



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

Case Reference : LON/00AE/HMF/2021/0051
LON/00AE/HMF/2021/0104

HMCTS : V: CVPCOURT

Flat : 49C St Pauls Avenue, London,
NW2 5SY

Applicants : Germano Poli;
Mayara Aparecido de Fatima
Cacciatore

Representative : In person

Respondent : Sonia Regina Nascimento

Representative : No appearance

Type of Application : Application for a Rent Repayment
Order by Tenant – Sections 40, 41,
43 & 44 of the Housing and
Planning Act 2016

Tribunal Member : Judge Robert Latham
Rachel Kershaw BSc
Clifford Piarroux

**Date and Venue of
Hearing** : 31 January 2022 at
10 Alfred Place, London WC1E 7LR

Date of Decision : 7 February 2022

DECISION

Covid-19 pandemic: description of hearing

This has been a hybrid hearing. Mr Poli appeared in person with an interpreter. Ms Cacciatore and an interpreter joined remotely. Mrs Nascimento did not attend. The form of the hearing was CVPREMOTE. This form of hearing has not been objected to by the parties. A face-to-face hearing was not held because Ms Cacciatore was in Brazil. The Tribunal has had regard to the papers filed by the parties.

Decision of the Tribunal

Germano Poli (LON/00AE/HMF/2021/0051)

1. The Tribunal makes a rent repayment order in favour of Mr Poli in the sum of £4,392 which is to be paid by 25 February 2022.
2. The Tribunal determines that the Respondent shall also pay Mr Poli £200 by 25 February 2022 in respect of the reimbursement of the tribunal fees paid by the Applicant.

Mayara Aparecido de Fatima Cacciatore (LON/00AE/HMF/2021/0104)

3. The Tribunal makes a rent repayment order in favour of Ms Cacciatore in the sum of £10,556 which is to be paid by 25 February 2022.
4. The Tribunal determines that the Respondent shall also pay Ms Cacciatore £200 by 25 February 2022 in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Application

1. By an application, dated 14 February 2021, Mr Germano Poli seeks a Rent Repayment Order (“RRO”) against Mrs Sonia Regina Nascimento, the Respondent, pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The application relates to the accommodation which he occupied at 49c St Paul’s Avenue, London NW2 5SY (“the Flat”) between 21 February 2020 and 8 August 2020. He seeks a RRO in the sum of £4,392, namely the rent which he paid during the course of his tenancy. Mr Poli is Italian. English is not his first language. He has acted in person.
2. In his application form, Mr Poli had stated that Sharleen Barreto, an environmental health officer with the London Borough of Brent (“Brent”) was acting for him. However, Brent subsequently informed the Tribunal that they could not act for Mr Poli. However, they would be happy to provide a witness statement in support of his case.
3. By an application, dated 30 March 2021, Ms Mayara Aparecido de Fatima Cacciatore seeks a RRO against Mrs Nascimento. The application relates

to the accommodation which she occupied at the Flat between 19 November 2018 and 18 August 2020. She seeks a RRO in the sum of £10,556, namely the rent which she paid between 19 August 2019 and 18 August 2020. Ms Cacciatore is Brazilian. Her first language is Portuguese. She has acted in person.

4. On 4 August 2021, the Tribunal gave Directions:
 - (i) By 25 August 2021, the tenants were directed to email to the Respondent and the Tribunal a digital, indexed and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application. The Directions specified the documents which were to be provided. The tenants have failed to comply with this direction. They have rather emailed the tribunal various documents in a number of different attachments. Other documents have been posted. They were directed to file Official Land Registry documents of the freehold title; this has not been provided. The preparation of their cases has been chaotic.
 - (ii) By 17 September 2021, the Respondent was directed to email to the Tribunal and send to the tenants a digital indexed and paginated Adobe PDF bundle of all relevant documents for use in the determination of the application. The Directions specified the documents which were to be provided. The landlord has failed to file any documents in response to this application.
 - (iii) The case was set down for a virtual hearing on 22 October.
5. On subsequent occasions, Procedural Judges have given further Directions. The Tribunal has urged all the parties to seek legal advice. On 3 September, a Procedural Judge noted that although the tenants had not complied with the Directions, they had filed sufficient evidence to enable a Tribunal to determine their applications. On 8 October, a Procedural Judge cancelled the hearing fixed for 22 October.
6. On 16 October 2021, Mrs Nascimento, the Respondent, sent an email to the Tribunal. Her first language is Portuguese. She stated that she did not speak English and was unable to comply with the Directions. She works as a cleaner. She has no money to pay a lawyer. She stated that she paid her landlord £2,050 per month in respect of her tenancy of the Flat. She went to Brazil with her husband who was suffering from depression and alcoholism. Her son remained in occupation of the Flat and admitted the tenants into occupation to help him to discharge the rent. She admitted that she had pleaded guilty to five housing offences in respect of the Flat. She felt that she had been unable to defend herself because she was alone.
7. On 21 October, a Procedural Judge directed the Respondent to file the documents on which she relied by 4 December. She has failed to comply with this Direction. On 5 November, a Procedural Judge directed that the

matter would be determined at a face-to-face hearing on 31 January 2022. On 15 December, a Procedural Judge converted this to a hybrid hearing after Ms Cacciatore had informed the Tribunal that she would be in Brazil. Mr Poli and Mrs Nascimento were directed to attend in person. On 30 December 2021, the tribunal sent details to the parties in respect of the hybrid hearing.

8. On 21 October 2021, a Procedural Judge had directed that all the parties must send to tribunal and to each other 14 days before the hearing printed copies of all documents on which they intended to rely (this included all documents previously sent to the tribunal, including the application forms, proof of rent paid, and any statements and evidence on which they sought to rely). The direction specified that these documents must be in a file and must be page numbered. The files must be identical. None of the parties complied with these directions.
9. The tribunal arranged three interpreters for the hearing on 31 January: (i) an Italian interpreter for Mr Poil; (ii) a Portuguese (Brazilian) interpreter for Ms Cacciatore; and (iii) a Portuguese (European) interpreter for Mrs Nascimento.

The Hearing

10. Because the tribunal would be dealing with three litigants in person, the hearing was listed before a three-member tribunal consisting of a legal chair, an environmental health officer and a lay member. This tribunal is used to dealing with litigants in person. It gives directions to enable the parties to formulate, prepare and present their cases. However, it expects the parties to comply with such directions. If English is not the first language of a party, it expects that person to seek appropriate advice from friends or some external agency. At the beginning of the hearing, the Tribunal informed the applicants that they must satisfy us that we should make a RRO and satisfy us, beyond reasonable doubt, that a relevant housing offence had been committed. We warned them that the manner in which they had prepared their cases was far from satisfactory.
11. Mr Poli appeared in person. He gave evidence, assisted by an interpreter. He had not brought any documents with him to the tribunal. He referred to the documents which had either sent or emailed to the tribunal in a piecemeal manner. The Tribunal directed him to send all the documents upon which he sought to rely in a single PDF file. He has sent a further eight emails with numerous attachments.
12. Ms Cacciatore joined the hearing remotely from Brazil. She gave evidence, assisted by an interpreter. She forwarded an email which she had sent to the tribunal on 25 August which included 45 pages of documents confirming the rent payments which she had made.

13. Mrs Nascimento did not attend. She had been notified of the hearing on at least six occasions (5, 16 and 25 November; 15 and 30 December and 19 January). On 26 January, the Case Officer left a voice mail letter asking her to confirm her attendance. The Tribunal is satisfied that Mrs Nascimento has made an informed decision not to engage with these proceedings or to attend the hearing.

The Background

14. 49 St Pauls Avenue is a two storey house in Willesden. There are two flats on the ground floor. Flat c is on the first floor. There are four room all of which have been let out as bedrooms. There is a kitchen, a bathroom and a separate toilet. It seems that Mrs Nascimento rented the property from “Euphrain”.
15. In November 2018, Ms Cacciatore was working in a public house in Leicester Square. She was put in touch with Mrs Nascimento through a contact at her local church. She took up a tenancy of a room on 19 November 2018 at a rent of £180 per week. She was not given any tenancy agreement. She made her first payment in cash. She was not given any receipt. There were three couples living in each of other rooms. They all shared the kitchen, bathroom and single toilet.
16. On 18 December 2018, her husband joined her, having travelled from Brazil. They paid a deposit of £400 when he moved into occupation. He has had various jobs working in a restaurant and for Uber. On 30 May 2019, they moved into a larger room paying £200 per week. They moved when she learnt that she was pregnant. On 12 July, the rent was increased to £203 per week. On 14 February 2020, her baby was born. Mrs Nascimento paid for her to clean the Flat. This was initially £60 per week, but was reduced to £40. These payments were deducted from the rent which she was required to pay. The Tribunal has been provided with extensive evidence of the rent payments which she made by “TransferWise”. They had some financial difficulties when the first Covid lockdown was imposed on 23 March 2020. However, we are satisfied that they made up any shortfall in the rent.
17. On 8 August 2020, Mr Poli moved into occupation of a room paying £183 per week. He paid an additional £5 pw for cleaning. The outgoing tenant advertised the room on Facebook. “Niara”, a Polish lady, required him to pay a holding deposit of £100. Mrs Nascimento required them to pay a deposit of two weeks rent. He was not provided with a tenancy agreement. Mr Poli and his partner (now his wife) shared the kitchen, bathroom and toilet with the other occupants. There were six adults and Ms Cacciatore’s baby in the other rooms. Mr Poli has had various jobs as a swimming teacher, a security officer and a driver for Suez, a waste management company. Mr Poli produced evidence of a number of weekly payments of £183 which were paid using the Monzo App. The Tribunal is satisfied that he paid his rent regularly.

18. Mr Poli described a number of problems. The lock on the front door was broken. He had a problem with the key to his room. He bought his own oven which he kept in the kitchen. Ms Cacciatore described how the tenants would have to fix problems themselves. When the shower head broke, she fixed it with a plastic bag. The boiler broke down. They reported it and met “Ephraim”. He was surprised that Mrs Nascimento was letting out the rooms.
19. There was an incident on 26 April 2020, when Mr Poli called the police. Apparently, Mrs Nascimento was arranging for another tenant to move into occupation and was moving his oven which was in the kitchen. The kitchen was very cramped for four households.
20. Shortly thereafter, Mr Poli contacted Brent. On 3 July 2020, Ms Sharleen Charlene Barreto inspected the Flat. Brent issued a summons against Mrs Nascimento alleging 5 housing offences which were committed “on or about 03/07/2020”. These included the offence of control of or management of an HMO contrary to section 72(1) of the Housing Act 2004. The other offences related to (i) no smoke alarm in any of the bedrooms; (ii) no fire blanket; (iii) the failure to provide the name, address and telephone number of the manager; and (iv) inadequate handrails/bannisters. On 4 March 2021, Mrs Nascimento pleaded guilty to these offences and was fined £800 in respect of each offence. Mr Poli has provided the Tribunal with a copy of the Certificate of Conviction.
21. As a result of the involvement of Brent, there was increasing tension between Mrs Nascimento and the tenants. She asked the tenants to leave. She also moved her son into one of the rooms which was vacant. Both applicants used their deposits to cover the rent for the last two weeks of their occupation.

The Housing and Planning Act 2016 (“the 2016 Act”)

22. Section 40 of the 2016 Act provides:

“(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.”

23. Section 40(3) tabulates seven offences. These include the offence of “control or management of an unlicensed HMO” under section 72(1) of the 2004 Act.

24. Section 41 deals with applications for RROs. The material parts provide:

“(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.

25. Section 43 provides for the making of RROs:

“(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 has been convicted).”

26. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides:

“(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid 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.

27. Section 44(4) provides:

“(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, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.”

The Housing Act 2004 (“the 2004 Act”)

28. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that a building or a part of a building meets the “standard test” if:

“(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.”

29. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

30. Section 263 defines the concepts of “person having control” and “person managing”:

“(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.”

Our Determination

31. The Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence under section 72(1) of the 2004 Act. We have regard to the Certificate of Conviction. We are satisfied that:

(i) The Flat was an HMO falling within the “standard test” as defined by section 254(2) of the 2004 Act which required a licence (see [28] above):

(a) it consisted of four units of living accommodation not consisting of self-contained flats;

(b) the living accommodation was occupied by persons who did not form a single household;

(c) the living accommodation was occupied by the tenants as their only or main residence;

(d) their occupation of the living accommodation constituted the only use of the accommodation;

(e) rents were payable in respect of the living accommodation; and

(f) the households who occupied the living accommodation shared the kitchen, bathrooms and toilets.

(ii) The Flat fell within the prescribed description of an HMO that required a licence (see [29] above):

(a) it was occupied by five or more persons;

(b) it was occupied by persons living in two or more separate households; and

(c) it met the standard test under section 254(2) of the 2004 Act.

(iii) The Respondent had control of or management of the Flat.

(iv) The Respondent had not licenced the HMO as required by section 61 of the 2004 Act. This is an offence under section 72(1).

(v) The offence was committed between 19 November 2018 and 18 August 2020. This covers the dates in respect of which RROs are sought.

32. The 2016 Act gives the Tribunal a discretion as to whether to make an RRO, and if so, the amount of the order. Section 44 provides that the period of the RRO may not exceed a period of 12 months during which the landlord was committing the offence. The amount must not exceed the rent paid by the tenant during this period, less any award of universal credit. Mr Poli and Ms Cacciatore confirmed that neither household was in

33. Mr Germano Poli seeks a RRO in the sum of £4,392 over the period 21 February 2020 and 8 August 2020. Ms Cacciatore seeks a RRO in the sum of £10,556 over the period 19 August 2019 and 18 August 2020.

34. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:

(i) The conduct of the landlord: The tenants were not provided with tenancy agreements. Their deposits were not paid into a Rent Deposit Scheme. They were not provided with (i) the “How to Rent” checklist; (ii) an energy Performance Certificate; or (iii) a gas safety certificate. There were a number of items of disrepair. Brent identified a number of housing defects.

(ii) The conduct of the tenant: There is no criticism of the conduct of the tenant. We are satisfied that they paid the rent that was payable under their tenancy agreements.

(iii) The financial circumstances of the landlord: The Respondent has adduced no evidence of her means.

(iv) Whether the landlord has at any time been convicted of an offence to which Chapter 4 of the 2016 Act applies, namely the offences specified in

section 40. We have regard to the fact that Ms Nascimento has been convicted of an offence under section 72(1) of the 2004 Act. We note that Brent decided to bring a prosecution rather than impose a Financial Penalty. This reflects their assessment of the seriousness of the offence.

35. We have had regard to the recent decisions of the Upper Tribunal including Judge Cooke in *Vadamalayan v Stewart* [2020] UKUT 183 (LC); the Deputy Chamber President, Martin Rodger QC, in *Ficcara v James* [2021] UKUT 38 (LC); and the Chamber President, Mr Justice Fancourt in *Williams v Parmar* [2021] UKUT 244 (LC).
36. We have had regard to the fines imposed by the Magistrates Court. However, we are satisfied that these fines were at the lower end of the scale. Parliament has decided that a landlord should be liable for both a RRO and a criminal sanction.
37. Having regard to findings above, we are satisfied that it is appropriate to make RROs in the sums sought.
38. We are also satisfied that the Respondent should refund to the applicants the tribunal fees of £200 which each of them has paid.
39. This application has highlighted the difficulties in bringing applications for RROs, faced by vulnerable tenants who do not have English as their first language. Section 49 of the 2016 Act makes express provision for a local housing authority to help a tenant apply for a RRO. This extends to helping the tenant by conducting proceedings or by giving advice.

Judge Robert Latham
7 February 2022

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 Flat and the case number), state the grounds of appeal, and state the result the party making the application is seeking.