



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

Case Reference : **LON/00AY/HMF/2022/0012**

HMCTS code (paper, video, audio) : **V: VHSREMOTE**

Property : **2C Mountbatten Close, London SE19 1AP**

Applicant : **Karim Bey**

Representative : **In person**

Respondent : **Maurice Laurent Limited**

Representative : **Matthew Eastman, Legal Executive, of Wayling Quarters (instructed by Creative Legal Solutions)**

Type of Application : **Application for Rent Repayment Order under the Housing and Planning Act 2016**

Tribunal Members : **Judge P Korn
Mr A Parkinson MRICS**

Date of Hearing : **24 June 2022**

Date of Decision : **6 July 2022**

DECISION

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: VHSREMOTE. 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 been referred are in two electronic bundles, the contents of which we have noted. The decisions made are set out below under the heading “Decisions of the tribunal”.

Decisions of the tribunal

The tribunal makes no rent repayment order and no cost order.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that the Respondent was controlling and/or managing a house in multiple occupation (“**HMO**”) which was required under Part 2 of the Housing Act 2004 (“**the 2004 Act**”) to be licensed at a time when it was let to the Applicant but was not so licensed and that it was therefore committing an offence under section 72(1) of the 2004 Act.
3. The Applicant’s claim is for repayment of rent paid during the period from 1 December 2020 to 30 September 2021 in the amount of £13,762.32.

Applicant’s written case

4. In written submissions the Applicant states that (under his former name of Leon Johnson) he was granted a tenancy of Unit 2, 2C Mountbatten Close by the Respondent on 1 October 2017 and remained the tenant until 9 January 2022.
5. In his Reply to Defence, the Applicant quotes “the converted building test” as set out in section 254(b) and section 254(4) of the 2004 Act. He also quotes from section 258 of the 2004 Act which sets out when persons are to be regarded as not forming a single household for the purposes of determining whether a building or part of a building is an HMO. Although the point is not clearly stated, it would appear that the Applicant’s position is that the Property met the converted building test and was therefore an HMO. From the fact that he has made this application it would also seem that he is arguing that it was an HMO that required a licence.

6. The Applicant also states that there were nine occupants in total at 2C Mountbatten Close, including two bedrooms in the basement of the building and three bedrooms on the ground floor. He comments that the occupants from each floor could not enter or share the facilities in the basement, ground, second or third floor but that there were no locks to separate the two floors above the ground floor.
7. At the hearing the Applicant was asked for evidence to support his assertion that the Property or the building was a converted building for the purposes of section 254(4)(a) of the 2004 Act, and he replied that there was a basement. When asked about the layout of the building he said that his room was on the second floor and was part of 2C, there being 3 floors in total. In response to a question, he said that it was possible to access all floors internally.

Respondent's written case

8. The Respondent denies that the Property is an HMO. It states that an HMO is essentially a property rented out by at least 3 people who are not from a single 'household' but share facilities such as a bathroom and kitchen. 2C Mountbatten Close is rented out to 2 occupants being the occupants of Rooms 1 and 2 on the plan included in the hearing bundle.
9. The hearing bundle also includes a plan of 2A Mountbatten Close, being the ground floor of the same building. Because 2A itself consists of more than three households, the Respondent successfully applied for a HMO licence in respect of 2A, and a copy of that licence is also included in the hearing bundle. The Respondent submits that this shows that the local housing authority considers each floor to be a separate property, and the fact that the second floor has only two households "negates the requirement for an HMO licence" in the Respondent's view.

The hearing

10. At the hearing the Applicant was asked for his evidence for asserting that the Property or the building was a converted building for the purposes of section 254(4)(a) of the 2004 Act and he replied that there was a basement. When asked about the layout of the building he said that his room was on the second floor and was part of 2C, there being 3 floors in total. In response to a question, he said that it was possible to access all floors internally.
11. Mr Eastman for the Respondent said at the hearing that all tenants in the building had an en-suite bathroom and that the only shared facility was a kitchen. However, there was a kitchen on each floor and therefore the kitchen on the floor comprising 2C was only shared by the two tenants of 2C.

12. As regards the Applicant’s assertion that there were 9 occupiers in 2C, Mr Eastman said that this was simply untrue and that there were only 2 occupiers in 2C. 2A had its own separate licence, and even if 2B and 2C could be treated as a combined part of a building for the purposes of the HMO test the Applicant had not established how many occupiers there were between 2B and 2C combined. But in any event 2C did not share any facilities with 2B.
13. The Respondent’s position was that there were 4 floors, namely the basement, the ground floor (2A), the first floor (2B) and the second floor (2C).

Relevant statutory provisions

14. Housing and Planning Act 2016

Section 40

- (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 ...
- (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.

| | <i>Act</i> | <i>section</i> | <i>general description of offence</i> |
|---|-----------------------------------|---------------------------|--|
| 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 |

Section 41

- (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.

Section 43

- (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 41.

Housing Act 2004

Section 55

- (2) This Part applies to the following HMOs in the case of each local housing authority –

- (a) any HMO in the authority's district which falls within any prescribed definition of HMO ...

Section 72

- (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 ... but is not so licensed.

Section 254

- (1) For the purposes of this Act a building or part of a building is a "house in multiple occupation" if –

- (a) it meets the conditions in subsection (2) ("the standard test")

- (b) it meets the conditions in subsection (3) ("the self-contained flat test")

- (c) it meets the conditions in subsection (4) ("the converted building test")

- (d) and (e) [*not relevant to this case*]

- (2) A building or 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.

- (4) A building or part of a building meets the converted building test if –
- (a) it is a converted building;
 - (b) it contains one or more units of living accommodation that do not consist of a self-contained flat or flats (whether or not it also contains any such flat or flats);
 - (c) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (d) 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);
 - (e) their occupation of the living accommodation constitutes the only use of that accommodation; and
 - (f) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation.

The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018

- 4 An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it –
- (a) is occupied by five or more persons;
 - (b) is occupied by persons living in two or more separate households; and
 - (c) meets –
 - (i) the standard test under section 254(2) of the Act;
 - (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or
 - (iii) the converted building test under section 254(4) of the Act.

Tribunal's analysis

15. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3), subject to certain conditions being satisfied. The offence of control or management of an unlicensed HMO under section 72(1) of the 2004 Act is one of the offences listed in that table. The Applicant submits that the Respondent has committed this offence, and therefore if we are satisfied that the offence has been committed it is in principle open to us to make a rent repayment order.
16. Section 254 of the 2004 Act sets out the meaning of a “house in multiple occupation” (HMO) and includes various possible tests as to what constitutes an HMO. The Applicant appears to be relying on “the converted building test”, although it is possible that he also – or alternatively – wishes to rely on “the standard test”.
17. Paragraph 7 of Schedule 14 to the 2004 Act states that: *“any building which is occupied only by two persons who form two households”* is not an HMO for the purposes of the 2004 Act. Therefore, for a property to be an HMO for the purposes of the 2004 Act there need to be at least 3 occupiers (and the other elements of one of the HMO tests in section 254 of the 2004 Act need to be fulfilled).
18. But the abovementioned provisions just inform us what an HMO is, not what a **licensable** HMO is. For this we need to go to both section 55(2)(a) of the 2004 Act and The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 (“**the 2018 Regulations**”). Section 55(2)(a) of the 2004 Act states that Part 2 of the 2004 Act, which deals with the licensing of HMOs, applies to *“any HMO in the authority’s district which falls within any prescribed definition of HMO”*. Paragraph 4 of the 2018 Regulations then states that *“An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it – (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets – (i) the standard test under section 254(2) of the Act; (ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or (iii) the converted building test under section 254(4) of the Act”*.
19. Therefore, for an HMO to be **mandatorily** licensable it needs to be occupied by 5 or more people living in 2 or more separate households (as well as meeting the other elements of one of the HMO tests, such as the standard test or the converted building test).
20. In addition to the mandatory licensing scheme, it is also possible for local housing authorities to extend the licensing regime in their locality

by introducing additional or selective licensing in the prescribed manner.

21. In the present case we have no evidence before us that there is an additional or a selective licensing scheme in place. Even if in fact such a scheme was in place, the Applicant would still need to demonstrate that the Property needed a licence under such scheme, but he has not made any submissions at all on this point. Therefore, we are forced to assume that the Applicant is seeking to argue that the Property is subject to mandatory licensing, seemingly under the converted building test.
22. The Applicant's assertion that the Property (being 2C Mountbatten Close) was occupied by 9 people is in our view simply not supported by the evidence. Even if it is true that the whole building was occupied by 9 people, the evidence seems to indicate that the building comprised 2A, 2B, 2C and a basement and that 2A had a separate HMO licence. It might be possible to argue that 2B and 2C between them could be treated as a combined part building for HMO licensing purposes, but we have no real evidence on this point from the Applicant and no evidence or even information as to how many occupiers there were in 2B and 2C combined. Furthermore, we have reason to be sceptical about the proposition that 2B and 2C should be treated as a combined part of building for HMO licensing purposes, because the evidence indicates that the two floors did not share any facilities. As for the Applicant's assertion, or apparent assertion, that the building was a converted building for the purposes of the converted building test, the Applicant was unable to explain the rationale for this assertion at the hearing.
23. The burden of proof is on the Applicant to satisfy the tribunal beyond reasonable doubt that an offence has been committed. The Applicant has failed to show that the Property was a licensable HMO and therefore his application must be dismissed.

Cost application

24. The Applicant applied at the hearing under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("**the Tribunal Rules**") for an order that the Respondent reimburse the application fee of £100.00 and the hearing fee of £200.00.
25. As the Applicant has been unsuccessful in his claim it would not be appropriate to order the Respondent to reimburse these fees and therefore the Applicant's cost application is refused. In any event, it became apparent after the conclusion of the hearing that the Applicant had in fact obtained an exemption from paying those fees in the first

place, and therefore there would be nothing to reimburse even if we had agreed in principle that an order should be made.

Name: Judge P Korn

Date: 6 July 2022

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.