FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BG/HMF/2021/0111**
HMCTS Code	:	**V: Video Hearing Services**
Property	:	**22 Mile End Place, London E1 4BH**
Applicants	:	**Ms. Emma Yuan** **Mr. Dean Yates** **Ms. Giuliana Torrisi**
Representative	:	**Ms. Clara Sherratt- Justice for Tenants**
Respondents		**Mr Robert Edsell & Mrs Charlotte Edsell**
Representative	:	**Mr Angus Gloag- Counsel- Direct Access**
Type of Application	:	**Applications for Rent Repayment Orders by Tenants** **Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**
Tribunal Members	:	**Judge Daley** **Mr Chris Gowman**
Date of Hearing	:	**24 August 2021**
Date of Decision	:	**5 October 2021**

Amended DECISION

I. 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: Video Hearing Services. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

II. The Applicants and the Respondents have produced two separate bundles of documents. Page references, where made in this decision are to the electronic page number in the Bundle.

III. Decision

The Tribunal makes a rent repayment order in favour of the Applicants for £**16,500 (sixteen thousand, five hundred and pounds**) together with reimbursement of the hearing and application fee.

Introduction

1. The Tribunal is required to determine this application which has been made under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order ("RRO") in respect of 22 Mile End Place, London E1 4BH ("the Property").This is an application by three tenants, concerning a 2 storey, 2-bedroom terraced house for a Rent Repayment Order, under section 41 of the Housing & Planning Act 2016.

2. The property they occupied was within an additional licensing area designated by the London Borough of Tower Hamlets. An additional licensing scheme came into force on 1 April 2019, this scheme will cease to have effect on the 31 March 2024.However, during the relevant dates the property was not licensed.

3. The tenants, who are the Applicants in this matter were granted a shorthold assured tenancy signed on 7 June 2019 (electronically by Hellosign). Their tenancy commenced on 21 June 2019, the tenancy came to an end on 21 April 2020. The rent payable for the premises was £1850 (One Thousand Eight Hundred and fifty Pounds) per month. The tenants applied to the First-tier Tribunal ('FTT') for a Rent Repayment Orders on 6 April 2021.

4. The Tribunal issued Directions on 26 May 2021, under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6. (3)(b). The Directions set out how the Applicants should prepare and the relevant documents to be provided.

5. The Directions set this matter down for hearing on 24 August 2021. The hearing was attended by the parties listed above, all parties including the Tribunal attended by Videolink. The parties did not raise any technical issues which affected the quality of the hearing.

Preliminary Matters

6. At the beginning of the hearing both representatives, set out that one of their clients may require reasonable adjustments, in respect of breaks and the wording of questions. The Tribunal noted this, however neither party asked for any specific adjustments during the hearing.

7. Mr Gloag also set out that he had only recently been instructed in the matter. He was instructed on 6 August 2021, and as such had not been involved in the case preparation until very recently. This was the reason for the late evidence, which he stated was in response to the Applicants asking for further evidence. The Tribunal decided to accept the late evidence pursuant to the Tribunal Procedure Rules 2013.

Property Inspection

8. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an inspection of the property but, based on the application form, the tenancy agreement and submissions of the parties, the Tribunal understands that the property is a 2- bedroom terraced house.

9. The Tribunal makes no further assumptions regarding the condition of the accommodation, however the Tribunal noted that there was a dispute between the parties concerning this at the material time of the tenancy.

10. Relevant Law

Section 41(1) of the Housing and Planning Act 2016 (the 2016 Act) provides:

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.

Section 40(3) of the 2016 Act lists 7 categories of offence, offence no 5 referring to section 72(1) of the Housing Act 2004 (the 2004 Act) identifies the offence as: ’

‘Control or management of unlicensed HMO. Section 72(1) of the 2004 Act provides:
‘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 licensed.’

The First-tier Tribunal may make a rent repayment order under Section 43 of the 2016 Act or 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).

Section 44 of the 2016 Act sets out the amount of order:

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 under 5 of Section 40(3) the amount must relate to rent paid by the tenant in respect of 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 rent paid in respect of 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—

the conduct of the landlord and the tenant,
the financial circumstances of the landlord, and
whether the landlord has at any time been convicted of an offence to which this Chapter applies.

The Hearing

The Applicants' Submissions

11. The Applicants provided a copy tenancy agreement, for the rental of the premises, the premises had two bedrooms and the kitchen and bathroom, which were shared. This was a shorthold assured agreement with the term starting on 21 June 2019. The tenancy agreement was signed by all three tenants. In their written statement, the Applicants stated that the premises were occupied by at least 3 people during the periods between 21 June 2019 and 21 April 2020. Ms Emma Yuan and Mr Yates shared one room and the other room was occupied by Giuliana Torrisi.

12. The first applicant, Ms Yuan, provided a witness statement in relation to this matter. She set out how the tenants came to rent the property; the property had been advertised on a website "QM Studentpad" which was a private forum which was used to let properties to students from Queen Mary College.

13. Ms Yuan in her statement set out that they had some difficulty finding a property which met their requirements, as Ms Torrisi had a dog, and they wanted a property with a garden. Prior to finding the property they were having difficulty finding a property which was near to their universities and was within their budget.

14. Ms Yuan stated that the interior of the property was not in good condition, although the property was to be rented unfurnished, which was unusual for a student letting, there was furniture which belonged to the previous tenant. The windows were single glazed with worn carpets. However, she stated that due to the difficulties they had experienced in finding suitable accommodation, the Applicants agreed to take the property on condition that it was furnished with an extra freezer provided, and that the tenancy agreement be amended to include a six- month break clause.

15. In her statement, Ms Yuan set out that there were some maintenance issues with the property at the beginning of the tenancy. These included issues with the overflow pipe to the kitchen sink, and mice infestation, evidenced by droppings in the cupboard to the second bedroom which contained the gas boiler. Ms Yuan stated that although some of these issues were attended to, the sink was not repaired until end August/early September 2019.

16. The Applicants were also concerned that the Gas Safety Certificate was out of date and was in the name of the former tenant. Ms Yuan disputed that there were CO2 detectors within the property.

17. Ms Yuan also denied that the tenants' attempted to prevent the landlords from remedying the breach in respect of their failure to licence the property, as alleged by the landlord. She stated that they had not asked Tower Hamlet's not to write to the landlords, merely not to share their new address.

18. In February 2020, the Applicants gave notice, however there was a dispute concerning whether they had ended the agreement in breach of the tenancy agreement. This was resolved in the landlord's favour at an adjudication concerning the return of their deposit. As a result, the tenants did not have their deposit returned. However, this is outside the jurisdiction of this tribunal.

19. Ms Yuan stated that she became aware that the property may have been subject to the additional licencing requirements when she was looking for alternative accommodation, and the issue of licensing was raised by more than one agent as a reason for their reluctance to rent the premises to three sharers.

20. On 24 January 2021, Ms Yuan wrote to Housing Advice Tower Hamlet. She was seeking confirmation as to whether the property was licensed as she had not seen details of the property in the Additional License Register.

21. The Applicants received confirmation from Fazur Rahman, Housing Intelligence Officer, Environmental Health & Trading Standard.

22. (LB of Tower Hamlet) which was confirmed in an email, dated 11 February 2021, that the property was "not currently licensed".

23. The Tribunal was provided with a schedule of rent payments and proof of payment (pages 45 & 46) of the electronic bundle. This confirmed that payments in the sum of £18,500 for the period of the tenancy were made by the Applicants.

24. In answer to questions, Ms Yuan stated that the nature of the occupancy, and the fact that they did not comprise a single house hold was not concealed from the Respondents. The Applicants did not accept that the landlord had acted professionally and responsibly throughout the letting as asserted by the Respondents in their defence.

The Respondents' Submissions

25. In written submissions, the Respondents, set out that the premises had been purchased in 2002 as the family home. However, in 2004, the Respondents moved out to West Sussex to support in the running of a family farm. The Respondents stated that they had been renting the property out in compliance with the law and without complaint since then.

26. In the written submissions, the Respondents complained that the Applicants had breached the terms of the tenancy by leaving two months early. Further that this had not complied with the terms of the coronavirus stay at home order. The Respondent set out how the dispute concerning the Applicants deposit had been resolved in their favour.

27. The Respondent acknowledged that the property was situated within an additional licensing area. They conceded that the area had been designated as an additional licensing area 2 months prior to the Applicants moving in. The Respondents also accepted that no licence was applied for.

28. In paragraph 11, of their statement of case, the respondents set out the reasons for resisting the Applicants claim. The Respondents stated that they had explained from the outset that the property was being let as a single occupancy, and the Applicants had asked if a friend could move in to share the costs. The Respondents stated that although it was let as a single occupancy, the names of those who were in the property needed to be included on the tenancy agreement.

29. The Respondents acknowledged Ms Yuan and Mr Yates occupation, however, in the written statement, it was contended that although they attended the property they never saw or spoke with Ms Torrisi. (Ms Torrisi, although resident abroad had attended the video hearing.)

30. The Respondents also disputed that the condition of the premises was as described by the tenants at the time of the letting. They referred to letters written by previous tenants praising the standard of the accommodation.

31. The Respondents stated that the designation of the area in which the property was situated as an additional licensing area was not communicated to them by the local authority, either directly or on any of the websites that they referenced.

32. The Tribunal heard from Mrs Edsell, she had also provided a witness statement, which was within the Respondent's bundle. She set out the circumstances in which the property came to be let to the Applicants.

33. Save that she agreed that one of the windows with the property had a hairline crack, she disputed that the property was in a poor condition. She accepted that there had been mouse droppings. However as soon as this was reported she stated that it was dealt with by them as landlords.

34. Ms Edsell denied that there had been a problem with the overflow pipe to the sink and referred to a photograph of the sink. She also stated that there had been a Gas safety Certificate provided and CO Alarms fitted.

35. Ms Edsell told the tribunal that she was a yoga teacher and partner in an agriculture business, and as such was not a professional landlord. She stated that the council had not provided them with any information about the designation of the additional licensing area. Neither had this information been provided to the National Landlord's Association, given this although she and her husband kept in touch with what was happening with rented properties through general reading, they had been ignorant of the requirement to apply for a license.

36. She also referred the Tribunal to photographs of the property which she stated accurately depicted the condition of the property, which demonstrated that the property was in good condition.

37. Mr Edsell also provided a statement in similar terms, to that of his wife. He confirmed that the property had been a family home. He stated that on finding out about the requirement to licence the property, he had enquired about the local authority's consultation exercise which was carried out prior to the designation of the area as an additional licensing area.

38. He stated that he had been informed that only 65 people attended the on-line consultation he had also read about Houses in Multiple Occupation and believed that there was a need for 5 or more occupants, whereas they had intended their property to be used for single occupancy. He also queried the Applicants assertion that the property had not provided a fire escape as needed. He stated that the property was a town story house.

39. He also referred the Tribunal to a number of references which had been received from former tenants which attested to his wife and his professionalism as landlords and to the satisfaction of former tenants.

Closing Submissions
The Respondent's closing submissions

40. Mr Gloag, referred to his written submissions, he also submitted that the Respondents were not professional landlords, they had rented what had in effect been their marital home. He referred the Tribunal to their character references as landlords, which had been submitted by their former tenants. Mr Gloag, also noted that the Respondents had resolved issues which had been raised by the tenants.

41. He submitted that the Tribunal should take note of the conduct and approach of the Edsell and the fact that they had not set out to breach the legislation. He stated that the legislation was designed to target rogue landlords, and it was clear that the Edsell were professional and competent landlords.

42. Mr Gloag noted that the law had changed two months before the property was let by the landlords. It was clear that the Respondents would have applied for a licence had they been aware of the need to obtain one.
    a. He stated that under the legislation they would have no difficulty in complying with the fit and proper person test.

43. They were unaware of the change in designation as the LA had not consulted widely or giving notice outside the borough. He stated that the Respondents had a reasonable excuse within the meaning of Section 72(5).

44. He stated that had been encouraged to let the property by the tenants who had wanted what they had described as "a Gem of a property".

45. He referred to the fact that the tenants had discouraged the LA from contact with the Landlords' and thus informing them about the change in designation.

46. He stated that the tenants had not been concerned about the condition of the property as this had only be raised once they left the property and this was in essence due to the fall out about the deposit.

The Applicant's closing submissions

47. Ms Sherratt, submitted that the Respondents had no reasonable excuses. She referred to Mohammed and Waltham Forrest [2020] EWHC 1083, a case in which the landlords were unaware of the need for a licence. This had not prevented the LA, applying for an order in the magistrate's court.

48. She submitted that there was no evidence that a HMO had been created behind the landlord's back. The Landlord knew that the property was being let to three tenants. She stated that living outside of the borough and therefore not knowing of the changes to the licensing regime within the borough did not amount to a reasonable excuse. She referred to Vadamalayan -v- Stewart and Others (2020) UKUT 0183. In particular paragraph 47

49. Ms Sherratt stated that in assessing this matter the Tribunal should consider Section 44(4) that is the conduct of the parties, the financial circumstances of the landlord and whether any offence had been committed. She also referred the Tribunal to Ficcara -v- James.

50. She stated that in order to prove financial circumstances of the parties the Respondents should have provided documentary evidence. She set out that the Respondent had not provided any evidence that a reduction was due. Ms Sherratt submitted that the starting point was the full rent paid by the tenants.

51. She noted that had the property been licensed, they the LA would have inspected the property and would have decided if the fire prevention measures were adequate. Ms Sherratt stated that the tenants had been unaware of their rights and the need for a licence when they first occupied the property. However this had been confirmed by the LA.

52. She submitted that there should be no deduction from the sums awarded.

Tribunal Decision

53. The Tribunal considered the application in four stages –

(i)Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed as an HMO but was not so licensed.
(ii)Whether the Applicants were entitled to apply to the Tribunal for a rent repayment order.
(iii)Whether the Tribunal should exercise its discretion to make a rent repayment order.
(iv)And finally, the Tribunal was required to make a Determination of the amount of any order.

54. It is important to note that the fact that the Applicants will have had the benefit of occupying the premises during the relevant period is not a material consideration.

55. The Tribunal in reaching its decision, also considered Ficcara and Ors -v- James (2020) UKUT 289 and Vadamalayan -v- Stewart and Others (2020) UKUT 0183.

56. The Tribunal is required to take account of the conduct of both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the 2016 Act.

57. There is no evidence before the Tribunal that the Respondent has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.

58. The Tribunal finds on the evidence before it, and on the admission of the respondents that the property was in an area covered by licensing provisions and that the premises required an additional licence. It considered that there was evidence that the flat was let to three tenants. As this was confirmed by the tenancy agreement, accordingly the premises was required to be licensed under the additional licensing scheme.

59. The premises was unlicensed during the material period, Accordingly, the Tribunal finds on a standard of proof beyond a reasonable doubt that the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act.

60. Having found the primary facts proved beyond a reasonable doubt, the Tribunal went on to consider, whether on a balance of probabilities the respondent had demonstrated that they had a reasonable excuse for failing to licence the property.

61. The Tribunal in decided whether the Respondents lack of knowledge concerning the requirement to have a licence had regard to Mohammed and Anor R (on the Application of) V London Borough of Waltham Forrest (2020) EWHC 1083 in particular paragraphs 39 and 40- " In practical terms it was common ground that in order to prove the offence under section 72(1) of the 2004 Act the prosecution will need to make the relevant tribunal sure that: (1) the relevant defendant had control of or managed, as defined in section 263 of the 2004 Act; (2) a HMO which was required to be licensed, pursuant to sections 55 and 61 of the 2004 Act; and (3) it was not so licensed. Mr Khan's submission would lead to a fourth element namely proving that (4) the relevant defendant knew that the property he had control of or managed was an HMO, and therefore was required to be licensed.
62. This raises the issue of statutory interpretation of the 2004 Act. In our judgment it is plain that there is no requirement to prove that the defendant knew that the property he had control of or managed was a HMO, and therefore was required to be licensed, for a number of reasons which are set out below…"
63. The Tribunal decided that the Respondents lack of knowledge could not constitute a reasonable excuse.

64. The Tribunal noted that the Respondents were not professional landlords' nevertheless they chose to manage the property it was therefore up to them to make arrangements to ensure that they fully understood and remained up to date with the requirements for management in Tower Hamlets. The Tribunal noted that they had a well- intended, amateurish approach to management and in that regard their management was complacent rather than poor.

65. The Tribunal considered the submissions of both parties.

66. The Tribunal noted that although both parties complained about the conduct of the other party, this was not a case in which the conduct of either party was identified by the Tribunal as an issue, although both parties had complaints about the conduct of the other party.

67. The Tribunal also noted that the Applicants although mentioning the condition of the property, had no real complaints, until the issue of the return of the deposit arose. At that point they looked into their rights and availed themselves of an application for a rent repayment order as is their right.

68. The Tribunal also found that there was no real issue of the conduct of the tenants as alleged by the landlords.

69. The Tribunal therefore finds that the Applicant is entitled to a rent repayment order.

70. The Tribunal in reaching its decision considered Vadamalayan -v- Stewart and Others (2020) UKUT 0183.

71. It noted that the decision stated that a proper interpretation of Section 44 and 45 of the Housing and Planning Act 2016, suggest that the maximum rent paid by the tenants is the starting point.

72. The Tribunal next considered whether on the evidence before it a reduction from 100% of the rent paid ought to be made. Given its findings concerning the knowledge of the landlord, it found no reason to depart from the principles set out in *Vadamalayan -v- Stewart*. The Tribunal noted that Section 44 and 45 of the Housing and Planning Act 2016, was designed to act as a deterrent. The Tribunal further noted that although Mr Gloag had referred to the Respondents as good landlords, their failure to licence the property meant that the LA had not been properly been able to assess the landlord's compliance with any fire requirements.

73. Given this, the Tribunal considers that the award should be £18,500, as the starting point. However, as the Tribunal is unable to look behind the findings of the adjudicator for the rent deposit scheme who found that a sum of rent equivalent to two month's rent was outstanding (minus the rent deposit). The Tribunal therefore has decided that the landlord may deduct the outstanding rent (which we find is equivalent to one month's rent) from the rent repayment order.

74. The Tribunal therefore makes a Rent Repayment order in the sum of £**16,500 (Sixteen thousand, and five hundred, pounds**) for the period 21 June 2019 to 21 April 2020. The Tribunal also makes an order for the cost of the Application fee of £100.00 and the hearing fee of £200.00 to be reimbursed.

75. **Payment should be made in full within 28 days of the date of this decision.**

Right 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.

Signed: Judge Daley

Dated: 5 October 2021

We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission at paragraph III paragraph 75and of our Decision dated 05/10/2021. Our amendments are made in bold. We have corrected our original Decision because of the sum of the rent repayment order was incorrectly stated in the rent repayment order.

Signed: Judge Daley

Re dated: 11 October 2021