FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00A1/HMK/2018/0028**
Property	**:**	**173 Restons Crescent, London SE9 2JH**
Applicants	**:**	**Andrew Millar** **Phillip William Hunt**
Representative	**:**	**In person**
Respondent	**:**	**Ms Anaradha Pasapula (1)** **Mr Ayang Obour (2)** **Stress Free Estates Ltd (3)**
Representative	**:**	**Mr Obour**
Type of application	**:**	**Application for a Rent Repayment Order – section 40 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Ruth Wayte (Tribunal Judge)** **S.Coughlin (Professional Member)**
Date and venue of hearing	**:**	**11 October 2018 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**17 October 2018**

DECISION

Decisions of the tribunal

(1) The tribunal makes a rent repayment order of £1,525 against the Third Respondent.

(2) The tribunal also orders the Third Respondent to pay the application and hearing fees of £300.

(3) No order is made against the First or Second Respondent.

The application

1. The Applicants seek a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 ("the 2016 Act"). They occupied the property as tenants of the Third Respondent and rely on them having committed an offence under section 72 (1) of the Housing Act 2004, namely being the landlord of a house in multiple occupation (HMO) without the necessary licence.

2. Directions were issued on 26 June 2018, at that stage the application named Ms Pasapula as the First Respondent and Mr Obour as the second Respondent. Correspondence was sent to them at 32 Clarendon Way, Colchester. In the absence of any response to the application they were debarred from relying on any evidence at the hearing. On 29 August 2018 the Third Respondent was added as a party and directions were sent to their address at 38 Mile End Road, Colchester. Mr Obour made a late application to adjourn the hearing on 27 September 2018 which was refused on 3 October 2018.

3. Both Ms Pasapula and Mr Obour attended the hearing and renewed their application for an adjournment. Mr Obour explained that they had moved from the house at 32 Clarendon Way, Colchester two years ago and had not received the earlier documents. He did confirm that they now lived at 38 Mile End Road, Colchester, the registered office address for the Third Respondent and that Ms Pasapula was the sole director of that company. As Ms Pasapula was working as a pharmacist, Mr Obour did most of the work in relation to letting, including liaising with the London Borough of Greenwich in relation to their requirements. They did not deny receiving some correspondence from the tribunal although had refused to accept the Applicants' hearing bundle. The Applicants objected to the adjournment and pointed out that they had emailed Mr Obour throughout and therefore he would have been aware of the application from an early stage.

4. The Tribunal refused the request for an adjournment. Although none of the Respondents had prepared for the hearing, there had been plenty of opportunity for them to seek advice, from the end of August if not

before, given the email contact from the Applicants. In terms of the parties, under the 2016 Act an RRO can only be made against the landlord which is Stress Free Estates Limited. That said, Mr Obour and Ms Pasapula were the spokespeople for the company and were given time to consider the hearing bundle and prepare their case. The start of the hearing was therefore delayed by 45 minutes. In addition and in the absence of a hearing bundle prepared on behalf of the Third Respondent, Mr Obour and Ms Pasapula were allowed to rely on documentation on their mobile phones, as detailed below.

The law

5. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence – in this instance the offence set out in section 72(1) of the Housing Act 2004, the control or management of an unlicensed House in Multiple Occupation (HMO). Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made.

6. Section 72 contains two defences: firstly, that an application for a licence has been made and is still effective (section 72(4)(b)) and secondly, that there is a reasonable excuse for the failure to licence the property (section 72 (5)).

7. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO must relate to rent paid by the tenant in respect of a period not exceeding 12 months, during which the landlord was committing the offence. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:

    - the conduct of the landlord and the tenant;
    - the financial circumstances of the landlord and
    - whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

Background

8. The Applicants entered into an assured shorthold tenancy agreement with the Third Respondent on 1 March 2017. Although the agreement gives the address of the property to be let as 173 Restons Crescent,

there was no dispute that the Applicants in fact let one room at that property for 12 months at a rent of £650 per calendar month inclusive of all bills. There was also no dispute that the Applicants left the property on 28 February 2018 and that they had paid their rent throughout.

9. The property had five bedrooms in total, arranged over two storeys. Although the rooms were all let to separate households, the fact that the property was not on three storeys meant it did not require an HMO licence in the absence of the local authority adopting its own licensing scheme. On 19 April 2017 the London Borough of Greenwich designated the borough as an area for additional licensing. HMOs were defined as a building or part of a building occupied by three or more persons in two or more households. That meant that the property required a licence from 1 October 2017, the date on which the designation came into effect.

10. Ms Pasapula had formed her company Stress Free Estates Limited three years ago and she and her partner, Mr Obour had a number of properties which were let on a room by room basis, inclusive of bills. They had both attended a course on HMOs and had previous experience of letting property but admitted that complying with requirements had been a "learning curve". The exact number of such properties they held was unclear to us. At various stages Mr Obour mentioned 5, 7 or 8-9. Of the properties they let as HMOs, only two had obtained a licence and the others were still pending. Mr Obour had documentation relating to 4 properties on his mobile phone but said that others were on his office computer.

The issues: has the offence been committed (section 43)?

11. There was no dispute that the property remained unlicensed, the issue was whether the Respondent could rely on either defence under the 2004 Act, namely an effective application or a reasonable excuse. Initially, Mr Obour claimed that a licence had been applied for in February, although he subsequently accepted that must have been a different property and the application for Restons Crescent was not made until 12 April 2018. It was unclear that this was an effective application but that was immaterial given that the Applicants vacated the property at the end of February 2018.

12. When asked about the reasons for the delay in applying for a licence, Mr Obour raised two issues: the requirement from Greenwich for a criminal records check and the need for an electrical certificate. In particular, he stated that the criminal records check did not come through until February and an electrical certificate was only obtained in April as works were required to bring the property up to standard. It was unclear why either of these requirements could not have been attended to earlier. In particular it was said that the electrics were not

inspected until January of 2018 when they failed and that works were then carried out sometime between January and April. The Applicants pointed out that from their personal search of the HMO register they had spotted at least two properties in Restons Crescent that had obtained a licence from 1 October 2017.

13. The tribunal do not consider that the circumstances provide a reasonable excuse for the Respondent's failure to obtain a licence from 1 October 2017. Mr Obour claimed that he had been in constant contact with the London Borough of Greenwich to ensure that their requirements were met but that it was not until November, after a meeting with other landlords, that he appreciated a criminal record check and an electrical certificate would be required. Given that the London Borough of Greenwich's decision to require additional licensing dated back to April 2017, the Tribunal considers that information would have been in the public domain from at least that date as to the need and process for applying for a licence. The Respondents were operating a business of letting propertyand therefore they bear the responsibility of ensuring that they comply with the law in that regard. In the circumstances the tribunal is satisfied, beyond reasonable doubt, that an offence has been committed from 1 October 2017, triggering the ability to make an RRO.

Amount of any RRO (section 44)

14. As stated above, section 44 of the 2016 Act provides that the amount of the RRO must not exceed the rent paid in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. In the Applicants' case this is £650 per calendar month from 1 October 2017 to 28 February 2018 when they left the property, amounting to five months and a total of £3,250. However, in determining the amount of an RRO section 44 states that the tribunal must, in particular, take into account: the conduct of the landlord and the tenant; the financial circumstances of the landlord and any relevant conviction. It was accepted that there had not been a conviction in this case.

15. In terms of conduct, the Respondents accepted that the Applicants had been model tenants, Mr Obour confirmed that he was disappointed when they left and had asked them to stay on. On the other hand, the Applicants' evidence confirmed that they had felt increasingly unsafe in the property due to the Respondents' failure to properly vet the incoming tenants or deal with their concerns about problems at the house. These included smoking in breach of the agreement, the lack of security and the failure to carry out repairs in a timely manner or in the case of the oven, at all The Applicants stated that they felt like caretakers and had simply had enough of shouldering the burden of running the house.

16. Guidance from the Upper Tribunal in previous decisions under the Housing Act 2004 indicates that it is only conduct relevant to the

offence that ought to be taken into account, although if an application for a licence had been made promptly, it is likely that there would be conditions dealing with the safety of the property as well as the number of occupants. It is clear to the Tribunal that the management of the property was inept. Neither Mr Obour nor Ms Pasapula had the time or the expertise to properly manage HMO properties.

17. In terms of the Third Respondent's financial circumstances, Mr Obour claimed that the business model was to lease properties, renovate them and then sublet to multiple occupiers on an all-inclusive basis. That is why they called the company "Stress Free", the idea being that the owner would have the security of the rent and the occupants would have a fixed price. The properties were leased by the company on three year leases but the costs upfront meant that there was no profit until year three. That said, they planned to take on more property and Ms Pasapula stated that she planned to give up her role as a pharmacist so that she could devote more time to the rental business. No evidence was submitted in support of the assertion that the Third Respondent had not made a profit to date.

18. The Upper Tribunal has also indicated that the landlord ought to be given credit for any bills paid for the benefit of the occupants and potentially the cost of the property itself. No bills were produced but the Applicants accepted that they benefited from council tax, gas, electricity and water rates paid on their behalf, together with broadband. Mr Obour estimated that the bills cost about £300-400 per month. He also produced a receipt from Property Lettings and Management Services Limited in Deptford for rent of £1,425 per month paid by Stress Free Estates Ltd in respect of the property for the first two months of their tenancy.

19. The evidence provided by the Respondents was limited, although the Applicants did not dispute that the property was let by them and there was no evidence of the actual ownership. On the basis that the property had five rooms for rental, the tribunal considers that it would be appropriate to deduct one fifth of the expenses to calculate the RRO in this case. In the absence of any bills, the tribunal considers that the lower amount of £300 per month is the appropriate figure, adding that to the rent of £1,425 and dividing the total by five produces £345 per month for the landlord's expenses. If this is deducted from the rent of £650 it produces a monthly figure of £305. The tribunal considers that this should be returned to the Applicants in full for each of the months they occupied the property during the period of the offence, making a total of £1,525. Although this reflects the entire net rent, on the evidence the Applicants were in effect running the house.

20. In addition to the RRO and in all the circumstances of the case, the Tribunal considers it is just and equitable that the Applicants should recover their outlay in terms of fees. The tribunal therefore also orders the Third Respondent to reimburse the application and hearing fees paid by the Applicants of £300

Name: Ruth Wayte **Date:** 17 October 2018

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).