FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00CQ/HMK/2019/0058 – 64**
Property	**:**	**5 Cassandra Close, Coventry, West Midlands, CV4 7HN**
Applicants	**:**	**(1) Ms Weronika Castiglione** **(2) Mr Massimo Frangiamore** **(3) Mr Inigo Beckett** **(4) Miss Nicola Easton** **(5) Mr Thomas Chaplin** **(6) Mr Oliver Cumberbatch** **(7) Mr Hu Su**
Representative	**:**	**Ms Weronika Castiglione**
Respondents	**:**	**(1) Dr Pushbinder Nagra** **(2) Mrs Parvinjot Nagra**
Representative	**:**	**Band Hatton Button LLP**
Type of Application	**:**	**Application under section 41(1) of the Housing and Planning Act 2016 for rent repayment orders**
Tribunal Members	**:**	**Judge M K Gandham** **Mr P J Wilson BSc (Hons) LLB MCIEH MRICS**
Date and venue of Hearing	**:**	**12th February 2020** **Coventry Magistrates Court, 60 Little Park Street, Coventry, CV1 2SQ**
Date of Decision	**:**	**8 April 2020**

DECISION

Decision

1. Mrs Parvinjot Nagra (the Second Respondent) is to repay to the Applicants the sum of £10,982.25.

Reasons for Decision

Introduction

2. By an Application, received by the Tribunal on 3rd October 2019, Ms Weronika Castiglione, Mr Massimo Frangiamore, Mr Inigo Beckett, Miss Nicola Easton, Mr Thomas Chaplin, Mr Oliver Cumberbatch and Mr Hu Su ('the Applicants') applied for an order for the repayment of rent paid, under section 41(1) of the Housing and Planning Act 2016 ('the Act'), in respect of the property known as 5 Cassandra Close, Coventry, West Midlands, CV4 7HN ('the Property').

3. The Tribunal issued directions on 4th October 2019. The Tribunal received a Statement of Case and bundle of documents from the Applicants, on 18th October 2019, and a Statement of Case and bundle of documents from Dr Pushbinder Nagra and Mrs Parvinjot Nagra ('the Respondents'), on 22nd November 2019. The Tribunal also received a Reply to the Respondents' Statement of Case, from the Applicants, and a Response to Applicants' Reply and an Addendum to that Response, from the Respondents.

4. A hearing was held at Coventry Magistrates Court on 12th February 2020 and the Tribunal reconvened to make their decision on 27th February 2020.

5. As far as the Tribunal is aware, the Respondents have not been convicted or received a Financial Penalty in respect of any offence detailed in section 40(3) of the Act.

The Law

6. Section 40 of the Act provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

   Section 41 of the Act provides:

   41 Application for rent repayment order

   (1) A tenant … may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order 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 the period of 12 months ending with the day on which the application is made.

Section 43 of the Act provides:

43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

The relevant offences are detailed in the table in section 40(3) of the Act as follows:

	Act	*section*	*general description of offence*
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 44 of the Act provides:

44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount the tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

7. Section 72 of the Housing Act 2004 ('the 2004 Act') provides:

72 Offences in relation to licensing of HMOs

(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.

…

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

…

(8) For the purposes of subsection (4) a notification or application is "effective" at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

…

8. Section 263 of the 2004 Act defines a "person having control" and a "person managing" for the purposes of section 72. It provides:

> ***263 Meaning of "person having control" and "person managing" etc.***
>
> *(1) In this Act "person having control", in relation to premises, 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.*
>
> *(2) In subsection (1) "rack-rent" means a rent which is not less than two-thirds of the full net annual value of the premises.*
>
> *(3) In this Act "person managing" means, in relation to premises, 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; and*
>
> *(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole 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.*

9. Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 SI 2018/221 altered the description of HMOs subject to mandatory licensing, with effect from 1st October 2018, by removing the requirement for three storeys to be present. It provides:

> ***Description of HMOs prescribed by the Secretary of State***
>
> ***4.*** *An HMO is of a prescribed description for the purpose of section 55(2)(a) of the Act if it—*
>
> *(a) is occupied by five or more persons;*
>
> *(b) is occupied by persons living in two or more separate households; and*
>
> *(c) meets—*
>
> *(i) the standard test under section 254(2) of the Act;*

(ii) the self-contained flat test under section 254(3) of the Act but is not a purpose-built flat situated in a block comprising three or more self-contained flats; or

(iii) the converted building test under section 254(4) of the Act.

Inspection

10. The Tribunal inspected the Property on 12th February 2020, in the presence of Dr Nagra ('the First Respondent') and Mr French, a solicitor employed with Band Hatton Button LLP. The Applicants did not attend and were not represented.

11. The Property is a large, two storey, detached house built, probably, in the 1980s. It has fair faced cavity brick walls under pitched roof with plain tile covering. It is located in an up market cul de sac development. As built, the Property had the benefit of an attached double garage but an internal inspection showed that this had now been converted to living space.

12. To the first floor, there were four bedrooms (one en suite) and a shared bathroom. At the time of inspection, all bedrooms were occupied as individual lets. To the ground floor, there was a kitchen, a communal dining room, two shared bathrooms, a study and two utility areas. In addition, the former lounge on the ground floor was being occupied as a let and the front left hand room, formerly occupied as a let, was being used as a store. Accordingly, at the time of the inspection there were two rooms on the ground floor occupied as lets, making a total of six lets.

13. There was an extensive hard wired automatic fire detection system, with battery back-up, with detector heads in all principal rooms.

Hearing

14. Following the Inspection, a public hearing was held at Coventry Magistrates Court, 60 Little Park Street, Coventry, CV1 2SQ. Ms Castiglione and her aunt, Miss S Castiglione, attended and represented the Applicants at the hearing. The First Respondent and Mrs Buckley-Thomson from No. 5 Barristers Chamber (counsel instructed by Band Hatton Button LLP), attended for and represented the Respondents.

Matters agreed between the parties

15. The following matters were agreed by the parties:

- A tenancy of the Property commenced on 1st August 2018 and ended on 30th June 2019 ('the Tenancy'), by virtue of a tenancy agreement dated 1st August 2018 ('the Tenancy Agreement');
- All of the Applicants were occupying the Property;
- Payments were being made to the First Respondent's bank account;

- The total payments made by the Applicants over the term of the Tenancy amounted to £25,896.26; and
- The Property became a licensable House in Multiple Occupation (HMO) on 1st October 2018.

Matters in dispute between the parties

16. The following matters were in dispute:

    - Which of the Applicants were tenants of the Property;
    - The identity of the landlord, the person who controlled and the person who managed the Property;
    - On what date the Respondents had made an application for a HMO licence;
    - The amount of the payments which were defined as rent;
    - The conduct of the Respondents; and
    - The conduct of the Applicants.

17. In addition to the conduct of both landlord and tenant, under section 44(4) of the Act, in determining the amount of any rent that might be repayable, the Tribunal has to take into account the financial circumstances of the landlord and whether the landlord has at any time been convicted of an offence to which the Chapter in the Act applies.

Submissions

The Tenants of the Property

18. Miss Castiglione, on behalf of the Applicants, submitted that, although only five of the Applicants were specifically named as tenants on the Tenancy Agreement, page 9 of the agreement referred to the fact that Mr Chaplin and Ms Castiglione were given permission to cohabit at the Property "*for the duration of the term*". She pointed to the fact that the First Respondent had initialled this addendum to the agreement and stated that this additional wording completely contradicted the First Respondent's assertion (in his Response to the Applicants' Reply) that he thought that Mr Chaplin and Ms Castiglione would only be stopping for a "*short duration".*

19. Miss Castiglione referred to paragraph 3 of the First Respondent's witness statement, where he specifically stated that he had allowed Mr Chaplin and Ms Castiglione to "*become tenants for the duration of the term.*" She also pointed to the fact that, in the Respondents' submissions, they had specifically detailed the amount of payment received from each of the Applicants, including Mr Chaplin and Ms Castiglione, during the term.

20. The Applicants confirmed that each of them had resided at the Property and made payments of rent to the First Respondent's account throughout the duration of the term – Mr Chaplin (directly through his bank) and Ms Castiglione (through Mr Frangiamore's bank account).

21. Mrs Buckley-Thomson, on behalf of the Respondents, pointed to the fact that, just because the First Respondent referred to Mr Chaplin and Ms Castiglione as tenants, this did not make them such under the eyes of the law. She referred to the fact that the Tenancy Agreement only gave permission to "*co-habit*" and did not refer to them as tenants.

22. The First Respondent stated that he had only agreed to five of the Applicants residing at the Property and that he had drafted the agreement on this basis. He stated that, when he came to sign the agreement, Mr Frangiamore had written an additional provision on the last page, relating to Mr Chaplin and Ms Castiglione. He submitted that he had only agreed to initial the change as Mr Frangiamore had told him that Mr Chaplin and Ms Castiglione would only be residing for a short period.

23. The First Respondent denied that he was in communication with Ms Castiglione throughout the duration of the Tenancy and stated that his usual point of contact was Mr Frangiamore.

The Landlord and Control and Management of the Property

24. Miss Castiglione referred to the fact that a rent repayment order may be made if a Tribunal is satisfied that a landlord has committed an offence. She referred to the wording in the Tenancy Agreement, which described the landlord as "*P. NAGRA*". She stated that the Respondents were experienced landlords and submitted that the failure to include a full name in the Tenancy Agreement was so that the agreement would be deliberately ambiguous, as the first names of both Respondents began with the letter 'P'.

25. Miss Castiglione stated that the Applicants dealt exclusively with the First Respondent and that at no point were they informed that he was acting in any capacity other than on his own behalf. She referred to paragraph 3 of the First Respondent's witness statement, where he had stated that *he* had entered into an Assured Shorthold Tenancy. Miss Castiglione pointed to the fact that he did not refer to entering in to the agreement on behalf of any other party.

26. She further stated that the Applicants were not aware until after the Tenancy had ended that the Second Respondent was, in fact, the freehold owner of the Property.

27. Miss Castiglione submitted that, as the Second Respondent owned the Property and the First Respondent held himself out as the landlord, either or both of the Respondents were the landlord for the purposes of the Act.

28. In relation to who was in control of the Property, under section 72(1) of the 2004 Act, Miss Castiglione referred to the definitions in section 263 of that Act. She stated that the First Respondent accepted that the rent was paid in to his account, as such, she stated that, based on the evidence, the First Respondent was the 'person having control' under section 263(1).

29. In relation to managing the Property, she stated that, although the First Respondent was clearly collecting the rent, this could have been on behalf of the Second Respondent, who was the owner, as her agent.

30. In relation to the First Respondent's submission – that E-Let Properties Limited ('E-Let Properties') controlled and managed the Property – she submitted that this was an attempt by the Respondents to avoid liability. She stated that the Respondents could easily have requested that the Applicants make payments to E-Let Properties' bank account if E-Let Properties were in either control or managing the Property. She also pointed to the fact that the invoices attached to the Respondents' Reply to Applicants' Reply, were clearly addressed to Mr Nagra, not E-Let Properties.

31. Mrs Buckley-Thomson stated that there were two separate issues to be determined – who the landlord was, under section 43 of the Act, and who controlled and managed the Property, under section 72(1) of the 2004 Act. She confirmed that, on determining who the landlord was, it was *that* person or entity who would then need to have committed the offence under section 72(1).

32. In relation to who the landlord was, Mrs Buckley-Thomson stated that it was accepted that the Second Respondent owned the freehold of the Property but that it was the First Respondent who dealt with the Applicants in relation to the Tenancy. She submitted that, as the First Respondent had acknowledged that he was the 'P. NAGRA' referred to on the Tenancy Agreement, clearly the Second Respondent was not the landlord for the purposes of section 43 of the Act.

33. Mrs Buckley-Thomson stated that there was no evidence that the First Respondent had a proprietary interest in the Property. In addition, she stated that the First Respondent was the sole director of E-let Properties and that, as such, he may have taken the view that, in dealing with the Tenancy Agreement, he was doing so on behalf of E-let Properties, rather than in his own capacity. She referred to clause 9 of the Tenancy Agreement, which detailed the address for any notices for the landlord as E-Let Properties' registered address.

34. Finally, she noted that the Tenancy Agreement had not been signed by *any* landlord, that the First Respondent had simply initialled the first and last page and witnessed the signatures of the Applicants.

35. In relation to the control and management of the Property, Mrs Buckley-Thomson stated that the Tribunal must be satisfied beyond reasonable doubt that an offence had been committed under section 263 of the 2004 Act. She stated that there was no evidence that the Second Respondent had ever received the rent, so she could not fall within either the definition of "person having control" under section 263(1) or the "person managing" under section 263(3) of the 2004 Act.

36. In addition, she stated that, although it was accepted that the First Respondent received the rent, he was neither the owner nor a lessee of the Property. Consequently, she submitted that he could not be a "person managing" the Property under the definition in section 263(3).

37. As such, she submitted that the only possible offence that could have been committed, of which the Tribunal must be satisfied beyond reasonable doubt, was whether the First Respondent was the "person having control" under section 263(1). She submitted that the First Respondent maintained that E-Let Properties controlled the Property.

38. Mrs Buckley-Thomson stated that the First Respondent had made the Applicants aware at the outset of the Tenancy that E-Let Properties controlled and managed the Property, that all email communications to him were sent via the company email and that the Notice showing the emergency contact details referred to the company and its registered address. She further stated that, being the sole director of the company, it was reasonable that his name should have been on invoices for the company and that the rent was paid in to his personal account.

39. As such, Mrs Buckley-Thomson submitted that there *was doubt* in this matter as to the identity of the landlord, and as to whether either of the Respondents controlled or managed the Property. She submitted that the application should have been made against E-Let Properties not either of the Respondents.

40. The First Respondent, upon questioning by the Tribunal, confirmed that E-Let Properties managed seventeen properties, two of which (including the Property) were HMOs. He confirmed that he was the sole director. He also confirmed that the company did have its own bank account but that the payments made by the Applicants were paid in to his personal account not the company's account.

The Application for a HMO Licence

41. Neither party disputed that the Property had become subject to mandatory licensing on 1st October 2018 and that the Respondents had made a valid application for a HMO Licence in July 2019, after the end of the term of the Tenancy; however, the Respondents submitted that they had made an initial application in February 2019. Miss Castiglione, on behalf of the Applicants, disputed that submission. She stated that the purported draft of the February application, included within the Respondents' bundle, was full of errors and inconsistencies including, amongst others, the wrong postcode for the Property, the wrong number of bedrooms and the wrong number of occupants. In addition, she stated that none of the Applicants had ever received any notice of this application having been made and pointed to the fact that the Second Respondent, as the landlord, was detailed as the proposed licence holder.

42. She stated that Coventry City Council had, in their email of 19th July 2019, confirmed that they had no records of any such application having been received and submitted that, if an application had not been received, it could not be 'effective'. She referred to the decision of the First-tier Tribunal in LON/00AH/HMG/2018/0002, where the Tribunal decided that an application was not effective, as an online payment had not been processed. She submitted that, as in this matter the application had not been received and that any cheque for the application fee had not been cashed, the application could clearly not be considered as effective.

43. Mrs Buckley-Thomson stated that the Respondents accepted that the local authority had not received the application but that this did not mean that it had not been submitted. She distinguished the decision in LON/00AH/HMG/2018/0002, as in that case she stated that the Respondents had tried to make a payment online and had been forwarded an error message, thus putting them on notice that the application had not been successful, whereas, in this matter, the Respondents had posted the original application. She stated that the draft copy within the bundle was simply a draft not a copy of the final version and that the original was not available as it had obviously been posted to the local authority.

44. She referred to the fact that the First Respondent had confirmed in his statement that he had started the application process in July/August 2018 but that he had encountered difficulties in finding a suitable electrician to carry out works required to the Property for the licence. The First Respondent had stated that the works had been completed in January 2019, hence the application was submitted in February. The First Respondent also referred to the fact that the plan in the application was drafted in January 2019 and that there would have been little point in completing the works in January and not submitting the application until later in the year.

45. The First Respondent stated that he had failed to make a copy of application and that the Second Respondent had not posted the application by recorded delivery. He also stated that he had not contacted the local authority to check whether they had received the application until July, as he had made a similar application for a friend and understood that that the local authority had a backlog. Upon hearing that his application had not been received, he stated that he made a new application and cancelled his cheque – he referred to the letter from his bank confirming that a cheque had been stopped on 10th July 2019.

The Rent

46. Both parties agreed that the rent payable under the Tenancy Agreement was £33,000.00 for a period starting on 1st August 2018 and ending on 30th June 2019. This sum was initially stated on the Tenancy Agreement to be inclusive of the gas and electricity supply (subject to a fair usage policy) and access to the internet. Part way through the Tenancy, it was decided that the rental payments would no longer include the payment for

the gas and electricity supply and a sum of £1,650.00 was reduced from the amount of rent payable under the Tenancy Agreement (11 months at £150.00 per month). At the hearing, it was also agreed between the parties that a sum £27.50 was refunded to the tenants each month in relation to the cost of internet access.

47. Both parties agreed that the Applicants had, from 1st October 2018 to 30th June 2019, made a total payment of £25,896.26. The Applicant submitted that nine months of this payment would amount to a sum of £21,187.85, the amount claimed in their statement. Ms Castiglione confirmed that the unequal sums paid by each of the tenants was a private arrangement between them relating to their respective accommodation.

48. Mrs Buckley-Thomson stated that the Tenancy Agreement was a joint tenancy and that all of the tenants were equally liable for paying the sum of £33,000.00 during the Tenancy. It was agreed that for the initial two months, the Property was not licensable and, in addition, one of the tenants had not made an application. As such, she stated that the maximum amount that could be awarded was 7/8th of nine months' worth of payments, less any amounts the Tribunal determined should not be included as rent.

49. The First Respondent submitted that the deposit of £5,000.00 referred to in clause 10 of the Tenancy Agreement was rent, that it had been repaid in full and that it should, therefore, be deducted from the sum claimed.

The Conduct of the Respondents

50. The Applicants stated that there were a number of issues of disrepair at the Property and provided to the Tribunal a detailed list within their Reply to the Respondent's Statement of Case. These included: a faulty front door lock; a hole in the roof; a twelve day delay in replacement of a faulty washing machine; old washing machines being dumped in the garden; six months' worth of disruption in the hot water and heating system; disrepair and lack of ventilation in one of the downstairs' shower rooms, resulting in fungi growth; the failure of one of the shower room windows to close properly and an infestation of rats, which the Applicants state was only dealt with by the Respondents after the Applicants had already arranged for an exterminator to attend. The Applicants also referred to issues relating to the post, excessive electricity charges and their concerns relating to fire safety.

51. The Applicants disputed that the Respondent had treated the Applicants with courtesy and respect and pointed to communications at the end of the Tenancy describing Ms Castiglione as arrogant.

52. Miss Castiglione also referred to the fact that the local authority was currently pursuing action against the Respondents.

53. Mrs Buckley-Thomson confirmed that the Respondents were currently in a dispute with the local authority regarding purported contraventions and that it would be unfair for any alleged contraventions, which were being disputed, to be taken in to account. The Respondents confirmed that they had not been convicted of any offences by the local authority.

54. She referred to the decision of the Upper Tribunal in *Parker v Waller* [2012] UKUT 301 (LC), in particular the fact that the conduct of the landlord should relate to the offence. She stated that the issues referred to by the Applicants did not relate to the offence in question – the failure to licence the Property.

55. The First Respondent stated that, although there were some minor items that required remedying at the Property, they were not to the level the Applicants contended and that these had been attended to, as evidenced by telephone correspondence included within the bundle. He also referred to the Fire Risk Assessment, contained within the bundle, which he stated showed that the Property was safe and that some of the issues referred to by the Applicants did not pose the risks the Applicants had stated.

56. The First Respondent stated that his relationship with the tenants had generally been 'good' throughout the Tenancy, as evidenced by correspondence, and that he had even given them a Christmas card. He pointed to the fact that at the end of the Tenancy he had offered them the Property for graduation and to take them for celebration drinks, contributing £100.00 for the same, an offer which some of the Applicants had taken up.

57. Mrs Buckley-Thomson pointed to the fact that the Property did not require a licence at the commencement of the Tenancy, that the requirements came in to force two months into the term by which time the Respondents were not in a position to vacate the Property whilst they made it suitable for a licence. She submitted that the First Respondent had confirmed that he was not ignorant of the law and had evidenced that he was actively taking steps to carry out works to the Property so that it could be licenced. She also referred to the fact that the Respondents made an application soon after the works in January had been completed and had been under the mistaken belief that the local authority had been in receipt of their licence application since February.

The Conduct of the Applicants

58. The Applicants disputed the Respondents' assertion, that they had not left the Property in a good condition. They stated that the Property had been in a poor state at the commencement of the Tenancy. In their Reply to the Respondents' Statement of Case, they had included an adjudication report received from the Dispute Service relating to their deposit. The Applicants stated that the Respondents had tried to claim a sum of £965.00 from the deposit for cleaning, damage and repair, but that this claim was dismissed and that they had received a full refund.

59. The Applicants also included a copy of a message received from the First Respondent on 24th June 2019, in which he specifically stated that they had left the Property in a "*good condition*" and offered to take them for a drink for being "*great tenants*". Upon questioning as to why the Applicants would take up such an offer if, as they contended, they did not have a good relationship with the Respondents, Ms Castiglione stated that only some of the Applicants attended and that this was just to keep the First Respondent happy.

60. Mrs Buckley-Thomson stated that, just because the Dispute Service did not find in the Respondents' favour, this did not mean that the Tribunal was not entitled to form a different view.

61. The First Respondent stated that the Applicants had left the Property in a damaged and untidy state and that he had regretted not providing more evidence to the Dispute Service at the time. Within their bundle, the Respondents had provided a Statement by Peter Sidhu, a manager of JS Developments, who stated that they had been instructed to clean the Property in August 2019, as it was quite dirty, and to dispose of a broken bed. The Respondents had provided an invoice from JS Developments for a sum of £585.00 and an invoice for a new mattress for £250.00.

62. The First Respondent stated that the message he had sent to the Applicants on 24th June 2019 was prior to his inspection at the end of the term. He stated that this was clearly evidenced by the fact that he did not receive the keys back until 30th June 2019.

63. The First Respondent confirmed that he had not taken any photographs of the Property at the commencement of the Tenancy to evidence its condition on letting.

The Financial Circumstances of the Landlord

64. The Respondents had provided statements in relation to their financial circumstances within their bundle. The First Respondent confirmed that he did not work and that any income he received related to the properties that he managed.

65. Mrs Buckley-Thomson referred to the points raised in *Parker v Waller* that, in particular, there was no presumption that the order should be for the total amount received by the landlord during the relevant period, that only in the most serious of cases should payment for any utilities be included and that mortgage costs *could* be taken in to account.

66. The First Respondent confirmed that there was a mortgage registered against the Property to Santander and that the monthly costs for the same were detailed in the Second Respondent's financial statement (a sum of £1,249.87). He confirmed that he would make the mortgage payments, often at the bank counter, and that the Respondents, having been married

for several years, did not differentiate between themselves as to the origin of their funds.

67. After the hearing, the Tribunal was provided with a copy of the Office Copies to the Property, which confirmed that the Second Respondent was the registered proprietor of the Property and that a charge in favour of Santander UK Plc was registered against the Property on 16th September 2005. The Tribunal was also provided with a copy of the Second Respondent's mortgage statement relating to the Property.

The Tribunal's Deliberations

68. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted and briefly summarised above.

The Tenants of the Property

69. The Tribunal noted that although Mr Chaplin and Ms Castiglione were not detailed as tenants on page 2 of the Tenancy Agreement, the amendment, initialled by the First Respondent, clearly stated that they had been given permission to cohabit at the Property "*for the duration of the term*". In addition, although the First Respondent's witness statement – referring to Mr Chaplin and Ms Castiglione as becoming tenants (at paragraph 3) – was not conclusive evidence that they were tenants rather than cohabitees, the Schedule of rents (included within the Respondents' bundle) indicated that the Respondents acknowledged that they had received payments of rent (whether directly or indirectly) from each of the Applicants throughout the term. As such, the Tribunal considers that, based on the evidence, all of the Applicants were tenants of the Property.

The Landlord and Control and Management of the Property

70. The Tribunal noted that the Second Respondent was the freehold owner of the Property, although all of the dealings with the tenants appeared to have been with the First Respondent and the payments were made into his bank account.

71. Page 2 of the Tenancy Agreement defined the landlord as "*P. NAGRA*", a term which could have referred to either of the Respondents, and the landlord had failed to sign the Tenancy Agreement. Although the First Respondent stated that the term "*P. NAGRA*" referred to him, in his witness statement (paragraph 2) he referred to E-Let Properties managing the Property for his wife, the Second Respondent. In addition, clause 8 (i) of the Tenancy Agreement confirmed that the term "*The Landlord*" includes "*the persons for the time being entitled in reversion expectant on the tenancy*". The Second Respondent was the registered proprietor of the freehold and the Tribunal finds that, despite the First Respondent's assertions, she is the landlord for the purposes of section 43(1) of the Act.

72. Section 43(1) of the Act confirms that a rent repayment order can only be made if the Tribunal is satisfied, beyond reasonable doubt, that an offence, as detailed in section 40(3) of the Act has been committed by the landlord. As such, the Tribunal must be satisfied that the Second Respondent had control of or managed the Property.

73. The Respondents submitted that there was no evidence that the Second Respondent had ever received the rent, so she could not fall within either the definition of "person having control" under section 263(1) or the "person managing" under section 263(3) of the 2004 Act. The Tribunal does not agree.

74. The First Respondent has averred, in his witness statement, that E-Let Properties was managing the Property for the Second Respondent; however, all of the Applicants' dealing were with him and all of the payments were made in to his personal account. As such, the Tribunal considers that it is clear that the First Respondent was receiving the rent.

75. The First Respondent confirmed at the hearing that he and his wife did not make a distinction between their incomes and that he would make mortgage payments against the Property. The mortgage statement provided to the Tribunal confirmed that the borrower was the Second Respondent.

76. Section 263(3) of the 2004 Act defines a "person managing" as being "*an owner or lessee of the premises*" who "*receives (whether directly or through an agent or trustee) rents or other payments from … persons who are in occupation as tenants … and includes, where those rents or other payments are received through another person as agent or trustee, that other person*".

77. Based on the evidence before it, the Tribunal is satisfied beyond reasonable doubt that the First Respondent received the rents as agent or trustee for the Second Respondent and that the Second Respondent was the person managing the Property for the purposes of section 263(3) of the 2004 Act.

78. As such, the Tribunal is satisfied that a rent repayment order can be made against the Second Respondent, it having found that she was the landlord for the purposes of section 43(1) of the Act and had committed an offence by managing an unlicensed HMO under section 72(1) of the 2004 Act.

The Application for a HMO Licence

79. The Tribunal noted that the only evidence to support the Respondents submissions that an initial application had been made for a licence in February 2019, was a copy of a draft application (which the Respondents acknowledged was not an accurate or complete copy) and a letter from the First Respondent's bank confirming that they had stopped a cheque in July 2019. The First Respondent stated that the application had not been

sent by recorded delivery and that he had not checked to see if it had been received.

80. The local authority had confirmed that it had no record of the February application and had clearly not cashed any cheque that may have been submitted with it.

81. In the absence of any evidence confirming that an application had been received by the local authority, either by way of confirmation of delivery or by the cashing of any accompanying fee, the Tribunal does not consider that an application had been duly made in February 2019 for the purposes of section 72(4)(b) of the Act.

The Rent

82. The Tribunal concurs with the Respondents, that the Tenancy Agreement was a joint tenancy and that all of the tenants were equally liable for paying the sum of £33,000.00 during the Tenancy. As the Tribunal does not consider that an application was validly made in February 2019, the relevant period during which an offence was being committed was from 1st October 2018 to 30th June 2019.

83. The Tribunal does not consider that the deposit was rent or should be taken into account for the purposes of the rent repayment order, as it was paid in addition to the rent, to be held as security during the Tenancy.

84. The Tribunal notes the comments made by the Upper Tribunal in *Parker v Waller* but does not consider this matter so 'serious' that any payment for any utilities, in this case payments for the gas and electricity supply and internet access, should be included within the rent repayment order.

The Conduct of the Respondents

85. The Tribunal notes the items of disrepair and maintenance referred to by the Applicants and the comments of the Respondents, that any such issues were dealt with and that the relationship between the parties was, on the whole, fairly amicable. The Respondents' position appears to be borne out in the copy messages produced in evidence to the Tribunal.

86. In addition, the Tribunal notes the comments in paragraph 39 of the addendum to the decision in *Parker v Waller* [2012] UKUT 301 (LC), that conduct of the landlord unrelated to the offence should not entitle a tribunal to increase the amount of an order above a level that would otherwise be justified (the unrelated assertions against the landlord in that matter included intimidation and harassment and a failure to implement various works of repair).

87. The Respondents confirmed in their statement that they were aware that the Property would require a licence in July/August 2018 and that their failure to make an application prior to 1st October 2018 was not due to an

ignorance of the law but due to the fact that they could not obtain the services of a suitable contractor. The Tribunal does not consider this a valid excuse. The Respondents appeared to be experienced landlords, owning a number of properties between them, one of which was also a registered HMO.

88. The Tribunal considered the failure to obtain a suitable contractor for some five months and then failing to make an application for a further six months showed a lack of urgency and was conduct relevant to the offence in question.

The Conduct of the Applicants

89. The Tribunal notes the Respondents' assertions, that the Applicants had left the Property in a damaged and untidy state; however, the Respondents have provided no evidence of the condition of the Property prior to the commencement of the Tenancy. As such, the Tribunal does not consider that the conduct alleged is substantiated, and therefore, it cannot take the same into account when considering the amount of the order to be made.

The Financial Circumstances of the Landlord

90. The Second Respondent had supplied a copy of her mortgage statement to the Tribunal. This detailed that mortgage payments amounting to the sum of £11,244.94 had been made over the relevant nine months (1st October 2018 to 30th June 2019).

91. The Respondents had also provided schedules detailing their income/ assets and expenses/liabilities but had provided no further information or details of any hardship that might be caused as a result of any order being made.

92. The Tribunal noted that the mortgage against the Property had been registered in September 2005 and considered it reasonable for the amount of the mortgage payments to be taken in to account when deciding the amount of the order to be made.

The Order and the Amount to be Repaid

93. Taking all the above into account, the Tribunal calculates that the total paid by the tenants over the nine months of the Tenancy amounted to £27,000.00 (£33,000.00 x 9/11).

94. From this sum, the Tribunal deducted an amount of £1,350.00 for the gas and electricity supply (£1,650.00 x 9/11) and £247.50 repaid by the Respondents for the internet access (£27.50 x 9). This left a sum of £25,402.50.

95. As only seven out of the eight tenants were parties to the application, the amount of rent payable by the Applicants over the relevant period amounted to £22,227.19 (£25,402.50 x 7/8).

96. Having deducted the sum for the mortgage payments over the term (£11,244.94), the resulting figure amounts to £10,982.25.

97. The Tribunal notes the principle set out in *Parker v Waller*, that there is no presumption that the order should be for the total amount received by the landlord during the relevant period. The Tribunal, having deducted the amounts paid by the Second Respondent for her mortgage payments, does not consider that any further deduction is justified considering the Respondents owned a number of properties and had been aware of the need for a licence prior to the commencement of the Tenancy.

98. Therefore, the Tribunal determines that an amount of £10,982.25 is to be repaid by the Second Respondent to the Applicants.

Appeal Provisions

99. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M. K. GANDHAM
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Judge M. K. Gandham