



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

**Case Reference** : LON/OOAC/HMK/2019/0064

**Property** : 20A Shirehall Close Hendon NW4 2QP

**Applicant** : Jordan Nethercliffe, Sona Fiedorova, Undine Liva Seglina, Yasmin Carter-Morgan

**Representative** : Mr Meethan

**Respondent** : Joshua Conway

**Representative** : Mr Kramer

**Type of Application** : Application for a Rent Repayment Order

**Tribunal Members** : Judge Shepherd  
Steve Wheeler MCIEH

**Date of Decision** : May 2022

1. This is an application for a rent repayment order made pursuant to section 41 of the Housing and Planning Act 2016. The application is made by four applicants, Jordan Nethercliffe, Sordan Fiedorova, Undine Liva Seglina, Yasmin Carter Morgan. All of the applicants were former joint tenants of premises at 20A Shirehall Close, London NW4 2QP (“The premises”). Their landlord was Joshua Conway (“The Respondent”).

2. The hearing took place on 25<sup>th</sup> March 2022. A previous order was set aside on the basis that the Respondent had not been served with the proceedings.
3. The premises consist of a three-bedroom upstairs flat with one kitchen one living room one bathroom and a secondary WC. The premises are located in Barnet.
4. The principal allegation in the application is that the Respondent failed to license the premises during the tenancy. The relevant period is from 17<sup>th</sup> of September 2018 to 16<sup>th</sup> of September 2019. During this period the premises were not subject to a licence notwithstanding the fact that they were a house in multiple occupation (HMO). There was no dispute that the premises were an HMO and that it had required a licence under the local authority's additional licencing scheme. The Respondent's defence was based on him having a reasonable excuse for failing to license the premises because he says he was advised by an estate agent that he did not have to do this because the premises were not an HMO. He realised this was not the case when the local authority contacted him on 25 July 2019 informing him that the premises may be an HMO. He was advised to apply for a Temporary Exemption Notice which he did on 29 July 2019 and the exemption notice applied with effect from 7 August 2019. This notice was given by the local authority on the basis of an assurance by the Respondent that he was moving back into the premises and therefore a licence would not be required in the future.
5. The Applicants were represented at the hearing by Mr Meethan of Counsel. The Respondent was represented by Mr Kramer a solicitor advocate. All of the applicants attended the tribunal to give evidence except for Jordan Nethercliffe who was excused attendance on medical grounds.
6. The Applicants gave evidence and were cross examined. It was put to them that there had been complaints from neighbours about noise and alcohol use.

This was denied. The Applicants maintained that there had been problems with the shower in the premises but they were taken to evidence which showed they were satisfied with the repairs. It was put to them that they had not paid the rent which had been paid by Yasmin Carter-Morgan's father. They confirmed that they had paid Mr Carter -Morgan back. They were challenged about the alleged failure to provide a gas safety certificate but maintained their position.

7. The Respondent called Mr Grosnas to give evidence. He was the agent who allegedly told the Respondent that the premises would not be an HMO. He says he sought advice from a High Street agent. His firm is Elli G Estates. He was a very unimpressive witness.
8. Mr Conway gave evidence. He said he didn't want the premises to be an HMO. He claimed he was not involved in property management and that Vale Investments of which he is a director was set up to help Ms Toohey an "old lady" who had a stroke to manage her property. He said he had been badly advised by Mr Grosnas. He was challenged about an article in the Times which mentioned his involvement with Vale Investments. He was also taken to his LinkedIn Account which mentioned Vale Investments. He said this had been set up as an experiment for pupils at the school he taught at. He denied he had alleged that someone else had placed the LinkedIn account at the last hearing.
9. Mr Conway also alleged that he had taken advice from a lawyer in his synagogue, Alon Blitz who told him he did not need a license.
10. Mr Winston Gilbert gave evidence on behalf of the Respondent. He is the Respondent's father in Law and an accountant. He said his daughter was a nurse and the Respondent a teacher. He said he knew nothing about Vale Investments.
11. Mr Kramer tried to distance his client from the RRO by virtue of the fact that Mr Carter-Morgan had paid the rent in the first instance. The Tribunal rejects this submission. The rent was paid on behalf of the occupiers and they paid Mr Carter-Morgan back.

12. Mr Meethan pointed out that reliance on an agents' advice would rarely provide a reasonable excuse. He relied on *Aytan v Moore* [2022] UKUT 27 (LC), in which the Upper Tribunal stated the following at [40]:

*40. We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.*

13. Mr Meethan said the Respondent had been involved with Vale Investments and he was a professional landlord. His account of the LinkedIn account was unbelievable and he pointed out the discrepancies. He said there was no credible excuse for the failure to license. In relation to the Respondent's financial circumstances he said he was earning over £70000 and his wife was working in a good job as well. They also had rental income from another property

## **The law**

14. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) order 2018 confirm that the property is an HMO that requires a licence if the following criteria apply-

- it is occupied by five or more persons;
- it is occupied by persons living in two or more separate households;

15. In addition s.56 of the Housing Act 2004 enables a local authority to designate areas subject to additional licensing for other HMOs if there are a significant proportion of HMOs being managed ineffectively in the area in question.

16. Under section 41(1) of the Housing and Planning Act 2016 a tenant may apply to the First Tier Tribunal for a rent repayment order against a person who it is alleged has committed an offence. Section 43 of the Act permits the FTT to grant a rent repayment order if satisfied beyond reasonable doubt that a landlord has committed an offence under section 72 one of the Housing Act 2004 by failing to obtain an HMO licence. There is a reasonable excuse defence under s.72(5). Section 44 of the Act permits the FTT to grant a Rent Repayment Order in respect of the rent paid by the tenant for a period not exceeding 12 months.

## **Determination**

17. The Tribunal does not accept that the Respondent had a reasonable excuse for not getting a license for the premises. His evidence was lacking in credibility. It is clear he had involvement with Vale Investments which in turn had involvement with the management of property. The account given for the LinkedIn entry was incredible and appeared to be a retrospective fabrication. Mr Grosnas was a singularly unimpressive witness which supports the view that the Respondent should not have taken advice from him. In any event the Tribunal does not believe that the Respondent relied on Mr Grosnas' advice. The Respondent had a better knowledge of property management than he was admitting to. His evidence in relation to Vale Properties was evasive and unimpressive.

18. In contrast to the Respondent the Applicants were all compelling clear and honest witnesses. The Respondent's attempts to discredit them with allegations of parties and drunkenness were unattractive, In any event the Tribunal made it clear during the hearing that the particulars of the alleged conduct during the tenancy was not a significant factor in this case.

19. It is not clear why the Respondent chose not to license the premises. He appeared to be trying to disentangle himself from a crisis which was of his own making. He was not at all contrite but instead tried to blame others. Neither was there any real evidence of difficulties in financial circumstances.

20. The tribunal have no hesitation in making a rent repayment order in this case the period of the rent repayment order is 10 months and 11 days leading up to the application for the exemption notice. The rent was £1800 per month. If the Tribunal could have awarded a 100% rent repayment order it would have done so but the provisions of the Act are such that once an exemption notices has been given this effectively stops the clock. The amount of the rent repayment order is £18,638 which should be paid by the Respondent to the Applicants' solicitors within 14 days.

21. It is of course open to the Applicants to apply for their costs in this case pursuant to regulation 13. If they wish to do they should make an application to the Tribunal with a costs schedule copied to the Respondent by 4 pm on **30 May 2022**. If the Respondent opposes the making of a costs order he shall provide his written objections by 4 pm on **13 June 2022**. The Tribunal will then reach a decision as to the question of costs.

## **Summary**

13. The Respondent is to pay a rent repayment order of £19,350 to the Applicants' solicitors by 4 pm on **30 May 2022**.

## **ANNEX - RIGHTS OF APPEAL** Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.