



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

Case Reference : LON/00BH/HMG/2022/0007

Property : 20 Station Road, London E17 8AA

Applicants : Dario Brito
Leonie Brito

Representative : Safer Renting

Respondents : JDC Holidays Rental Ltd
DC Associated Management Ltd
Daniel Martin-Portugues

Type of Application : Application for a rent repayment order
by tenants

Tribunal : Judge Nicol
Mr S Wheeler MCIEH CEnvH

**Date and Venue of
Hearing** : 9th September 2022;
10 Alfred Place, London WC1E 7LR

Date of Decision : 9th November 2022

DECISION

- 1) The Second Respondent, DC Associated Management Ltd, shall pay to the Applicants a Rent Repayment Order in the amount of £4,356.**
- 2) Further, the Respondent shall reimburse the Applicants' Tribunal fees of £300.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. The Applicants were joint tenants from 8th March to 1st October 2021 at the subject property at 20 Station Road, London E17 8AA, a studio flat

on the ground floor of a building containing a café and two other rooms also converted into studio flats. During the tenancy, they paid a total of £4,356 in rent.

2. The Applicants seek a rent repayment order (“RRO”) against the Respondents in accordance with the Housing and Planning Act 2016 (“the 2016 Act”).
3. The hearing of this matter was in person and took place on 9th September 2022. The attendees were the Applicants and Ms Hannah Al-Qaryooti of Safer Renting, acting as their representative. The Respondents did not attend.

The Respondents’ status

4. The registered freeholders of the property are Mr Christakis Neocleous and Mrs Maria Neocleous. There is a registered leasehold interest of the whole of the property belonging to Station Road Property Ltd. None of them have been listed as Respondents. The named Respondents are:
 - (a) JDC Holidays Rental Ltd
 - (b) DC Associated Management Ltd;
 - (c) Daniel Martin-Portugues – he is named at Companies House as a director of both the other two Respondents.
5. According to the Court of Appeal in *Rakusen v Jepsen* [2021] EWCA Civ 1150, only a tenant’s immediate landlord may be liable for a RRO.
6. DC Associated Management were named in the tenancy agreement as the recipient of the rent. The Applicants’ evidence was that their rent was paid to JDC Holidays Rental until June 2021 and thereafter to DC Associated Management. Both companies satisfy the definition under section 263(1) of the 2004 Act of persons having control in relation to the subject property since they both received the rack-rent.
7. However, there is also the question of who was the Applicants’ landlord. The Tribunal has concluded that it is DC Associated Management because they are named in the tenancy agreement. JDC Holiday Rental would have had to account to DC Associated Management for the rent they collected and most likely did so as agents.
8. Mr Martin-Portugues liaised with the Applicants from time to time on matters to do with the tenancy but there is no evidence that he did this on his own behalf as opposed to acting for the companies of which he is a director.

The offence

9. The Tribunal may make a RRO when the landlord has committed one or more of a number of offences listed in section 40(3) of the 2016 Act. The Applicants alleged that the Respondents were guilty of having control of

a house which is required to be licensed but is not so licensed, contrary to section 95(1) of the Housing Act 2004 (“the 2004 Act”).

10. Both the First and the Second Respondents might be accused of this crime but only the landlord, the Second Respondent, may be liable for a RRO.
11. The local authority, the London Borough of Waltham Forest, designated its entire district as an area for Selective Licensing of rented properties for the relevant period. By email dated 9th December 2021, Waltham Forest confirmed that there is no licence or an application for one in respect of the subject property. Moreover, it is not registered with property valuation, there is no planning application and there is no council tax record.
12. Therefore, the Tribunal is satisfied so that it is sure that the Second Respondent has committed the offence of having control of the property which was required to be licensed but was not.

Rent Repayment Order

13. For the above reasons, the Tribunal is satisfied that it has the power under section 43(1) of the Housing and Planning Act 2016 to make a RRO on this application. The Tribunal has a discretion not to exercise that power but, as confirmed in *LB Newham v Harris* [2017] UKUT 264 (LC), it will be a very rare case where the Tribunal does so. This is not one of those very rare cases. The Tribunal cannot see any grounds for exercising their discretion not to make a RRO.
14. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC). Amongst other matters, it was held that an RRO is a penal sum, not compensation. The law has changed since *Parker v Waller* and was considered in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC) where Judge Cooke said:
 53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker v Waller*. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. ...
15. In *Williams v Parmar* [2021] UKUT 0244 (LC) the Upper Tribunal held that there was no presumption in favour of awarding the maximum amount of an RRO. The tribunal could, in an appropriate case, order a lower than maximum amount of rent repayment, if the landlord's offence was relatively low in the scale of seriousness, by reason of mitigating circumstances or otherwise. In determining how much lower the RRO should be, the tribunal should take into account the purposes intended to be served by the jurisdiction to make an RRO, namely to punish offending landlords; deter landlords from further offences; dissuade

other landlords from breaching the law; and removing from landlords the financial benefit of offending.

16. In *Awad v Hooley* [2021] UKUT 0055 (LC) Judge Cooke also expressed concerns (at paragraph 40) that using the total rent as the starting point means it cannot go up, however badly a landlord behaves, thereby limiting the effect of section 44(3). However, with all due respect, this stretches too far the analogy between RROs on the one hand and criminal penalties or fines on the other.
17. Levels of fines in each case are set relative to statutory maxima which define the limit of the due sanction and the fine for each offender is modulated on a spectrum of which that limit defines one end – effectively the maximum fine is reserved for the most serious cases. However, an RRO is penal but not a fine. The maximum RRO is set by the rent the tenant happened to pay, not by the gravity of the offence. It is possible for a landlord who has conducted themselves appallingly to pay less than a landlord who has conducted themselves perfectly (other than failing to obtain a licence) due to the levels of rent each happened to charge for their respective properties.
18. There is nothing wrong with or inconsistent in the statutory regime for RROs if a particular RRO can't be increased due to a landlord's bad conduct. It is the result which inevitably follows from using the repayment of rent as the penalty rather than a fine. The maximum RRO, set by the amount of the rent, is a cap, not the maximum or other measure of the gravity of the parties' conduct. A landlord's good conduct or a tenant's bad conduct may lower the amount of the RRO, as happened in *Awad v Hooley* when the tenant withheld their rent, and that is how section 44(3) finds expression.
19. When the Tribunal has the power to make a RRO, it should be calculated by starting with the total rent paid by the tenant within time period allowed under section 44(2) of the 2016 Act, from which deductions are permitted under section 44(3) and (4) – the Tribunal must take into account the conduct of the parties, the landlord's financial circumstances and whether the landlord has been convicted of a relevant offence.
20. On the basis of the Applicants' unopposed evidence, the gravity of the offence in this case is higher up the scale. The rented room shared a wall with the café. A room where the café's materials were stored could be seen through a bathroom window. There was no fire separation, despite the café's kitchen being a high risk area for fire.
21. Further, the Applicants complained of a number of failures of service which probably would have been addressed if a licence application had been made. There was no heating system, the hot water was inoperative for several weeks, there was no internet access (despite being provided for in the tenancy agreement), the water pressure was low, the WC door got stuck, a leak in the bathroom affected the electrics, there was mould sufficient to send one of the Applicants to hospital with respiratory

problems, and there were no fire safety measures. When the Applicants raised disrepair with the Respondents, they refused to deal with it.

22. In this case, the lack of licensing wasn't the Respondents' only default. Together with the lack of registration for council tax and the apparent breaches of planning law, there is strong evidence that the Respondents need significant incentive to comply with the law.
23. The Respondents provided no evidence, including of their financial circumstances or any conduct by themselves or the tenants.
24. In the circumstances, the Tribunal concluded that the Applicants should be awarded a RRO in the full amount of £4,356.
25. The Applicants paid £300 in Tribunal fees and asked the Tribunal to exercise its power to order the Respondent to reimburse them. The application has succeeded in full. In the circumstances, the Tribunal is satisfied that it is appropriate to order reimbursement of the fees.

Name: Judge Nicol

Date: 9th November 2021

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 95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) 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 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,
and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,
as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (6B) 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.
- (7) For the purposes of subsection (3) 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 (8) is met.
- (8) 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.
- (9) In subsection (8) “*relevant decision*” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Section 263 Meaning of “person having control” and “person managing” etc.

- (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.
- (4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).
- (5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

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.

(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.

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.

Section 52 Interpretation of Chapter

- (1) In this Chapter—
 - “offence to which this Chapter applies” has the meaning given by section 40;
 - “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012;
 - “rent” includes any payment in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit;
 - “rent repayment order” has the meaning given by section 40.
- (2) For the purposes of this Chapter an amount that a tenant does not pay as rent but which is offset against rent is to be treated as having been paid as rent.

