



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

Case reference : **LON/00BH/HMF/2020/0086**

HMCTS code : **V: VIDEO**

Property : **58 Matlock Road, London E10 6BU.**

Applicants : **Mr. Mikis Kalogeridis.**

Representative : **In person.**

Respondent : **Mr. Zivinas Buga.**

Representative : **Mr. Buga did not attend the hearing.**

Type of application : **Application for a Rent Repayment Order (“RRO”) by tenant Sections 41 of the Housing and Planning Act 2016**

Tribunal members : **Judge Hamilton-Farey.
Ms. S. Coughlin MCIEH.**

Date of Hearing : **15 March 2021.**

Date of decision : **15 March 2021.**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been not 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 before the tribunal at the hearing were;

1. The applicants' application and bundle extending to 25 pages (including the application form);
2. No documents were received from the respondent.

At the hearing Mr. Kalogeridis represented himself. Mr. Buga did not appear and was not represented. The tribunal was satisfied that Mr. Buga was aware of the application and hearing date and proceeded with the hearing in his absence.

Decisions of the tribunal

1. The tribunal determines that it will not make a Rent Repayment Order in favour of the applicant.

The background

2. The tribunal received an application dated 13 June 2020 under section 41 of the Housing and Planning Act 2016 ("**the 2016 Act**") for a rent repayment order ('**RRO**') in respect of 58 Matlock Road, London E10 6BU ('the **Property**'). The London Borough Waltham Forest is the local housing authority.
3. The application has been brought by the applicant, who alleges that, in respect of the period from 15 September 2019 to 29 February 2020, he paid £2,520.00 to the respondent in rent, and that in that period, the respondent committed an offence by failing to have a licence, this was amplified further in his statement. Having received the application, the tribunal issued directions to the parties on 10 December 2020, that required amongst other things for the parties to provide copies of documents on which they wished to rely to support their respective positions. In particular those directions required the applicant to supply evidence of rent payment made, a calculation of the amount of rent paid in the applicable period, excluding any Universal Credit/Housing Benefit.
4. As noted above, nothing was heard from the respondent.

The Property

5. The Property is described in the application as a 5-bedroom house, although during the hearing the applicant suggested that it had six bedrooms, a shower room/w.c. in the attic, a first-floor bathroom/w.c and a small shared kitchen.
6. No party requested an inspection, and the tribunal did not consider that one was necessary.

The applicant's case:

7. At the beginning of the hearing the applicant informed the tribunal that he had been approached by a friend who told him about an available room at the property. Presumably after viewing the room, he considered it would suit his purpose, but he informed us that he thought he would only be in occupation for about three months before he found somewhere else. We were told that he was not given a tenancy agreement at that time, but he paid his deposit and first months' rent, a total of £210.00, and was given a key by the landlord's son.
8. The applicant informed the tribunal that, at the start of his tenancy there were approximately 10 people living in the house, but that by June or July 2020, this had reduced to about 4. He also told us that the respondent and his son also occupied rooms in the house but left in or around February 2020.
9. The tribunal was told by the applicant that he always paid the respondent in cash and obtained a receipt for the £2,520.00 claimed retrospectively in February 2020 because he needed it for his application at the Job Centre and/or Universal Credit. At the same time, he obtained a tenancy agreement, which was provided in the bundle, and extended to one page, but told us that this had been back-dated by the respondent. He also said that the respondent admitted to him that the reason he had not provided a tenancy agreement in the first instance, was because the property did not have a licence.
10. Following problems with his eyes, he was advised by a friend to go to the Housing Advice Centre, where he was advised to stay in the property until he was served with a valid S.21 Notice (S.21 Housing Act 1988) requiring vacant possession of the property.
11. On 15 January 2020 the respondent purported to end the tenancy by serving a S.21 Notice. Having received this, he approached the Local Authority for advice and/or made an application as a homeless person.
12. In a letter of 11 March 2020, the Local Authority responded to this application to say that the S.21 Notice was invalid, because the applicant had not been provided with a copy of the Gas Safe Certificate, Energy Performance Certificate, How to Rent Booklet and proof of deposit. The letter also advised the applicant that the landlord should re-issue the S.21 Notice and the applicant should contact the Property Licensing Team to rent the property legally. A copy of that letter was sent to the respondent.
13. On 23 March 2020, the Property Licensing team of the Local Authority wrote to Mr Z. Sayed at the property, informing him that, since 1 April 2015 it became a legal requirement for most privately rented properties in Waltham Forest to hold licence and that he required:
 - (i) A private Rented Property Licence (Housing Act 2004 Part 3) and;

- (ii) If the property was a house of multiple occupation and was rented to two households or more consisting of five or more people, then he would need a mandatory HMO licence.
- (iii) That planning permission was required to operate an HMO within Waltham Forest.

From that letter it appears the Local Authority had checked their records and found that no licences existed for the property. A copy of this letter was included within the applicant's bundle.

- 14. Also within the bundle were witness statement from a Mr. T. Zakarauskas and Ms. D Jankauskiene, both of whom confirmed they were tenants of the respondent in the property. Unfortunately, neither of these witnesses attended the hearing and it was therefore not possible for the tribunal to test their evidence. We have however, taken the documents at face-value.
- 15. During his submission, the applicant confirmed to the tribunal that he had received Universal Credit since before he had occupied this property (having received it for his previous property), at the rate of £455.00 per month (in relation to his rental payments), and that he continues to receive this sum, despite the fact that he has not paid any rent to the landlord since February 2020.
- 16. We have reached our decision on the basis of the documents supplied and the applicant's verbal evidence during the hearing.
- 17. The relevant legal provisions referred to in the tribunal's decision and reasons are set out in the Appendix to this decision.

The tribunal's findings:

- 18. The tribunal must satisfy itself that an offence has been committed under S.72(1) of the Housing Act 2004 in that the respondent was in control or management of an unlicensed HMO. It appears from the evidence before us that at all times the property was an HMO, however both Mr. Buga and his sone have lived at the property for periods which we were not able to determine, so it is not clear that the property required licensing under the mandatory licensing provisions. We were not provided with any details of other licensing schemes which the borough may operate.
- 19. Section 72(5) of the 2004 Act contains a statutory defence of 'reasonable excuse' to the offence of being in control/management of an unlicensed HMO.
- 20. Section 44(4) of the 2016 Act provides that in determining the amount of any RRO the tribunal must, in particular, take into account
 - (a) The conduct of the landlord and tenant,

(b) The financial circumstances of the landlord

21. Having considered sections Section 72(5) of the 2004 Act and Section 44(4) of the 2016 Act in light of the applicant's submissions we find that we have insufficient information to be sure, to the criminal standard of proof, that the respondent was committing an offence. Mr. Kalogeridis's evidence was inconsistent and confusing in relation to the relative rolls of Mr. Bugs and his son and the periods they were resident at the property. The retrospective receipt and tenancy agreement were apparently provided to enable Mr. Kalogeridis to continue his universal credit claim in February 2020.
22. In addition, as admitted by the applicant the whole of his rent was paid by Universal Credit, and in accordance with S.44(3) we cannot therefore make an Order in favour of the tenant for the return of rent which has been paid by Universal Credit.
23. We therefore do not consider it appropriate to make a Rent Repayment Order in favour of the applicant.
24. The day after the hearing, the tribunal received a submission from Mr. Buga's representatives, NR Legal Solicitors. As this submission and witness statement were received after the hearing, the tribunal has not admitted them into evidence, or taken any account of their content.

Name: Judge Hamilton-Farey **Date:** 17 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).

Appendix of Relevant Legislation

Housing Act 2004

55 Licensing of HMOs to which this Part applies

(1) This Part provides for HMOs to be licensed by local housing authorities where—

(a) they are HMOs to which this Part applies (see subsection (2)), and

(b) they are required to be licensed under this Part (see section 61(1)).

(2) This Part applies to the following HMOs in the case of each local housing authority—

(a) any HMO in the authority's district which falls within any prescribed description of HMO, and

(b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in the designation.

(3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection (2)(a).

(4) The power conferred by subsection (3) may be exercised in such a way that this Part applies to all HMOs in the district of a local housing authority.

56 Designation of areas subject to additional licensing

(1) A local housing authority may designate either -

(a) the area of their district, or

(b) an area in their district,

as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless—

(a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.

72 Offences in relation to licensing of HMOs

(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 (see section 61(1)) but is not so licensed.

(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,

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
- (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to –
 - (a) repay an amount of rent paid by a tenant, or
 - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.
- (3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

- (4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the

improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

41 Application for rent repayment order

- (1) 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.
- (3) A local housing authority may apply for a rent repayment order only if –
 - (a) the offence relates to housing in the authority’s area, and
 - (b) the authority has complied with section 42.
- (4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

43 Making of a rent repayment order

- (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 had 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 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).

44 Amount of order: tenants

(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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 –
 - (a) the rent 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.