



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

Case Reference : **LON/OOBD/HMK/2017/0012**

Property : **54 Brewery Lane, Twickenham TW1 1AW**

Applicant : **Mr Laurence Moore**

Representative : **In person**

Respondent : **Miss Lan You Hao**

Representative : **In person**

Type of Application : **For a rent repayment order under the
Housing and Planning Act 2016**

Tribunal Members : **Tribunal Judge Dutton
Mr M A Mathews FRICS
Mr C S Piarroux JP CQSW**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR on 2nd
February 2018**

Date of Decision : **12th February 2018**

DECISION

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DECISION

The Tribunal determines that the Applicant is entitled to a rent repayment order in the sum of £3,750 to be paid within 28 days. In addition, as agreed the Respondent should reimburse to Mr Moore the sum of £200 being the hearing fee, also within 28 days.

BACKGROUND

1. This matter came before us for hearing on 2nd February 2018 as a result of an application made by Mr Moore dated 19th October 2017 seeking the sum of £4,000 in back rent and the return of his deposit of £1,200 presently within a deposit protection scheme.
2. It would appear that on or around 15th July 2017 Mr Moore became a tenant at the property 54 Brewery Lane, London TW1 1AW occupying a room with en-suite and use of the communal rooms at ground floor level. At the time of his occupancy there was a single occupier on the first floor, Mr Moore occupied a room on the second floor and there was a couple on the third floor. It seems that shortly thereafter the property was 'full' there being five letting rooms containing seven people.
3. The terms of the rental agreement dated 15th July 2017, which we were told is the appropriate one, there being other copies in the papers bearing different dates, show a payment due of £1,200 per month. Mr Moore produced a copy of a bank statement from Barclays showing payments made on the 17th July of £200, being a holding deposit, a further payment of £2,200 on 24th July 2017 which was one month's rent and a further deposit of £1,000. There then followed a payment of £1,200 on 15th August 2017 and the last payment he seeks to recover is dated 2nd October 2017 in the sum of £1,800, which would have paid the rent to 15th October 2017. He told us that no rent had been paid after that date but that he still occupied the property but he had no money to move anywhere else.
4. Miss Hao appeared at the hearing bearing documents. Prior to her attendance we had received a letter from Carter Bells Solicitors dated 18th January 2018 which enclosed a statement of reasons and a copy of the tenancy agreement. Miss Hao told us that we should not take note of the contents of the letter and statements from Carter Bells as they were not instructed. She immediately drew our attention to an email from Mr Gary Vickers an Environmental Health Practitioner from the London Borough of Richmond which confirmed that an application for an HMO licence dated 13th October 2017 had been received at their office on 17th October 2017. This email indicated that the application form had not been correctly completed and set out three items which required further information. Notwithstanding that the application had been received by the local authority on 17th October, this email raising these queries is not dated until 29th November 2017.
5. It appears that these issues were resolved, although we know not when, as we were shown a notice of intention to grant an HMO licence dated 19th January 2018 with an indication that the consultation period would end by 9th February

2018. The proposed licence was also included dated 19th January 2018 showing the licence holder to be Mrs Sihan Zhan.

6. We understood from Miss Hao that the property was in fact owned by both Mrs Zhan and her husband Mr Chen. It seems that they both live in China. Miss Hao told us that she held a power of attorney for them both and accepted that rent had been paid to her, although she said she then transferred it to YUHE International Investments Limited which we were told was a company owned by Mrs Zhan and Mr Chen. The deposit had been lodged with a deposit taking company, although Mr Moore was concerned that in fact it still remained within the control of Mrs Hao. Mrs Hao told us that she was a real estate agent and it was in that capacity that she was dealing with this property.
7. It was suggested that the use of the property as a house of multiple occupancy might be in breach of planning or restrictive covenants that may have been imposed on the development, although we saw no evidence to substantiate this. However, Mr Moore told us that there have been problems with accessing the estate and with the concierge as a result of the alleged misuse of the property by the owners. He told us that he had never met Mr Chen or Mrs Zhan and had only discovered their identity in October last year when he had searched the register of title. The only person he had ever had any dealings with was Mrs Hao. She for her part confirmed that she had merely indicated to Mr Moore that she was acting for the landlord but made no disclosure of her client's identity.
8. Although Mr Moore sought to recover £4,000 and the return of the deposit, he accepted that in fact he had been paid back £250 because there had been some change to the start date of the tenancy. Accordingly, the sum for which he sought a rent repayment order reduced to £3,750. He accepted that the deposit will need to be dealt with through the deposit taking agency.
9. Asked why he had not paid the rent from November onwards, he told us that the Council had told him orally that it would be sensible not to do so although a visit to Citizens Advice Bureau whilst supporting this view, had advised him to put money aside.
10. We were told that included within the rent was electricity, gas and water and it would seem Council Tax. Although this had proved to be something of a problem in that Mr Moore had received a Council Tax bill for the total of the property but that had now been resolved. There was no evidence before us as to what these amounts might be and no application to set any such sums off against the amount Mr Moore sought.
11. We were told that although Mr Moore has not paid the rent since the beginning of November, no court proceedings had been undertaken, although that may now follow.
12. Finally, we were told that Mr Moore sought the refund of the application and hearing fee. Mrs Hao said that she would be prepared to refund the £200 hearing fee but not the application fee and Mr Moore accepted that.

THE LAW

13. The Housing and Planning Act 2016 introduced some changes to rent repayments orders from those originally to be found under section 72 onwards of the Housing Act 2004. The new provisions enable a First Tier Tribunal to make a rent repayment order where the landlord has committed an offence to which the chapter applied. One of those offences is pursuant to section 72(1) namely having control of management of an unlicensed HMO.
14. Under section 44 of the 2016 Act a tenant may apply to the Tribunal for rent repayment order but only if (a) the offence relates to housing that at the time of the offence was let to the tenant and (b) the offence was committed in a period of 12 months ending with the day on which the application is made. Under section 43 the Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt that an offence has been committed whether or not the landlord has been convicted.
15. Under section 44 of Act the Tribunal if it decides to make a repayment order must determine the amount in accordance with this section and it must not be for a period exceeding 12 months during which the landlord was committing the offence.
16. Under sub-section 4 we are entitled to take into account the conduct of the parties, the financial circumstances of the landlord and whether at any time the landlord has been convicted.

FINDINGS

17. In the submission from Carter Bells it was suggested that Miss Hao was not the person managing or having control of the subject property. Miss Hao to her credit did not seek to pursue the submissions made by Carter Bells, which we consider to be appropriate. It seems to us that she was clearly the agent acting for Mrs Zhan and Mr Chen but had not disclosed their identity. It seems, therefore, at best she was agent for an undisclosed principal. Furthermore, it is quite clear that she dealt with the letting arrangements, was at all times the point of contact and had been receiving the rent, although she said she transferred it on. We are satisfied, therefore, that she is the appropriate person having control and was managing the premises in respect of this matter.
18. Equally we have no doubt that at the time that Mr Moore took occupation of his room the house should have been licensed as an HMO. It was not. We find, therefore, that applying the standard of proof, that this property was not a licensed HMO and was in breach of the legislation. Accordingly, we find that a rent repayment order can and should be made for Mr Moore in respect of the period from 15th July to the time that the application was made to the local authority which was 17th October, being the date that it was received. As it happens, this coincides with the periods for which the rent was paid. Accordingly, allowing for the £250 which it appears to be accepted was refunded to Mr Moore at some time during the early days, we find the amount payable by way of rent repayment order is £3,750. It will be for an application to the

company which has taken the rent deposit who we understand to be DPS (deposit protection scheme).

19. We also order that the sum of £200 should be repaid to Mr Moore within 28 days being the reimbursement of the hearing fee.

Judge: *Andrew Dutton*

A A Dutton

Date: 12th February 2018

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.