



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

Case reference : **LON/00AG/HMF/2021/0009**

Property : **42 Kings Gardens, London, NW6 4PX**

Applicant : **Hannah Armstrong (1)
Emily Bates (2)
Keisha Whitehorne (3)
Viktoriya Toncheva (4)
Chiara Pinna (5)**

Representative : **Justice for Tenants – Alasdair
McClenahan**

Respondent : **Jonathan Lake**

Representative : **Sean Petit of Counsel**

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(s)** : **Judge H Carr
Mrs Louise Crane MCIEH**

**Date and venue of
hearing** : **4th June 2021 2021 at 10 Alfred Place,
London WC1E 7LR**

Date of decision : **21st June 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was CVP. A face-to-face hearing was not held it was not practicable and all issues could be determined in a remote hearing. The tribunal were provided with an electronic bundle prepared by the applicants comprising 192 pages and a supplementary bundle comprising 58 pages. The respondent provided an unindexed pdf of exhibits of 420 pages, 2 separate witness statements and a further pdf bundle comprising a draft planning application. A brief skeleton argument was provided by the respondent's representative on the morning of the hearing. The determination below takes account all the documentation received from the parties.

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum of **£34,291.35**.
- (2) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees, totalling **£300**.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).
2. The applicants allege that the respondent committed an offence of control or management of an unlicensed house in multiple occupation. The applicants are seeking RROs in the total sum of **£38,275.20** for the periods set out below.

The hearing

3. The applicants Ms Hannah Armstrong, Ms Emily Bates, Ms Keisha Whitehorne, Ms Viktoriya Toncheva & Ms Chiara Pinna attended the

hearing together with their representative Mr Alasdair Mcclenahan from Justice for Tenants). Ms Armstrong and Ms Toncheva gave evidence.

4. The respondent, Mr Jonathan Lake attended the hearing together with his representative Mr Sean Petit of Counsel. Mr Lake gave evidence.

The background

5. The premises is a 5-bedroom self-contained flat in a purpose-built block with a shared kitchen, a bathroom and a shower room. The respondent provided a copy of the floor plan of the premises. The property has the benefit of a balcony and access to communal gardens.
6. In the relevant period the five bedrooms in the property were rented out on separate agreements. Those occupants shared the kitchen and bathroom facilities.
7. The premises were not subject to mandatory HMO licensing under s 55 (2)(a) of the Housing Act 2004, because they were a self-contained flat situated in a purpose built block of flats comprising of three or more self-contained flats, and therefore exempt from mandatory licensing under s.4(c)(ii) of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.
8. The premises are however situated within an additional licensing area as designated by the London Borough of Camden. The additional licensing scheme came into force on 8 December 2015 and has been implemented on a borough wide basis. The property required licensing under Camden Council's additional licensing scheme.
9. The applicants occupied the premises as follows:
 - (i) Room1: Viktoriya Toncheva, occupied the room from 7 May 2019 until 17 December 2020.
 - (ii) Room 2: Keisha Whitehorne lived in Room 2 from 31 May 2019 and moved out on after the relevant period.
 - (iii) Room 3: Hannah Armstrong lived in Room 3 from the 23 September 2019 to 23 September 2020.
 - (iv) Room 4: Emily Bates occupied Room 4 from 1 September 2019 until 25 June 2020.
 - (v) Room 5: Chiara Pinna occupied Room 5 from 15 March 2020 until 4 July 2020.

10. The applicants are seeking to recover rent as follows:
 - (i) Hannah Armstrong is seeking to recover the sum of £9,840 for the rent paid for the period between 23 September 2019 and 22 September 2020.
 - (ii) Keisha Whitehorne is seeking to recover the sum of £9,900 for the rent paid for the period between 1 July 2019 and 30 June 2020.
 - (iii) Viktoriya Toncheva is seeking to recover the sum of £8,640 for the rent paid for the period between 7 September 2019 and 6 September 2020.
 - (iv) Chiara Pinna is seeking to recover the sum of £2,574 for the rent paid for the period between 15 March 2020 and 3 July 2020
 - (v) Emily Bates is seeking to recover the sum of £7,321.20 for the rent paid for the period between 1 September 2019 and 25 June 2020
11. The respondent, Mr Lake, is the long leaseholder of the property. He purchased the property in 2003, initially sharing it with lodgers. He moved out of the property in 2007 and since that date has rented out rooms.
12. Mr Lake is named on the rental agreements and receives the rent from the occupiers.
13. The rental agreement included bills for the TV, gas and electricity, council tax, water rates and the internet. The occupiers paid an additional sum for cleaning.
14. The agreements with the applicants purport to be licences providing for a single room occupancy in a shared property. It was agreed by the respondent's representative that the occupiers had exclusive possession of their rooms and therefore were very likely to be entitled to tenancies.
15. The respondent made a planning application in February 2020 for change of use to the property from an existing 4 bedroom flat into two separate 2 bedroom flats.
16. Ms Armstrong contacted the local authority on 8th June 2020 because she had concerns about fire safety in the premises.

17. Following this, on the 19th June 2020 the local authority contacted the applicants explaining that the property required licensing and their rights in relation to s.21 notices.
18. Camden also sent a letter to Mr Lake addressed to the premises. Ms Armstrong says that she forwarded this letter to Mr Lake. The presumption is that the contents of the letter were in similar terms to that sent to the applicants.
19. Subsequently, on 13 July 2020, the respondent purported to end the occupiers' agreements.
20. Whilst three of the applicants agreed to leave within the notice period proposed by the respondent, Ms Whitehorne stayed on an extra month-and-a-half after that period and Ms Toncheva remained until mid-December 2020.
21. The respondent was concerned that Ms Toncheva was occupying a property designed for 5 occupiers as sole occupier and attempted to negotiate a change in her rent that would make her responsible for the bills. This negotiation was never completed.
22. Camden Council inspect the property on 10th August 2020 and served a notice on Mr Lake listing alleged offences of failure to licence and breaches of The Management of Houses in Multiple Occupation Regulations 2006.
23. The proceedings that followed were settled by mediated agreement between the respondent and Camden Council.
24. The applicants made their application to the tribunal on 9th December 2020.
25. No application has been made to obtain a licence. The respondent informed the tribunal that the property was no longer multiply occupied.

The issues

26. The issues that the tribunal must determine are:
 - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - (ii) Does the landlord have a defence of a reasonable excuse?

- (iii) What amount of RRO, if any, should the tribunal order?
 - (a) What is the maximum amount that can be ordered under s.44(3) of the Act?
 - (b) What account must be taken of
 - (1) The conduct of the landlord
 - (2) The financial circumstances of the landlord:
 - (3) The conduct of the tenants?
- (iv) Should the tribunal refund the applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

- 27. The applicants assert that the premises were occupied by at least 3 people at all points during the relevant period of 1 July 2019 to 22 September 2020. Each tenant occupied their own room on a permanent basis with separate occupation agreements. It was a standard HMO arrangement, there were communal cooking and toilet and washing facilities, with separate, unrelated individuals each paying rent and occupying their rooms as their only place to live.
- 28. They assert that none of them were in receipt of a housing element of universal credit or housing benefit.
- 29. They also assert that the appropriate HMO license was not held during the relevant period and that no license application was made at any point during the periods of the claim.
- 30. The applicants provided information from Camden council confirming that the property required licensing.
- 31. The respondent confirmed that he had received a financial penalty from Camden Council for failing to licence the property.

32. The applicants provided evidence that they had paid rent monthly over the period for which they are claiming.
33. The respondent admits that during the period of the claim the property was an HMO within the meaning of section 254 of the Housing Act 2004 and was situated in an area where an additional licencing scheme was in place. It is admitted that the property was not licenced. Accordingly, he admits that section 43 of the Housing and Planning Act 2016 applies and that a Rent Repayment Order may be made.

The decision of the tribunal

34. The tribunal determines that the respondent has committed the alleged offence.

The reasons for the decision of the tribunal

35. The tribunal relies on the evidence from the applicants, the information from the local authority and the concessions of the respondent.

Should the tribunal make an award of a RRO? If so, for what amount?

36. As required by the statute the tribunal considered the conduct of the respondent, the conduct of the applicants and the financial circumstances of the respondent. It considered evidence and heard arguments as set out below.

The conduct of the respondent

37. The applicants argue that the conduct of the respondent has been poor. In particular
 - (i) The respondent failed to ensure that a gas safety certificate was in place throughout the tenancy. The gas boiler was not fit for purpose and a danger to use. On 6th June 2019 the gas engineer inspected the boiler and said that it was leaking and beginning to rust. A warning certificate and notice were provided and the applicants were told it needed to be replaced. This did not happen.
 - (ii) The property had no fire doors, no fire extinguishers nor an adequate fire alarm system.

- (iii) The premises only had one smoke alarm in the kitchen which was broken until it was replaced on 24th June 2020 following requests from the applicants.
 - (iv) There was no extractor fan in the shower room and mould was growing on the walls. Following one of the applicants contacting the respondent about mould the respondent arranged for a fan to be fitted but it was not installed correctly and shorted when used.
 - (v) The use of licences and the failure to protect deposits and the unlawful termination of the occupancies.
 - (vi) Poor maintenance and management with a failure to provide legally required information.
38. The respondent rejects the allegations made by the applicants about his conduct. He told the tribunal that he takes his responsibilities as a landlord extremely seriously. He refers to the positive experiences of his prior tenants and provides copies of testimonials.
39. He told the tribunal that prior to the London Borough of Camden reviewing the property he had not been prosecuted nor issued with any civil penalty notices for breaching any housing or other legislation.
40. The respondent says that he was not aware until October 2020 that the property was classified as a house in multiple occupation and that he should have applied for a licence. He was not aware of the statutory requirement at any time prior to October 2020.
41. He says that he is not a sophisticated landlord and this property is the only rental property that he owns. There was no question of him attempting to avoid his responsibilities. He simply did not know that he was required to obtain a licence.
42. He told the tribunal that he was very concerned and upset by the nature of the application and the allegations made against him. He rejects any suggestions that he is a rogue landlord.
43. He accepts that a number of issues were raised by the applicants in connection with the property, issues he was required to address. However he states that a number of those issues were issues that could not have been foreseen.

44. He argues that he has always dealt with issues as quickly as possible and dealt with the applicants in a courteous and professional manner. In response to questions from the tribunal he confirmed that he responded to requests from the applicants but agreed that he had not inspected the property since the beginning of 2019 when he moved from the area. He had not met any of the applicants.
45. Mr Lake told the tribunal that he accepted that deposits ought to have been protected in one of the designated statutory deposit schemes but argues that he did not benefit financially from the way he held the deposits. Prior to Ms Toncheva, he had always returned deposits in full and often more quickly than they would have been returned by the statutory scheme.
46. He told the tribunal that the only reason why he held the applicants deposits in his personal bank account was due to not being fully appraised of the statutory requirements relating to the handling of deposits.
47. In connection with the gas boiler Mr Lake told the tribunal that the gas engineer told him that no immediate repairs were required to the boiler and that the minor issues which he noted could be addressed at the next service.
48. In connection with the shower room he says that he acted whenever he was informed of problems by the applicants. He suggested that mould was inevitable in a well used shower room and what was required was regular cleaning.
49. He explained that the notice email sent on 13 July 2020, to the four remaining tenants was in response to the COVID-19 pandemic and he was prepared to be flexible about notice periods. He told the tribunal that he was not aware of Ms Armstrong's discussions with the Council or that the property was a house in multiple occupation. He said he knew nothing about this until October 2020.
50. The tribunal asked for his explanation of why he had not received the letter forwarded by Ms Armstrong. He said that he did not believe that it had been sent and suggested that the applicants stood to gain by not informing him of their conversations with the local authority.
51. The respondent told the tribunal that he paid sums to Homeserve on a regular basis relating to servicing of the boiler, landlord emergency support and safety requirements.
52. The applicants responded to Mr Lake pointing out the extent of the faults that Camden found with the property such as the lack of ventilation in the shower room and the inadequacy of the fire precautions. It was also

pointed out that the manner of termination of the tenancies was distressing as was the suggestion that Ms Toncheva pay the bills on the property. The applicants also pointed to the correspondence between Ms Toncheva and the respondent to refute the suggestion that he was a courteous and caring landlord.

The financial circumstances of the landlord

53. The respondent made no submissions about his financial circumstances. He told the tribunal that in addition to the premises he owned the property he lived in and he has an as yet unspecified share in his mother's estate.
54. The agreement with the applicants included the payment of bills which the respondent calculated at £80.30 per person per month.

The conduct of the tenants

55. The respondent made no specific allegations about the conduct of the applicants but the tribunal noted that he suggested that Ms Armstrong had deliberately failed to forward communication from the Council and that Ms Toncheva had stayed on after the expiry of the notice period.
56. Mr Mcclenahan said that the applicants were exemplary tenants who paid their rent on time, took an active part in managing the property and could not be faulted.

The submissions

57. The parties made submissions relating to the quantum of RROs.
58. Mr Pettit argued that the tribunal should consider the history of the property and he noted that when the respondent first owned the property the agreements he used were perfectly proper as he was letting rooms in his own home. It was only from 2007 that the agreements became inappropriate and the failure to licence was only relevant from 2015. For many years the property was rented out without problems.
59. He accepted that the proper status of the occupiers was as tenants with assured shorthold tenancies and that the property should have been licenced and that there is no excuse for a landlord not knowing the law. He also agreed that Mr Lake should have been more proactive in managing the property.
60. He argued that the proceedings for the Rent Repayment Orders was a significant blow to Mr Lake but said that he should not be 'beaten with the same stick twice'. He asked the tribunal to note that Mr Lake thought

that the contracts were *bona fide*, he was not manipulating the system and he was not trying to scam people.

61. Mr Pettit argued that Mr Lake was not a rogue landlord. It was a well appointed property, the rent was reasonable and it was a very desirable place to live. Although the contracts did not comply with the law, they were reasonable.
62. He argued that the mould in the shower room was not such that it would fall foul of s.11 of the Landlord and Tenant Act 1985 and that the boiler was not in a dangerous condition. He asked the tribunal to accept the evidence of Mr Lake that the engineer had told him there was no immediate danger and that repairs could wait until the next servicing point.
63. With regards to the law he drew on *Parker v Waller* [2012] UKUT 301, *Vadamalayan v Stewart* [2020] UKUT 0183, *Chan v Bikhu* [2020] UKUT 289 and *Ficcara v James* [2021] UKUT 0038 to make the following points:
 - (i) A Rent Repayment Order must relate to the actual rent and not to the landlord's profit;
 - (ii) However, there must be sufficient 'headroom' in the starting point so as to be able to properly take into account the conduct of the parties, in particular to be able to adequately sanction the worst landlords;
 - (iii) Furthermore, there must also be sufficient 'headroom' in the default starting point for the tribunal to be able to distinguish (and adequately sanction) those landlords who have committed multiple offences.
 - (iv) The tribunal can take into account and make deductions in respect of utilities and similar services.
64. Mr Pettit suggested that an appropriate level of RRO would be at 40% of the rent with the outgoings for utilities deducted from that amount.

The applicants' submissions

65. On behalf of the applicants Mr Mcclenahan made the following points:

66. First he said that there was no presumption that deductions should be made for utilities, that was at the discretion of the tribunal.
67. Second he said that the current caselaw indicated that the starting point for an RRO was 100% of the rent paid. He argued that the exercise to be undertaken by the tribunal was not to place the behaviour of this particular landlord on a scale and make a RRO which reflected that landlord's position on a hierarchy of poor behaviour. Rather it was to consider what elements of the conduct of the landlord and the tenants might lead to a deduction or an increase in the RRO to be made.
68. In this instance he suggested that the conduct by the tenants was exemplary in contrast to the poor conduct of the landlord. The respondent had failed to find out the law, he had not engaged with any professional landlord association and he had not engaged an agent to manage the property. To suggest that there was simply one breach of the law he argued was false. The failure to engage with the law had led to many breaches.
69. Mr Mcclenahan points to the notice of defects from Camden Council. He also says that Mr Lake could have applied for a temporary exemption notice which would have allowed him to serve s.21 notices and avoid the distress suffered by Ms Toncheva.
70. Overall Mr Mcclenahan suggests that the respondent fell far short of the standards expected from a landlord and that therefore the maximum RRO should be awarded.

The decision of the tribunal

71. The tribunal determines to make a RRO of **£34,291.35**.
72. The RRO for each applicant is as follows:
- (i) Hannah Armstrong £9,840 – (12 x 80.30) £963.60 = **£8876.40**
 - (ii) Keisha Whitehorne £9,900 – (12 x 80.30) £963.60 = **£8936.40**
 - (iii) Viktoriya Toncheva £8,640 – (12 x 80.30) £963.60 = **£7676.40**
 - (iv) Chiara Pinna £2,574 – (3.5 x 80.30) £281.05 = **£2292.95**

(v) Emily Bates £7,321.20 – (10 x 80.30) £803.00 =
£6509.20

The reasons for the decision of the tribunal

73. The tribunal considers that there are no issues with the conduct of the tenants. However it considers that it is appropriate that the cost of utilities provided for them, and from which they benefitted should be deducted from the RRO.
74. The tribunal has reached the following conclusions about the conduct of the respondent.
75. The tribunal accepts that until June 2020 the respondent was not aware of the requirement to licence the property.
76. The tribunal considers that from July 2020 the respondent was aware of his obligations.
77. It reaches this conclusion because it accepts the evidence of Ms Armstrong that she forwarded the correspondence from Camden council to the respondent which informed him of the legal situation.
78. The tribunal accepts her evidence for the following reasons:
- (i) Ms Armstrong is a credible witness and she was not cross-examined on this point
 - (ii) Although Mr Lake told the tribunal that Ms Armstrong had something to gain from withholding the correspondence – and here he made it clear that he was referring to the tribunal proceedings - the tribunal does not accept this. Ms Armstrong had already occupied the property for a period of 9 months so had accrued a considerable proportion of the maximum possible RRO. She would also have benefitted from Mr Lake being informed that he could not evict the applicants until he obtained a licence. Further the tribunal considers that the motivation that Mr Lake ascribes to Ms Armstrong would require a level of legal sophistication that is not credible.
 - (iii) The tribunal considers that on the balance of probabilities the email notice sent by Mr Lake

requiring the applicants to leave the premises was sent in response to the information from Camden Council. Mr Lake has failed to give a satisfactory alternative explanation and there was sufficient proximity to make this a credible explanation.

79. Although the tribunal considers that Mr Lake was ignorant of the need to licence until June/July 2020 it does not accept that this exculpates him. It is very concerned that he seemingly made no attempt to find anything out about the legal requirements for renting out a property, nor did he seek to appoint a manager. At the same time, he has been in receipt of a large rental income of more than £40,000 per annum.
80. The correspondence at the commencement of Ms Armstrong's occupation provides an example of an instance which should have alerted Mr Lake to the need to pay attention to legal requirements. Ms Armstrong refers to the statutory deposit protections and to the statutory provisions for rent rises. Unfortunately, this did not make the respondent check out the legal position. He seems to have dismissed her concerns as irrelevant.
81. The tribunal notes that the respondent benefitted from his ignorance. He has also benefitted from letting the property to shared occupiers rather than a family who would have paid a lower rent.
82. The tribunal considers there are distinctions between for instance a landlord who is only just entering the rental market, or one who is poorly educated or one that does not have English as a first language and Mr Lake. Mr Lake has been renting out the property for a considerable time and has had ample opportunity to become familiar with the law and to take competent legal advice. He may not be a professional landlord but he is very articulate and well educated. It is difficult for the tribunal to believe that he can have been so insulated from discussions about landlord and tenant matters that he remained quite so ignorant of his legal responsibilities for a period of more than 10 years.
83. The tribunal notes that Mr Pettit says the level of RRO should take into account the difference between a landlord who has committed one offence and one who has committed multiple offences.
84. However it considers that whilst only one offence under the Act has been committed here, the offence of failing to licence, it considers there is a distinction between the circumstances of this case and others where only one offence has been committed. This is not a case of failure to licence but otherwise running the property appropriately. Here the failure to licence was accompanied by a failure to let on assured shorthold tenancies, a failure to protect deposits as required by statute and a failure to manage the conditions in the property appropriately. The notice from Camden Council dated 10th October 2020 demonstrates the level of

failure to manage the property with appropriate regard to health and safety.

85. The failure to let on assured shorthold tenancies has serious consequences as it suggests that there is very limited security of tenure. This had particular consequences during the pandemic when extensions of the protections from eviction were provided to tenants with ASTs. There was also a failure to provide the appropriate fire precautions required by multiple occupancy and to deal with poor conditions. The failures of the landlord put the occupants of the property at risk as the evidence from the applicants demonstrates.
86. The tribunal has taken into account Camden council's concerns about the premises and notes that extensive works had to be carried out on the property to bring it to the requisite standard. It also has concerns about the treatment of the last remaining applicant who had to live with builders in the property without even the benefit of a lock on her bedroom door and to cope with unilateral demands that she pay the bills despite the terms of her agreement.
87. It has also taken into account that Mr Lake appears to have thought, and he continued to express this in the course of the tribunal, that it was the applicants' responsibility to ensure that he managed the property properly. He for instance seems to be of the belief that the applicants should have identified the correct carbon monoxide alarm or constantly informed him about the continuing poor conditions in the shower room. He said that Ms Armstrong should have come back to him if she was concerned over the legal points she raised.
88. The tribunal also notes that when Ms Toncheva attempted to assert her rights she was met with an aggressive response in emails dated 18th and 28th October 2020. The tribunal accepts that parties can get involved in heated exchanges during the course of legal disputes. However the tone of the emails is not consistent with Mr Lake's assertion of being a caring landlord.
89. The tribunal is also surprised by the poor handover arrangements. It is inevitable in shared property that tenants abandon belongs and leave rooms in an unacceptable state. It is extraordinary that Mr Lake left it to the occupiers to manage this, and to manage the induction of new tenants into the property.
90. It also agrees with the submission of Mr McClenehan, that the role of the tribunal in determining the level of the RRO is not to place the landlord's fault on a hypothetical scale of poor landlord behaviour. It notes the Upper Tribunal's decisions referred to by Mr Pettit and in particular the observations in *Ficcara v James* on the exercise of discretion under s.44 of the Act. However the tribunal does not consider that this decision means that when deciding whether and how to exercise its discretion it

should take into account how much worse the landlord's behaviour could have been. The exercise of discretion must relate to the behaviour of the landlord and the risks that his behaviour caused the applicants to face.

91. For the reasons set out above the tribunal considers that the conduct of the landlord was very poor and had serious consequences for the applicants. The tribunal therefore does not exercise its discretion to lower the level of the RRO from the starting point of 100% of the rent paid minus the utility bills.
92. In the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr

Date: 14th June 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).