



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

**Case reference** : **LON/00AN/HMF/2020/0099**

**HMCTS code** : **V:CVP Remote**

**Property** : **30 Phipps House White City Estate W 12  
7 QE  
Matthew Anderson and Clara  
Labaste(1)**

**Applicant** : **Victoria Cifo Valderrey (2)  
Elodie Gaillard (4)**

**Representative** : **Justice for Tenants**

**Respondent** : **Ms Gemma Jane Constance Aldridge**

**Representative** : **Mr George Aldridge**

**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  
Mr A Fonka**

**Date and venue of  
hearing** : **5<sup>th</sup> March 2021 at 10 Alfred Place,  
London WC1E 7LR**

**Date of decision** : **22<sup>nd</sup> March 2021**

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**DECISION**

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## **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 V: SKYPEREMOTE. 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 259 pages, and electronic bundle prepared by the respondent comprising pages. A further bundle from the applicants which comprised 40 pages, prepared in response to the respondent statement of case had been forwarded by the applicants to the tribunal but had not been provided to the tribunal prior to the hearing. The tribunal received that bundle during 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 of £22,532.86. The amount for each of the applicants is as follows:
  - a. Ms Labaste and Mr Anderson £10, 342.86
  - b. Ms Gaillard £8,415
  - c. Ms Valderrey £3,775
- (2) The tribunal orders the respondent to reimburse the applicants the application fee and the hearing fee totalling £300 within 14 days of receipt of this determination.
- (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 seek a total RRO of £22,532.86. The relevant period is 5<sup>th</sup> February 2019 – 4<sup>th</sup> February 2020. The application was made on 11<sup>th</sup> June 2020.
3. The relevant details for each applicant are as follows:
  - (i) Matthew Anderson and Clara Labaste (who are a married couple) occupied room 1 and seek £10,342.86 for the period 5<sup>th</sup> February 2019 – 4<sup>th</sup> February 2020.
  - (ii) Victoria Cifo Valderrey occupied room 2 and seeks £3,775 for the rental period 5<sup>th</sup> September 2019 – 4<sup>th</sup> February 2020
  - (iii) Elodie Gaillard occupied room 3 and seeks £8,415 for the rental period 5<sup>th</sup> February 2019 – 4<sup>th</sup> February 2020
4. The applicants allege that the respondent has committed the offence of having control of or managing an unlicensed house in multiple occupation under s.72(1) of the Housing Act 2004. They allege that no licence for an HMO was held during the relevant period and no licence application was made at any point during the applicants' occupancy.

### **The hearing**

5. The applicants, Mr Anderson and Ms Labaste, Ms Valderrey and Ms Gaillard attended the hearing with their representative, Mr McClennahan from Justice for Tenants. The respondent, Ms Gemma Aldridge attended together with her husband, Mr George Aldridge. Mr Aldridge acted in part as his wife's representative, but he also gave evidence as he carries out the day-to-day management of the property on behalf of his wife.
6. The tribunal are grateful to everyone who attended and spoke at the hearing.

### **The background**

7. The premises is a 2 bedroomed self-contained flat in a five storey block of local authority flats. The living room has been converted into a 3<sup>rd</sup> bedroom. The property contains a single shared kitchen and a shared bathroom and toilet.

8. The property is situated within an area of additional licensing as designated by the London Borough of Hammersmith and Fulham. The additional licensing scheme came into force on 5<sup>th</sup> June 2017 and runs until 4<sup>th</sup> June 2022.
9. The respondent has a long leasehold of the property which she purchased on 30<sup>th</sup> August 2013. She told the tribunal that her husband, Mr George Aldridge, manages the property for her.
10. The respondent entered a lease with Estate Student Ltd on 24<sup>th</sup> February 2017. The terms of this agreement are discussed below.
11. At some stage Estate Student Ltd entered into an agreement with DMCK rooms. The status of DMCK rooms is unclear. It appears to have provided day to day management of the property on behalf of Estate Student Ltd. The registered address of DMCK Rooms and Estate Student Ltd are the same.
12. The applicants occupied their own rooms on a permanent basis and had separate occupation agreements. None of the rooms had locks.
13. Ms Labaste, Ms Valderrey and Ms Galliard each signed licence agreements. These were signed on different occasions. Mr Anderson joined his wife, Ms Labaste, at the property a few weeks after she signed the agreement. Mr Anderson did not sign the agreement. The respondent suggested that he had avoided signing it, but the evidence that Mr Anderson provided to the tribunal indicated that he had asked to sign the agreement but was not given the opportunity to do so.
14. The applicants paid rent individually to Estate Student Let. The rent payable every four weeks was as follows:
  - (i) Mr Anderson and Ms Labaste - £800
  - (ii) Ms Valderrey - £700
  - (iii) Ms Gaillard - £660
15. The administration team at DMCK rooms signed the licence agreement.
16. The licence agreement states explicitly that it is a personal agreement. It includes a term that stated that the agreement is not intended to confer exclusive possession on the licensee. The licensor reserves the right to immediately terminate the licence without notice if the licensee abandons the property or the falls into seven days of arrears.

17. The licence also includes a clause about moving rooms. This states that the licensor reserves the right to move the licensee to a different room within the property or to a property within the portfolio owned by the licensor with one weeks' notice. Failure to move to the new room when required will result in immediate termination of the licence.
18. Estate Student Ltd changed its name during the course of the agreement with the respondent to Dammack Properties Ltd. It informed the respondent that it was terminating the agreement in November 2019 and immediately stopped paying rent or responding to any emails or telephone calls. It is now in voluntary liquidation.

### **The issues**

19. The issues that the tribunal must determine are:
  - (i) Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence? The particular issues raised by the respondent and requiring determination are
    - (a) Is the property an HMO which requires licensing?
    - (b) Does the fact that the agreements purport to be licences have any relevance?
    - (c) Is the respondent a person who has control of or manages the property?
    - (d) Does the respondent have a reasonable excuse defence?
  - (ii) If the tribunal determines that the relevant offence has been committed by the landlord then it must determine what amount of RRO, if any, should it order. There are two particular issues to be decided in this case:
    - (a) What is the maximum RRO that can be awarded?
    - (b) What account should be taken of
      - (1) The landlords conduct

(2) The tenants' conduct

- (iii) Should the tribunal refund the applicants the applicant fee and the hearing fee.

**The relevant law**

20. The relevant sections of the Housing Act 2004 are as follows:

s.72(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 but is not so licensed.

s.72(5) In proceedings against a person for an offence under subsection (1), (2) or (3) 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 permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

s. 263 (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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5) References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

### **The determination**

#### **Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?**

21. In the early part of the hearing the respondent conceded that the property had been occupied as an HMO throughout the relevant period, that it required a licence and that it did not have a licence.
22. Therefore the issues that require to be determined by the tribunal in order to determine whether the respondent has committed the alleged offence are (i) whether the respondent is a person in control of or managing the property and (ii) if so, does the respondent have a reasonable excuse defence

#### **Is the respondent a person in control of or managing the property?**

23. The applicants argue that the respondent is the appropriate respondent for this application because she holds a long leasehold of the property and received a market rent for it.

24. The applicants point out that the respondent receives a rent from the property of £1,451.66 per month. As there is nothing to suggest that the respondent let the property to Estate Student Ltd at anything other than a market rent for the property the receipt of this rent complies with the requirement that the respondent receive a rent at least 2/3 of the market value – the commonly understood meaning of rack rent. This confirms the applicants' conclusion that she is a person who is in control of the property under s.263 of the Housing Act 2004.
25. The applicants reject the respondent's argument that as she receives less than 2/3 of the rent paid by the applicants, she is not in control of the property.
26. The applicants referred the tribunal to the decision of **Urban Lettings (London ) Ltd v London Borough of Haringey [2015] UKUT 0104 (LC)** which provides that there may be multiple rack rents of properties.
27. The applicants also argue that the respondent also indirectly received rent from the tenants in the HMO and is therefore a person managing the property.
28. Additionally the applicants argue that if the whole arrangement is taken into consideration, the respondent is, compared with Estate Student Limited and DML rooms, the appropriate person to apply for and be granted an HMO licence.
29. The respondent argues that she is not the person in control of the property.
30. The respondent told the tribunal that she let the property to Estate Student Ltd on 24<sup>th</sup> February 2017 as a two-bedroom flat. She provided a copy of the tenancy agreement with Estate Student Ltd.
31. The agreement with Estate Student Ltd included a clause permitting it to sublet the whole or individual bedrooms of the property on short term licence agreements not to extend beyond the expiry date of the lease.
32. The respondent received a monthly rent of £1451,66 from Estate Student Let.
33. The respondent had no knowledge of DMCK Rooms Limited. It was DMCK Rooms which let the property to the Applicants.
34. She agrees with the applicants that the starting point is to establish the rack rent of the premises, commonly accepted to be the open market



rent of the property between a willing landlord and a willing tenant on a particular date. However the respondent argues that the rack rent is the rent that the applicants paid and she received considerably less than that amount.

35. The respondent argues therefore that she cannot be defined as a person having control, as she was not the person who received the rack rent of the premise or was entitled to receive the rack rent.
36. The respondent further argues that she is not the person managing the rent because it has not been established that there was a financial or contractual connection between Estate Student Limited and DMCK Rooms which allowed the respondent to receive the applicants rent directly or indirectly. The respondent does not therefore meet the requirement to be considered a person managing under s.263.
37. The applicants refer the tribunal to particular terms of the agreement with Estate Student Ltd to argue that the respondent is responsible for the letting arrangements and ensuring that proper licensing is put in place.
38. First they highlight that the agreement was for three years, whereas HMO licences are normally granted for five years. They argue that the repairing obligations lie with the respondent and that therefore Estate Student Limited would have been unable to carry out works if any were required by Hammersmith and Fulham.
39. The applicants also argue that the respondent did not carry out due diligence in entering into the agreement with Estate Student Ltd. The respondent failed to investigate the credentials of Estate Student Ltd, but simply relied on a meeting following a recommendation from their estate agent. They failed to insert relevant clauses into the agreement, for instance setting a maximum number of occupants of the property, or specifically prohibiting its occupation as an HMO.
40. The applicants also say that the respondent could have carried out proper inspections during the agreement which would have revealed how many people were living in the property. The respondent could also have requested to see the letting agreements of the occupiers which would have made clear the use of the property.
41. The applicants also suggest that the respondent was aware of the existence of DMCK Rooms and referred the tribunal to text messages between Mr Aldridge and Ms Gaillard attached to the respondent's bundle and dated 13<sup>th</sup> and 14<sup>th</sup> January 2020.
42. The respondent says that they thought that this referred to the renamed Estate Student Ltd.

43. The respondent also says that the agreement with Estate Student Ltd in effect handed over responsibility to that company. The agreement did allow them to carry out works and pointed the tribunal to the works in default clause of the contract. Estate Student Ltd would have been in a position to have obtained an HMO licence for the property.
44. Mr Aldridge gave evidence of having visited the property. He had done so in connection with repairs. He did not inspect how the property was being occupied. He also gave evidence of meeting with Estate Student Ltd who appeared to be a respectable organisation.

### **The decision of the tribunal**

45. The tribunal determines that the respondent was a person in control of the premises for the purposes of s.263 of the Act.

### **The reasons for the decision of the tribunal**

46. The tribunal accepts the evidence of the respondent that she was unaware of the existence of DMCK Rooms.
47. The tribunal accepts the arguments of the applicants that the respondent was in receipt of a rack rent for the premises and is in control of the property.
48. Whilst the respondent does not receive 2/3 of the rent paid by the applicants, the tribunal accepts that more than one rack rent may be paid in connection with a property.
49. The respondent is the long leaseholder of the property and received rent. She is therefore also a person who manages the property.

### **Does the respondent have a defence of a reasonable excuse?**

50. The respondent says that she has a reasonable excuse defence on the following grounds:
  - (i) The property was let to Estate Student Let from March 2017 on a three-year lease as a two-bedroom flat on the understanding that the bedrooms may be sublet to individuals. The arrangement did not require an HMO licence.
  - (ii) The use of the living room as a bedroom was not something which fell within the control of the

respondent. It was carried out without her knowledge and was not permitted under the terms of the lease with Estate Student Ltd.

(iii) In addition, the respondent argues that the Hammersmith and Fulham additional licencing scheme did not come into force until June 2017. She therefore entered into the arrangement with Estate Student Ltd prior to the additional licensing scheme coming into force and therefore she could not be expected to have complied with it.

(iv) Estate Student Ltd set up an arrangement with DMCK Rooms without the knowledge of the respondent. She was not alerted to this and always received rent from Estate Student Ltd..

51. The applicants say that the arrangement with Estate Student Ltd cannot be the basis of a defence of reasonable excuse. In part this is because of the points made in paragraphs 39 and 40 above demonstrating that the respondent did not take the necessary care to ensure that the property was lawfully let.
52. They argue that the respondent remained deliberately ignorant of the letting arrangements of the property and that deliberate ignorance cannot be the basis of a reasonable excuse defence. It would have been easy for the respondent to have put in place arrangements which would have let her know how the property was being used.
53. The applicants also point out that the public notice for the additional licensing scheme imposed by Hammersmith and Fulham was available at the time the respondent entered into the arrangement with Estate Student Ltd even though the scheme had not yet commenced.
54. They argue that it is the respondent's responsibility to ensure that they keep up to date with law about renting properties and put in place what is required to safeguard their tenants. This includes being aware of local regulation of landlords.
55. The applicants say that there is no evidence that the respondent inspected the property until she stopped receiving rent.
56. The applicants point to the fact that the respondent owns a number of properties which she rents out. She is an experienced property landlord.

### **The decision of the tribunal**

57. The tribunal determines that the respondent has not got a reasonable excuse defence.

### **The reasons for the decision of the tribunal**

58. The tribunal has listened carefully to the arguments of the respondent. It understands that they believe themselves to be as much a victim of the poor practices of Estate Student Ltd as the applicants.
59. Although the tribunal accepts that the respondent was not aware of the details of the letting arrangements it has two concerns. First, property owners cannot avoid legal responsibility by failing to engage with the realities of letting arrangements even when they have put intermediaries into place. Second, the evidence demonstrates that the respondent knew that licences would be used in the property and was prepared to allow their use. Clause 7 of the contract with Estates Student Ltd makes this clear. Whilst licences may be appropriate in some circumstances, they are often shams disguising that the reality of the arrangement is a tenancy. They can be indicative of exploitation of people's ignorance of the law. The use of licences should have alerted the respondent to the need to be vigilant in the legal arrangements for the property. This did not happen.
60. The tribunal therefore agrees with the applicants. The respondent was in control of how the property was to be used. She had available to her mechanisms to ensure that the property was let within the law. She could have ensured the property was regularly inspected, she could have imposed a maximum occupancy, she could have insisted on seeing agreements. Having chosen not to use these mechanisms she cannot now claim a reasonable excuse defence.

### **What is the appropriate amount for the RRO?**

61. The issues that require to be determined by the tribunal to determine the quantum of the RRO in this particular case are as follows: What is the maximum RRO that can be ordered? Should any deductions be made as a result of the conduct of the landlord and the applicants?
62. The maximum RRO that can be ordered is 52 weeks rent for Mr Anderson and Ms Labaste, 52 weeks rent for Ms Gaillard and 22 weeks rent for Ms Valderrey. This totals as follows,
- (i) Mr Anderson and Ms Labaste -  $£200 \times 52 = £10,400$
  - (ii) Ms Valderrey -  $£175 \times 22 = £3,850$
  - (iii) Ms Gaillard -  $£165 \times 52 = £8,580$

63. The rental payments are substantiated by the bank statements provided by the applicants. The statements have not been challenged by the respondent.
64. The applicants claim less than that amount. Mr Anderson and Ms Labaste claim £10,342.86 Ms Valderrey claims £3,775 and Ms Gaillard claims £8,415.
65. The respondent says that Ms Valderrey and Ms Gaillard have included in their claim their security deposits. This does not appear to be substantiated by the tribunal's calculations.
66. Therefore the starting point for the award is the amount claimed by the applicants.

*The conduct of the landlord*

67. The applicants argue that the respondent made unlawful gains by renting premises without the required licence and failed to ensure that the property adhered to the safety conditions imposed by the licensing scheme. The respondent did not provide the appropriate level of security as the applicants were told to leave via an invalid form.
68. The applicants' representative also pointed out to the tribunal that the sort of rent to rent arrangement which the respondent used was associated with exploitative practices by the intermediate landlords who often targeted foreign workers who were unfamiliar with the type of protections the law provides to those who rent.
69. The applicants reminded the tribunal of the determination in *Vadmalayan v Stewart* [2020] UKUT 0183(LC) which makes it clear that the starting point for an RRO is the rent itself for the relevant period of up to 12 months and limits deductions to those set out in the statute.
70. The respondent argued that the applicants made no complaints about the condition of the premises. She argues that the property must have been in satisfactory condition because it is now rented to LB of Hammersmith and Fulham and it has not required works to be carried out.
71. She also pointed out that she has not received any rent from Estate Student Ltd since 15<sup>th</sup> October 2019.
72. The respondent produced no evidence of her financial circumstances.

73. The respondent did not pay utility bills.

#### *The conduct of the applicants*

74. The applicants argue that they were excellent tenants who paid their rent in full and on time.
75. The respondent expressed some concern about the behaviour of Mr Anderson who she suggested had avoided entering into an agreement to occupy the property.
76. She also made suggestions that the applicants were not concerned about the condition of the property but simply motivated by the possibility of getting their rent reimbursed.

#### **The decision of the tribunal**

77. The tribunal determines to make no reduction to the amount of the RRO claimed by the applicants.

#### **The reasons for the decision of the tribunal**

78. The tribunal agrees with the applicants that the starting point for the RRO is the rent paid during the period of the claim.
79. The tribunal accepts the arguments of the applicants that licensing requirements were introduced by Parliament for HMOs because of the extra risks posed in properties that are shared.
80. The tribunal had particular concerns about the licence agreement used in the property. It offered the occupiers no security and failed to provide them with the protections offered by a tenancy, including tenancy deposit protection. It notes that one of the applicants was assaulted by a previous occupier who had a mental health crisis. This highlights the risks faced by people sharing properties particularly when proper security arrangements are not in place.
81. The respondent has provided no evidence of her financial situation. The tribunal notes that she is the owner of five properties in addition to her family home. The fact that she has received no rent for the relevant period is not a deduction allowed for in the RRO statutory scheme.
82. The tribunal does not consider that Mr Anderson was taking any steps to avoid being named on the agreement to the property and therefore his conduct has no bearing on the amount of the RRO ordered.

83. 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:** 22<sup>nd</sup> March 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).