



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

**Case Reference** : **LON/00AZ/HMF/2019/0027**

**Property** : **108 Hunsdon Road, New Cross,  
London SE14 5RF**

**Applicant** : **(1) Reuben Martindale (2) Henry  
Louch (3) Zachary Levin-Smith (4)  
Noah Verbeeten (5) Gasper Mencos**

**Representative** : **Mr. R Martindale**

**Respondent** : **Mr. Vendrys Henry**

**Representative** : **N/A**

**Types of Application** : **Rent repayment order**

**Tribunal Members** : **Judge Tagliavini  
Mr. M C Taylor FRICS**

**Date and venue of  
Hearing** : **6 November 2019  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **21 November 2019**

**DECISION**

## **Decision of the tribunal**

- I The tribunal determines it is appropriate to make a Rent Repayment Order in the sum of £10,714 to be paid by the respondent to the applicants.**
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### **The application**

1. This is an application for a rent repayment order (RRO) made under the provisions of the Housing and Planning Act 2016 in respect of the subject premises situate at 108 Hunsdon Road (“the premises”) as the respondent landlord failed to obtain a mandatory licence for a House in Multiple Occupation (HMO) which was required by the London Borough of Lewisham under its additional licensing scheme. In their application the applicants sought a RRO in the sum of £24,235 representing 8 months’ rent at £3,100 per month.

### **Background**

2. Pursuant to an Assured Shorthold Tenancy Agreement dated 09/09/2018 made between the applicant tenants and the respondent landlord, the subject premises were let to the applicants for a term of 12 months commencing on 06/09/2018 at a monthly rent of £3,100 payable on the 6<sup>th</sup> day of every month. The respondent has not been subjected to any criminal proceedings or a civil penalty in respect of the subject premises.

### **The premises**

3. The premises comprise a two-storey house with five bedrooms and shared use of a kitchen, bathroom/w.c. with access to a basement and garden.

### **The Applicant’s evidence**

4. At the oral hearing of the application the applicants relied on their bundle of documents containing an unsigned and undated Statement. Mr. Martindale attended the hearing and gave oral evidence to the tribunal as the ‘lead’ tenant on behalf of the other applicants who did not attend the hearing. It was said that during the period of the tenancy the applicants were all students who were all friends and who had lived together the previous year in a different property and that none of them had been in receipt of housing benefit or any other form of welfare support.

5. It was asserted by Mr. Martindale that in addition to the property not having the required HMO licence, the respondent landlord had failed to provide a gas safety certificate and that throughout the tenancy there were problems with damp and mould, trip hazards on the stairs and with a mice infestation in the kitchen. Mr. Martindale also asserted that there were inadequate fire safety measures in the premises as well as building works which took place with little or no notice to the applicants and included window replacement works. The applicants provided the tribunal with black and white photographs of the alleged disrepair and mice infestation.
6. A letter from Mr. Blaise Macklin HMO Licensing and Enforcement Officer at the London Borough of Lewisham stated that the subject premises required a licence as a mandatory HMO under the The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences)(England) Regulations 2018 which came into force on 1<sup>st</sup> October 2018. This letter also confirmed that the respondent landlord did not seek to licence the premises until an application was made on 6<sup>th</sup> May 2019.
7. Mr. Martindale told the tribunal that the applicants complained to the landlord about the damp, mould and mice but was unable to rely on an text messages or emails sent as these were not included in the applicants' bundle of documents. On questioning by the tribunal Mr. Martindale accepted that none of the applicants had taken any steps to remove the mould and did not call any firm specialising in pest control to attend the property although they had put a few mousetraps around the kitchen. In early 2019 the premises were burgled.
8. Mr. Martindale told the tribunal that because of the condition of the premises and the disruption caused by the 'building' works the applicants had negotiated a reduction in the rent to £2,650 for the month of January 2019 and £3000 for the month of March 2019. Mr. Martindale told the tribunal that at the end of the tenancy the applicants were £1200 in arrears of rent.
9. Mr. Martindale sought to rely on a witness statement of Mr. Smith the father to one of the applicants detailing his opinion of the disrepair at the premises and the oral evidence of Mr. Blaise Macklin who had not provided a witness statement to the tribunal. However, as this evidence had not been previously been sent or made known to Mr. Henry, he objected to its admission at this late stage of the proceedings.
10. The tribunal deliberated as to whether it should allow the late admission of this evidence and determined that it should not be admitted as the prejudice likely to be caused to the respondent, significantly outweighed that caused to the applicants.

## **The respondent's evidence**

11. Mr. Henry also provided the tribunal with a bundle of documents on which he relied including his signed and dated witness statement. Mr. Henry stated that he had previously used letting agents (Winkworths) in respect of the letting of this property but on this occasion had been approached directly by the applicants as one or more of them were friends with the previous tenants. Mr. Henry stated that the applicants had visited the premises before it was let to them and that he had provided a Gas Safety certificate and Energy Performance Certificate. Mr. Henry stated that he advised the applicants that they should 'air' the property to alleviate any mould and had agreed to have installed double glazing and to make the downstairs bathroom bigger although this work had overrun the two week Christmas period he had allowed. Mr. Henry stated that the applicants had kept the property in a 'despicable' state, had allowed a person to sleep in the basement and until they had moved in, there had been no problems with rodents.
12. Mr. Henry stated that having received notification from the London Borough of Lewisham that he required an HMO licence for the premises in April 2019 he applied for one online. However, due to his misunderstanding of the process and his absence abroad this was not completed and paid for until 6<sup>th</sup> May 2019. Subsequently, a licence was granted on 13 August 2019 with effect from 10 September 2019 for a period of five years.
13. On questioning by the tribunal Mr. Henry stated that the mortgage payments of the subject premises were £1,600 to £1,700 per month and provided bank statements as evidence of these payments to the Halifax mortgage provider. Copies of Mr. Henry's landlord insurance were also provided together with copies of a Gas Safety Certificate covering the period of the applicants' tenancy. Colour photographs were also provided, which Mr. Henry relied upon to show the poor state of cleanliness of the premises due to the applicants and showed the presence of a made-up bed in the basement area.
14. Mr. Henry accepted that there had been some disruption caused to the applicants over the 2018/19 Christmas/New Year period due to the 'building works' but asserted that the applicants had returned unexpectedly early to the premises. Subsequently a discount to the rent had been negotiated.
15. Mr. Henry told the tribunal that in addition to the premises he had bought as a 'buy to let' in 2004 and had rented it out since 2014 but had no other rental properties. However, Mr. Henry admitted in cross-examination by Mr. Martindale that he owned a two bedroom flat in Kingston, Jamaica which he let out on Air B n'B. Mr. Henry told the tribunal that had recently set up his own practice as he is a qualified solicitor. However, this was very much in its infancy and for the last 12 months it had been running at a loss and had eaten into his savings.

However, Mr. Henry did not provide the tribunal with any documentary proof of these assertions.

16. Mr. Henry accepted he had been in breach of the licensing requirements but requested the tribunal to take into account all relevant circumstances when making its decision and suggested a RRO in the region of 10% of the sum sought by the applicants.

### **The tribunal's decisions and reasons**

17. As Mr. Henry accepted he required an HMO licence from 1st October 2018 and admitted he had not applied for one until 13th May 2019 the tribunal is satisfied beyond all reasonable doubt that an offence has been committed under section 71 of the Housing Act 2004.
18. In considering the amount of any RRO the tribunal took into account the conduct of Mr. Henry and found that he is an experienced landlord who usually used the services of an agent in the letting of the subject premises. The tribunal finds that Mr. Henry was responsive to the applicants' requests for repairs and took steps to minimise any disruption to their enjoyment of the premises by having works carried out over the Christmas period, when the applicants when he had reasonably expected them to be away. The tribunal also finds that Mr. Henry did agree a reduction in the rent to compensate them for this disruption and for a subsequent later period.
19. The tribunal accepts that Mr. Henry has started his own practice/business but finds that he has failed to support his account of it running at a loss by producing any business bank statements or any other evidence establishing what financial investment he has made in it. Further, despite being asked by the tribunal if he owned and rented any other property Mr. Henry stated he did not until he was challenged by Mr. Martindale and admitted he also owned and rented out a two bedroom flat in Jamaica on short-term holiday lets. No evidence of the income this letting generated was provided to the tribunal. Consequently, the only evidence of Mr. Henry's financial commitments was that provided by the bank statements of his liability to make mortgage payments per month totalling £11,550 for the subject premises.
20. The tribunal also took into account the conduct of the applicants and finds that they did little to keep the premises sufficiently aired and cleaned to prevent or minimise mould and did little to ensure that the kitchen areas was kept clear of food debris or make any significant effort to deter the presence of mice. The tribunal finds that there was a current Gas Safety Certificate in place and that efforts to maximise the size of the downstairs bathroom and install double glazing for the comfort of the tenants were put in place by the landlord.

21. The tribunal calculates that between 1/10/2018 and 12/05/2019 (both dates included) the subject premises were unlicensed for a period of 224 days. This amounts to £101.92 per day and £22,829 for the whole period. However, the tribunal takes into account the reduced rent negotiated and deducts the sum of £565 from the total sum resulting in rental paid of £22,264. The tribunal also has regard to the fact that during this period Mr. Henry has demonstrated only that he has financial commitments of an average of £1,650 per month in respect of mortgage repayments for the premises amounting to £11,550 over the relevant 7 months period. Deducting this sum from the total rental figure of £22,264 this produces a figure of £10,714.
22. Therefore, having regard to the conduct of both the parties and the financial commitments of the respondent, the tribunal determines it is appropriate to make a Rent Repayment Order in the sum of £10,714 to be paid by the respondent to the applicants.

**Signed: Judge Tagliavini**

**Dated: 21 November 2019**

