FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case References	**:**	**LON/ 00BG/HMF/2020/0204** **V:CVP REMOTE**
Property	**:**	**1 Hague St London E2 6HN**
Applicants	**:**	**Mr C Farchy** **Mr A Brown**
Representative	**:**	**Mr A Mcclenahan** **Justice for Tenants**
Respondent	**:**	**Desai Global Investments Ltd (1) (landlord)** **Mr Imran Vali (2) (Director of First Respondent company)**
Representative	**:**	**Did not appear and were not represented**
Type of Application	**:**	**Application for a rent repayment order**
Tribunal Members	**:**	**Judge F J Silverman MA LLM** **Mr M Cairns MCIEH**
Date of video hearing	**:**	**05 May 2021**
Date of Decision	**:**	**06 May 2021**

DECISION AND ORDER

Decision and Order of the Tribunal

1. **The Tribunal makes a rent repayment order against both Respondents jointly and severally and in favour of Mr Farchy in the sum of £9,027.64.**
2. **The Tribunal makes a rent repayment order against both Respondents jointly and severally and in favour of Mr Brown in the sum of £8,702.**
3. **Additionally, the Tribunal orders both Respondents jointly and severally to repay to each of the Applicants the sum of £150 (total £300) representing the repayment to them of the fees paid by them to the Tribunal in respect of their application and hearing fees.**

Reasons

1 This application made on 11 December 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 Respondents in respect of the property known as 1 Hague Street London E 2 6HN (the property) for the period 1 November 2018 to 13 October 2019 (Mr Farchy) and 1 September 2019 to 31 August 2020 (Mr Brown) during which time the property was unlicensed.

2 The subject property was originally required to be licenced under the national mandatory licencing scheme having five occupiers from two or more households. It had no licence during this period. On 1st April 2019 Tower Hamlets additional licensing scheme came into force which required licences for HMOs with three or four occupiers and both of the claims under consideration in this application are in the period following the adoption of that scheme. Again no licence was obtained for this period neither is there any evidence that any application was made at any time by the Respondents (page 136) .

3 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.

4 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property. The Tribunal considered however that the matter was capable of determination without a physical inspection of the property.

5 The hearing took place by way of a CVP video hearing (to which neither party had objected) on 05 May 2021 at which the Applicant tenants were represented by Mr A Mcclenahan of Justice for Tenants.

6 The Respondents, neither of whom were present or represented at the hearing, had been barred from taking part in the proceedings by an Order of the Tribunal made on 7 April 2021. The order was made by a Tribunal Judge because the Respondents had not complied with the Tribunal's Directions of 19 January 2021 and had not communicated at all with either the Applicants or the Tribunal. An email dated 26 April 2021 sent by the Respondents both to the Tribunal and to the Applicants demonstrates that both Respondents were aware of the proceedings and of the date of the hearing for which they had been sent a video link. That email (which is on the Tribunal's file but not included in the hearing bundle) does not provide an explanation of or defence to the application neither did it request an adjournment of the hearing.

7 An email from the Respondents (page 301) admits that the property is an HMO. The Tribunal infers from this that the Respondents acknowledged that the property required a licence and that it did not have one.

8 Both Applicants had prepared witness statements for the Tribunal (page 305 et seq) and gave oral evidence to the Tribunal who asked supplementary questions to clarify some points of the evidence.

9 Mr Farchy had lived at the property as his main and only residence from 9 August 2015 until 30 October 2019. When he left the premises he had difficulty in recovering his deposit which he discovered was not protected, as it should have been, under a deposit protection scheme (page 149). In the course of seeking help to recover the deposit (which was ultimately successful) he discovered that the property in which he, Mr Brown and various other persons had been living should have been licensed as an HMO and was not so licensed. That discovery led to the present proceedings.

10 Mr Brown had lived at the property as his main and only residence from 25 August 2018 until 28 August 2020.

11 Both Applicants confirmed that the property was a 5 bedroom apartment above commercial premises, also owned by the Respondents, in Hague Road. The tenants shared kitchen and bathroom facilities. The second Respondent lived in a separate property on the ground floor adjacent to the commercial premises. Mr Farchy said that there had been five full time occupants of the premises at all times during his tenure. He was able to provide the names and approximate dates of occupation of all the co-tenants and describe some of their personal details. Mr Brown confirmed that evidence in so far as it related to his own period of occupation. On the basis of this evidence the Tribunal is satisfied that the number of full time occupants of the property exceeded the number which would render the property exempt from licensing requirements for the entire period under discussion.

12 Both Applicants included copies of their tenancy agreements in the hearing bundle (pages 41 -65) both of which contained premature notice to quit provisions which are not permissible in a fixed term Assured Shorthold Tenancy agreement.

13 Proof that the Applicants each paid the rent to the second Respondent is contained in their rent schedules and bank statements (pages 66-67, 68, 89).

14 The local authority confirmed that the property was subject to the HMO licensing scheme, that it had never had a licence and at the time of writing no application for a licence had been made (page 95).

15 The second Respondent is the sole Director of the first Respondent company and acts as the company's human agent. His own knowledge and actions are imputed to the company. The Tribunal also accepts the Applicants' evidence that the second Respondent was the day to day contact for the residents of the property, he attended to problems, organised the cleaning, received the rent, and sent welcome letters to new tenants (see eg pages 148, 157, 299). He is therefore to be regarded as a person in control or management of an unlicensed HMO.

16 The Tribunal is, therefore, satisfied beyond reasonable doubt that both the Respondents have 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.

17 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 favour of Mr Farchy for the period 1 November 2018 to 20 October 2019 and to Mr Brown for the period 1 September 2109 to 31 August 2020.

18 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44 of the Act.

19 Neither Applicant has been in receipt of any benefits or universal credit during the periods which are the subject of these proceedings.

20 The Respondents' failure to engage with these proceedings is unfortunate but is not a defence under the Act.

21 Although the rent payable by the Applicants was inclusive of utility services there is no evidence before the Tribunal of the proportion of rent (if any) attributable to those services and the Tribunal therefore makes no deductions for them.

22 According to the Applicants the property was inadequately maintained and in disrepair. The Tribunal heard evidence of an infestation of the loft area by pigeons and of damage caused by an ingress of water which flooded the building (see photos pages 165-297). The tenants also complained of inadequate fire safety precautions and of the use of illegal clauses in their tenancy agreements. The Tribunal also noted other management failures including the lack of a gas safety report, the failure to display a notice giving details of the manager and the failure to supply a How to Rent Guide.

23 That, despite being aware of the need for a licence (page 301) the Respondents failed to complete an application for licensing.

24 The Tribunal did not have details of the Respondents' financial circumstances. No evidenced plea of financial hardship has been made in these proceedings.

25 Mr Farchy is asking the Tribunal to make an order in the sum of £9,027.64 which represents the amount of rent paid by him to the second Respondent during the period 1 November 2018 to 20 October 2019 (page 57). Mr Brown is asking the Tribunal to make an order in the sum of £8,702 representing the rent paid by him to the second Respondent during the period 1 September 2019 to 31 August 2020. Additionally the Applicants ask for the return of their application fee (£100) and hearing fee (£200).

26 For the reasons cited above the Tribunal makes no deductions to the amount claimed by the Applicants and accordingly awards Mr Farchy the sum of £9,027.64 and Mr Brown the sum of £8,702 under this Order. Additionally, the Respondents are ordered to repay the sum of £150 to each Applicant in reimbursement of their share of the application and hearing fees.

27 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: local housing authorities

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)

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

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 the amount of rent paid under the tenancy for that period less 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 F J Silverman as Chairman **Date:** 06 May 2021

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 rplondon@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.