



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

**Case reference** : **LON/00BH/HMK/2020/0020**

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

**Property** : **19 Edinburgh Road, London E17 7QA**

**Applicant** : **Ms. Elsie Johnson**

**Representative** : **Ms. Sarah Collins, Senior Caseworker,  
Safer Renting.**

**Respondents** : **(1) Mr. Brian Beveney  
(2) Mrs. Wilma Dominique  
(3) Mrs. Euna Beveney Bailey**

**Representative** : **In Person**

**Type of application** : **Application for a rent repayment order  
by tenant**  
Sections 40, 41, 43, & 44 of the Housing and  
Planning Act 2016

**Tribunal members** : **JUDGE SHAW  
Mrs L CRANE MCIEH**

**Venue** : **VIDEO HEARING**

**Date of decision** : **15<sup>th</sup> March 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 been consented to by the parties. The form of remote hearing was V: CVPEREMOTE . A face-to-face hearing was not held because of the Covid-19 Pandemic, and all parties were agreeable to a remote hearing. It was practicable to resolve all issues with a remote hearing. The documents referred to by the Tribunal are in digital bundles, submitted by the parties respectively, and supplemented by some further documents produced shortly before the Hearing. All of the documents produced have been carefully considered by the tribunal.

## **Introduction**

1. This case involves an application by Elsie Johnson (“The Applicant”) for a rent repayment order in respect of the property at 19 Edinburgh Road E17 7QA (“the Property”). The Respondents to the application are Mrs Euna Beveney-Bailey, who is the registered proprietor of the property; Mrs Wilma Dominique (who is Mrs Beveney-Bailey’s daughter) and Mr Brian Beveney (who is Mrs Beveney-Bailey’s son). The Respondents will, save where otherwise indicated, be referred collectively as “the Respondents”.
2. The application is made pursuant to the provisions of the Housing Act 2004 as amended by the Housing and Planning Act 2016. It is also made pursuant to the Protection from Eviction Act 1977 because this is a case in which illegal eviction is alleged. In so far as the application is made under the Housing Act 2004, it is based upon the allegation that the property was let to the Applicant during a period when a selective licensing scheme existed within the area in which the Property is situate, as operated by the London Borough of Waltham Forest. It is not disputed that there was no license held by any of the Respondents in respect of the property during the period of occupation concerned by the Applicant.

3. The application for a rent repayment order is in the total sum of £7,200, being 12 monthly payments of £600 for the period from 25<sup>th</sup> June 2018 to 25<sup>th</sup> June 2019. It is alleged that on 25<sup>th</sup> June 2019 the locks at the property were changed, thereby effectively unlawfully evicting the applicant.
4. The application was made on 24<sup>th</sup> June 2020. Directions were given on 10<sup>th</sup> November 2020 and the hearing of the matter took place by video link on 18<sup>th</sup> February 2021. The Applicant attended the hearing in person and was represented by Ms Sarah Collins of the tenant assistance group Safer Renting. Her case was supported in evidence (both in writing and orally) by Ms Clare Dinnall-Ferdinand (a friend) and Mr Peter O’Kane who is a retired former Assistant Director of Housing for several local authorities and now gives voluntary assistance to tenants and other residential occupiers. Mrs Wilma Dominique and Mr Brian Beveney attended the hearing, Mrs Wilma Dominique via video link and Mr Brian Beveney via telephone. Mrs Euna Beveney-Bailey is, sadly, suffering from long- term vascular dementia, is bed-bound and did not attend the hearing. She is joined as a party to the proceedings as the sole proprietor of the property.
5. It is proposed to give a summary of the evidence advanced by the parties before the tribunal, to set out the appropriate law, and then to give the determination of the tribunal together with reasons. With the consent of the parties the tribunal heard evidence initially from the respondents in order to crystallise the salient areas of dispute in respect of which the tribunal was to make its findings.

### **The Respondents’ Case**

6. Mrs Wilma Dominique prepared a helpful witness statement and Statement of Case on her behalf and on behalf of the other Respondents. She told the tribunal in oral evidence that she works, and has done so for 14 years, for the London Borough of Waltham Forest, ironically the

borough within the jurisdiction of which these matters occurred. She confirmed that she is Mrs Euna Beveney-Bailey's daughter and that Mr Brian Beveney is her brother, and that together they look after the affairs of their elderly and incapacitated mother. She confirmed the layout of the Property, which is a double-fronted end of terrace house. At the material time, access involved a main front door leading to a further internal door, which then opened out into an internal hallway. The second internal door had been installed to prevent their mother from wandering out of the Property. To the left, is a door leading to the major part of the house which is occupied by her mother, and where she receives care and attention from others. To the right is a further door, which was originally the living room of the double fronted house.

7. Mrs Wilma Dominique told the tribunal that the Applicant had been referred to them by a care agency, and that the Applicant was seeking a place to live. The gist of her evidence, is that the Applicant was allowed by her and her brother to occupy the room as described to the right of the front door, which had living facilities together with an integral kitchen and bathroom/WC. That room had been prepared by Mr Brian Beveney, with a view to having at some stage a live-in carer for their mother. The room has its own lockable door and the key was supplied to the Applicant. It was agreed that the applicant would pay £600 per month for the use of the property, which she did in fact pay, from the time of taking up occupation in January 2016. It was envisaged that the Applicant would give some assistance with the care of the elderly Mrs Euna Beveney-Bailey, but it is not in dispute that this was short-lived. In the event, after an initial period of a couple of months, the Applicant devoted herself exclusively to her full time job with a care agency, and carried on paying the £600 per month until the time of the alleged unlawful eviction in June 2019.
8. There is a substantial dispute as to the proper status of the Applicant in this room, from the time of taking up occupation until her leaving. The Respondents say that she was an informal lodger to whom they offered help, as would be standard in the Caribbean community. All the parties

mentioned are West Indian, although as understood, the Applicant is Jamaican and Respondents are from Guyana. Again, it appears undisputed that initially the applicant went into occupation of the property pursuant to the provision of a tenancy agreement dated 11<sup>th</sup> January 2016, and for a term of 4 weeks. Mrs Wilma Dominique told the tribunal that her brother Mr Brian Beveney had suggested that no written agreement was required, but that she, Mrs Wilma Dominique, had felt that some kind of agreement was necessary, and went to the Post Office to obtain an appropriate lodger's agreement. In the event the Post Office did not have such an agreement, and she used a standard Assured Shorthold Tenancy Agreement, which she and the Applicant signed.

9. She subsequently (years later) was able to obtain a Lodger's Agreement, but the Applicant refused to sign this, and simply remained in occupation in the event, for over three years, paying the £600 per month (which included cost of utilities) and retaining the key to both the front doors and her room. She equipped the room with her own furniture. Mrs Wilma Dominique insisted that she had over-filled the room, and that thereafter the relationship between the parties became strained. She told the tribunal that the applicant treated the house as **hers** own to use, as she saw fit. She would often bring a friend into the living room where her mother slept, and watch TV and relax in the room generally. There were disagreements about the importation of potted plants by the Applicant to the Property, her use of the garden, and the movement of the refuse bins (which the Applicant said created unpleasant smells in her room) and ultimately an argument occurred concerning her instruction to engineers to attend at the Property to fit her room with internet facilities. According to the Respondents, all of this was without consultation or permission from them.
10. It is this that led ultimately to Mr Brain Beveney changing the locks to the Property and thereby excluding the Applicant. He told the tribunal that an incident had occurred when he came back to the Property and discovered the engineers doing their work in the Applicant's room, and remonstrated that no permission had been sought or given for this work to take place. He

told the tribunal that a fracas occurred, during which the Applicant punched him and kicked him in the groin, and that the engineer in attendance had actually proffered him his assistance as a witness to this assault, if required. He told the tribunal he had never thought that matters would come to this pass, and that he should have called the police, but did not.

### **The Applicant's Case**

11. The Tribunal heard evidence from Mr Peter O'Kane, mentioned above, to whom the Applicant went for assistance in respect of the troubled relationship with the Respondents. He helped her to recover her property from the room from which she had been excluded, and in obtaining alternative accommodation. The tribunal also heard from the Applicant herself who told the tribunal that she had been accepted by the Respondents as a tenant from the outset, and that she had made it perfectly clear to them that she had a full-time job, and would not be looking after their mother. For practical purposes she had the key to her room, and exclusive occupation of that room. It should be said that there was no real dispute in this respect from Mrs Wilma Dominique, who accepted that she would not have expected to go into the Applicant's room without her permission, nor could there be any suggestion that she, Mrs Wilma Dominique, had any right to put anyone else into that room with the Applicant. The Applicant generally denied the allegation of any assault upon Mr Brian Beveney, and asserted several times that both Mrs Wilma Dominique, and he, were liars. The tribunal also heard evidence from Mrs Dinall-Ferdinand who was involved only to the extent that she accompanied the Applicant when the Applicant sought to collect her belongings from the property. She contended that Mr Brian Beveney had been aggressive and insulting to them, and that they had been given limited time to remove the Applicant's possessions. She told the tribunal that Mr O'Kane had been present during this exchange, but he told the tribunal he could not recall any bad language, or any overt aggression, although the atmosphere was tense.

12. In summing up, the Respondents effectively told the tribunal that they felt this situation had been engineered by the Applicant, and that they had unwittingly been left with no control of either the room or the Applicant, who had long overstayed. Mrs Wilma Dominique told the tribunal that she had contemplated at one stage trying to stop the direct payments coming into her account. Her position was, that she, her brother and mother, had been manipulated into this predicament by the Applicant, and that they ought not to be penalised.
  
13. On behalf of the applicant Ms Collins told the tribunal that the salient part of the Applicant's case and the necessary ingredients for both offences had in effect been admitted by the Respondents, and that the tribunal should make an order for full recovery of the rental payments involved, subject only to the guidance in *Vadamalayan V Stewart (2020) UKUT 0183 (LC)* which allows for deduction of payments for utilities and services. Although there was no direct evidence in this respect, Ms Collins on behalf of applicant argued that an appropriate sum would be £1259 maximally, which according to research material prepared, was an average for all the relevant utilities in respect of fuel- consumption for a room of this size, and was also in accordance with material published by Thames Water in respect of water usage. Although she recognised that the tribunal had a discretion under the Act, she argued that the merit was with the Applicant, and that the unlawful eviction rendered the matter serious and aggravated.

### **Analysis of the Tribunal**

14. The tribunal agrees with the applicant that the relevant ingredients for demonstrating the offences under the Housing Act 2004 and the Protection from Eviction Act 1977, in large part, have been admitted by the Respondents in evidence. Ms Collins said that in fact although that it had been asserted by the Applicant that her true status was that of an assured shorthold tenant, she was more accurately to be regarded as a common law tenant, given that the registered proprietor of the property occupied the

property with her. She argued, and the tribunal agrees, that in this case the distinction is without a difference, because in either case the status of the Applicant is that of a tenant, entitled to the protection of both the 2004 (as amended) Act and that of the 1977 Act.

15. The tribunal finds that in accordance with *Street v Mountford* principles, the Applicant enjoyed exclusive possession of this room, in respect of which she was paying a rent as indeed is manifest in the tenancy agreement which was signed. There is no suggestion on the part of the Respondents that they were entitled to require the Applicant to accept anyone else in the room with her, or that others could enter the room without her permission. The tribunal finds as a matter of fact and law, that the Applicant was a tenant in the property. It also finds on the evidence before it, that the Respondent Mr Brian Beveney excluded her from the property without serving any proper notice, whether a statutory notice or common law notice. Indeed, once again, there was no suggestion to the contrary.
  
16. As mentioned at paragraph 2 above, this application is made in part on the basis that the Property was let to the Applicant during a period when a selective licensing scheme existed within the area in which the Property is situate, as operated by the London Borough of Waltham Forest. These schemes were first regulated by the Housing Act 2004. A licence under the 2004 Act may be held by a person who is not the immediate landlord of the occupier of residential premises. Section 64 lays down no ownership condition for the grant of a licence. The local housing authority (“LHA”) must be satisfied that an applicant is a fit and proper person to be the licence holder, and that, out of all the persons reasonably available to be the licence holder in respect of the house, they are the most appropriate person.
  
17. Section 95 of the 2004 Act, specifies a number of offences in relation to the licencing of houses. The material parts provide that:



*“(1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85 (1)) but is not so licensed”.*

18. Section 263 defines the concepts of a person having “control” and/or “managing” premises. These definitions are wide enough to include a number of different people in respect of a property. Where there is a chain of landlords, more than one may be liable. It may also extend to a managing agent.

19. Section 263 provides that:

*“(1) In this Act “person having control”, in relation to premises, means (unless the context otherwise requires) the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*

*(2) In subsection (1) “rack-rent” means a rent which is not less than two-thirds of the full net annual value of the premises.*

*(3) In this Act “person managing” means, in relation to premises, the person who, being an owner or lessee of the premises—*

*(a) receives (whether directly or through an agent or trustee) rents or other payments from—*

*(i) in the case of a house in multiple occupation, persons who are in occupation as tenants or licensees of parts of the premises; and*

*(ii) in the case of a house to which Part 3 applies (see section 79(2)), persons who are in occupation as tenants or licensees of parts of the premises, or of the whole of the premises; or*

*(b) would so receive those rents or other payments but for having entered into an arrangement (whether in pursuance of a court order or otherwise) with another person who is not an owner or lessee of the premises by virtue of which that other person receives the rents or other payments;*

*and includes, where those rents or other payments are received through another person as agent or trustee, that other person.”*

20. In short, by virtue of the above provisions, the offence is made out if the selective licence is not held by the person in management or control of the property (assuming of course that this is within a selective licencing area). Under the 2014 Act, the Rent Repayment Order is made against the landlord of the property. The Tribunal is satisfied that each of the Respondents qualifies under both of these criteria. On the evidence, the First Respondent was the person, together with his sister (the Second Respondent) who was in management and control of the property, carried out or caused to be carried out any work of maintenance, and was named on the Tenancy Agreement as the landlord. The Second Respondent received the rent and was treated and acted (on the Applicant's evidence, which the tribunal accepts) effectively as the Applicant's landlady. It was she who arranged for the Tenancy Agreement entered into. The Third Respondent ultimately received the rent, albeit through the agency or trusteeship of her daughter the Second Respondent, and was the registered proprietor and either landlord or head landlord of the Applicant. As has been held in *Goldsbrough v CA Property Management Ltd* [2019] UKUT 311 (LC); [2020] HLR 18, it is perfectly possible to have a multiplicity of parties who are liable and susceptible to the order applied for.

21. The Tribunal is accordingly satisfied, that a Rent Repayment Order is to be made against each of the Respondents. The offence under the Protection from Eviction Act 1977 was carried out by the First Respondent alone, without any evidence of complicity of the other two Respondents, and a finding against him alone is made in that regard.

## **Quantum**

21. In respect of the letting of the property without the necessary license the tribunal takes guidance given from the Upper Tribunal in *Vadamalayan v Stewart and others (2020) UKUT 0183 (LC)* to the effect that the starting point is full repayment of the rent for relevant period, subject to deduction for utilities where appropriate. In this case the tribunal accepts the concession made on behalf of the applicant that the figure should be the average of £1259, for a room of this size occupied for this

duration. This would leave a balance £5941. The tribunal is entitled under the Housing Act, to take into account the financial circumstances of the Respondents, any relevant conduct, and whether there has been any history of previous similar offences.

22. Mrs Euna Beveney-Bailey only has a state carer's allowance and the benefit of her late husband's pension (and presumably state pension) to live on, by way of income. Mrs Wilma Dominique told the tribunal that she had a take-home payment from her Local Authority work of approximately £400 per week. Mr Brian Beveney is effectively retired from his work as a builder and decorator, and does such jobs as he is able to do periodically, bringing in, he thought, about £2000 a year. It is true there was no documentary evidence in this respect, but the Respondents came across to the tribunal as candid and genuine witnesses who had never really sought to deny the main features of the Applicant's case. Nor were they professional landlords who were seeking in any way to exploit this Applicant. They had committed no similar offences, and there was no evidence that they owned other properties. These matters are all taken into account by the Tribunal.

23. Dealing with all of the Respondents, the Tribunal take into account under section 44(4) their financial circumstances as above, the fact that they have no history of any previous offence of this kind. In addition, it seems to the Tribunal, on questions of conduct that this is not a case of a wilful flouting of the licencing provisions, so much as an unwitting creation of a legal scenario upon which they should have taken advice, but failed to do so. Taking all these matters into account, and on the facts and circumstances of the case upon which the tribunal has heard evidence, the tribunal makes a Rent Repayment Order in the sum of £3,500, being approximately 60% of the rent during the relevant period, after deduction of utilities.

24. So far as the offence of unlawful eviction is concerned, as mentioned the tribunal finds this made out beyond reasonable doubt. No notice was

given, reasonable or otherwise, and the facts were essentially admitted candidly by the First Respondent. On the question of the unfortunate incident which prompted the unlawful eviction (the occasion of the applicant bringing engineers into her room to carry out works without permission and the alleged subsequent altercation), the tribunal accepts the evidence of Mr Brian Beveney. The tribunal accepts that in the heat of the moment the Applicant did strike him in the manner alleged. It is right also to record that the Applicant was permitted to return to the Property to collect her belongings. Taking all matters into account, the Tribunal makes a further order of £1000 against the First Respondent (the equivalent of about 8 weeks rent) in respect of the unlawful eviction. against the First

25. An application for reimbursement by the Respondents of the Applicant's application and hearing fees in the sum of £300 was applied for on behalf of the Applicant. The Applicant was obliged to make this application to obtain the relief ordered and it seems to the tribunal that she is entitled to such re-imburement from the Respondent.

### **Conclusion**

For the reasons indicated above the tribunal makes a Rent Repayment Order totalling £3500 against all Respondents. A further payment of £1000 for the offence under the Protection from Eviction Act is made against the First Respondent. The Respondents are also ordered to pay the Applicant her costs in the sum of £300, making the total payment **£4,800.**

**JUDGE SHAW**

**15<sup>th</sup> 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).