



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

<b>Case Reference</b>	:	<b>LON/00AN/HMF/2022/0203</b>
<b>Property</b>	:	<b>22 Old Oak Road, London W3 7HQ</b>
<b>Applicants</b>	:	<b>Davide Ambrosecchia Margherita Tapetto</b>
<b>Representative</b>	:	<b>Represent Law Ltd.</b>
<b>Respondent</b>	:	<b>Surinder Kaur Mahal</b>
<b>Representative</b>	:	<b>Not applicable</b>
<b>Type of Application</b>	:	<b>Application for a Rent Repayment Order</b>
<b>Tribunal Members</b>	:	<b>Judge F. Dickie Ms F. Macleod (MCIEH)</b>
<b>Date and venue of Hearing</b>	:	<b>13 January 2023, 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>10 February 2023</b>

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**DECISION**

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**Decisions of the tribunal**

The application for a rent repayment order is dismissed. The applicants have failed to prove beyond reasonable doubt that the respondent committed the offence. The application for costs against the respondent is dismissed.

**The application**

1. By an application received by the tribunal on 2 September 2022 the applicants seek a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016 (the 2016 Act).

2. The application is made on the grounds of the respondent's alleged management and control of an unlicensed property as defined by section 95 of the Housing Act 2004 (the 2004 Act). As confirmed on behalf of the applicants, the application relies on an alleged failure to obtain a selective licence.
3. The application further states that the respondent committed an offence under s.72(1) of the Housing Act 2004, “namely having control of or managing a house, which was required to be licensed under Part 3 Housing Act 2004 but was not so licensed”.
4. The applicants were tenants of an assured shorthold tenancy and thereafter a statutory periodic tenancy at 22 Old Oak Road, Acton, London W3 7HQ (the Property) from 21 February 2020 until 20 November 2021. The respondent is the freeholder of the Property and was the applicants’ landlord. The applicants sought a rent repayment order of £8,730 (for the rent paid for the period from 20 November 2020 until 20 November 2021).

### **The Hearing**

5. The tribunal issued directions on 22 September 2022. The matter was listed for an oral hearing which took place on 13 January 2023. The applicants were represented by Ms Hoxha of Represent Law Limited and the respondent was represented by her son Mr. Akwal Mahal. The respondent is understood to be an 82 year old widow in poor health requiring care. Mr Mahal said her sons handle her affairs in relation to the Property.
6. Mr Mahal produced a short statement of case signed by the respondent, which he said her sons had helped her to prepare. It had been sent by email to the tribunal on 2 December 2022. That email was not copied to the applicants. In error the statement had not been placed on the tribunal’s file. Mr Mahal said the statement had been sent by post to the applicants before Christmas, though did not produce a covering letter or proof of posting.
7. The failure to copy in the applicants was not serious and Ms Hoxha accepted they had not been prejudiced. It was acknowledged that there had been postal strikes around Christmas which had caused serious disruption to deliveries. The respondent is unrepresented and the tribunal did not identify the failure to copy the email to the applicants until shortly before the hearing. In all of the circumstances the tribunal decided to admit the document, which contained no admission that the Property was subject to HMO licensing. Its contents however, to the

extent that they amounted to evidence, where not agreed and not within Mr Mahal's personal knowledge, could not be the subject of cross-examination, and the tribunal could therefore attach little weight to them. Such contents of this document did not ultimately play a part in the tribunal's decision on the application. The tribunal refused to admit evidence in the form of a letter from the current tenant, who had also not attended the hearing to give evidence.

8. The tribunal heard evidence from the applicants. The tribunal did not inspect the property, which is described in the application as a two storey house but was described in the evidence to be a three-storey house with a garden, with a studio flat on the second floor, a studio flat and two rooms on the first floor, and two rooms on the ground floor occupied by the respondent. The applicants' studio flat had a separate kitchen and bathroom and shared a washing machine in the garden with the other tenants. The condition of the flat had been good but the applicants saw no fire door and no smoke detectors or fire alarm in the common parts.
9. All bills were included in the rent. The applicants paid a deposit of £1,150. The rent was £1000 per month for the first three months and then £970 per month thereafter. The applicants did not pay rent for November 2020 owing to problems with the hot water, and paid half rent for the months of May, July, September and October 2021. The deposit was not returned when the applicants moved out of the Property on 20 November 2021. There was dispute as to the applicants' assertion that the landlord had agreed the various rent reductions. This assertion had not been included in their witness statements and the tribunal was not persuaded of the fact.
10. Mr Mahal refuted Ms Tapetto's unevidenced assertion that there were seven people living in the Property, saying that there were no more than four and that any others would have been family members, non-paying guests who were visiting from abroad and a Sri Lankan man who helps the respondent, for example by taking her out in the car, and pays only a nominal amount to live there.

### **Evidence of an Offence**

11. There has been no conviction for an offence under the 2004 Act. In support of their case that the respondent had committed an offence, the applicants relied solely on incidental correspondence they had received from the local authority, the London Borough of Hammersmith and Fulham (LBHF). A letter from LBHF dated 23 March 2022 said:

*“Referring to the information stated in the previous email, this property contains;*

*2 bedrooms and they share kitchen and bathroom.*

*2 little apartments with including bathroom and kitchen*

*It would seem that this property would require a Selective licence for the part of house which contains the 2 bedrooms and shared kitchen and bathroom as well as 2 separate licenses for the 2 individual apartments.*

*In order to correctly confirm which licenses are required for this property we will need to arrange a property inspection.*

*This can be arranged for Wednesday 30th March 2022 at 12pm, please confirm whether you can have a suitable person at the property for our visit, if this time and date is unsuitable for you please let us know as soon as possible.”*

12. A previous email from LBHF dated 28 February 2022 had confirmed that there was no record of any licence or application for a licence for the Property (a fact not in dispute). Another email dated 16 July 2021 had said:

*“Yes, the information that you provided, on behalf of Davide, was very useful. It confirmed that the premises requires a Mandatory HMO Licence. We treat such properties differently to the other types of licensable properties, i.e. ones that are subject to either Additional Licensing or Selective Licensing.*

*When notified of a property that requires a Mandatory HMO Licence, we will usually seek to gather evidence and impose a financial penalty (if appropriate), without giving the landlord prior notice of our investigation, or a “final warning” to apply for said licence.*

*So I intend to gather the evidence in two ways:*

*[1] I will invite Davide to give us a witness statement, setting out what happened, e.g. how he came to live there, when did he live there, with whom, how did he pay his rent and to whom did he pay. Included with this statement, I will “exhibit” any documents/photos that support what Davide is saying.*

*[2] I will try to visit the premises, speculatively, and see if the current occupiers will allow me to inspect it, and/or if they will answer my questions.*

*I would prefer to do [1] and complete this process, before starting [2]. I understand that Davide has left the premises, and can no longer facilitate a visit to it; but if this is not correct, and he can facilitate a visit, please let me know.”*

13. There is no evidence that LBHF did pursue its enquiries, gather evidence or contact the respondent about the matter. There has been no enforcement action. The applicants did not provide a witness statement for LBHF, It is not clear that the LBHF was made aware that the respondent resided in the ground floor rooms. There was no relevant inspection of the Property which LBHF offered to conduct, that recorded its composition and construction, and no evidence of the authority’s considered view on the license required. It is noted that the emails from the council were not consistent as to the licence required.
14. The tribunal must be satisfied beyond reasonable doubt that the respondent committed an offence. This is the criminal standard of proof. This is a high burden which must be discharged by the applicants on the evidence.
15. Ms Hoxha clarified and confirmed that the applicants did not assert and seek to show that the Property was subject to mandatory HMO licensing, and that the application was made on the ground of a failure to obtain a selective licence. Her skeleton argument referenced the standard test for an HMO in s.254(2). For the purpose of an offence under s.72(1) of the 2016 Act (control or management of unlicensed HMO), the applicants conceded that the condition in s.254(2)(f) was not met (in that there was no evidence that two households shared basic amenities) and that the Property did not meet the standard definition of a HMO. For the purpose of an offence under s.95(1) of the 2016 Act (control or management of unlicensed house), the requirement under Part 3 of the 2004 Act for a house to be licensed under section 85 applies only to those in an area of selective licensing (s.79(2)).
16. The applicants’ case that selective licensing was required was evidenced only by the statement made in the email of 23 March 2022 that *“It would seem that this property would require a Selective licence for the part of house which contains the 2 bedrooms and shared kitchen and bathroom as well as 2 separate licenses for the 2 individual apartments. In order to correctly confirm which licenses are required for this property we will need to arrange a property inspection.”*

17. This evidence is not considered to be sufficient, robust or reliable. The tribunal finds it is far from an unequivocal statement that the house was at the relevant time in an area of selective licensing and that such a licence was required. A selective licensing scheme is discretionary. If the area had been subject to selective licensing the applicants could and should have obtained proof from the local authority that a scheme was in place and covered the relevant period (such as the selective licensing order) and served that evidence on the respondent according to the tribunal's directions. Furthermore, there was no evidence that the Property was subject to additional licensing. The tribunal therefore finds that the applicants have failed to discharge the burden on them to prove their case to the criminal standard of proof and it dismisses the application.
18. In the event that the tribunal had been satisfied of the grounds for making a Rent Repayment order it would have deducted £1500 for all bills including utilities. It would also have taken into account the conduct of the parties, including the landlord having thus failed to install an adequate smoke and fire alarm system, and the tenants having unilateral withheld rent and left the Property in arrears (for which the tribunal would have made a significant reduction in the amount of the order).

**Name:** F. Dickie

**Date:** 10 February 2023