



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

**Case reference** : **LON/00BG/HMG/2021/0005**

**HMCTS code (paper, video, audio)** : **V: CVPREMOTE**

**Property** : **31 Thornaby House, Canrobert Street,  
London E2 0BE.**

**Applicant** : **Vittoria Pili, Angela Perez Cacabelos  
Nastja Bavec**

**Representative** : **Justice for Tenants – Ms Clara Sherratt**

**Respondent** : **Mohammed Milan Alom**

**Representative** : **Arcadian Law**

**Type of application** : **Application for a Rent Repayment  
Order by tenant. Sections 40,41, & 44 of  
the Housing and Planning Act 2016**

**Tribunal members** : **Judge H Carr  
Ms F Macleod**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **15th December 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: CVPREMOTE**. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that the tribunal was referred to are in a bundle from the Applicant comprising 110 pages, the contents of which have been noted. Sixpdf documents were received from the Respondent which have also been read by the tribunal.

### **Decision of the Tribunal**

1. **The Tribunal determines to make a Rent Repayment Order of £7,982.30**
2. **The Tribunal determines to order the Respondent to reimburse the Applicants the application and hearing fees of £300 within 14 days of receipt of this decision.**

### **The application and procedural history**

3. The applicants made an application for a Rent Repayment Order on 17th January 2021. The applicants allege that the landlord has committed the offence of controlling or managing an unlicensed HMO.
4. The applicants seek a RRO for the period 1st October 2019 to 30th September 2020, in the sum of £11,403.29.
5. The Tribunal issued directions on 16th April 2021.

### **The hearing**

6. The hearing took place via video on 28th July 2021. Two of the applicants, Ms Angela Perez Cacabelos and Ms Nastja Bavec attended the hearing with their representative, Ms Sherratt from Justice for Tenants. Ms Bavec gave evidence. The respondent also attended and gave evidence. He was accompanied by Mr Jonathan Pennington Legh of Counsel instructed by Arcadian Law.

7. The tribunal heard and determined two interlinked preliminary applications.

### **Application for adjournment**

8. The respondent's representative made an application for an adjournment. He told the tribunal that the respondent had only found out about the hearing on 22nd July 2021 and immediately went to his solicitors. Although he had managed to prepare a short witness statement and supporting documents and instruct counsel, additional time would allow him to present the respondent's case properly.
9. The respondent was at significant risk if the adjournment was not granted. He faced the possibility of a significant RRO being made against him. Counsel suggested that the applicants have moved out and so would not be prejudiced by an adjournment.
10. Counsel said that an adjournment would be in accord with the overriding objective of dealing with cases fairly and justly.
11. The applicant's representative responded. In summary she argued that:
  1. The applicants would suffer additional loss and stress if the hearing was adjourned. They had taken days off work to be present and were very anxious about the hearing and wanted it to be over. It is not right for the respondent to claim that the applicants would not suffer as a result of an adjournment.
  2. The applicant sent the application to the address on the tenancy and to the address on the Land Registry documents. It is the respondent's responsibility to ensure that the information on official documents is correct and to put in place. The applicants should not suffer because the respondent had not put proper procedures in place.

### **Application to disallow bundle of evidence**

12. The applicant's representative asked the tribunal to disallow the respondent's evidence bundle. The applicants had only received it on 27th July 2021 and that provided insufficient time to prepare a response.
13. The respondent's representative apologized on behalf of the respondent for the late submission of the evidence. This was because the managing agent of the property had failed to inform the respondent of the proceedings against him. As soon as he became aware of the application, he contacted

solicitors who prepared his case. He did as much as he could in the circumstances in which he found himself.

14. Counsel asked that if the application for the adjournment was refused his bundle of evidence should be allowed. He argued that it was in the interests of justice and consistent with the overriding objective to allow the respondent to make his case.

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

15. The tribunal determined to refuse the application for the adjournment and to refuse the application to disallow the respondent's bundle.

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

16. The tribunal paid attention to the overriding objective, the need to avoid delay, the concerns of the applicants in relation to delay and the need to allow the respondent to make his case.

### **The issues**

17. The issues that require to be decided by the Tribunal are:
  - (a) Is the tribunal satisfied beyond reasonable doubt that the Respondent committed the offence of being someone in control of or managing an HMO which is required to be licensed and is not so licensed?
  - (b) Does the respondent have a reasonable excuse defence?
  - (c) If the tribunal determines to make a Rent Repayment Order:-
    - What is the applicable 12-month period?
    - What is the maximum amount that can be ordered under s.44(3) of the Act?
    - What account must be taken of the respective conduct of the applicants and the respondent and of the financial circumstances of the respondent?

### **The background and chronology**

18. Flat 31 Thornaby House Canrobert Street is a 1 storey 3 bed room self contained flat on the 4th storey of a 4 storey purpose built development.
19. The property was rented to one of the applicants, Ms Vittoria Pili in October 2016. She shared the property with Spela Vavpotic and Michelle Galeano who were also tenants. The tenancy was arranged through Locke and Quay as managing agents on behalf of the respondent. In 2018 Ms Vavpotic and Ms Galeano moved out and Ms Nastja Bavec, another of the applicants moved into the property alongside Mr Gamblin (who is not party to the application). The tribunal was shown a tenancy agreement (dated 24th October 2018) which is an assured shorthold tenancy with a monthly rent of £2050 per month. The rent was paid to the to Locke & Quay by standing order.
20. The agreement names Mr Milan Alom as Landlord but it is signed by Halima Begum presumably as agent for the landlord. The landlord's address is given as 110 Violet Road, Bow, London E3 3QH which is the address of the agent. Mr Gamblin moved out in September 2019 and was replaced by Ms Adi Ben Tov in October 2019. She occupied the third and smaller room until March 2020 when she left due to the pandemic. There was difficulty replacing her and for that period the agents agreed that the occupiers Ms Pili and Ms Bavec could pay two thirds rent. During that time one of the applicants was in receipt of Universal Credit.
21. Ms Angela Perez moved into the property in August 2020 and a further tenancy agreement was signed on 6th August 2020 by Angela Perez and the other tenants. It names Mr Alom as Landlord and Ms Bili, Ms Bavec and Ms Perez as tenants. The rent remains at £2050 pcm. It is signed by Sham from Locke and Quay on behalf of the Landlord. The applicants paid all outgoings on the property including water and council tax.
22. The property is situated within an additional licensing area in the borough of Tower Hamlets. The additional licensing scheme came into effect on 1st April 2019. The additional licensing scheme is borough wide other than the pre 2014 wards of Weavers, Whitechapel, Spitalfields and Bangatown. It requires that all tenanted properties occupied as an HMO are licenced – that is properties including flats which are occupied by 3 or more persons comprising 2 or more households. The property is in the St Peter's ward of Tower Hamlets and therefore within the designated area.
23. In May 2020 the property was visited by officers from the borough who informed the occupiers that the owner did not have an HMO licence.

24. On 14th September 2020 Ms Kosum Sattar from the borough wrote to the occupiers of the property informing them that the owner or agent in control of the property had not applied for a licence and may therefore be committing an offence. The letter went on to say that 'we shall soon begin enforcement action against those landlords that have not yet applied for their licence. We may therefore contact you in due course to arrange an inspection of your home'.
25. Mr Muhammed Williams of Tower Hamlets provided the following information to the applicants' representative by email on 11th December 2020. The landlord Mr Shamin Ahmed Kamali applied for a temporary exemption on 26th November 2020. The landlord said in his email to the council that the 'current tenants at the property had given him notice to leave the property on 2nd January 2021. He notes further that once property is empty the landlord has intentions to let property back to Tower Hamlets Council. The landlord's email address is given as shamin@filerooms.com
26. The applicants moved out of the property at the beginning of January 2021
27. The appropriate HMO licence was not held during the period of the applicants' occupation and no licence application was made during this period. At the time of the hearing the property is occupied by two individuals and therefore does not require a licence.
28. The respondent is the leasehold owner of the property and has been since 2008. The property was purchased with the benefit of a mortgage. The freeholder is the London Borough of Tower Hamlets.

**Did the Respondent commit the offence of controlling or managing an unlicensed HMO?**

29. The applicants assert that:

- the property was an HMO
  - the applicants lived in the property as their only or principal home
  - the tenants did not form a single household, they were not related to each other nor were any of them in a relationship
  - they did not receive the housing element of universal credit during the period of their claim
  - the property was in an area of additional licensing
  - that no licence has been granted in relation to the property
  - and that the Respondent was the leasehold owner of the property.
30. They produced evidence from Tower Hamlets Council that demonstrated that the property required licencing under its additional licencing scheme.
31. The respondent accepted the position of the applicant.

### **The decision of the Tribunal**

32. The tribunal determines that the respondent committed the offence of controlling or managing an unlicensed HMO.

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

33. The tribunal relies on the statements of the applicants, their supporting evidence, particularly the evidence from Tower Hamlet Council and the concession of the respondent.

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

34. The respondent argues that he has a reasonable excuse defence which provides a complete defence to the offence. The respondent relies on the fact that he gave responsibility to professional managing agents for

determining whether a licence was needed and to obtaining that licence if it was.

35. Counsel's starting point is that what amounts to a "reasonable excuse" is not defined in the Act and there is no limit to the range of excuses that may be reasonable. He also accepted that it is for the respondent to prove a reasonable excuse on the balance of probabilities.
36. He referred the tribunal to *Thurrock Council v Khalid Daoudi* [2020] UKUT 209 (LC) paragraph 26 where it was accepted that ignorance of the need to obtain an HMO may be relevant in a financial penalty case.
37. In this case the respondent was
  1. not a professional landlord; he says he became a landlord accidentally because he got into financial difficulties and therefore rented out the property and moved into his parent's home
  2. was ignorant of the law;
  3. was ignorant of whether or not the Property needed an HMO licence.
  4. He did not want to be involved in the management of the property and therefore he decided to use a professional managing agent.
38. The respondent explained to the tribunal that when he began letting the property out in around 2012 he hired agents who did not pay him any rent. After moving back into the property and refurbishing it he rented out again in 2016.
39. At that time he chose Locke and Quay because they were recommended by a friend. The friend told him that they were reliable and took on all the 'headaches' of the property. He provided the tribunal with a copy of the agreement. He said that the full management agreement essentially authorised the agents to deal with all aspects of the management of the property.
40. This meant he had no involvement with the property or its management. He has not met or spoken to the applicants or any previous tenants that lived in the property. He did not know how many people were even living in the property.



41. He referred the tribunal to clause (vi) of the Management agreement which says that it was Locke and Quay's responsibility to ensure that the property was appropriately licensed. The clause says that they will 'check and apply if property licence (selective, additional or mandatory hmo) is required which the Landlord will be charged'.
42. The applicants say that the excuse was not reasonable. In their opinion the respondent has evaded his responsibilities. He had failed to provide an address where he could be contacted on the tenancy agreement. The address he provided was the address of the agents. He did not appear to have set up a proper system for redirecting post that arrived at the property. The management agreement is incoherent on responsibilities for licensing. They referred the tribunal to clause(vi) which says "to check and apply if property licence (selective, additional or mandatory hmo) is required which the Landlord will be charged."
43. The respondent was not able to explain what that clause meant. He gave the tribunal the impression that he was totally unfamiliar with the management agreement.
44. The respondent said that the arrangement for post was simply that the agents were to collect it and forward it when they visited the property.

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

45. The tribunal determines that the respondent does not have a reasonable excuse defence.

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

46. The tribunal considers that the respondent failed to take proper steps to ensure that the property was properly managed. He relied solely on the recommendation of a friend. He did not provide any evidence to suggest that he had researched the experience and standing of the agents he selected. He does not even appear to have taken proper care to read the agreement he entered into with the agents with appropriate care.
47. The failures of the agents should have been clear to the respondent. The fact that he did not receive rent statements or invoices in connection with repair work should have alerted him to the fact that the agents did not take their responsibilities seriously.

48. Whilst the tribunal accepts that there are some circumstances where entering into a management agreement may provide the basis for a reasonable excuse defence, the tribunal would expect that a respondent, in order to avail himself of that defence, would have to show due diligence. The respondent did not demonstrate due diligence in selecting the agent, in reading and understanding the agreement he entered into, nor in monitoring its performance. Nor did he demonstrate due diligence in fulfilling his basic responsibilities to his tenants. The respondent failed even to provide the very least that the law expects, an address through which he can be contacted. In effect the respondent washed his hands of his responsibilities.

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

49. The amount of rent applied for by Nastja Bavec on behalf of the three applicants is £11,403.29 for the period of 1st October 2019 to 30th September 2020. The applicants say that there is a period between 17th March 2020 and the 5th August 2020 where rent is not being claimed as there were only 2 occupants in the property, meaning that the property did not require a licence. Ms Pila received one Universal credit contribution during her period of occupancy. This was received in June 2020 during the period when there were not three tenants in the property and is therefore not relevant to the claim.
50. The respondent raised no issue about the amount of the RRO claimed
51. The tribunal then heard arguments about the tenants' conduct, the respondent's conduct and his financial circumstances.

#### *The tenants' conduct.*

52. The tenants' representative said that the tenants had behaved properly. They paid their rent on time, reported repairs in a timely fashion and generally behaved well. They took responsibility for replacing tenants as they left the property.
53. The respondent raised no issue about the conduct of the tenants.

#### *The respondent's conduct*

54. The applicants argue that the failure to licence the property was a very serious failing by someone who had been in the business of renting out property since around 2012.
55. The applicants allege that the property was poorly managed and poorly maintained. They refer to correspondence with the agents. Perhaps most useful is the email sent to Locke and Quay by Ms Pili on June 12th 2020,
56. In this email she states that there are a number of works that have never been fixed since being reported long ago. Some of the problems have existed since she first moved into the flat in 2016. In 2018 an email with all the issues that required addressing was sent to the agents but noting in that email has been resolved at the date of the correspondence.
57. The list includes,
  1. The bathroom window has never closed properly since the tenants first moved. The balcony door is faulty and has not been fixed in two years
  2. There is mould in every room around the windows. This was reported to the agents in 2018 and is getting worse every year
  3. There was a leak in the bathroom that caused problems to the flat below which was raised many times before it was fixed. Ms Pili says that she does not believe it is yet properly fixed as it is constantly damp around that area of the sink
  4. There is also an ongoing issue with the washing machine that took multiple visits from an engineer to fix and there is still a strange noise emitting from the machine during the wash cycle so she is not convinced it has been sorted. There is no smoke alarm to the property which is a breach of fire safety
58. The respondent rejects suggestions that his conduct was poor. He gave instructions to his agents that they should carry out repairs as requested by his tenants. He was amenable to a cut in rent during the pandemic because he understood that many people were suffering hardship.
59. He repeated what he had said earlier, that he had handed over his responsibilities to the managing agents who he was paying for a professional service.

60. The applicants, drawing on the full range of Upper Tribunal decisions, suggested that the tribunal should take as its starting point 100% of the rent payable in the relevant period and then only reduce that amount if there was poor conduct on the part of the applicants or good conduct on the part of the landlords. In this case there was no reason to reduce the award from 100% as the tenants had been exemplary. However if the tribunal thought there was, then at that point it should take into account good conduct from the tenants and poor conduct from the landlords to in effect work back towards a level of 100%. The applicants argued that there was very good conduct on the part of the tenants and poor conduct on the part of the landlord. The failure to licence by a professional landlord is very poor conduct. The property was in a poor condition and repair issues were not handled properly.
61. Therefore, they argue that the appropriate award in this case is 100% of the rent paid.
62. They also argue for the refund of the tribunal fees totalling £300.

#### *The financial circumstances of the landlord*

63. The respondent points to his difficult financial circumstances. He has an uncertain income because he works casually and part time in a restaurant and he has not had work for the last couple of months, his wife and child are dependent on him and he lives with his wife and child with his parents.
64. Whilst he owns another property it is only a small studio flat which is rented at £800 pcm. He is trying to start a social media company.

#### **The decision of the Tribunal**

65. The Tribunal determines to award an RRO at 70% of the rent paid in the applicable period -.

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

66. The tribunal finds that the tenants conduct was good. They were responsible tenants throughout the tenancy.
67. The tribunal is very concerned by the landlord's conduct. He did not exercise due diligence in selecting an agent, relying on recommendations

from friends. There is no evidence that the respondent checked the knowledge and experience of the agents. It was also clear from the hearing that the respondent had not read the agreement that he signed with sufficient care and attention. The agreement was ambivalent on responsibilities for licensing. The landlord did not receive inspection reports, was not asked about incoming tenants, received no information about repairs requested and carried out, and did not even receive rent statements.

68. The lack of a smoke alarm is a serious issue.
69. On the other hand the tribunal notes that the landlord has no criminal convictions, that whilst the landlord has one other property he is not a portfolio landlord and his second property is a small studio flat, that his financial circumstances are limited and that his wife and child are dependent upon him, that he lives with his parents in their property and that he made some, if ineffective efforts to ensure the property was managed, that the level of disrepair was not of the most serious and he was unaware of any poor management of the repairs at the property
70. The tribunal also notes that the respondent refurbished the flat in 2016 and he was amenable to a rent reduction during the pandemic.
71. The respondent has no criminal convictions.
72. The figure of 70% has been reached after balancing all these factors.
73. In the light of the findings above the tribunal also orders the respondent to reimburse the applicants for the application fee and hearing fee, totalling £300.

**Name:** Judge H Carr

Date: 15th  
December 2021

**RIGHTS 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.

