



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

**Case reference** : **LON/00AE/HMF/2021/0149  
FVHREMOTE**

**Property** : **54 Poplar Grove, Wembley, Middlesex,  
HA9 9DB**

**Applicants** : **Juliet Fernandes**

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

**Respondents** : **Mohinder Singh Rajan and Gurudev  
Rajan**

**Representative** : **Mr Robin Stewart of Anthony Gold  
Solicitors**

**Type of application** : **Application for a rent repayment order  
by tenant**  
Sections 40, 41, 43, & 44 of the Housing and  
Planning Act 2016

**Tribunal members** : **Judge Shepherd**  
**Mr Appollo Fonka MCIEH CEnvH M.Sc**

**Venue and date of  
hearing** : **Remote hearing by video on 27<sup>th</sup>  
October 2021**

**Date of decision** : **27<sup>th</sup> October 2021**

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**DECISION**

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**Decision of the tribunal**

- (1)** The Tribunal dismisses the rent repayment application made by the applicant for the reasons set out below.

**Reasons for the tribunal's decision**

## **Introduction**

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as 54 Poplar Grove Wembley HA99DB .The tenant seeks a Rent Repayment Order (RRO) for the total sum of £6000. This property is described in the tenants' application as a 2-bedroom flat in which the dining room has been converted into a third bedroom.
2. 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.
3. The hearing of the application took place on 27<sup>th</sup> October 2021 by a video hearing. The applicant appeared with no representation and thus appeared as a litigant in person. The respondent was represented by Mr Stewart of Anthony Gold Solicitors.
4. Prior to the hearing the Respondents' solicitors had applied to strike out the application on the basis it was time barred. The application was contained in a letter dated 20<sup>th</sup> October 2021. The Respondents had mentioned the potential limitation defence in their statement of case however the defence was only made good on receipt of information from the local authority, Brent Council.
5. The information from Brent consists of a letter from Tony Jemmott the Private Housing Manager dated 19<sup>th</sup> October 2021. In the letter he confirms that a valid license application had been made by the Respondents on 6<sup>th</sup> December 2019 and that there was a file note dated 5<sup>th</sup> July 2021 confirming that an inspection had taken place and the premises were no longer an HMO. Indeed, it was recorded that the premises had ceased being an HMO in July/August 2020. This was because the other occupiers had moved out and the only remaining tenant was the applicant.
6. The hearing bundle contained evidence of the license application and the payment of the fee. The Tribunal was not in a position to go behind the evidence of the local authority which confirmed that a valid application had been made on 6<sup>th</sup> December 2019. This had the effect of providing a defence to the offence of running an HMO without a license (see s72(4) of the Housing Act 2004). This defence could be relied upon thereafter because the application to the local authority was extant and effective until it was no longer required.
7. The RRO application was dated 9<sup>th</sup> June 2021. In order to be valid the application would have to be made within 12 months of the offence being committed (see s.41(2)(b) of the Housing and Planning Act

2016). As a result of the local authority confirming the valid license application date as 6<sup>th</sup> December 2019 and the fact that this was over 12 months before the RRO application was made it is regrettably clear that the application is time barred.

8. The Tribunal explained the strike out application to the Applicant who understood and accepted its consequences. The RRO application must be dismissed.
  
9. Mr Stewart wisely did not pursue costs on the part of his clients. This was a dry technical defence. The Tribunal regrets that through no fault of her own (she appears to have received advice to hold off issuing her application until the criminal proceedings had past) the Applicant is now prevented from pursuing recourse against her landlords. For their part the Respondents have already been punished in the criminal courts and appeared to understand the necessity of complying with the law in the future. It is hoped that the parties can now draw a line under these proceedings and proceed on the basis that all issues are resolved. Rights of appeal are set out in the annex to this decision and relevant legislation is set out in an appendix to this decision.

Name: Judge Shepherd

Date: 27<sup>th</sup> October 2021

## Annex

### Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **Appendix of relevant legislation**

### **s41 Housing and Planning Act 2016**

#### **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.