



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

Case References : **LON/00BB/HMF/2020/0115**
CVP/VIDEO

Property : **147 Barrier Point Road London E16**
2SE

Applicants : **Emmanuel Lamson**
Ken Uzuegbuna

Representative : **In person**

Respondent : **Ms Lucy Nana Yaa Barnes**
Kayode Clement Ayotunde

Representative : **Ms Barnes**

Type of Application : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM**
Mr M Cairns MCEIH

Date of CVP remote hearing : **23 February 2021**

Date of Decision : **22 March 2021**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondents jointly and severally and in favour of the Applicants jointly and severally in the sum of £6,400.00.**

Reasons

- 1 This application received by the Tribunal on 4 September 2020 is made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as 147, Barrier Point Road, London E16 2SE (the property) for the period 12 January 2020 to 20 June 2020 during which time the property was unlicensed.
- 2 A bundle of documents had been placed before the Tribunal for their consideration and these had been read by the Tribunal before the commencement of the hearing and were referred to during the hearing.
- 3 An amended bundle prepared by the Applicants and sent to the Tribunal on 18 December 2020 had not been seen by the Tribunal prior to the hearing and was only located a week after the hearing had ended. The amended bundle was identical in content to the original bundle save for 5 pages (pages 51-55). Both parties were then asked to submit their written observations on the contents of these pages. In reply, the Applicants confirmed that these pages related to a County Court action which they had taken against the landlord to recover their deposit. They obtained a judgment in the sum of £500 which reduced their claim under this application by that amount (the claimed cost of a bed frame does not fall within this jurisdiction). The Respondent was asked for her comments on these extra pages. Her response failed to mention pages 51-55 at all but contained allegations that current rent is in arrears which is not a matter relevant to the current application. She also re-stated issues which had already been put before the Tribunal at the oral hearing.
- 4 It is undisputed that the property required a licence from the London Borough of Newham and was unlicensed at the commencement date of the Applicants’ tenancy. A licence was applied for on 22 June 2020 (page 35).
- 5 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 6 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property.

- 7 The hearing took place by way of CVP Video conference on 23 February 2021 at which the Applicants appeared in person and Ms Barnes represented herself. Mr Ayotunde did not appear and was not represented although it is understood that Ms Barnes holds a power of attorney granted to her by him.
- 8 The Applicants were in occupation of the property during the entire period covered by this application. They occupied the property under a tenancy agreement produced by Ms Barnes which specified a monthly rent of £1,200 but she subsequently demanded that they sign a different contract paying £1,450 each month.
- 9 The schedule of payments produced to the Tribunal shows that the Applicants paid the higher £1,450 figure for 2 months but then reverted to the figure originally agreed of £1,200 per month.
- 10 The Applicants described the property as an 'old' flat (perhaps 50 years old) in not very good condition. They complained of bed bugs, faulty showers and dangerous electrical wiring.
- 11 The rent was paid regularly and proof of payment was produced to the Tribunal (pages 37-47).
- 12 The Applicants say that they were unaware that the property either needed a licence or that it did not have one until informed of the fact by Newham Council in 2020. They say that they would not knowingly have rented an unlicensed property.
- 13 The negotiations for the tenancy and all their dealings with the landlord were through Ms Barnes who held herself out variously as the landlord or the landlord's agent. She was the person who authorised the letting of the flat to the Applicants and who produced both contracts to them for signature. She was therefore at the material time a person who was in control of management of an unlicensed property. It is understood that Mr Ayotunde is the legal owner of the property and Ms Barnes holds a power of attorney to act on his behalf.
- 14 The relationship between the Applicants and Ms Barnes appears to have deteriorated during the tenancy and at one point she unlawfully excluded them from the premises by changing the locks.
- 15 Ms Barnes said that she had not known that the property required a licence. She applied for one immediately after receiving notification from the Council.
- 16 The inference to be drawn is that Ms Barnes accepted that the property needed to be licensed.
- 17 The Tribunal was, therefore, satisfied beyond reasonable doubt that the Respondents had committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that they had been in control or management of an unlicensed house.
- 18 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in respect of the Applicants jointly and severally for the period commencing on 12 January 2020 and ending on 22 June 2020. Any award could not exceed the total rent of £7,700 received by the Respondents for this period of time.
- 19 The Tribunal accepts that the failure to apply for a licence was inadvertent but this is not a defence under the Act.

- 20 Although Ms Barnes's behaviour towards the Applicants during the relevant period appears at times to have been unacceptable and verging on harassment the Tribunal does not categorise the Respondent as a rogue landlord.
- 21 When Ms Barnes became aware of the need to obtain a licence she applied for one promptly.
- 22 There is no evidence that the Respondents have any previous convictions of this kind and importantly, the Council did not consider the Respondent's offence to be sufficiently serious to prosecute.
- 23 The Tribunal did not have details of the Respondent's financial circumstances other than that Ms Barnes had not claimed benefits. No plea of financial hardship was made on their behalf. No evidence was produced of outgoings paid on the property by the Respondents during this period. There are therefore no deductions to make.
- 24 Neither of the Applicants was in receipt of any benefits during the relevant period.
- 25 The period to which the repayment order applies is 12 January 2020 to 22 June 2020 which comprises 5 months and 10 days.
- 26 On balance, taking into account the Respondent's conduct, the Tribunal considers that it would be reasonable order the repayment to the Applicants jointly and severally of rent for the entire period covered by the offence amounting to £6,400.
- 27 This sum has been calculated taking into account the fact that the rent paid in January, April and May was £1,200 each month, £1,450 was paid in February and a reduced sum of £950 (reflecting the County Court judgment in respect of the deposit) was paid in March. The incomplete period June 12-22 has been calculated as one third of the monthly rent of £1,200.

28 Relevant Law
Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 ("the Act") provides:

"(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.

(3) The amount of a rent repayment order under this section is to be determined in accordance 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).

Amount of order: tenants

16. Section 44 of the Act provides:

(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

an offence mentioned in row 1 or 2 of the table in section 40(3)
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

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.”

Name: Judge Frances Silverman as Chairman **Date:** 11 December 2020

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to rpsouthern@justice.gov.uk.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

