



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

Case References : **LON/00AP/HMF/2021/0239**
CVP/VIDEO

Property : **47 Sperling Road London N17 6UQ**

Applicants : **Luigi Pagano**

Representative : **Justice for Tenants**

Respondent : **London Consulting Solutions Ltd (1)**
Huseyin Karaman (2)

Representative : **Did not attend and were not
represented**

**Type of
Application** : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM**
Mr T Sennett MCIEH

**Date of CVP
remote hearing** : **10 May 2022**

Date of Decision : **12 May 2022**

DECISION

Decision of the Tribunal

The Tribunal makes a rent repayment order against the first Respondent and in favour of the Applicant in the sum of £1,264.31. Additionally the Tribunal orders the first Respondent to pay to the Applicant the sum of £300 by way of reimbursement of his application and hearing fees. The total sum payable by the Respondent is therefore £1,564.31.

Reasons

- 1 This application dated 12 September 2021 is made by the Applicant under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the first and second Respondents in respect of the property known as 47 Sperling Road London N17 6UQ (the property) for the period 20 June 2020 to 25 February 2021 during which time the property was unlicensed.
- 2 Directions were issued by the Tribunal on 25 November 2021.
- 3 The subject property, situated within the area of Haringey Borough Council, falls within their additional licensing scheme requiring all properties occupied by five or more people forming two or more households and who share amenities such as kitchens and bathrooms to be licensed.
- 4 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 5 The Applicant’s assertion that at all times during his tenancy the number of persons occupying the house and sharing amenities was always more than five has not been denied by the Respondents. The local authority has confirmed that the property did not have a licence at any point during the Applicant’s occupation and that no application for a licence has been made since the relevant time (page 109).
- 6 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property.
- 7 The hearing took place by way of CVP Video conference on 10 May 2022 to which the parties had consented. The Applicant was represented by Ms C Sherratt of Justice for Tenants. Neither of the Respondents appeared or were represented and neither had submitted any statements or evidence to the Tribunal.
- 8 The Applicant was in lawful occupation of the property during the entire period covered by this application. With his infant daughter he occupied an upper floor room in the property under a licence dated 03 July 2019 (page 35). The Applicant’s continuous period of residence commenced on 20 June 2020 prior to the signature of the licence. The rent payable during the relevant period covered by this application was £145 per week.

- 8 Proof of payment of the rent is shown on pages 60 et seq of the hearing bundle This has not been challenged by the Respondents.
- 9 It is the landlord's duty to ensure compliance with the law, not the tenant's duty to check that the property has a licence. The first Respondent is described in its registration details at Companies House (page 131) as a company which manages property ie a professional landlord which should have known and complied with the law relating to residential lettings.
- 10 The second Respondent is named by HM Land Registry as the freehold owner of the property (page 106). The licence agreement was made between the Applicant and the first Respondent and he paid rent directly to a Director of the first Respondent (see page 65). The relationship between the second and the first Respondent is unknown. For that reason only the Tribunal chooses not to make an order against the second Respondent in this case.
- 11 In his evidence to the Tribunal the Applicant also alleged that the property was in a poor state of repair with a broken window in his room and was infested with vermin (page 134). He also told the Tribunal that the Respondent had failed to deal with incidents of violence at the property committed by other residents which had caused him to flee from the property for his own safety and that of his infant daughter.
- 12 Having considered the evidence presented to the Tribunal it was satisfied beyond reasonable doubt that the first Respondent had committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that it had been in control or management of an unlicensed house.
- 13 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in favour of the Applicant for the period 20 June 2020 to 25 February 2021 . The total sum received by the first Respondent during this time was £4,900. However, this sum must be reduced by the amount of deductible benefits received by the Applicant during this period (£3,635.69) leaving an amount to be claimed of £1,264.31.
- 14 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 15 The first Respondent is a professional landlord/property manager who should have been aware of the need to obtain a licence. Ignorance of the law is not a defence under the Act.
- 16 The Applicant's evidence as to the state of the property has not been challenged by either Respondent.
- 17 Despite the issue of these proceedings it appears that neither Respondent has so far applied to the local authority to obtain a licence for the property.
- 18 It is not known whether the Council has instigated proceedings against either Respondent .
- 19 The Tribunal did not have details of the first Respondent's financial circumstances but no plea of financial hardship has been

made. The Applicant's rent was inclusive of outgoings but no evidence of their amount or payments have been produced.

- 20 In circumstances where a professional landlord has not produced any evidence to validate expenditure and has demonstrated both ignorance of the applicable law and a reluctance to engage with these proceedings the Tribunal declines to deduct any further sums from the amounts claimed by the Applicant.
- 21 On balance therefore, and taking into account the Respondent's conduct and the fact that the Applicant suffered some inconvenience during his occupation, the Tribunal considers that it would be reasonable to make an award of £1,264.31 which represents the full sum claimed by the Applicant net of deductible benefits. This is the sum awarded under this Order which is to be paid by the first Respondent to the Applicant.
- 22 The Tribunal also considers it reasonable to order the first Respondent to repay to the Applicant the sum of £300 representing the reimbursement of his application and hearing fees.
- 23 This brings the total award payable by the Respondent to £1,564.31.

24 Relevant Law Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 ("the Act") provides:

"(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.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

- (a) section 44 (where the application is made by a tenant);
- (b) section 45 (where the application is made by a local housing authority);
- (c) section 46 (in certain cases where the landlord has been convicted etc).

Amount of order: tenants

16. Section 44 of the Act provides:

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

a period not exceeding 12 months, during which the landlord was committing the offence

(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.

(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.”

Name: Judge Frances Silverman
as Chairman **Date:** 12 May 2022

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to londonrap@justice.gov.uk.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.