



**Case Reference** : **LON/00AP/HMF/2020/0008**

**HMCTS Code** : **Remote, V: Video**

**Property** : **162 Park Lane, Haringey, London  
N17 OJN**

**Applicant** : **Mr Nsuka Vandune**

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

**Respondent** : **Da Silva Empire Ltd**

**Representative** : **Mr Kishantha De Silva  
Palliyaguruge - sole director of Da  
Silva Empire Ltd**

**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 H Carr  
Ms S. Coughlin MCIEH**

**Date and Venue of Hearing** : **31<sup>st</sup> July 2020**

**Date of Decision** : **4<sup>th</sup> August 2020**

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**DECISION**

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This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V:Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are in the Applicant's bundle of 37 pages and email attachments provided by the Respondent, the contents of which we have noted. The order made is described at the end of these reasons. The parties said this about the process: they were satisfied with the proceedings.

## **Decision of the Tribunal**

1. **The Tribunal makes a Rent Repayment Order of £4000 against the Respondent to be paid within 14 days of the date of this decision.**
2. **The Respondent is ordered to reimburse the Applicant his application fee of £100 within 14 days of this decision.**
3. **The reasons for the decision are set out below.**

## **The application and procedural history**

4. The Tribunal received an application under section 41 of the Housing and Planning Act 2016 ('the 2016 Act') dated 15<sup>th</sup> January 2020. It concerns 162 Park Lane, Haringey, London N17 OJN which is a three storey property with a loft conversion forming the top storey. It is an HMO with 8 bedrooms and four bathrooms, two of which are ensuite and two are communal. At the time of the Applicant's residence at the property it was occupied by 11 tenants.
5. The Applicant alleges that the landlord committed the offence of control or management of an unlicensed HMO.
6. The Applicant seeks a maximum RRO of £4,600 which comprises rent of £400 per calendar month for a period of 11 and a half months from 16<sup>th</sup> January 2019.
7. The Tribunal issued directions on 30<sup>th</sup> January 2020. The directions made it clear that the Tribunal has to be satisfied beyond reasonable doubt that the landlord has committed the alleged offence.
8. The application and the directions named Mr Kishantha De Silva Palliyaguruge as the Respondent. It has subsequently become clear that the correct Respondent is De Silva Empire Ltd which is hereby named as the Respondent in this application. Mr Kishantha De Silva Palliyaguruge acts as representative for the Respondent and agreed to this amendment.
9. The relevant legal provisions are set out in the appendix to this decision.

## **The background**

10. The property comprises an 8 bedroom HMO. The Respondent has a lease and management agreement with the owner of the property which means that it pays rent to the owner and then rents out rooms in the property on ASTs. Mr Kishantha De Silva Palliyaguruge accepts full responsibility on behalf of his company for the management of the property. He was unclear about when the company became the manager of the property, but indicated that it was shortly before the Applicant took up occupation.

11. The parties signed an AST on 16th January 2019. The agreed rent was £400 per calendar month. Neither party provided a copy of the tenancy agreement to the tribunal. The Applicant said that it was stored on his phone which had been stolen. The Respondent said that he would forward a copy to the tribunal.
12. The Respondent informed the tribunal that the agreement was for an initial fixed term of three months which was to act as a probationary period. After that term the tenancy became a monthly periodic tenancy.
13. The tenancy was terminated by the Respondent via a s.21 notice dated 25<sup>th</sup> October 2019.

### **The hearing**

14. The hearing took place via video on 31<sup>st</sup> July 2020. The Applicant attended and gave evidence and made submissions. The Respondent company was represented by Mr De Silva Palliyaguruge who gave evidence and made submissions on its behalf.
15. The issues that require to be decided by the tribunal are:
  - (a) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
  - (b) Did the offence relate to housing that, at the time of the offence, was let to the tenant?
  - (c) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?
  - (d) What is the applicable 12 month period?
  - (e) What is the maximum amount that can be ordered under s.44(3) of the Act?
  - (f) What account must be taken of:
    - i. The conduct of the landlord?
    - ii. The financial circumstances of the landlord?
    - iii. Whether the landlord has at any time been convicted of an offence under the Act?
    - iv. The conduct of the tenant?
    - v. Any other factors.

### **The issues**

*Matters not in dispute*

16. The tribunal is very grateful to the parties that they were able to agree the following:
- (a) The Respondent company had committed the offence of controlling/managing an unlicensed HMO
  - (b) This offence related to housing that at the time of the offence was let to the Applicant
  - (c) The offence was committed by the Respondent in the period of 12 months ending with the date the application was made.
  - (d) The relevant period is the period of the tenancy ie from 16<sup>th</sup> January 2019 to December 2019.
  - (e) The amount of rent paid by the Applicant to the Respondent during the relevant period is £4,600
17. The tribunal also noted that there was no evidence that a criminal offence had been committed by the Respondent in relation to the property
18. The tribunal heard evidence on the outstanding issues. These issues go to the amount of the RRO.

*The conduct of the landlord*

19. The Applicant gave evidence to the tribunal that he believed that his tenancy had been terminated by the Respondent because he, the Applicant, had contacted Haringey council to ask whether or not the property was licensed. The notice of intention to seek possession was dated 25<sup>th</sup> October 2019. He had contacted the council the previous week and he believed he had seen a letter from the council delivered to the property around the time of the termination of his tenancy. He assumed that the letter concerned whether or not the property was licensed.
20. The Applicant produced to the tribunal an email from the local authority confirming that the property was not licensed. That email was dated 28<sup>th</sup> October 2019 post-dating the date of the notice of intention to seek possession.
21. The Respondent denied that the reason for terminating the tenancy was in retaliation for contacting Haringey. He said that he terminated the tenancy because of the conduct of the tenant. His allegations are set out at paragraph 36 below.

22. The Respondent told the tribunal that he did not become aware of the alleged offence until he received a copy of the application from the tribunal. This was in January 2020.
23. He told the tribunal that he had entrusted someone to make the HMO licence application before the applicant moved into the property. He also stated that the property was in very good condition, that he had applied for a licence as soon as he became aware that the person he had entrusted to make the application earlier had failed to do so, and that the Applicant must have been content with the conditions at the property because he had stayed there for nearly a year.
24. In short the argument of the Respondent was that he was a good landlord who had made a mistake in relying on someone else to sort out the licensing of the property. He had told the tribunal he had done this because of illness and family problems. He now realized that he had to take more personal responsibility for the proper running of the property.
25. When asked about his experience in the rented sector he explained that he had about 15 properties in the London area which he managed on his own behalf. He rented the properties and then sublet them to individual tenants. In addition to these properties he also managed an undisclosed number of other properties on behalf of other landlords.

*The decision of the tribunal*

26. The tribunal decided that it has serious concerns about the conduct of the landlord. There appears to have been a strong temporal connection, which is more than a coincidence, between the Applicant contacting the local authority and the issue of the notice which suggests it was in retaliation for the action of the tenant.
27. The tribunal finds it difficult to believe that an experienced housing manager was unaware that the property was unlicensed.
28. The tribunal notes that the Respondent says he instructed another person to get the licence, but the Respondent provided no written evidence of these instructions, nor did he provide the name of the person whose responsibility it was or any evidence about when he gave these instructions.
29. Moreover the tribunal is concerned that the Respondent offered to the Applicant an AST providing only 3 months of security, when the legal requirement is six months. It was also alleged that he failed to protect the Applicant's deposit until the day before the tenancy was terminated. The tribunal was very concerned at the quality of the fire risk assessment that the Respondent provided to the tribunal. It did not provide accurate details of the property, it omitted the loft extension from consideration, it named rooms as living rooms when they were in fact bedrooms and it recommended a form of

fire protection that is targeted at commercial premises in that it prioritises the protection of property rather than the protection of life. The contents of the report made it difficult for the tribunal to believe that the assessor had actually visited the property even after the Respondent told the tribunal that the fire risk assessor had visited the property and that he had accompanied the assessor during his inspection.

30. It is proper to note that when the tribunal pointed out the defects of the fire risk assessment to the Respondent, he agreed that he would contact the local authority licensing section to make it clear that he would get a new fire risk assessment.

#### *The financial circumstances of the landlord*

31. The Respondent company has a solid property profile. It controls 15 properties with more than 100 lettings. In addition the company acts as managing agent for other landlords.
32. The Respondent suggested that his health problems had some financial consequences. He also told the tribunal that there was a 30% vacancy rate on his properties as a result of the pandemic and that, because of the moratorium on possession proceedings, many of his tenants were not paying full rent.
33. He also made it clear that the Applicant's rent included all utilities and council tax that the company had paid during the course of the Applicant's tenancy.

#### *The decision of the tribunal*

34. The Applicant provided no evidence to support his claim of financial hardship, nor evidence to substantiate the amount of the Applicant's rent that covered outgoings. This was despite the fact that the directions made clear that evidence of outgoings and hardship should be substantiated through documentation.
35. There is no doubt that all landlords will have suffered loss as a result of the pandemic. It is also clear that the Applicant has had the benefit of electricity, heating etc during the period of his tenancy.
36. Taking these factors into account the tribunal determined to deduct £600 from the maximum RRO payable in recognition that the Respondent will have been obliged to discharge certain outgoings from the rent.

#### *The conduct of the tenant*

37. The Respondent said that throughout the tenancy the conduct of the Applicant had been poor. The Respondent said that he caused messes and failed to clear them up and he played music loudly and at anti-social hours. The Applicant

had also stored computers and screens in the communal areas, causing difficulties for other tenants and blocking storage areas.

38. The Respondent said that on a personal level he liked the Applicant, but he was obliged to terminate the tenancy because of his poor conduct. The Respondent said that he had requests from other tenants to evict the Applicant. He could not risk losing other tenants because of the behavior of the Applicant.
39. The Respondent said that he had asked the Applicant to leave the property on several occasions but that the Applicant had failed to leave.
40. The Respondent suggested that the application before the tribunal was motivated by revenge for his eviction.
41. The Applicant denied that he played music at anti-social hours. He pointed out that he is employed as a pharmacy advisor and had worked for Boots the chemist for the past 10 years. He worked shifts and frequently was at work in the evening.
42. He denied he was responsible for mess in the property. He, along with other tenants, shared the costs of a cleaner who visited the property once or twice a week for a few hours.
43. He accepted that he had stored computer screens in the kitchen for a period. This was because his bedroom was very small and he was working out how to store the screens within his room. He had the computers and accessories to provide computers abroad.
44. It was clear that there was a dispute between the parties about the Respondent having disposed of property that belonged to the Applicant. The Respondent said that he had enquired and believed it was abandoned property. The Applicant said that it was always clear the property was his. The Applicant commenced proceedings in connection with the loss of his property, but has subsequently discontinued these proceedings.

#### *The decision of the tribunal*

45. The tribunal was not persuaded that the conduct of the tenant was poor. The Respondent had not provided any evidence in support, such as statements from other occupiers of the property or letters/emails/texts of complaint to the Applicant from either the Respondent or other residents of the property.
46. It does appear that there was a dispute between the parties about the storage of computers and that the Applicant had failed to keep all his possessions within his room. However the tribunal consider that this is the sort of dispute



that inevitably arises in shared accommodation and that it should not have been allowed to escalate in the way that it appears to have done.

47. The tribunal concluded that there was no evidence to support any further reductions from the amount of the RRO. Therefore the amount of the RRO ordered by the tribunal is £4000.

*The hearing fee*

48. In the light of the evidence before it the tribunal also determines that the Respondent reimburses the hearing fee of £100 to the Applicant.

**Name:** Tribunal Judge Carr

**Date:** 4<sup>th</sup>  
**August 2020**

**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.

## **Appendix of relevant legislation**

### **Housing Act 2004**

#### **80 Designation of selective licensing areas**

- (1) A local housing authority may designated either –
  - (a) the area of their district, or
  - (b) an area in their district,as subject to selective licensing, if the requirements of subsections (2) and (9) are met.

...

#### **95 Offences in relation to licensing of houses under this Part**

- (1) A person commits an offence if he is a person having control or managing a house which is required to be licensed under this Part (see section 85(1) but is not so licensed.
  - (2) A person commits an offence if –
    - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 90(6); and
    - (b) he fails to comply with any condition of the licence.
- ...
- (4) In proceedings against a person for an offence under subsection (1), or (2) it is a defence that he had a reasonable excuse –
    - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
    - (b) for failing to comply with the condition,as the case may be.

...

### **Housing and Planning Act 2016**

#### **40 Introduction and key definitions**

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –
  - (a) repay an amount of rent paid by a tenant, or
  - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

#### **41 Application for rent repayment order**

- (1) A tenant or a local housing authority 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.
- (3) A local housing authority may apply for a rent repayment order only if –

- (a) the offence relates to housing in the authority’s area, and
  - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

...

**43 Making of a rent repayment order**

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond, a reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had been convicted).
- (2) A rent repayment order under this section may be made only on an application under section 41.
- (3) The amount of a rent repayment order under this section is to be determined with –
  - (a) section 44 (where the application is made by a tenant);
  - (b) section 45 (where the application is made by a local housing authority);
  - (c) section 46 (in certain cases where the landlord has been convicted etc).

**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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 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,
  - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

28.