



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

Case Reference : **LON/00AL/HMF/2021/0172**

HMCTS : **V: CVPREMOTE**

Property : **74 Austen Close, Thamesmead,
London, SE28 8AZ**

Applicant : **Mr Ricardo Lima**

Representative : **Mike Pilkington
(Knights Law Solicitors Limited)**

Respondent : **Housing Best Limited**

Representative : **No appearance**

Type of Application : **Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016**

Tribunal Member : **Judge Robert Latham
Mr A. Fonka, MCIEH CEnvH M.Sc**

**Date and Venue of
Hearing** : **17 November 2021 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **17 November 2021**

DECISION

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: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicant provided a Bundle of Documents which extended to 62 pages.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £6,600 which is to be paid by 15 December 2021.
2. The Tribunal determines that the Respondent shall also pay the Applicant £300 by 15 December 2021 in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application, dated 6 July 2021, the Applicant seeks a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The application relates to the accommodation which he occupied at 74 Austen Close, Thamesmead, London, SE28 8AZ (“the Property”) between 24 August 2019 and 23 August 2020. The Applicant has been represented by Mike Pilkington of Knights Laws Solicitors Limited.
2. On 26 July, the tribunal sent a copy of the application to the Respondent at 53 Banning Street, Greenwich Peninsula, London, SE10 0NZ.
3. On 11 August, the tribunal issued Directions. A hearing was fixed for today. On 12 August, the tribunal sent a copy of the Directions to the respondent and highlighted the hearing date.
4. On 6 September, the Applicant emailed the bundle of documents upon which he relies in support of his application, to the tribunal. He also emailed a copy to Respondent.
5. By 1 October, the Respondent was directed to provide its Case in Response. The Respondent has not engaged with this application.
6. On 11 November, the tribunal emailed the Respondent asking it to confirm who would be attending the hearing. The tribunal received no response. On 16 November, the tribunal emailed joining instructions to the Respondent.

The Hearing

7. The Applicant, Mr Ricardo Lima attended the virtual hearing. He was represented by Mr Pilkington. He gave evidence. He works for a tech-based nursing agency. The Tribunal has no hesitation in accepting his evidence.
8. Mr Pilkington also adduced evidence from Mr Dotun Okuwobi, an Intelligence Office in the Houses in Multiple Occupation Regulation Team of the Royal Borough of Greenwich (Greenwich"). On 28 July 2020, Mr Okuwobi inspected the Property. He is not an environmental health officer and did not assess the conditions. He subsequently served statutory notices on the Respondent. On 11 February 2021, Greenwich imposed a Financial Penalty of £2,500 for the control or management of an unlicensed HMO under section 72(1) of the Housing Act 2004 ("the 2004 Act"). The Respondent paid the penalty within the 14 day period which enabled it to benefit from a 50% discount. Mr Okuwobi informed the Tribunal that the landlord has not applied for an HMO licence, apparently on the ground that the Property is no longer let as an HMO.
9. There was no appearance from the Respondent. Mr Okuwobi confirmed that the Applicant had provided the tribunal with the same contact details for the Respondent as had been used by Greenwich.

The Background

10. The Property at 74 Austen Close is a modern three storey terraced house. There are now four bedrooms. We suspect that at least one of these would have originally been a living room. There is a garage at ground floor level behind which there is a small kitchen/living room and a toilet. On the first floor there are two bedrooms. There are a further two bedrooms on the second floor, together with a bathroom. Mr Lima stated that the four bedrooms were occupied by the same four separate household throughout his tenancy. Single people occupied two of the bedrooms. The third was occupied by Amina, her partner and her baby. All the tenants shared the kitchen, bathroom and toilet.
11. Mr Lima saw the property advertised on Spare Room. He was shown round by a member of the Respondent's staff. He was granted a 12 month Assured Shorthold Tenancy for the period 24 August 2019 to 23 August 2020 at a rent of £650 per month. The rent was inclusive of fuel charges and council tax. He was also required to pay a deposit of £650. The name of the landlord was not specified on the tenancy agreement. Neither was he notified of any address for service of notices as required by section 48 of the Landlord and Tenant Act 1985. He paid his rent regularly, by standing order, to Housing Best Limited.

12. Mr Lima was also required to pay some £37 for a set of keys. This would have been a prohibited payment within the Tenant Fees Act 2019. He was not provided with any of the following: (i) the “How to Rent – The Checklist for renting in England”; (ii) an Energy Performance Certificate; (iii) a gas safety certificate; or (iv) the deposit paperwork. Indeed, the Respondent did not protect his deposit in a Rent Deposit Scheme.
13. Mr Lima had a number of issues when he lived at the property. The electricity supply kept shorting and this damaged his computer equipment. He suspected that the property required an HMO licence and did an on-line check with Greenwich. This confirmed that the house did not have a licence.
14. Mr Lima had several arguments with one of the tenants in particular, namely the tenant in Room 1. This did not make for a pleasant environment in which to live. The tenants were supposed to have the common areas of the property cleaned and split the cost between everyone. He asked to see the receipts for the cleaning charges, but these were not provided. The tenants became aggressive towards him and he did not feel safe.
15. Bearing in mind all these problems Mr Lima decided to move out early, and left the property in 12 June 2020. Despite this, he continued to pay the rent up until the end of the tenancy term. He returned to the property on a number of occasions to collect items. He always took his father or a second person with him, for safety.
16. Mr Lima became concerned that his deposit would not be returned. On 19 June, after speaking to Shelter, he emailed the Respondent to ask them to provide details of the landlord of the property and whether his deposit was protected. He notified them that he was aware that he could claim a penalty of three times the rent if it was not protected. He asked to be released from his tenancy and stated that he would not seek any penalty if this was agreed. His proposal was rejected.
17. Mr Lima subsequently learnt that the freeholder of the property was Sinead Rose when his deposit was placed in a Deposit Protection Scheme and the Certificate was registered in her name. He subsequently recovered his deposit from her together with a penalty of £1,585.

The Housing and Planning Act 2016 (“the 2016 Act”)

18. Section 40 of the 2016 Act provides:

“(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.”

19. Section 40(3) tabulates seven offences. These include the offence of “control or management of an unlicensed HMO” under section 72(1) of the 2004 Act.

20. Section 41 deals with applications for RROs. The material parts provide:

“(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.

21. Section 43 provides for the making of RROs:

“(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).”

22. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides:

“(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.

23. Section 44(4) 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 Housing Act 2004 (“the 2004 Act”)

24. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that a building or a part of a building meets the “standard test” if:

“(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.”

25. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

26. On 19 April 2017, Greenwich introduced an Additional Licencing Scheme. This extended to all HMOs in the borough occupied by three or more separate households.

27. Section 263 defines the concepts of “person having control” and “person managing”:

“(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.”

Our Determination

28. Our starting point is section 263 of the 2004 Act (see [39] above). We are satisfied that the Respondent falls within the statutory definitions the “person managing” the property. The Respondent received the rent from the persons who were in occupation of the property.
29. Towards the end of his tenancy, Mr Lima learnt that the freeholder of the Property is Sinead Rose. Regardless of whether Ms Rose granted the Respondent any interest in land, the Tribunal is satisfied that the Respondent created a tenancy by estoppel and is the relevant landlord for the purposes of this application.

30. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) The Property was an HMO falling within the “standard test” as defined by section 254(2) of the 2004 Act which required a licence (see [37] above):

(a) it consisted of five units of living accommodation not consisting of self-contained flats;

(b) the living accommodation was occupied by persons who did not form a single household;

(c) the living accommodation was occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constituted the only use of the accommodation;

(e) rents were payable in respect of the living accommodation; and

(f) the households who occupied the living accommodation shared the kitchen, bathrooms and toilets.

(ii) The Property required licence under Greenwich’s Additional Licencing Scheme.

(iii) Alternatively, the Property fell within the prescribed description of an HMO that required a licence (see [25] above):

(a) it was occupied by five or more persons;

(b) it was occupied by persons living in two or more separate households; and

(c) it met the standard test under section 254(2) of the 2004 Act.

(iv) The Respondent had not licenced the HMO as required by section 61 of the 2004 Act. This is an offence under section 72(1).

(v) The offence has been committed between 24 August 2019 and 23 August 2020, the period of the Applicant’s tenancy.

31. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. We are satisfied that the Applicant was not in receipt of any state benefits. He paid his rent from his earnings.

32. The Applicant seeks a RRO in the sum of £6,600 based on the rent which he paid during the twelve month period of his tenancy. Whilst we were told that his rent included fuel bills and council tax, the Respondent has adduced no evidence of the cost of these services.
33. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
- (i) The conduct of the landlord: There has been a lack of transparency in the grant of this tenancy. The Tribunal has identified a number of issues of concern.
- (ii) The conduct of the tenant: There is no criticism of the conduct of the tenant.
- (iii) The financial circumstances of the landlord: There is no evidence of this.
- (iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. There is no relevant conviction in this case.
34. We have had regard to the recent decisions of the Upper Tribunal including Judge Cooke in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); the Deputy Chamber President, Martin Rodger QC, in *Ficcara v James* [2021] UKUT 38 (LC); and the Chamber President, Mr Justice Fancourt in *Williams v Parmar* [2021] UKUT 244 (LC).
35. We note that the relevant factors which we should take into account are not limited to those mentioned in section 44(4). We do not take into account the failure to place the deposit in a Deposit Protect Scheme as a separate penalty has been imposed in respect of this. We note that Greenwich has imposed a Financial Penalty. This was at the very lowest end of the scale. This does not justify any reduction in the RRO that we make as Parliament has decided that a separate penalty should be payable in these circumstances (see *Vadamalayan* at [55]).
36. Having regard to findings above, we are satisfied that it is appropriate to make a RRO in the sum sought.
37. We are also satisfied that the Second Respondent should refund to the Applicant the tribunal fees of £300 which he has paid in connection with this application.

Judge Robert Latham
17 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.