



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

Case References : **LON/00AE/HMF/2022/0006**
CVP/VIDEO

Property : **2 Park Lodge , 136 Olive Road London
NW2 6UX**

Applicants : **Ms Fozia Arif**

Representative : **In person**

Respondent : **Mrs J Bellis (landlord) (1)
Mr J Bellis (2)**

Representative : **Mrs J Bellis**

**Type of
Application** : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM
Ms F Macleod MCIEH**

**Date of CVP
remote hearing** : **17 June 2022**

Date of Decision : **30 June 2022**

DECISION

Decision of the Tribunal

The Tribunal makes a rent repayment order against the first Respondent and in favour of the Applicant in the sum of £2,129.50. Additionally the Tribunal orders the Respondent to pay to the Applicant the sum of £300 by way of reimbursement of her application and hearing fees. The total sum payable by the Respondent is therefore £2,429.50.

Reasons

- 1 This application dated 06 January 2022 is made by the Applicant under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as 2 Park Lodge 136 Olive Road London NW2 6UX (the property) for the period 07 January 2021 to 30 April 2021 during which time the property was unlicensed.
- 2 The subject property, situated within the London Borough of Brent falls within the mandatory licensing scheme requiring all properties occupied by five or more people forming two or more households and who share amenities such as kitchens and bathrooms to be licensed.
- 3 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 4 Following receipt of a letter from the local authority (page 40) the first Respondent obtained a licence for the property on 31 May 2021. She confirmed that the house had been occupied by five persons comprising two or more households and sharing facilities.
- 5 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property.
- 6 The hearing took place by way of CVP Video conference on 17 June 2022 to which the parties had consented. The Applicant represented herself and the first Respondent appeared in person. The second Respondent was present at the hearing and had filed a written statement which the Tribunal had read and took into account in making their decision. The Tribunal understands the second Respondent to be the son of the first Respondent. Although he lives at the property, he is not responsible for its management and the Tribunal makes no order against him.
- 7 The Applicant was in lawful occupation of the property during the period 7th January 2021 to 1st May 2021. From the 17th April the number of residents fell at least temporarily to three which took the property outside the mandatory licensing scheme (page A37). The sum ordered by the Tribunal under this application (below) relates only to the period up to and including 17 April 2021.

- 8 The Tribunal understands the property to be a Victorian house divided into two apartments. The ground floor apartment is not owned by the Respondents and is not relevant to this application which concerns the maisonette comprising the upper two floors. Reached by a staircase from the ground floor the first floor level contains a kitchen, bathroom and three bedrooms together with access via a rear staircase to the rear garden. A fourth ensuite bedroom occupies the converted loft area.
- 9 The Applicant occupied one room on the first floor of the property and during the period of her occupation between the 7th January 2021 and the 17th April 2021 the occupancy level of the property numbered five persons from more than two separate households (page A37).
- 10 The Applicant's rent payable during the relevant period covered by this application was £680 per calendar month and the Applicant provided proof of payment for the entire period (page A17). The terms of the letting indicated that £50 of the monthly rent was attributable to outgoings. The first Respondent said that her calculations showed that a sum of closer to £89 per person represented the true cost of the outgoings on the property. The Tribunal said that it would only be able to take the sum of £50 per month into account because that was the amount which had been agreed with the tenant.
- 11 The Applicant said that she had raised the question of a licence with the second Respondent on several occasions either by text or email but had not included any substantiated evidence of this within her bundle. She had however included a copy of a letter from the London Borough of Brent dated 13 April 2021 (page A16) in response to her request to them about the need for/existence of a licence which confirmed that the property required a licence and did not have one.
- 8 The Applicant accepted that the property had been recently refurbished and was in a 'suitable letting condition' but stated that the fire precautions were not compliant with regulations. The first Respondent refuted the Applicant's allegation that the smoke alarms were either deficient or non-existent but acknowledged that no fire route exit notices were in place. She insisted that since there was only one exit route from the property such notices were unnecessary or alternatively that the regulations did not apply since the property was not a block of flats.
- 9 Not having inspected the property the Tribunal is not in a position to take a view on this point but it notes that the first Respondent did not appear to be familiar with the regulatory framework which applies to rental properties. This is the first Respondent's only current rental property and she herself lives in rented accommodation.
- 10 The Tribunal also notes that the period of the Applicant's occupation was not an isolated incident. The first Respondent did not deny that there had been a period during the previous year (June -August 2020) when the property had been occupied by five persons comprising different households and thus would have

- required a licence which it did not have. She said that it was 'accidental' that there were five persons living in the house.
- 11 Allegations about the Applicant's personal conduct made by the Respondents in their statements to the Tribunal were not pursued in oral evidence and were not taken into account by the Tribunal in making its decision because they were entirely unrelated to the issue before the Tribunal. The conduct allegations appear only to have arisen after the Applicant raised the licence issue with the council and culminated in the first Respondent serving notice to quit on the Applicant. The Tribunal also notes the first Respondent's apparent reluctance to engage in these proceedings by refusing an offer to mediate.
 - 12 It is the landlord's duty to ensure compliance with the law, not the tenant's duty to check that the property has a licence. As a landlord the first Respondent should have known this.
 - 13 The Tribunal notes that the Respondent did apply for and obtain a licence but only after having received a warning letter from the council. A copy of the licence is contained in the bundle but there is no copy of the application. The Tribunal must therefore assume that the property remained unlicensed throughout the Applicant's occupation.
 - 14 Having considered the evidence presented to the Tribunal it was satisfied beyond reasonable doubt that the first Respondent had committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that she had been in control or management of an unlicensed house.
 - 15 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in favour of the Applicant for the period commencing on 07 January 2021 until and including 17 April 2021. Any award could not exceed the total rent of £2,559 received by the first Respondent for this period of time. There was no evidence that the Applicant had been in receipt of deductible benefits during this period.
 - 16 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
 - 17 The Respondent is a professional landlord who should have been aware of the need to obtain a licence. Ignorance of the law is not a defence under the Act.
 - 18 The property was adequately maintained but questions remained about compliance with the smoke detection and fire precaution measures.
 - 19 That, once the first Respondent was notified by the council of the need to obtain a licence she applied for one reasonably promptly.
 - 20 That the Council did not consider the Respondent's offence to be sufficiently serious to prosecute her but had charged her a 'finders' fee'.
 - 21 The Tribunal did not have details of the first Respondent's financial circumstances but no documented plea of financial hardship was made. The Applicant's rent was inclusive of outgoings and her statement included a list of expenditure on the property during the

relevant period with receipts. As stated above, the Tribunal has allowed £50 per month or pro rata for expenses because this is what the tenant had agreed to.

- 22 In circumstances where a professional landlord demonstrates an ignorance of the applicable law and a reluctance to engage with the process the Tribunal is reluctant to deduct any further sums from the amounts claimed by the Applicant.
- 23 On balance therefore, and taking into account the first Respondent's conduct the Tribunal considers that it would be reasonable to make an award of £2,129.50 This is the sum awarded under this Order which is to be paid by the Respondent to the Applicant. This sum is made up by the net rent (ie less a £50 or pro rata sum for outgoings) per month of £509 (January) £630 (February) £630 (March) and £360.50 (April).
- 24 The Tribunal also considers it reasonable to order the Respondent to repay to the Applicant the sum of £300 representing the reimbursement of her application and hearing fees.
- 25 This brings the total award payable by the Respondent to £2,429.50.

26 Relevant Law Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 ("the Act") provides:

“(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).

(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 in accordance 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).

Amount of order: tenants

16. Section 44 of the Act provides:

(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 the table.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

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 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.

(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.”

Name: Judge Frances Silverman
as Chairman **Date:** 30 June 2022

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. Under present Covid 19 restrictions applications must be made by email to RPlondon@justice.gov.uk.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.