FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00BJ/HMB/2020/0002**
HMCTS code	**:**	**V:CVP Remote**
Property		**37 Longmead Road, SW17 8PN**
Applicant	**:**	**Joshua Czachur & Inga Solofuti**
Representative	**:**	**N/A**
Respondent	**:**	**Dr Sanjay Kumar Agarwal**
Representative	**:**	**Street Estates Limited – Mr Griffin**
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(s)	**:**	**Judge H Carr** **Mr Stephen Wheeler MCIEH**
Date and venue of hearing	**:**	**25th March 2021 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**9th April 2021**

DECISION

© CROWN COPYRIGHT

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: SKYPEREMOTE. A face-to-face hearing was not held it was not practicable and all issues could be determined in a remote hearing. The tribunal were provided with an unnumbered electronic bundle prepared by the applicants, and a number of electronic documents provided by the respondent. The determination below takes account all the documentation received from the parties.

Decisions of the tribunal

(1) The tribunal determines to make a Rent Repayment Order of £11,250 . The amount for each of the applicants is as follows:

a. Mr Czachur - £6030

b. Mr Solofuti - £5220

(2) The tribunal orders the respondent to reimburse the applicants the application fee and the hearing fee totalling £300 within 14 days of receipt of this determination.

(3) The tribunal makes the determinations as set out under the various headings in this decision

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).

2. The applicants seek a total RRO of £11,830.00. The relevant period is 6th June 2018 - 5th June 2019 The application was made on 4th June 2020.

3. The applicants assert that:

(i) Mr Josh Czachur was a tenant from 9 October 2017 until 24 July 2019 and paid £600 per calendar month in rent

from the commencement of the agreement. The rent rose to £630 pcm in March 2019.

(ii) Mr Inga Solofuti was a tenant from 20 February 2018 until 5 June 2019 and paid £145 per week in rent throughout the time of his occupancy.

4. The applicants allege that the following offences have been committed:

(i) "control or management of an unlicenced HMO" under section 72(1) of the Housing Act 2004 ("the 2004 Act); and /or

(ii) "harassment of occupiers" under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977.

The hearing

5. Mr Czachur attended the hearing on his own behalf and on behalf of Mr Solofuti. The respondent was represented by Mr Griffin of Streets Estates Limited.

6. The tribunal noted that the respondent had not provided a statement of truth. It also noted that the bundle provided by the respondent did not comply with the directions. Instead every document had been provided individually and it was difficult to understand what each document was as there was limited coherence to the labelling of the documents.

7. Nonetheless the tribunal is grateful to Mr Czachur and Mr Griffin who answered the tribunal's questions frankly.

The background and chronology

8. The property is a three bedroom house with two reception rooms ,a kitchen and a bathroom.

9. The respondent, Dr Agarwal, is the freehold owner of the property. He acquired the property on 21st May 1987. Mr Griffin, from Streets Estate Ltd, said that the house had been family property and lived in by the family until the respondent went to work in the United States. In his statement the respondent said that it was his only home in the United Kingdom. Prior to 2017 the property appears to have been rented out via another agent, but Mr Griffin had no details of this.

10. The respondent entered into an agreement with Streets Estate Ltd on 25th May 2017 to act as agents for renting out the property. The copy of the agreement provided by Mr Griffin indicated that it was for the full management service including advertising and marketing the property, interviewing prospective tenants, and carrying out credit search and referencing, preparing the tenancy agreement and arranging for it to be signed, and collecting the rent. The service provided includes rent and legal expenses guarantee insurance. It also includes regular inspections of the property carried out on a half yearly basis. That service includes the proviso that if Street Estates do not think it is necessary inspections will only take place annually.

11. Shortly after that the respondent entered into an Assured Shorthold Tenancy agreement with Mr Balazx Stalter and Mrs Szilvia Banszki in 2017. Mr Stalter agreed to pay rent of £2,150 pcm to Street Estates who deducted 10 % commission and forwarded the balance to the respondent. The tenancy was for an initial fixed term of 12 months. It rolled over into a periodic tenancy from October 2018.

12. The agreement included terms that limited the occupiers to a maximum of 2 and that the tenant had to occupy the property as his principal home.

13. It appears that from October 2017 Mr Stalter rented out rooms in the property. Mr Czachur says that he found the room on spareroom.co. Individual rooms were let out on individual agreements and occupiers were not known to each other. He was the first occupier to move into the property but other occupiers quickly followed.

14. Mr Czachur and Mr Solofuti are two of the five people who were occupying the property at the relevant time. They occupied the rooms on a permanent basis. The rooms had individual locks and there was a double bed in each room. The three bedrooms were occupied as well as the two reception rooms. There was therefore no shared living space. The kitchen and bathroom were shared. Mr Stalter did not reside in the property.

15. Mr Czachur occupied his room in the property from 9th October 2017 until 24th July 2019. He did not sign a written agreement but he understood that the terms of his agreement were that he was required to pay one month rent in advance as a deposit and then pay £600 each

month in rent. The rent was raised in March 2019 to £630 pcm. The agreement was that he would be given one month's notice of termination and his deposit would be used to pay the final months rent.

16. Mr Solofuti occupied the property from 20th February 2018 until 5th June 2019. He did not sign a written agreement but he understood that he would pay 4 weeks rent in advance as a deposit and then pay £145 per week in rent. He was entitled to one month's notice and the rent for that period would be covered by the deposit.

17. The applicants paid their rent to Mr Stalter and provided bank statements as evidence of their payments.

18. Mr Czachur approached Wandsworth Council on 4th January 2019 initially because the oven was broken and Mr Stalter did not appear to be taking steps to get it repaired. As a result of conversations with the Council they were informed that it appeared to be an unlicensed HMO. On 26th February Michelle Marsden an Environmental Health Officer for Wandsworth Council visited the property. The applicants showed her all the bedrooms in the house and she took measurements and statements.

19. The Council found that the property was an HMO and prosecuted Mr Stalter for operating an unlicensed HMO. Mr Stalter was convicted by magistrates court on 21/11/2019 of having control of an unlicensed HMO.

20. Mr Stalter stopped paying rent in March 2019. Mr Griffin told the tribunal that the property was covered by rent guarantee insurance and covers the costs of missing rent payments and the costs involved in eviction. When rent was outstanding for six weeks the matter was handed to the insurers who took steps under ground 8 of the Housing Act 1988 and paid the arrears of rent.

21. It appears – although Mr Griffin did not have the evidence to hand – that possession proceedings against Mr Stalter were commenced on 30th April 2019 and a possession order was obtained on 24th July 2019. On that date Mr Stalter surrendered possession,

22. The applicants say that from the time that the Council became involved in the matter Mr Stalter started harassing the occupiers and threatening illegal eviction.

23. Mr Stalter sent an email to Streets Estates Ltd on 20th April 2019 telling them that he needed to evict 3 subtenants and suggesting ways to evict them without serving notice or getting a court order.

24. Mr Czachur contacted Streets Estates Ltd on 30th April 2019 to inform them of Mr Stalter behaviour. The details of the allegations of harassment are set out below at paragraphs 60-63.

25. Streets Estates replied the same day saying that they could not discuss the matter due to data protection but that they were happy to liaise with the police directly.

26. Mr Solofuti left the property on June 5th 2019, returning to his native New Zealand.

27. Mr Czachur left the property on 24th July 2020 having found somewhere else to live.

28. There has been no application for an HMO licence.

The issues

29. The issues that the tribunal must determine are:

(i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offences? The particular issues raised by the respondent and requiring determination are

(a) Is the respondent a person who has control of or manages the property which is unlicensed and requires to be licenced ?

(b) If he is does the respondent have a reasonable excuse defence?

(c) Did the respondent harass the applicants under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977?

(ii) If the tribunal determines that the relevant offence has been committed by the landlord then it must determine

what amount of RRO, if any, should it order. There are two particular issues to be decided in this case:

(a) What is the maximum RRO that can be awarded?

(b) What account should be taken of

(1) The landlords conduct?

(2) The tenants' conduct?

(iii) Should the tribunal refund the applicants the applicant fee and the hearing fee.

The relevant law

30. The relevant sections of the Housing Act 2004 are as follows:

s.72(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 but is not so licensed.

s.72(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), or

(b)for permitting the person to occupy the house, or

(c)for failing to comply with the condition,

as the case may be.

s. 263 (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.

31. The relevant section of the Protection from Eviction Act 1977 is as follows:

Section 1

(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2)If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that

he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3)If any person with intent to cause the residential occupier of any premises—

(a)to give up the occupation of the premises or any part thereof; or

(b)to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(3A) Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if—

(a)he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or

(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe, that that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the offence of having "control or management of an unlicenced HMO"?

32. Mr Stalter was convicted in the magistrates court for being in control of an unlicensed HMO. The tribunal is therefore satisfied beyond reasonable doubt that the property is an unlicensed HMO.

33. The issues that are outstanding in connection with this alleged offence and require to be determined by the tribunal are (i) whether the respondent is a person in control of or managing the property and (ii) whether the respondent has a defence of reasonable excuse.

Is the respondent a person in control of or managing the property?

34. The applicants argue that the respondent is a person in control of the property because he is the freehold owner of the property. They rely on **Goldsborough v CA Property Management Ltd [2019] UKUT 311** and **Rakusen v Jepson and Others [2020]UKUT 298**. They argue that these cases confirm that there may be more than one person who is the landlord and in control of the property as defined by section 263 of the Act.

35. They argue that the respondent is a person who was entitled to the rack rent as he let the property out to Mr Stalter. They say that there is nothing to suggest that this was for less than the market rate and it is clear that he either received the rack rent or would be entitled to received is as a result of the tenancy agreement between himself and Mr Stalter.

36. Mr Griffin argues that the respondent is not the person in control of the property. He told the tribunal that the respondent let the property to Mr Stalter and his partner on an AST. That agreement limited the occupation of the property to 2.

37. Mr Griffin told the tribunal that he had read the decisions referred to by the applicants and he considered there was a difference between the circumstances of those cases and the application before the tribunal. He said that in those cases there was a rent to rent agreement and not an AST in place.

38. Mr Griffin emphasised that the respondent had no knowledge of the applicants and argues that there was no rack rent received.

The decision of the tribunal

39. The tribunal determines that the respondent was a person in control of the premises for the purposes of s.263 of the Act.

The reasons for the decision of the tribunal

40. The tribunal accepts the arguments of the applicants that the respondent was in receipt of a rack rent for the premises which he received from the immediate landlord. He is therefore a person in control of the property for the purposes of s.263(1) .

41. The status of the intermediary agreement is not relevant at this point in the determination of the tribunal. It is relevant to the issue of defence of a reasonable excuse to which the tribunal now turns.

Does the respondent have a defence of a reasonable excuse?

42. Mr Griffin says that the respondent has a reasonable excuse defence on the following grounds:

    (i) The property was let to Mr Stalter and Ms Banszki on an AST.

    (ii) The agreement specifically limited the number of occupiers and required the tenants to occupy the property.

    (iii) The agents took up references therefore taking reasonable steps to check the credibility of the tenants.

    (iv) The agents inspected the property and carried out a gas safety check.

    (v) The agents only had concerns about Mr Stalter when he stopped paying rent in March 2019. At that stage they commenced possession proceedings

    (vi) Mr Griffin said that the first that he knew of the subletting was 20th April 2019 when Mr Czachur wrote to Streets.

    (vii) The landlord has not been in contact with any of the occupiers of the property. He pays the agents to manage the property and does not have contact details for Mr Stalter.

43. In summary Mr Griffin is arguing that the agreement expressly prohibited subletting and neither the respondent knew about it, nor did Street management. Therefore the respondent has a reasonable excuse defence.

44. The applicants say that in no time in the two years they lived at the property did anybody from Streets Estates Ltd visit or inspect the property. The failure to inspect demonstrates that the respondent knew or ought to have known how the property was being occupied.

45. The tribunal asked Mr Griffin for further details about the inspections. He had no records but recalled that he had inspected the property at

the commencement of Mr Stalter's tenancy. At that point there was no furniture in the property and there were locks on individual doors. Mr Griffin said he was going to remove these but Mr Stalter told him that he would take care of it. Mr Griffin was sure he had inspected on other occasions. When asked if he had noted the occupancy arrangements he said he was inspecting for conditions and not for occupancy. He agreed with the tribunal that sending workmen for instance to carry out the gas safety check would not mean that he was aware of how the property was occupied.

46. The tribunal asked Mr Griffin about the email sent by Mr Stalter when he told Streets Estate that he was planning to evict his subtenants. Mr Griffin had no proper explanation as to why he had not taken action to investigate the situation at that point. He said he had already placed the matter in the hands of the insurers and that the employee who had received the email no longer worked for him.

47. The applicants argue that the respondent was complicit in setting up the unlicensed HMO.

48. They argue that even if the respondent did not know about the situation, he should have known. He or his agent allowed the situation to happen. They ignored the legal duty to operate in a Housing Act compliant way.

49. If the property had been inspected the property the 5 bedrooms each with individual locks and each with a double bed would have been found.

50. The applicants say that the arrangement between Mr Stalter, the applicant and Street Management Ltd cannot be the basis of a defence of reasonable excuse.

51. They argue that the respondent remained deliberately ignorant of the letting arrangements of the property and that deliberate ignorance cannot be the basis of a reasonable excuse defence. It would have been easy for the respondent's agent to have put in place arrangements which would have let him know how the property was being used.

The decision of the tribunal

52. The tribunal determines that the respondent has not got a reasonable excuse defence.

The reasons for the decision of the tribunal

53. The tribunal has listened carefully to the arguments of the respondent.

54. It considers that letting the property on an AST with terms prohibiting subletting and limiting the numbers of occupation to two, may in some circumstances provide a reasonable excuse defence to the offence. However letting on an AST with those terms does not automatically protect a superior landlord from the consequences of a rent-to-rent arrangement. Otherwise, it would be easy for the statutory licensing provisions to be avoided. In the opinion of the tribunal the respondent has to provide evidence that the relevant terms of the AST were meaningful in preventing multiple occupation of the property.

55. The tribunal has three concerns arising from the facts in this case. The first concern relates to the locks on the room doors. The tribunal asked whether there were locks on the room doors when Mr Griffin carried out the initial inspection of the property prior to any multiple occupation. Mr Griffin told the tribunal that there were locks on the doors at that time. He remembers telling Mr Stalter that he would arrange to have them removed and that Mr Stalter said that he would organise this himself. Mr Griffin said that he regretted not having arranged the removal of the locks. However he does not seem to have made any arrangements to check whether the locks were removed.

56. The tribunal finds it difficult to believe that Mr Griffin would have allowed locks to remain on the room doors if he considered that Mr Stalter was going to occupy the property with his family. The failure to remove the locks considerably reduces the weight that the tribunal attaches to the AST as the basis of a reasonable excuse defence. Leaving the locks on the doors facilitated the multiple occupation of the property.

57. The second concern is about inspections. Inspections provide one way in which substance is given to the terms of an AST. Mr Griffin's evidence about inspections was not very clear. He says that he inspected during the period of occupancy of the applicants and that he arranged for workmen to carry out the gas safety check and other matters. However there were no records of inspections provided to the tribunal. The one inspection that Mr Griffin was able to provide details of happened before the property was furnished. It provided him with no evidence of how the property was to be occupied, in particular no evidence that it was to be occupied by a family. The tribunal finds it difficult to believe that if Mr Griffin did subsequently inspect he would have been unaware that there were multiple occupiers of the property living in individual rooms with locks. The double beds in the reception rooms would have been a strong indicator. So either Mr Griffin did inspect and knew that the property was in multiple occupation, in which case the applicant has no reasonable excuse defence, or he did not inspect. If he did not inspect, particularly as he was aware that there were locks on doors, then this is problematic in the context of relying on the AST as a defence of reasonable excuse because failing to inspect makes the terms of the AST meaningless.

58. Thirdly the tribunal is concerned about the email that Mr Stalter sent to Streets Estates Ltd on 20th April 2019 which informed that about subtenants and set out proposals to evict them without serving notice or obtaining a court order. The tribunal would have expected that Street Estates would at this point immediately have visited the property to find out what was going on and how it was occupied. Mr Griffin provided no evidence of any response. He told the tribunal this was because steps were already being taken to evict Mr Stalter for non-payment of rent.

59. The tribunal therefore agrees with the applicants that the respondent has not done sufficient to demonstrate on the balance of probablilites that he has a reasonable excuse defence. The respondent, via his agent, was in control of how the property was used and whether that use was consistent with the agreement that was in place. He could have ensured that individual locks were removed, he could have ensured the property was regularly inspected and taken action if there was any indication of multiple occupancy. The tribunal would also have expected to see evidence that he was shocked to learn about the subtenants in April 2019 and taken some immediate action. His failure to take proactive steps to prevent multiple occupation, at the same time as facilitating multiple occupation because the agent failed to remove the individual locks, means that the tribunal determines that there is insufficient evidence to support the defence of reasonable excuse.

Has the respondent committed the offence of "harassment of occupiers" under section 1(2), (3) or (3A) of the Protection from Eviction Act 1977?

60. The applicants say that Mr Stalter started to harass them from March 2019 following them contacting Wandsworth Council and in particular when they cooperated with the council in connection with his prosecution for managing an unlicensed HMO.

61. Mr Czachur provided evidence to the tribunal that Mr Stalter had threatened him and his family via social media, that he threatened to cut off services to the property and that he gave them notice to quit the premises. Mr Stalter made contact with Mr Czachur's employer, and particularly upsetting, he left abusive posts on Mr Czachur's mother's business website.

62. Mr Czachur wrote to Streets Estates on 30th April 2019 to point out that the property was available to let online despite the fact that they were living there. He explained the extent of the intimidation he received and the threats of unlawful eviction and attached the social media messages Mr Stalter had sent him. The tribunal were disturbed by Streets Estates reply that said that they were unable to discuss the allegations with Mr Czachur because of data protection issues. The

tribunal would have expected a more proactive response to allegations that their tenant was committing a crime.

63. The respondent says that the actions of Mr Stalter had nothing to do with the respondent and explains his failure to act in response to the evidence of harassment was because he had already initiated eviction proceedings against Mr Stalter via the insurers.

The decision of the tribunal

64. The tribunal does not find that the respondent committed the offence of harassment under s.1 of the Protection from Eviction Act 1977

The reasons for the decision of the tribunal

65. The tribunal accepts that Mr Stalter has harassed the applicants and that his behaviour may constitute an offence under the Protection from Eviction Act. However there is insufficient evidence to show that the respondent committed an offence under the Act which is what is required in this case.. The applicants would have to show beyond reasonable doubt that Mr Stalter was acting as an agent of the respondent when he was harassing or threatening illegal eviction. Although there is some evidence that Streets Estates Ltd were aware of Mr Stalter's behaviour, at least from April 2019, there is nothing to support a direct link between that behaviour and the respondent.

What is the appropriate amount for the RRO?

66. The tribunal calculated that the maximum RRO that can be ordered is £6030 for Mr Czachur and £5220 for Mr Solofito. It appears that the applicants made a miscalculation in their application to the tribunal.

67. The rental payments are substantiated by the bank statements provided by the applicants. The statements have not been challenged by the respondent.

68. Therefore the starting point for the award is the maximum RRO.

The conduct of the landlord

69. The tribunal notes that the only evidence it has directly from the respondent is a letter included in the respondent's bundle dated 9th February 2021 which indicates that he is angry with the applicants. It shows no concern with the difficult circumstances that the applicants found themselves or any concern with the criminal behaviour of his

former tenant. This is despite the letter postdating the conviction of Mr Stalter.

70. The applicants argue that the respondent made unlawful gains by renting premises without the required licence.

The conduct of the applicants

71. The applicants argue that they were excellent tenants who paid their rent in full and on time.

72. Mr Griffin made no comments about the conduct of the applicants.

Financial circumstances

73. No evidence was provided to the tribunal of the respondent's financial circumstances.

The decision of the tribunal

74. The tribunal determines to make no reduction to the amount of the RRO claimed by the applicants.

The reasons for the decision of the tribunal

75. The tribunal agrees with the applicants that the starting point for the RRO is the rent paid during the period of the claim. There is no evidence before it which would justify making any deductions.

76. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr **Date:** 08 April 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).