



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

Reference : LON/00BG/HMF/2021/0150

Property : 87 Canrobert Street, London E2 9PX

Applicants : MR. FELIX ARBENZ-CAINES
(2) MR. JAMIE SMITH
(3) MR. JORDAN KLUCKOW
(4) MR. SEBASTIAN SCHUSMAN

Representative : Mr McLean

Respondent : TIM SCORER

Representative : Mr Hart

Type of Application : Application for a Rent Repayment Order

Tribunal Members : Judge Shepherd
Fiona Macleod MCIEH

Date of Decision : **4th March 2022**

DETERMINATION

1. In this case the Applicants, Mr. Felix Arbenz-Caines, Jamie Smith, Jordan Kluckow and Sebastian Schusman (“The Applicants”) are seeking a Rent Repayment Order pursuant to sections 40 and 41 of the Housing and Planning Act 2016 on the basis that the Respondent, Tim Scorer (“The Respondent”) failed to obtain a House in Multiple Occupation (HMO) License for the relevant period between 23rd June 2019 and 22nd June 2020 (“the relevant period”) in relation to premises at 87 Canrobert Street, London E29PX (The premises). The Applicants were in occupation of the premises.
2. There is no dispute that the Respondent did not have a license when he should have done. The Respondent argues that he had a reasonable excuse for this however. In the alternative he argues that the penalty awarded should be reduced on the basis of mitigation. The Claimants represented by Mr McLean argued that the Respondent as a professional landlord did not have a reasonable excuse and sought the full award for the relevant period.

Background

3. The Applicants were all tenants at the premises pursuant to a joint tenancy they signed on 18th June 2019. The Respondent together with his partner are the freehold owners of the premises and the Respondent himself was signatory to the tenancy. The rent for the premises was £3250 per month. The Applicants divided the rent liability based on the size of their rooms. A deposit of £3750 was paid. It was common ground that the Applicants had met the full rent liability during the relevant period. The first Applicant left the premises on 22nd June 2020 and the remaining Applicants left on 22d September 2020.
4. Prior to the start of the relevant period (1/4/19) LB Hackney had introduced an Additional Licensing Scheme and it was common ground that the premises were covered by the scheme. It was also common ground that the effect of the Additional Licensing Scheme was to require the landlord of the premises to have a license because there were 3 or more people in occupation all from

different households and they shared facilities in addition as already indicated a rent was being paid. The need for an HMO License was confirmed by Tower Hamlets in letters dated 1st August 2020 and 21st October 2020

5. In the event the Respondent did not apply for a license until 29th September 2020.

The relevant law

6. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) order 2018 confirm that the property is an HMO if the following criteria apply-

- it is occupied by five or more persons;
- it is occupied by persons living in two or more separate households;
- it meets the standard test under section 254 (2) of the Act

7. In addition s.56 of the Housing Act 2004 enables a local authority to designate areas subject to additional licensing if there are a significant proportion of HMOs being managed ineffectively in the area in question. The additional licensing criteria in Tower Hamlets are described in paragraph 4 above.

8. Under section 41(1) of the Housing and Planning Act 2016 a tenant may apply to the First Tier Tribunal for a rent repayment order against a person who it is alleged has committed an offence. Section 43 of the Act permits the FTT to grant a rent repayment order if satisfied beyond reasonable doubt that a

landlord has committed an offence under section 72 one of the Housing Act 2004 by failing to obtain an HMO licence. Section 44 of the Act permits the FTT to grant a Rent Repayment Order in respect of the rent paid by the tenant for a period not exceeding 12 months. Section 72(5) provides a reasonable excuse defence.

The hearing

9. The Applicants were cross examined by Mr Hart who concentrated largely on their conduct as tenants. The Applicants accepted that relations between them and the Respondent were cordial initially but soured towards the end. They accepted that they had caused damage to the patio, that they had covered the fire alarms with cling film and had damaged the freezer door. They had made an arrangement with the Respondent to move out for a day so that he could arrange viewings of the premises. He deducted their rent accordingly. They said that the Respondent had been hostile after 6th August 2020 when he had let himself into the premises before the arranged time.

10. The Respondent gave evidence and was cross examined. He accepted he was a professional landlord who bought and rented out properties. He has 12 properties only two of which are HMOs. He said he rang the council in March 2019 to ask about LACORS guidance in relation to a different property. The council had not mentioned the Additional licensing scheme despite him asking if there were any forthcoming regulations. He accepted that the Additional Licensing Scheme was advertised on the council's website. He had not contacted the council again before letting the premises. He accepted he had not kept on top of the regulations and that he had not specifically asked the council about the HMO licensing scheme. He accepted that he had come to the premises and let himself in at 6.15 am on 6th August 2020 when the appointment had been made with the Claimants was 8 am. He'd also asked for a fee for writing a reference.

11. On the Respondent's behalf, Mr Hart said he had a reasonable excuse. He had contacted the council and they had not told him about the Additional Licensing scheme. The scheme had started just before the tenancy. In mitigation he said his client had no previous convictions and no harm had been done to the Applicants as a result of his failure to license.
12. Mr McLean reinforced the contents of his skeleton argument. He said that the Respondent should have obtained a license and he did not have a reasonable excuse for failing to do so.

Determination

13. The Tribunal does not consider that the Respondent had a reasonable excuse for failing to license the premises. As a professional landlord it was for him to keep on top of the legislative requirements. If he did contact the council, it was not with regard to the issue at hand or indeed the property in question. If he was talking to the council about the LACORS guidance they will naturally have assumed his question about forthcoming regulations referred to this. Once he knew about the need to license however, he put in hand an application which is to his credit and this will be reflected in a deduction of the penalty.
14. The Tribunal gave an indication to the parties that it was unimpressed by the conduct of either side. The Applicants did not manage the property in a tenant like manner in several respects. They clearly smoked at the property which was a breach of tenancy, they caused damage to the patio with a barbecue which was highly predictable and they tried to down play the damage to the freezer. It was frankly astounding that they felt it okay to obstruct a smoke alarm when it had been fitted for their safety. The Respondent also behaved badly and sought to annoy the Applicants by attending too early on 6th August 2019 and letting himself into the premises. Nevertheless, his conduct fell short

of the type of serious landlord harassment that the Tribunal sometimes witnesses. Those acting for the Applicants need to consider how they rely on landlord conduct allegations in the future. There was a failure by the Applicants to acknowledge the fact that the Respondent had for the majority of the time acted as a very good landlord, allowing rent holidays etc. He also applied for the license as soon as he was aware of the need to. There is no doubt he will not make the same mistake again. To reflect these factors the Tribunal will make a 40% deduction in the Rent Repayment Order claimed. This is a joint tenancy and the tenants are jointly and severally liable. In such a case an award is made to reflect the total rent and it is for the Claimants to apportion the award between themselves.

Summary

15. The Tribunal awards the Applicants £ 23400 payable to the Applicant's solicitors in 14 days.

Judge Shepherd

4th March 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.