



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

**Case Reference** : **LON/00BG/HMK/2019/0053**

**Property** : **Room 1, Flat 2, 42b Settles Street,  
London E1 1JP**

**Applicant** : **Ms Eva Van Wyk de Vries**

**Representative** : **Mr Sham Thakerar (Counsel)**

**Respondent** : **Ms Razia Begum Salique**

**Representative** : **Mr Stockinger (Solicitor Advocate)**

**Type of Application** : **Application for a Rent Repayment  
Order by Tenant – Sections 40, 41,  
43 & 44 of the Housing and  
Planning Act 2016**

**Tribunal Member** : **Judge Robert Latham  
Mr Luis Jarero BSc FRICS**

**Date and Venue of  
Hearing** : **20 November 2019 at  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **19 December 2019**

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**DECISION**

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**Decision of the Tribunal**

1. The Tribunal makes a rent repayment orders ('RRO') against the Respondent in the sum of £1,425 to be paid by 16 January 2020.

2. The Tribunal determines that the Respondent shall also pay the Applicants £300 by \_\_\_\_ January 2020, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The Application**

1. On 26 June 2019, the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (“the 2016 Act”) for a RRO in respect of Room 1, Flat 2, 42b Settles Street, London E1 1JP (“the flat”). The application is issued against Ms Razia Begum Salique. Ms Salique’s address was given as Flat 2, 42b Settles Street, London E1 1JP.
2. In her application form, Ms De Vries describes the current layout of the flat. There were five bedrooms and seven occupants. On the first floor, there was a kitchen, bathroom and a double bedroom which used to be the living room. On the second floor, there were two double bedrooms and a bathroom. On the top floor, there was a single bedroom, a double bedroom (which was occupied by Ms De Vries) and a bathroom.
3. On 4 July 2019, the Tribunal gave Directions. On 29 July, the Tribunal directed the Applicant to provide any other address for the Respondent. The Applicant replied on 7 August providing a quantity of further documentation. This included a copy of the First-tier Tribunal (“FTT”) decision in LON/00BG/HMF/2018/0020.
4. On 11 September, the application was listed for hearing. Ms de Vries was unable to attend as she had sustained a significant injury in France and required medical treatment. Her Counsel applied for an adjournment. Ms Salique did not appear. The Tribunal adjourned the case and issued further Directions. The Applicant was directed to send a copy of the application to the Respondent at 60 Oulton Crescent, Barking. A new hearing date was fixed for 20 November.
5. On 18 September, the Applicant filed a Bundle of Documents to which reference is made in this decision. On 15 November, Westbrook Law wrote to the Tribunal stating that they had been instructed by Ms Salique. They enclosed a witness statement from Ms Salique with a number of documents.

### **The Hearing**

6. The Applicant was represented Mr Sham Thakerar, Counsel, instructed by Legal Road Limited (“Legal Road”). He provided a Skeleton Argument. He adduced evidence from Ms Van Wyk de Vries.
7. The Respondent was represented Mr Stockinger, a Solicitor Advocate instructed by Westbrook Law. He adduced evidence from Ms Salique. It was apparent that the documents annexed to Ms Salique’s statement were

incomplete. Mr Stockinger provided a number of further documents during the course of the hearing.

### **The Issue**

8. The main argument raised by Mr Stockinger is that the application for the RRO has been brought against the wrong person. Ms Salique has filed a witness statement in which she asserts that she was not a party to the relevant tenancy agreement and had no contractual relationship with Ms De Vries. The relevant landlord is rather KME London, a business under the control of Mr Juned Hussain. She had granted an intermediary tenancy of the flat to KME London who granted the assured shorthold tenancy of a room to Ms De Vries.
9. Mr Thakerar argues that Ms Salique is the relevant landlord. KME London were mere agents. The practical reason why the application has not been brought against “KME London” is that “KME London Limited” is a limited company which was dissolved on 18 December 2018.
10. After the hearing, the Tribunal alerted the parties to the recent decision of the Upper Tribunal (“UT”) in *Goldsborough v CA Property Management Ltd* [2019] UKUT 311 (LC) (“*Goldsborough*”). This was a decision of Elizabeth Cooke, dated 29 October 2019. The freeholder had let a house to CAPM at a rent of £1,400 per month. CAPM had sublet rooms to individual tenants. The two subtenants who brought the applications each paid CAPM £550 per month. The UT held that the applicants could bring their claims for RROs in respect of the offence of “control or management” of an HMO against both CAPM or the freeholder. The 2016 Act no longer used the wording “the appropriate person” which had appeared in section 74(10) of the Housing Act 2004. Section 40(1) rather conferred the power on the First-tier Tribunal to make a RRO “where a landlord has committed an offence”. The UT concluded (at [32]):

“The only conditions that it (the 2016 Act) sets for liability to an RRO are, first, that the person is “a landlord” and second that that person has committed one of the offences. Certainly the person must be a landlord of the property where the tenant lived; section 41(2)(a) requires that the offence relates to housing that, at the time of the offence, was let to the tenant. It does not say that the person must be the immediate landlord of the occupier; if that was what was meant, the statute would have said so.”
11. The Tribunal invited the parties to make further submissions on the relevance of this decision. On 29 November 2019, Westbrook Law made further submissions on behalf of the Respondent, seeking to distinguish it, arguing that on the facts of this case, KME London had both control and management of the flat.

## **The Factual Background**

12. 42 Settles Street is a three-storey terraced property with a basement. In 1990, Spitalfields Housing Association granted Ms Salique and her husband a tenancy of Flat 42b Settles Street which was on the upper two floors. This was a two-bedroom flat.
13. On 2 July 2001, Mrs Salique and her husband acquired a 125-year lease of the flat under the Right to Buy legislation at a premium of £119,000. They created two extra bedrooms in the roof space. On 14 October 2011, Ms Salique was registered as the sole lessee on the death of her husband. In about 2014, Ms Salique purchased a house at 60 Oulton Crescent, Barking, IG11 9HF.
14. On 1 January 2015, Ms Salique signed a “Guaranteed Rental Agreement with Kingsman Estates. Ali Hussain signed on behalf of Kingsmen Estates. Ms Salique described how a friend of her late husband had introduced her to Mr Hussain. She has no sons and needed someone to assist her in renting out her property. We are satisfied that Ms Salique wanted as little as possible to do with the management of the property. She was content to leave this to Mr Hussain, provided that she received a regular rent.
15. Ms De Vries informed the Tribunal that there were seven rooms at the flat which were occupied by seven people. Two of the rooms had been divided to create additional rooms. This is not entirely consistent with the description of the flat provided in the application form. Ms Salique stated that she was not aware that the living room was being used as a bedroom or that other rooms had been divided into two.
16. The Agreement, dated 1 January 2015, is headed “Kingsmen Estates Property Consultants”. There has been no suggestion that either “Kingsmen Estates” or “Kingsmen Estates Property Consultants” were limited companies. It seems that Mr Hussain was trading under one of these names. The address specified is 536 Barking Road, E13 8QE. Kingsmen Estates guaranteed to take on the property for a period of 2-5 years and pay the landlord the agreed fixed monthly rental income “even if the property is empty!”. “£2100.00” is specified as the “Guaranteed Rental Amount”. The “Contract Start Date” is 1 January 2015 and the “End Date” is 1 January 2018.
17. There is a document headed “Terms and Conditions”. This refers to Kingsmen Estates as “agent”. Three clauses are of particular relevance:
  - (i) Clause 2 imposes the obligation on Ms Salique to comply with all health and safety regulations such as the Fire and Furnishing Regulations 1988, Gas Safety Regulations 1998 and the Low Voltage Electrical Equipment (Safety) Regulations 1989. Ms Salique was required to sign three statements confirming that the property complied with these regulations.

(ii) Clause 4 provides: “allow the agent to carry out its duties on (sic) how it sees it fit, without undue influence”.

(iii) Clause 7 provides: “In the event of the agent requiring tenant(s) to be evicted, for legal reasons, the eviction process will need to be carried out in the Landlords name. Although Kingsmen Estates will carry out all necessary paperwork in relation to this process, the landlord will be required to authorise the action and if necessary attend court”.

(iv) Clause 13 provides: “If the property is withdrawn (early termination) before the expiry of our agreement for any reason whatsoever, the landlord agrees to pay in all costs incurred by the agency”. The clause then proceeds to consider those costs in greater detail.

18. On 14 January 2016, Ms Salique signed a further agreement with Kingsmen Estates. It was again signed by Mr Hussain. The guaranteed rent was increased to £3,250 per month starting from 21 January 2016 and ending on 31 January 2017. It seems that a further agreement was signed on 28 January 2017. However, the Respondent has not provided a full set of the paperwork for either of these agreements.
19. In her statement, dated 8 January 2019, Ms Salique states: “On around January 2016, I entered into a full management contract with Kingsmen Estate signed by Mr Juned Hussain to let and manage the above property.”
20. On 2 January 2018, Ms Salique signed a further agreement with “KME London”. Sean Miah signed this on behalf of KME London. The address for KME London was given as 142 Bethnal Green Road, E2 6DG. The documents signed by Ms Salique are similar to those signed in January 2015. The agreement is stated to be for a period of two years from 2 January 2018 to 1 January 2020. No Guaranteed Rental amount is specified.
21. Ms Salique told us that the agreed sum was £3,150 per month. In her statement, she described how Mr Juned Hussain had formed another business under the name KME London.
22. This agreement also included a document headed “Terms and Conditions” similar to those in January 2015. An additional Clause 18 was added:

“KME London takes full responsibility to apply for any licence requirement and to complete all necessary works”.
23. Ms Salique was also required to give “KME London” a power of attorney valid until 1 December 2021 to “discuss, request, or provide information or services on my behalf, for the purpose of carrying out all necessary functions relating to that of a letting/management agent” in relation to the property.

24. The Applicant has produced evidence that on 26 June 2017, “KME London Limited” was incorporated. Its business was described as “real estate agencies”. It was dissolved on 18 December 2018.

### **The Applicant’s Tenancy**

25. Ms De Vries occupied Room 1 at the property between 14 August 2018 to 23 December 2018. This was a double bedroom on the top floor. She paid a rent of £570 per month. She was also paid a deposit of £570.
26. Ms De Vries signed a tenancy agreement dated 14 August 2018 (at p.10-20). The term is described as “five calender (sic) months only from 14/08/2018” and “starting on 14/08/2018 to 01/01/2019”. The landlord is specified as “KME London”. It is not clear who signed the agreement on behalf of KME London. The agreement refers to the deposit being held by “a government-approved tenancy deposit scheme”, but no such scheme is specified.
27. In her witness statement, dated 24 June 2019, Ms De Vries describes how she had visited the property on 13 August 2018 with Tim Alan Le Flem. He informed Ms De Vries that KME London had been appointed by the leaseholder to manage the property on her behalf. She moved into the property on 14 August.
28. On 27 October 2018, she had e-mailed KME London because the lock on the front door had frozen shut and she had had to call someone to repair it. She received no response to her e-mail. She subsequently spoke to “Ali” and “Sean” at KME London. She was told that they had to contact her landlady in order to recompense her.
29. After she had left the property, Ms De Vries had tried to recover her deposit. She was told by “Tee” at KME London that the landlady had been in hospital and this was the reason that the deposit had not been returned. It has still not been returned.
30. The Tribunal heard evidence from Ms De Vries and accept her as a reliable witness. She told us that she had initially gone to an office in Barking Road which was at the back of a shop. She had never met Mr Husain and had no idea who her landlord was.
31. We accept Ms De Vries evidence that she made five monthly payments of £570 by bank transfer to “KME London”. She has produced bank statement to confirm this.
32. Ms Salique described how she had received the following rent from KME in 2018: August: £2,900, September: £3,200; October: £3,200; and November: £2,952.40. In December, she had received no rent. In March 2019, A1AM Ltd had paid £3,200.

33. Ms Salique had only had dealings with Mr Hussain. The legal identity of “KME London” remains unclear. Was this a shorthand for “KME London Limited” or was Mr Hussain trading in the name of “KME London”? It is not necessary for us to make a finding on this.

### **The Previous Finding by a FTT**

34. On 3 December 2018, the FTT made a RRO against Ms Salique in the sum of £4,800 in favour of Mr Theodore Veremis who had occupied Room 1 at 42B Settles Street between 10 August 2017 and 10 February 2018. Ms Salique did not appear and took no part in the proceedings. The FTT had been provided with a tenancy agreement which had not specified a name for the landlord. The landlord’s agent was stated to be KME London.
35. Ms Salique stated that she had no knowledge of this application. Legal Road had also acted for the tenant. It seems that these proceedings were served on Ms Salique at 42B Settles Street. On 27 February, 2018, Legal Road had written to Ms Salique at 60 Oulton Crescent. No reply had been received.

### **The Law**

36. In considering this issue as to the relevant landlord, it is important to remind ourselves of the offence in respect of which a RRO is being sought. Section 40(1) of the Housing and Planning Act 2016 (“the 2016 Act”) “confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies”. An “offence to which this Chapter applies” includes an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”) in respect of the “control or management of unlicensed HMO”.
37. Section 72(1) of the 2004 Act provides:
- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
38. Section 254 of the 2004 Act defines an HMO:
- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if–
- (a) it meets the conditions in subsection (2) (“the standard test”);
  - (b) it meets the conditions in subsection (3) (“the self-contained flat test”);

- (c) it meets the conditions in subsection (4) (“the converted building test”);
  - (d) an HMO declaration is in force in respect of it under section 255; or
  - (e) it is a converted block of flats to which section 257 applies.
- (2) A building or a part of a building meets the standard test if–
- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
  - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
  - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
  - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
  - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and
  - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.”

39. Section 263 of the 2004 Act defines the following terms:

(i) “person having control” means “(unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.”

(ii) “rack-rent” means “a rent which is not less than two-thirds of the full net annual value of the premises.”

(iii) “person managing” means “the person who, being an owner or lessee of the premises:

“(a) receives (whether directly or through an agent or trustee) rents or other payments from (i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises.....; or

(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of



the premises by virtue of which that other person receives the rents or other payments; and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”

(iv) References in the Act to any person involved in the management of a HMO include references to the person managing it.

### **Our Determination**

40. The Tribunal is required to consider whether the substance and reality of the contractual arrangement between Ms Salique and Mr Hussain was more consistent with a relationship of (i) landlord and tenant prescribed by a tenancy agreement; or (ii) a management arrangement whereby Ms Salique was willing to afford Mr Hussain a wide discretion as to how he managed the property. One problem is the lack of clarity as to the legal entity with which Ms Salique had contracted. The relevant agreement subsisting at the time that “KME London” purported to grant a tenancy to Ms De Vries is that dated 2 January 2018.
41. Over the years, the courts have had to construe written agreements granted by landlords which do not reflect the substance and reality of the agreement between the parties. In *Street v Mountford* [1985] AC 809, Lord Templeman described these (at p.825) as “sham devices” and “artificial transactions”. In the later decision of *A.G.Securities v Vaughan* [1990] 1 AC 417 (at p.462), Lord Templeman preferred to substitute “the word ‘pretence’ for the references to “sham devices” and “artificial transactions”. The role of this tribunal is to construe the agreements, against the background facts, to identify the substance and reality of the contractual relationship between Ms Salique and Mr Hussain (and his associated legal entities).
42. The Tribunal is satisfied that the substance and reality of the contractual relationship between Ms Salique and Mr Hussain was one of principal and agent. Ms Salique was willing to afford Mr Hussain a wide margin of discretion as to how he managed the flat on her behalf. Mr Hussain traded under a number of different names. These agreements are poorly drafted. We have highlighted a number of terms which are only consistent with a relationship of agency rather than one of landlord and tenant. We are satisfied that provided Ms Salique received her monthly “guaranteed rental amount”, she was content for Mr Hussain to manage the flat as he considered appropriate. He partitioned off a number of rooms in a manner in which no tenant would have been permitted to do so, without the consent of his landlord. However, Ms Salique was willing for her agent to take such steps as were appropriate to maximise the rent that could be secured from the flat.
43. Whilst “KME London” were described on Ms De Vries’ tenancy agreement as her landlord, we are satisfied that there was an undisclosed agency. Ms

Salique as both leaseholder and principal was the undisclosed landlord. We are further satisfied that none of the agreements signed by Ms Salique granted Mr Hussain, “KMW London” or “KMW London Limited” any interest in land.

44. We turn to the two statutory definitions:

(i) “Person having Control”: We are satisfied that Mr Hussain was the person having control. He received the rent from Ms De Vries, albeit that he received it as agent for Ms Salique.

(ii) “Person Managing”: We are satisfied that Ms Salique was the person managing the flat. She is the leaseholder of the flat. She receives rent from her managing agent. We accept that she only received the “guaranteed rental amount”. However, she was content for her agent to maximise the rents that he could secure from the flat, provided that she received these regular payments.

45. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 72(1) of the 2004 Act. We are satisfied that:

(i) On 1 October 2016, the London Borough of Tower Hamlets introduced a selective licencing scheme for HMOs (se p.45). Under this scheme all HMOs in the Whitechapel Ward of Tower Hamlets are required to be licenced. The flat is situated in this ward.

(ii) Flat 2, 42b Settles Street, is an HMO falling within the definition falling within the “standard test” as defined by section 254(ii) of the 2004 Act. In particular:

(a) it consists of at least five units of living accommodation not consisting of self-contained flats;

(b) the living accommodation is occupied by persons who do not form a single household;

(c) the living accommodation is occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable in respect of the living accommodation; and

(f) the households who occupy the living accommodation share the kitchen, and bathroom and toilet facilities.

(iii) The Ms Salique was the “person managing” the flat.

(iv) The Respondent had failed to licence the HMO as required by section 61(2) of the 2004 Act (see p.207). This is an offence under section 72(1).

(v) The offence was committed over the period of 14 August to 23 December 2018.

(vi) The offence was committed in the period of 12 months ending on 26 June 2019, namely the date on which the application was made.

46. The Tribunal considers the position were we to be wrong in our finding that the relationship between Ms Salique and Mr Hussein was one of principal and agent. In that situation, Mr Hussain (or his associated company) would be an intermediary landlord. In such circumstances, having regard to the finding of the UT in *Goldsborough*, we are satisfied that Ms Salique would still have committed an offence under section 72(1). In such circumstances, both Ms Salique and Mr Hussein were persons having control of the flat in that they were both in receipt of rack rents. Ms Salique received this from Mr Hussain; whilst Mr Hussain received this from Ms De Vries.
47. The 2016 Act gives the Tribunal has a discretion as to whether to make a RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit paid to any of the tenants. The Applicant was not in receipt of any state benefits and paid the rent from their earnings.
48. We are satisfied that the relevant period is one of 5 months between 14 August and 23 December 2018. During this period, Ms De Vries paid five monthly sums of £570, namely a total of £2,850.
49. In determining the amount of any RRO, we have had regard to the guidance given by George Bartlett QC, the President of the Upper Tribunal (“UT”) in *Parker v Waller* [2012] UKUT 301 (LC). This was a decision under the 2004 Act where the wording of section 74(6) is similar, but not identical, to the current provisions. The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. Although the period for which a RRO can be made is limited to 12 months, a tribunal should have regard to the total length during which the offence was committed. The Tribunal should take an overall view of the circumstances in determining what amount would

be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than the non-professional landlord.

50. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord;

(ii) The conduct of the tenants. No criticism has been made of the conduct of Ms De Vries.

(iii) The financial circumstances of the landlord.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in section 40. A RRO is not a conviction for this purpose.

51. We first have regard to the conduct of the landlord. We do not have regard to the RRO made by the FTT on 3 December 2018. We accept Ms Salique's evidence that she was not aware of these proceedings. No evidence was adduced as to Ms Salique's financial circumstances. We were told that on 1 December 2017, she had taken out a £393,000 interest only mortgage on the flat and was paying £1,000 per month. We do not take this into account, as we are satisfied that she took out this mortgage to finance the purchase of her property at 60 Oulton Crescent. We do have regard to the fact that the deposit paid by Ms De Vries has not been returned.

52. We have some sympathy for Ms Salique. She is not a professional landlord. She has no husband or son to advise her. She wanted to rent out her flat and looked to Mr Hussain to manage it on her behalf.

53. However, this legislation has been enacted to protect the health and safety of tenants. Any landlord must accept their responsibilities in respect of any accommodation that he or she may choose to let. A landlord cannot absolve themselves of those responsibilities by involving a managing agent.

54. Having taken all these factors into account, we are satisfied that it is appropriate to make RROs in respect of 50% of the rent paid by Ms De Vries over the relevant period of five months. This is a sum of £1,425. This is at the lower end of the scale for this type of case. The RRO would be higher if any tenant should make any further application for a RRO. If Ms

Salique wishes to continue to let out this flat, she must ensure that it is both licenced and properly managed.

55. We further order that the Respondent refunds to the Applicants, the tribunal fees of £300 paid by the Applicants pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

**Judge Robert Latham**  
**19 December 2019**

### **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 Tribunal 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 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.
4. 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.