



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

**Case reference** : **LON/00BG/HMG/2021/0027**

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

**Property** : **36 Morieux Road London E 10 7LL**

**Applicant** : **Ricardo de Koning and Olga Lipska**

**Representative** : **In person**

**Respondent** : **Susan McAleer**

**Representative** : **In person**

**Type of application** : **Application for a Rent Repayment  
Order by tenant. Sections 40,41, & 44 of  
the Housing and Planning Act 2016**

**Tribunal members** : **Judge H Carr  
Mrs L Crane MCIEH**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **8th 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: CVPREMOTE**. 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 that the tribunal was referred to are in two bundles from the Applicants one comprising 157 pages, the other, a bundle in reply comprising 32 pages. The Respondent provided a bundle of 30 pages. The tribunal has noted the contents.

### **Decision of the Tribunal**

1. **The Tribunal determines to make a Rent Repayment Order of £7,276.67.**
2. **The Tribunal determines to order the Respondent to reimburse the Applicants the application and hearing fees of £300 within 14 days of receipt of this decision.**

### **The application and procedural history**

3. The applicants made an application for a Rent Repayment Order on 12th August 2021. The applicants allege that the landlord has committed the offence of controlling or managing an unlicensed HMO and failing to comply with an improvement notice.
4. In their application the applicants asked for a RRO for the period 1st April 2020 to 31st March 2021 but at the hearing they confirmed that the period they were seeking an RRO for was for the period 1st August 2020 to 31st July 2021.
5. The Tribunal issued directions on 8th September 2021

### **The hearing**

6. The hearing took place via video on 14th January 2022. Mr de Koning appeared in person on behalf of the applicants. The respondent Ms McAleer appeared in person and represented herself.

7. The tribunal dealt with a preliminary matter. No improvement notice had been served in connection with the property therefore, with the consent of the parties, it strikes out that part of the application relating to noncompliance with an improvement order under Rule 9 (2) (e) of its procedural rules.

### **The issues**

8. The issues that require to be decided by the Tribunal are:
  - (a) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of being someone in control of or managing an HMO which is required to be licensed and is not so licensed?
  - (b) Does the respondent have a reasonable excuse defence?
  - (c) If the tribunal determines to make a Rent Repayment Order:-
    - What is the applicable 12-month period?
    - What is the maximum amount that can be ordered under s.44(3) of the Act?
    - What account must be taken of the respective conduct of the applicants and the respondent and of the financial circumstances of the respondent?

### **The background and chronology**

9. The property is a two-bedroom ground floor flat in a purpose-built Victorian house known as a Warner flat.
10. The applicants entered into a 12 month AST with the respondent on 25th October 2017. The agreement was rolled over as a periodic tenancy until the applicants terminated the tenancy in December 2021 due to relocation.
11. The rent was £1250 per calendar month from the commencement of the tenancy to its termination.
12. The applicants received universal credit from November 2019 including the housing element.
13. The respondent has been the leasehold owner of the property since 2017.

14. The respondent bought the property as a buy to let property/ It is her first buy-to-let property and the applicants were her first tenants.
15. From the commencement of the tenancy until December 2019 the property was managed by Outlook, a property management company. From 2020 the respondent took responsibility for management.
16. The tenants contacted Waltham Forest Housing and Licensing Team on 15th January 2018 who inspected the property on 16th January 2018. They provided a report which required certain repairs/improvements to be made.
17. A further inspection was carried out by Waltham Forest on 10th August 2021 following renewed contact from the applicants.
18. The Housing and Licensing officer performing the inspection in 2021 informed the tenants that the property had required licensing since 31st March 2020, the date the previous licence had expired, A new licence was applied for on 17th August 2021.
19. The respondent told the tribunal that the licence had been granted but was unable to produce the licence at the hearing. She confirmed that the property is currently untenanted.

**Did the Respondent commit the offence of controlling or managing an unlicensed HMO?**

20. The applicants assert that:
  - the property was in an area of selective licensing
  - the applicants lived in the property as their only or principal home
  - that the property was unlicensed from 31st March 2020. An application for a licence was made on 17th August 2021
  - and that the Respondent was the leasehold owner of the property.

21. They produced evidence from Waltham Forest Council.
22. The respondent agreed that the property required licencing and that it was not licensed and accepted the position of the applicants.

### **The decision of the Tribunal**

23. The tribunal determines that the respondent committed the offence of controlling or managing an unlicensed HMO.

### **The reasons for the decision of the Tribunal**

24. The tribunal relies on the statements of the applicants, their supporting evidence, particularly the evidence from Waltham Forest Council and the concession of the respondent.

### **Does the respondent have a reasonable excuse defence?**

25. The respondent argues that she has a reasonable excuse defence which provides a complete defence to the offence.
26. She explained that following the expiration of the licence on 20th March 2020 she received an email notification from Waltham Forest. She attempted to follow the link in the email and complete the form but because the form was different from the previous form she found she was unable to complete it as she did not know how to answer some of the questions.
27. She received no response from the licensing office when she called them. This was when the country went into lockdown she assumed that there would be no one in the office.
28. She told the tribunal that she continued receiving automated emails to finish completing the form and each time she called the licensing office there was no answer. On several occasions she left voicemails but she received no reply to these. She said that she preferred communicating by phone than by email. She attempted to get evidence of her voice messages but the council said that it did not retain them.

29. She told the tribunal that she lost her father during this time which had a very big impact on her, she had so much on her mind that she forgot to pursue the licence.
30. When the applicants informed the respondent that they were applying for a Rent Repayment order this reminded the respondent that she had not completed the form. She told the tribunal that after several renewed attempts she spoke to someone, who helped her complete it on 17th August 2021. She told the tribunal that the form would have been completed on time if it were not for the lockdown due to the pandemic.

### **The decision of the tribunal**

31. The tribunal determines that the respondent does not have a reasonable excuse defence.

### **The reasons for the decision of the tribunal**

32. The tribunal considers that the respondent failed to take proper steps to ensure that the property was licensed. She was fully aware of the need for licensing. She had taken it upon herself to terminate the management contract which meant she was taking on full responsibility for the management of the property. There were alternatives open to her when she was unable to complete the form such as emailing or consulting an experienced landlord or a managing agent.
33. Whilst the tribunal is sympathetic with her personal circumstances the length of the period that the property was unlicensed is unacceptable.

### **What is the appropriate amount for the RRO?**

34. The applicable 12-month period is 1st August 2020 to 31st July 2021. The applicants provided a very useful table which explained the rent paid and the amount of universal credit paid which was prepared in accordance with the guidance provided for local housing authorities.
35. The total amount of rent paid in the applicable period is £15,000. The total amount of Universal Credit is £5,297.77.
36. Therefore the maximum amount payable for an RRO is £9,702.23.
37. The respondent raised no issue about the amount of the RRO claimed or the figures that the applicants relied upon.

38. The tribunal then heard arguments about the tenants' conduct and the respondent's conduct.
39. The respondent provided no evidence of her financial circumstances but informed the tribunal that she owned three buy-to-let properties (including the subject property) as well as her own house.

*The tenants' conduct.*

40. The applicant said that they had been exemplary tenants paying their rent on time, performing regular small tasks of maintenance and informing the managing agent or the respondent immediately of any problems with the property.
41. In general the respondent agrees that the applicants were good tenants but says that the applicants did not leave the property in a good condition and provided photographs to substantiate this. She said that the carpet was stained and the place was not properly cleaned on departure.
42. The applicants say that any stains on the carpet were fair wear and tear. The respondent says that they went beyond that. She told the tribunal that the carpet was not new at the commencement of the tenancy but it had been cleaned and was not stained. She also told the tribunal that she did not withhold any money from the deposit. The tenancy agreement did not require that the property was professionally cleaned at the termination of the tenancy.

*The respondent's conduct*

43. The applicants argue that the failure to licence the property was a serious failing as she was fully aware that the property required licensing.
44. In addition, the applicants allege that the property was poorly managed and poorly maintained. The applicants say that the respondent refused to take their complaints seriously saying that condensation and damp were to be expected in a Victorian property. They point out that they raised concerns about the condition of the property almost immediately upon commencement of the tenancy. Although the property appeared to be in good condition when they moved in over the winter the problems of condensation mould and damp quickly made themselves apparent. The applicants say that the works that were carried out were minimal patching up rather than tackling the root causes of problems. The applicants say that

this was very stressful and that it was also stressful not getting replies or indications that progress was being made with their concerns.

45. The respondent denies saying that there was no need for works. She says that she did not neglect the property and that she took over the management herself to speed processes up.
46. The tribunal raised questions about the works that were carried out following the visit from the EHO in 2018. Some works were clearly carried out but no decorating was done, the sink unit was not replaced no works were done to the second bedroom and no works were done to the guttering.
47. The respondent explained that she thought replacing the taps was sufficient with the sink unit, that providing a dehumidifier was sufficient to deal with the issues in the second bedroom, she relied on the tradesmen saying that they had made good and did not organise redecorating.
48. The tribunal also asked questions about the works done following the visit from the EHO in 2021. That work appears to have been completed but some of it only subsequent to the termination of the applicants' tenancy.
49. The tribunal was very surprised to learn that the respondent had not inspected the property herself after she took over responsibility for management. Nor had she attended the property with the trades people she instructed, which is particularly disappointing because of the continued failures of work she had commissioned.
50. The applicant raised the slow responses of both Outlook and the respondent, and the problems caused by the termination of the contract with Outlook as that resulted in the cancellation of already organised visits from workers.
51. The respondent rejects suggestions that her conduct was poor she spent on repairs to the property during the applicants' tenancy and suggested that the applicants had caused some delay in enabling repairs to be done because they would not allow the contractor to visit the property when they were not at home. She says that some of the delay was due to poor practices by her managing agent which was why she terminated its contract and took over responsibility herself.

*The financial circumstances of the landlord*



52. The respondent provided no evidence of her financial circumstances

### **The decision of the Tribunal**

53. The Tribunal determines to award an RRO at 75% of the rent paid in the applicable period less the amount of universal credit received. 75% of £9,702.23 is £7276,67

### **The reasons for the decision of the Tribunal**

54. The tribunal finds that the tenants conduct was good. They were responsible tenants throughout the tenancy. The tribunal found the evidence of the applicants to be reliable and thoughtful.

55. The tribunal notes that the respondent says that she was disappointed in the state of the property at termination. It appears that the property had not been professionally cleaned but that was not a requirement of the tenancy. The tribunal also notes that there was no deduction from the deposit and that the carpet staining was more likely than not the result of fair wear and tear particularly as it was not new at the beginning of the tenancy. For these reasons the tribunal has not taken into account, in reaching its decision on the amount of the order, the state of the property at the end of the tenancy.

56. The tribunal is very concerned by the landlord's conduct. There was a serious lapse in professional standards in failing to put a new licence into place. If the gap had been one or two weeks at the start of the pandemic the tribunal may have understood the problem, but there was a very long period when the property was not licenced and the tribunal finds as a fact that the respondent only completed the application process when she learned that the applicants were seeking a RRO. Even if the respondent was having difficulty she should have arranged for professional help and given the renewal of the licence the priority it needed.

57. The second concern of the tribunal is the poor management standards which led to very poor living conditions for the applicants. The applicants made it very clear what the problems were right from the beginning of the tenancy. Yet there appears to have been reluctance to tackle the problems except in a piecemeal fashion. The tribunal notes that some items of concern to the EHO 2018 at Waltham Forest remained of concern in 2021. The respondent provided several excuses for the failures, the pandemic, the poor quality of the management company, the poor quality of the workmen

she employed. The tribunal considers that she should have made much greater efforts to get to grips with the problems much earlier than she did. It also considers that management standards fell after she terminated the contract with Outlook. The failure to inspect the property or attend the property with tradesmen compounded the delays and persistent poor quality work. In short the respondent managed the property poorly.

58. The tribunal notes that the respondent has a small portfolio of properties and should therefore be taking her responsibilities more seriously.
59. On the other hand the tribunal notes that the landlord has no criminal convictions, and that whilst the living conditions were poor they were not amongst the worst conditions.
60. The tribunal therefore decides to make an order of 75% of the maximum order that can be made.
61. In the light of the findings above the tribunal also orders the respondent to reimburse the applicants for the application fee and hearing fee, totalling £300.

**Name:** Judge H Carr

Date: 8th  
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.

