was required to be licenced in accordance with the Council's requirements.
19. The property was not licenced and no application for an HMO licence was received by the Council by 27/04/2021. This is evidenced by the Council's email of that date.
20. The applicant's rental payments for the relevant period amount to £1183.40 which reflects a full month's rent for March 2021 and 20 days rent for April 2021 at a daily rate of £23.47.
21. The Tribunal found beyond reasonable doubt that the respondent was in breach of their 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 Islington from 01/02/2021.
22. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.
23. 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.
24. The Respondent has failed to participate in these proceedings. Nothing is known about their financial circumstances other than the fact that they are a limited company, their entry on Companies House showing that their business is in real estate. There is no evidence that they have previously been prosecuted.

25. The only evidence of the applicant's conduct is that he paid his rent regularly.
26. In relation to the respondent's conduct the tribunal finds as follows:-
- a. The respondent is a professional landlord who has failed to comply with their responsibilities by failing to comply with the Council's licencing requirements
 - b. They have failed to provide a letting booklet and fire safety certificate, at the very least, to the applicant as a new tenant
 - c. They disconnected the internet service in the property for a few days during a period still much affected by the Covid-19 pandemic during which such services were essential
 - d. They have failed to engage with these proceedings
27. Without any submissions from the respondent, it was impossible for the Tribunal to make a positive case for their position.
28. Nor were the Tribunal in a position to make any deductions for utilities that were said to be included in the tenancy agreement. In order to have been able to take such payments into account, the respondent should have complied with the Tribunal's directions dated 22/10/2021 and provided evidence of any outgoings, as detailed at paragraph 10(g) of that order.
29. Having regard to the Upper Tribunal case of Williams v Parmer & Ors (2021) UKUT 244 (LC), the Tribunal took the view that without any evidence that the landlord had been prosecuted, and without evidence of extremely poor conduct by the landlord, an appropriate award is 80% of the rent paid in the relevant period of £1183.40.
30. 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 all of these matters into account together with the landlord's conduct, as well as principles set out in *Williams v Parmer*, cited above, we consider that the 80% award is fair in the circumstances. Accordingly, we find that an RRO should be made against the respondent, in the sum of £946.72 which should be paid to the Applicant within 28 days.
31. No application was made for the return of the Tribunal fees paid by the Applicant.

Name: Judge Brandler **Date:** 7th February 2022

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.

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.

(2) 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.