



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

Case Reference : **LON/00AL/HMF/2021/0030**

HMCTS code (paper, video, audio) : **V: CVP VIDEO**

Property : **373a Well Hall Road, London SE9 6TY**

Applicant : **Mr Enoch Sowah Adjetej**

Representative : **In person**

Respondent : **(1) Kenneth Lloyds Limited
(2) Mrs Aftaban Bibi Ali**

Representative : **The Second Respondent was represented by Mrs Ahmed**

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 N Hawkes
Mr A Fonka MCIEH CEnvH M.Sc**

Venue and date of hearing : **Remote video hearing on 11 August 2021**

Date of Decision : **12 August 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. 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 we were referred to are contained in the Applicant's 83 page bundle and in the Second Respondent's 155 and 2 page bundles, the contents of which we have noted. The order made is described below.

Decisions of the Tribunal

(1) The Tribunal makes a rent repayment order in favour of the Applicant against the First Respondent, Kenneth Lloyds Limited, in the sum of £6,240.

(2) The Tribunal does not make a rent repayment order against the Second Respondent, Mrs Aftaban Bibi Ali.

The background

1. By an application dated 21 January 2021, Mr Adjetey (the Applicant) applied for a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act").
2. The Respondents to this application are Kenneth Lloyds Limited, the Applicant's immediate landlord, and Mrs Aftaban Bibi Ali, the superior landlord and the freehold owner of 373a Well Hall Road, London SE9 6TY ("the Property"). It is apparent from the written tenancy agreements to which the Tribunal was referred at the hearing that Mrs Ali sublet the Property to Kenneth Lloyds Limited who in turn sublet a room at the Property to the Applicant.
3. On 21 March 2021, the Tribunal issued Directions ("the Directions") leading up to a final hearing which took place on 11 August 2021.
4. The Applicant attended the hearing in person. Kenneth Lloyds Limited (the First Respondent) did not attend the hearing and has taken no steps to comply with the Tribunal's Directions. Mrs Aftaban Bibi Ali (the Second Respondent) attended and was represented by her daughter, Mrs Aktar Nasim Ahmed, at the hearing.
5. At the commencement of the hearing, the Tribunal considered whether it had jurisdiction to make a RRO against the Second Respondent. The Tribunal concluded that it could not make a RRO against the Second Respondent and then went on to consider whether to make a RRO against the First Respondent with reference to the list of issues set out in the Annex to the Directions.

The application for a RRO against the Second Respondent

6. In *Rakusen v Jepsen* [2021] EWCA Civ 1150, the Court of Appeal held that section 40(2)(a) of the 2016 Act only enables a RRO to be made against an immediate landlord and not against a superior landlord.
7. The Tribunal asked the Case Officer to provide the Applicant and the Second Respondent with a copy of the Court of Appeal judgment in *Rakusen* and adjourned for 30 minutes in order to enable the judgment to be sent out and considered.
8. Having given the Applicant and the Second Respondent the opportunity to make representations and having considered the judgment (in particular paragraph 43), the Tribunal concluded that it could not make a RRO against the Second Respondent because she is the superior landlord. The Tribunal does, however, have jurisdiction to potentially make a RRO against the First Respondent.

The application for a RRO against the First Respondent

9. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.
10. Statutory guidance for Local Housing Authorities concerning RROs under the 2016 Act was published on 6 April 2017 (“the Statutory Guidance”). The Tribunal has had regard to the Statutory Guidance in determining this application.
11. Section 41 of the 2016 Act provides:

(1) A tenant ... 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.”
12. Section 43 of the 2016 Act provides:

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.

Whether the Tribunal is satisfied beyond reasonable doubt that the First Respondent has committed a relevant offence

13. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) of controlling or managing an unlicensed house in multiple occupation (“HMO”).

14. Section 72 of the 2004 Act provides, so far as is material:

72 Offences in relation to licensing of HMOs

(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 (see section 61(1)) but is not so licensed.

...

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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)

15. By section 263(3) of the 2004 Act:

(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 ... 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.

16. The Applicant referred the Tribunal to a letter dated 12 February 2021 from the Royal Borough of Greenwich stating:

“1. Royal Borough of Greenwich has had a borough wide additional licensing scheme from 01/10/17. We believe that the property at 373A Well Hall Road, London SE9 6TY required an HMO licence from 1/10/17.

2. On 09/09/2020, information was received by [the] Royal Borough [of] Greenwich that 373A Well Hall Road, London SE9 6TY is a House in Multiple Occupation consisting of up to 5 unrelated occupants.

3. On 16/09/2020 we received an HMO licence application and considered that the application was “duly made” on that date, the application is still being processed.”

17. The Applicant also referred the Tribunal to an email from Imran Hussain of the First Respondent stating:

“I understand your concerns in relation to the HMO licence and it not being in place, this was due to an office error where a previous staff [sic] was suppose to [sic] submit this yet failed to do so. As soon as we was made aware of it was done.”

18. On the basis of this correspondence and the Applicant’s oral evidence, the Tribunal is satisfied beyond reasonable doubt that the First Respondent committed the offence of controlling or managing an unlicensed house in multiple occupation. The Tribunal is not satisfied that an office error amounts to a “reasonable excuse” and the First Respondent did not, in any event, submit that it had a reasonable excuse for managing an unlicensed HMO, having failed to participate in these proceedings.

Did the offence relate to housing that, at the time of the offence, was let to the tenant?

19. The Applicant referred the Tribunal to a written tenancy agreement which he entered into with the First Respondent as his landlord in respect of “Room 2” at the Property. The written tenancy agreement is for the period 4 February 2019 to 2 February 2020.

20. The Tribunal accepts the Applicant's oral evidence that he remained a tenant at the Property after 2 February 2020. This oral evidence is supported by written evidence in the Applicant's bundle, including rent receipts from the First Respondent for the period September 2019 to September 2020 and a notice proposing a new rent dated 29 October 2020.
21. In all the circumstances, the Tribunal is satisfied that the offence related to housing that, at the time of the offence, was let by the First Respondent to the Applicant.

What is the applicable period and what is the maximum amount which can be ordered under section 44(3) of the 2016 Act?

22. The amount of any rent repayment order must relate to rent paid by the Applicant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) of the 2016 Act).
23. By section 44(3) of the 2016 Act:
 - (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.*
24. At the hearing, the Applicant confirmed that the relevant 12 month period runs from September 2019 to August 2020 (rather than from September 2019 to September 2020 as stated in his schedule). The Tribunal was initially of the view that one month's rent would fall to be deducted from the Applicant's total figure of £6,240. However, we note that the Applicant failed to include the month of October in his schedule (although he did rely upon a rent receipt as demonstrating that he paid rent for the month of October 2019). Accordingly, the figure of £6,240 represents 12 months' rent paid during the period September 2019 to August 2020.
25. The Applicant relied upon receipts provided by the First Respondent which demonstrate that he paid rent at the rate of £520 per month from September 2019 to August 2020 and upon his oral evidence that he made these payments. We are satisfied that on the balance of probabilities that these payments were made and that the maximum amount of any RRO is £6,240. It has not been suggested that the Applicant was in receipt of universal credit.

The amount of the rent repayment order

26. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that in certain circumstances the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
27. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(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.

The conduct of the tenant

28. The First Respondent did not attend the hearing to make any representations concerning the conduct of the Applicant.

The financial circumstances of the landlord

29. The First Respondent did not attend the hearing to make any representations concerning its financial circumstances.

Whether the landlord has at any time been convicted of an offence to which this Chapter applies

30. Neither the Applicant nor the Second Respondent is aware of any criminal conviction.

The conduct of the landlord

31. Firstly, we take into account the fact that the First Respondent has failed to comply with the Tribunal's Directions and has failed to attend the hearing.
32. The Applicant gave evidence that following a fire in commercial premises below the Property, he wrote to Kenneth Lloyds by email dated 3 July 2020 stating:

“Following the recent fire incident at the property, 373A Well Hall Road I would like to know for my own health and safety:

- If a risk assessment has been carried out at the property as it is now more of a commercial rental property.*
- When last electrics and gas safety assessment were carried out as well as smoke detectors testing.*
- Would be helpful if you could provide the risk assessment and electric safety finds and any relevant information regards health and safety at the property*

As it stands the gas cooker is a gas and fire hazard as the dials on the cooker are not the right one and one do not know if the gas is turned off or not as some of the dials come off the gas clockwise and some vice versa and the oven door does not shut. Considering a scenario where the oven is turned on unknowingly, there is a gas leak, with the oven which door does not shutting as it should and cooker is ignited during cooking activities, we there is more that likely [sic] to be a fire putting my life at risk.

On a separate note

- 1. The main door does not shut*
 - 2. Hoover is broke*
 - 3. The Bathroom drains are blocked*
 - 4. The cooker/oven needs replacing*
 - 5. The carpet in the communal area needs cleaning due to activities of the fire brigade.”*
33. Daniel Rozados of the First Respondent replied stating *“Thanks for contacting us regarding 373a Well Hall Road. We are looking into it and we will let [sic] as soon as we can.”* The Applicant gave evidence that no steps were then taken to resolve the issues to which he drew the First Respondent’s attention and that the Property remained in a state of disrepair. The Second Respondent confirmed that she did not personally inspect the Property and so she cannot comment on its condition at the relevant time. We accept the Applicant’s evidence.
34. The Applicant also gave evidence, which we accept, that a representative of the First Respondent entered his room without his

consent and without giving him any notice and that this occurred during the coronavirus pandemic.

35. The Applicant additionally states that the First Respondent increased his rent when he complained about the condition of the Property. From discussions with the other tenants, he ascertained that only his rent was increased and he infers that the rent increase was retaliatory and that the First Respondent was seeking to evict him. The Applicant ultimately moved out. We accept the Applicant's evidence of fact concerning the rent increase but do not consider that we have sufficient evidence to make findings concerning the First Respondent's motivations. Further, we are in any event satisfied on the basis of our other findings that a RRO should be made in the maximum amount.
36. The Second Respondent gave evidence that in oral discussions prior to letting the Property to the First Respondent she informed the First Respondent that the Property was to be let as a single unit and not as an HMO. Accordingly, the letting of the Property by the First Respondent as an HMO was contrary to the Second Respondent's express instructions. We accept this evidence.
37. Having considered the Statutory Guidance and all of the circumstances of the present case, including the specific findings set out above concerning the conduct of the First Respondent, the Tribunal is satisfied that a RRO should be made in favour of the Applicant against the First Respondent, Kenneth Lloyds Limited, in the sum of £6,240. This represents 100% of the rent paid by the Applicant during the relevant period.

Name: Judge Hawkes

Date: 12 August 2021

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).