



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

Case reference : **LON/00BJ/HMF/2020/0123**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **299 Southcroft Road, London SW16
6QT.**

Applicant : **Ms. W. Rookwood.
Ms. T. Merrett.
Ms. J. Felbinger.
Mr. L. Bruns.
Ms. A. Bishop.**

Representative : **Mr. A. McClenahan of Justice for
Tenants.**

Respondent : **Ms. Angela J. Kinane.**

Representative : **Devonshires, Solicitors LLP
Mr. S. Evans of Counsel at the hearing.**

Type of application : **Application under S.41 Housing and Planning Act 2016 for a Rent Repayment Order.**

Tribunal members : **Ms. A. Hamilton-Farey
Mrs. L. Crane.**

Venue : **Remote.**

Date of decision : **26 April 2021.**

DECISION

Covid-19 pandemic: description of hearing.

This has been a remote video hearing. The form of remote hearing was V: VIDEOREEMOTE. 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 were referred to the tribunal were contained within the applicants' bundle and the respondent's bundle, the contents of which have been noted by the tribunal. The order made is described at the end of these reasons.

Decisions of the tribunal

- (1) The tribunal makes a Rent Repayment Order in favour of the applicants in the sum of **£20,970.86** which shall be apportioned between the individual applicants on the basis of their periods of occupation. This sum shall be paid within 28 days of the date of this decision.

The application

1. The tribunal received an application under S.41 of the Housing and Planning Act 2016 on or around 13 July 2020. In that application the applicants sought a Rent Repayment Order amounting to **£27,961.15** in relation to various periods of occupation between 15 November 2018 and 1 January 2020. The majority of the applicants had been resident in the property for the whole of that period, but some to a lesser extent, and at least one applicant remains in occupation. In addition to the applicants there were at least two other tenants who did not take part in these proceedings (Mr J. Lee, Ms. C. Baxter, and Mr. J. Fehlner).
2. The tribunal issued directions on 9 December 2020 in which three respondents were named. These were:
 - (i) Airswift

(ii) Mark Anthony London

(iii) Ms. Angela Josette Kinane.

3. However, by a letter dated 8 September 2020, Justice for Tenants, the representatives of the applicants wrote to the tribunal to say that Airswift were not a company registered in the United Kingdom and Mr. London had not entered into the Rent-2-Rent Agreement to which these proceedings relate, and that the respondent should therefore be Ms. Kinane.
4. The tribunal sought comments from the parties and received correspondence from Pannone Corporate, the representatives of Airswift to the effect that their client had never entered into an agreement with Ms. Kinane and were not connected in any way with the Airswift noted on the tenancy agreement with Ms. Kinane. The tribunal was satisfied that the only respondent in this matter would be Ms. Kinane and amended directions were issued by the tribunal on 8 March 2021.
5. A hearing was convened by video conferencing on 12 April 2021 at 10:00am. Present at the hearing were Mr. McLenahan of Justice for Tenants, representing the five applicants who were also in attendance. Ms. Kinane attended and was represented by Mr, Evans of Counsel.
6. There were some slight difficulties at the start and during the hearing with loss of connection and camera facilities and the tribunal extends its thanks to the parties for their patience when these occurred.
7. At the start of the hearing Mr. Evans said that Mr. London might make a Rule 6 application, depending on the outcome of the hearing. The tribunal will take no further action on this point unless/until an application is made.

Matters not in dispute:

8. It is not disputed between the parties that the applicants occupied various rooms in the property during the period of claim. As already identified, some of the applicants remained longer than others and Ms. Rookwood exchanged rooms when one of the other tenants vacated.
9. It is not disputed that the tenants paid all of their rent for the period of their occupation.
10. It is not disputed that Ms. Kinane entered into a Tenancy Agreement on 26 October 2018 with a company called Airswift. The term was a period of 36 months and the rental £2,500 per calendar month. Within that agreement the tenants' agents were noted as My Habitat who would receive the rent from the occupiers and pay Ms. Kinane.
11. It is not disputed that the tenancy agreement between Ms. Kinane and Airswift contained two special clauses one of which stated that the *'tenant (Airswift in this case) agrees to allow up to a maximum of four occupants to reside in the property'*. The second related to a ban on the lighting of fires in the fireplaces and is not relevant for these proceedings.
12. It is also not disputed by Ms. Kinane that she did not possess an HMO licence for the property. She informed us that she had specifically told the agents (My Habitat) that the property did not have a licence and that it could only be occupied by four tenants at any one time.

Preliminary:

13. Mr. Evans drew our attention to the fact that Mr. McClenahan did not go through the usual procedure of requiring his witnesses to confirm the veracity of their statements or that they were true. We accept that without these formalities the statements are true to the best of the applicant's knowledge and that they may be admitted into evidence.
14. Mr. Evans also questioned the witnesses about any fee payable to Justice for Tenants. Ms. Bishop said that she had not signed anything, Ms. Rookwood believed that Justice For Tenants would only cover their costs, and this was the reason she was happy to use them. At the end of the hearing Mr. McClenahan confirmed that Justice For Tenants would receive

approximately 25% of any Rent Repayment Order as their fee for representing the applicants. We accept this as a private arrangement between the applicants and their representatives and for them to make any payment from an award.

15. Mr. Evans also made much of the fact that not all of the tenants had joined in the application, but we accept that those tenants who wished to make the application did so, and those that did not, had their own reasons for not doing so. It was not, in our view, the responsibility of the applicants to ensure that all of the tenants joined the application.
16. In relation to the above preliminary matters the tribunal has not repeated them within the applicants' evidence.

The applicants' case:

17. The Applicants case is that they rented the property from the respondent through My Habitat Limited for periods that commenced in November 2018. It is accepted that not all of the applicants remained in the property for the full period under claim, and it will be for them to apportion any award between themselves having calculated their respective periods.
18. Ms. Bishop was called by Mr. McClenahan and gave evidence of her occupation. She said that there had been an electrical fault both in the common parts (kitchen) and in her bedroom and that although the fault in the kitchen had been repaired, the one in her bedroom had not been repaired by the time she vacated. She also said that there were mice in her room, and this was the reason she left the property.
19. During her examination by Mr. Evans she confirmed that personnel from My Habitat showed her around the property, she was shown a shared house tenancy agreement and that the company appeared professional and genuine. The majority of her dealings with them had been on-line, and she had no dealings with the respondent personally and did not even know she existed.
20. Ms. Bishop said that the property was in a poor state and was unsafe throughout the period of her occupation, especially with the electrical faults, the dampness in the dining/living room and the mice. She said that living in the property affected her mental health.

21. She also said that repairs were reported to the agents through an on-line portal, although occasionally she would ring or e-mail them, but the responses were slow, and repairs remained outstanding at the end of her tenancy. She said that other tenants also reported the same repairs with similar results but was unable to give us any further details.
22. Finally, in her evidence she said that the internet connection was constantly being interrupted and despite complaints nothing was done, and she said the agents would not take ownership of the problem. She did not know who the supplier was but had been told when viewing the property and signing her tenancy agreement that an internet service was included within the rent. On further examination, she was unable to show any documents that confirmed this to be the case.
23. Overall, she said that the landlord had made 'gains' although she accepted that she was not the landlord on the contract.
24. Ms Rookwood then gave her evidence which was similar to that of Ms. Bishop. She occupied what was supposed to be the boiler room, although she said that it had a window and blinds, it did not have bedroom furniture the same as some of the other rooms. She was sure that there were locks on the doors when she viewed the property, and that because her personal safety was important to her, she believed she would not have taken the room if locks were not present. She confirmed that some of the other rooms had furniture that had not been built. She confirmed the problem with mice in the property and said that she saw them in her room and which she said entered her room through holes in the skirting board and the boiler cupboard. She reported the problem to the agents, but no-one had turned on the day arranged. She accepted that a pest control company did turn up just before Christmas, but that the three visits charged for had not been done, and mice were still present in her room after 10 January.
25. She accepted that she had to take responsibility for the boiler but said that this did not entail much because the thermostat was on the outside wall and not within her room. She could not remember whether any gas safety engineers attended the property, but the applicants have not raised this as an issue with the property and we find nothing turns on this point.
26. The other problem in the house she said was a faulty W.C. on the top floor of the house. She said this kept blocking, and despite reporting to the agents, nothing happened. She and others kept chasing, the fault was remedied and then the W.C. broke again. In the end the tenants each paid approximately £80.00 each to have the fault remedied. No information was

provided to us on what caused the fault. There was also a faulty kitchen tap that had still not been repaired by the end of her tenancy, despite several complaints.

27. Ms. Rookwood also confirmed that she had been promised internet within her rent, but that it was intermittent and that they would frequently receive invoices from utility companies to say that the electricity or gas was to be disconnected for non-payment. They had passed these bills onto the agents, but still received the 'red' reminders.
28. She also said that one of her other housemates who she thought was Claire investigated whether the deposits had been properly protected and found that they had not. She found the whole experience stressful; she was paying her rent, but it was frustrating that repairs were not being done. The final issue for her was that the agents demanded three months' notice before she could leave the property and this caused other problems because she wanted to move, but other agents would not hold a property for three months whilst she served out her notice, and she could not afford to rent two places. She said that she felt 'trapped'. It was not made clear to us why the agents demanded three months' notice when the contract had become a statutory periodic one.
29. On cross examination, Ms. Rookwood confirmed that she had been shown the property by My Habitat she thought they were not outrageous, they were genuine and supplied her with the tenancy agreement that she signed both electronically and as a wet signature.
30. She confirmed that she had been a tenant for approximately six years in previous properties. That the house itself looked fine, the agents appeared to be 'OK' and there was nothing glaringly obvious to raise the alarm. She said that she would be more cautious from now onwards and would make additional enquiries of agents and landlords.
31. Finally, she said she believed the agency had obtained a single-person discount against the council tax liability for the house but did not know whether this was a genuine mistake or not.
32. Mr. McClenahan then called Ms. Felbinger. She said that when bills arrived Claire had dealt with them, but she took over the task after Claire and John left the property.

33. She referred to a bill [286] addressed to Chloe Henderson at My Habitat, but still received the red reminder when this bill was not paid.
34. She said that living in the house was 'up and down'. That the house had been newly refurbished just prior to her occupation, but had deteriorated over time
35. She confirmed all of the repair and maintenance issues raised by Ms. Bishop and Rookwood but said that she tended to telephone the agency because she felt that they were more responsive when she did, and this gave her more optimism that repairs would be carried out. She said however that most issues were not resolved. She did say that she had not seen any mice, but the rodent boxes had not been removed from the property.
36. She also said that the agents told her they were waiting for the landlord's approval for works to be carried out, and that the dampness was reported 'early on' in her tenancy and was half-way across the dining/living room wall adjacent to the doors to the garden and extended to approximately half a metre high from the floor.
37. She did not have any communication with the respondent, she said she 'guessed' the landlord is the immediate landlord but not the house owner.

The Respondent's case:

38. Mr. Evans called Ms. Kinane. She completed the usual formalities regarding her witness statement.
39. She said that she had placed an ad in Open Range. My Habitat's employees/directors had responded. They were really impressive and young, and she thought them suitable for her purposes.
40. She had seen on the internet that Airswift were a large recruitment organisation and was aware that they required property to stay in for members of staff when they stayed in London.

41. She confirmed that she had had conversations with Airswift and My Habitat to the effect that the property did not have an HMO Licence and could therefore only be let to 4 occupants at a time. She was assured that this would be the case, a special clause was entered into the agreement with Airswift, and she was suitably confident that everything would go smoothly.
42. She said that generally she left the repairs and maintenance to My Habitat, but occasionally sent her own contractors around. She said that it had been quiet for the last couple of months.
43. She confirmed under cross examination that she had entered into the tenancy agreement with Airswift for a term of 36 months at a rental of £2,500 which she said was mid-range according to her own investigations. She said that she had approached other agents, notably Kinleigh Folkard and Hayward who were local, but Open Range charged less for listing, they had a good rentals portal with tenants waiting and she considered them to be a better option. She had originally thought to rent out the house for 1 or 2 years, but My Habitat asked for 3, and she thought that this was a good idea.
44. Mr. McClenahan drew her attention to the inventory report that had been prepared for the tenancy, which suggested that it was a five-bedroom property. Several pages of the document were missing namely those with any written detail of the property and only photographs had been supplied within the bundle. Ms. Kinane said that she had sent the whole document to her solicitors and did not know why only certain pages had been included in the bundle.
45. Prior to letting with Airswift she had been provided with a copy of a reference for the company, in relation to another property [375] although the address for Airswift was different to that on the tenancy agreement she thought that they were in fact the same company when it is not absolutely clear that they are. She said that she had researched My Habitat online but did not look at Companies House but thought that Airswift would not deal with such a small company.
46. She said finally that she only became aware of the sub-letting as part of these proceedings and had insisted at the start of the agreement with My Habitat that the special clause limiting the number of occupiers would be included in the agreement. She was aware of the HMO licensing system but preferred to have a lower rent with less occupiers than have the house become an HMO.

47. Mr. McClenahan asked her whether she had every inspected the property, she said that she had not because My Habitat sent her photographs regularly from which she was satisfied that the tenancy was being well run.

Mr. Evans – representations:

48. Mr. Evans reminded the tribunal that we had to be sure that the property was let at all material times and that there were sufficient numbers of tenants during the periods of claim for the house to be classified as an HMO.
49. He said that there was no evidence that the tenants had occupied the property as their main home, particularly Mr. Lee whose tenancy agreement we had not seen and who had not taken part in these proceedings.
50. He said that the witness statements were coincidentally similar and had been prepared by the applicants by Justice for Tenants, and therefore it was necessary for us to separate the wheat from the chaff.
51. If we were against him on the respondent's failure to licence, then he believed that Ms. Kinane had a reasonable excuse and said that lack of knowledge may be an excuse. It was clear in this instance that Ms. Kinane was not aware of the sub-letting by Airswift.
52. He also said that Ms. Kinane appeared to be an unwitting victim of fraud perpetrated by a company suggesting that they were Airswift, when according to the correspondence received by the tribunal they were not.
53. The applicants had thought My Habitat to be professional, they did not do any due diligence on the agents or Airswift and although the applicants may have suffered, Ms. Kinane had also suffered and had done her best to prevent the situation occurring.

54. As he said, under most tenancy agreements inspections can only be undertaken on notice, and in that period, it was possible for rooms that were being used as bedrooms to be emptied so as not to create the suspicion that the property was being let to more tenants than authorised.
55. In defence of his client, he reiterated that she did not have day to day management of the property, My Habitat were not her agents, but Airswift, who apparently do not exist, but this did not make his client liable.
56. He said finally, that if we were to make an RRO he accepted that the starting point would be the rent paid as per Vadamalayan Case, but that S.44(4) of the Act gave us more flexibility and that a Rent Repayment Order can be lower than that asked for. He said that his client was not cynically avoiding the licensing regime, she was not the tenant's landlord but an easy target.
57. He suggested that any disrepair should not form part of the failure to licence a property, that there were other civil remedies that could be followed by the applicants if they wished. There had been no unlawful gain by his client as suggested by the tenants, because on her evidence she was not receiving the market rent for the property.
58. He finally reminded the tribunal that there had been no application to amend the particulars of the claim, and that the sum sought was £5,748.81 not £5,760.00, and that some deductions should be made in relation to Ms. Bishop's claim in relation to the deposit paid and the fees charged by the agents, a total of £749.61 which left £90.46 towards rent from her payment of £840.00.

Mr. McClenahan's Representations:

59. Mr. McClenahan confirmed that Justice for Tenants would receive 25% of a successful award made by the tribunal.
60. He said that there was an inequality between the landlord and tenants and that no new evidence had been submitted by the applicants and that there was therefore no need for them to sign their witness statements. We have already accepted the witness statements as drafted.

61. He submitted that the respondent knew the company she was dealing with (My Habitat) was new, and despite the application they were still the agents for the property. Ms. Kinane did the maintenance on the property, but as Airswift were the landlord under the tenancy, why did they not carry out any works on the property. He suggested that this demonstrated the respondent knew what she was signing up to.
62. The property was in poor repair with electrical faults and mice, and there was a general lack of attention to repairs and maintenance and the safety of the tenants.
63. The respondent had not been disadvantaged because she had received all of the rent due to her under her agreement with My Habitat/Airswift, and that it was the applicants who had been disadvantaged in this matter.
64. He said that there was no precedent where the reasonable excuse was 'I did not do due diligence'; that the landlord had not carried out inspections.
65. He suggested that we should be persuaded by Vadamalayan as the most relevant precedent, and that we should award a Rent Repayment Order for the full amount. He confirmed that the authorities required the landlord to repay the rent paid by the tenants, not necessarily the rent received, as in this case.
66. Finally, he said that the tenants' conduct was better than that of the respondent, and we should award the full amount.
67. An application under Rule 13 of the Tribunal Procedure Rules was also made for a refund of the £300.00 application and hearing fees in this matter. Mr. Evans only said that costs would normally follow the event and he would wait until our decision was issued.

The Tribunal's Reasons:

68. We have considered all of the evidence before us, the statements of the parties and the authorities relied on. We find on balance that a Rent Repayment Order should be made, but that to award the full amount would be excessive.
69. We do not find this landlord to be a 'rogue landlord', and although there was an electrical fault in the building (which was not fully identified), we are not satisfied the property was as unsafe as the applicants suggest. We also note that as soon as Ms. Kinane became aware of the issue, she inspected the property to ensure that the number of occupiers had reduced to 4 and is taking legal steps to end the agreement with My Habitat, as a way of showing positive action on her part, and we find this goes towards conduct in this matter.
70. On Ms. Felbinger's evidence the property was in good condition when she agreed her tenancy. It is inevitable that a property would deteriorate through fair wear and tear over the following two or three years, and there appeared to be no real reluctance on the part of the landlord to have repairs carried out.
71. Mr. McClenahan made much of the fact that the landlord had not done any due diligence when appointing her agent/tenant, but it appears that the same could be said of the tenants. From this tribunal's experience we are not aware that tenants carry out any due diligence before signing a tenancy agreement. They find a property and if it suits their purposes, they sign a tenancy agreement. We are not persuaded by Ms. Bishop's evidence that the property was in such poor condition; if it were then why did she sign the agreement? We find that it satisfied her purposes and was at a rent she was willing to pay.
72. We find that the respondent was naïve in her dealings with the property but that does not excuse the fact that she allowed the property to be used as an HMO knowing that it did not have a licence. In the circumstances we find that a deduction of 25% should be made from the rent paid by the applicants and award a Rent Repayment Order of £21,254.63 which should be paid by the respondent within the next 28 days.
73. We also find, that as costs would normally follow the event, the respondent should pay the applicants their fees of £300.00 also within the next 28 days.

74. For clarity, we attach a spreadsheet showing the various occupation dates of the applicants and other tenants, this shows that all material times there were more than five occupiers of the property. We have not been given a date of occupation for Johnny, but as this was 'early in the year' we have used the date of February, but this is not material in this instance.

Name: Judge Hamilton-Farey **Date:** 20 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).

	Nov-18	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19	Jun-19	Jul-19	Aug-19	Sep-19	Oct-19	Nov-19	Dec-19	Date Moved Out
Witley Rookwood	24th														24-Mar-20
Tia Merrett	15th														15-Jul-19
Jasmin Felbinger	10th														Current
Lily Bruns	30th														Current
Amelia Bishop										1st					09-Dec-19
Clare Baxter	5th														01-Dec-19
John Fehlner	5th														01-Dec-19
Jonny Lee															2020
Number of Occupants	5	6	6	7	7	7	7	7	7	7	7	7	7	7	
	From 24th Nov														

