



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

Case Reference : **LON/00AE/HMG/2021/0042**

HMCTS : **V: CVPREMOTE**

Property : **Flat 3, 55a Chichele Road, London,
NW2 3AN**

Applicants : **Irene Rodriguez Pinedo
Matteo Vinci**

Representative : **In Person**

Respondent : **Sunil Ravji Bhundia**

Representative : **No appearance**

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

Tribunal Member : **Judge Robert Latham
M.Cairns MCIEH
C.Piarroux JP**

**Date and Venue of
Hearing** : **27 April 2022 at
10 Alfred Place, London WC1E 7LR**

Date of Decision : **29 April 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The Applicants have filed two bundles of documents.

Decision of the Tribunal

1. The Tribunal makes a rent repayment order against the Respondent in the sum of £16,320.
2. The Tribunal determines that the Respondent shall also pay the Applicants £300 in respect of the reimbursement of the tribunal fees which they have paid.
3. The Respondent is to pay the said sums by 20 May 2022.

The Application

1. By an application received on 8 December 2021, the Applicants seek a Rent Repayment Order (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”). The Respondent is the freehold owner of 55 Chicele Road, London, NW2 3AN (“the Flat”).
2. On 9 December 2021, the Tribunal sent a copy of the application to the Respondent. On 26 January 2022, the Tribunal gave Directions. The Tribunal set the matter down to be heard today. On 26 January, the Tribunal sent a copy of the Directions to the parties. On 21 April, the Tribunal notified the parties of the arrangements for the hearing.
3. Pursuant to the Directions, both the Applicants have filed a Bundle of the Documents (127 pages) on which they seek to rely in support of their application. They later supplied an additional bundle (28 pages). In this decision, the prefix “A.1__” will be added to the first bundle and “A2.__” to the second bundle.
4. The Respondent has played no part in these proceedings. Since issuing the application, the Respondent has twice contacted the Applicants and made reference to their application. The Tribunal is therefore satisfied that the Respondent is aware of the proceedings and has made an informed decision not to engage with them.

The Hearing

5. The Applicants appeared in person. At their request, the Tribunal had arranged a Spanish interpreter. However, in the event, she was not

required. The Applicants confirmed that their witness statements were accurate and true. They answered a number of questions from the Tribunal. They also provided a witness statement (at A1.13-14) from Alex Pang, an Enforcement Officer, Private Housing Services, of the London Borough of Brent (“Brent”).

6. The Applicants confirmed that they are seeking a RRO in the sum of £16,320 in respect of 100% of the rent which they paid in the period of 12 months ending on 19 October 2021. There is a schedule at A1.12. This is computed on the basis of six monthly payments of £1,420 and six of £1,300.
7. The Applicants confirmed that the full name of the Respondent is Sunil Ravji Bhundia and the Tribunal amends the application accordingly. The Respondent had been named as “S Bhundia”.
8. The Respondent did not attend the hearing. He has not submitted any evidence.

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

9. Section 40 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.”
10. Section 40(3) lists seven offences “committed by a landlord in relation to housing in England let by that landlord”. These include the offence under section 95(1) of the Housing Act 2004 (“the 2004 Act”) of control or management of an unlicensed house.
11. 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.

12. 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).”

13. 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 (emphasis added):

“(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.

14. 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.”

15. Section 56 is the definition section. This provides that “tenancy” includes a licence.

The Housing Act 2004 (“the 2004 Act”)

16. Part 3 of the 2004 Act relates to the selective licensing of residential accommodation. By section 80, a local housing authority (“LHA”) may designate a selective licencing area.

17. Section 95 specifies a number of offences in relation to the licencing of houses. The material parts provide:

“(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.

(3) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time -

(b) an application for a licence had been duly made in respect of the house under section 87,

and that ... application was still effective (see subsection 7).

18. Section 263 provides:

“(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.”

The Background

19. The property at 55 Chicele Road, London, NW2 3AN is a terraced property. On 7 January 1999, the Respondent acquired the freehold of the property, jointly with Shashikant Maganlal. The property has been converted to create five flats. Flat 3 is a one bedroom flat on the ground floor. Mr Bhundia is the manager of Harsun & Co Ltd, a firm of estate agents based at 7 High Road, London, NW10 2TE.
20. On 28 March 2020, Mr Bhundia granted the Applicants an Assured Shorthold Tenancy of the Flat for a term of 12 months. The tenancy agreement is at A1.25-47. The rent was £1,420 inclusive of council tax and water charges. In March 2021, the Respondent agreed to reduce the rent from £1,420 to £1,300 per month. The reduction was agreed, because there had been some confusion as to what bills were included in the rent.
21. On 1 June 2018, Brent had introduced a Selective Licencing Scheme (at A1.22). This extends to Mapesbury ward, the ward in which the Flat is situated and applies to any house (which includes a flat) which is rented. Mr Pang has confirmed that there was no licence in respect of the Flat.
22. On 14 July 2021, Brent carried out an unannounced inspect of the Flat. On 26 July, Brent wrote to Mr Bhundia and Ms Maganlal warning them to apply for a licence. On 20 October 2021, Mr Bhundia attempted to make an on-line licence application. This was not possible as the Flat had been converted without any planning approval. The address for the Flat was therefore not recognised by Brent.
23. The Applicants accept that the offence of control or management of an unlicensed house ceased upon this application being made. They therefore apply for a RRO for the twelve month period leading up to this date.
24. The Applicants vacated the Flat on 1 April 2022. On 28 February (at A2.5) they had given the Respondent notice of their intention to do so. In the ten days before they left, the Respondent sent builders into the Flat to carry out works.

Our Determination

25. The Tribunal is satisfied beyond reasonable doubt that the Respondent has committed an offence under section 95(1) of the 2004 Act, having both “control of” and “managing” an unlicensed house. The offence has been committed between 28 March 2020 (the date on which the tenancy was granted) and 20 October 2021 (when the Respondent applied for a licence).
26. 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. Both Applicants were working and were not in receipt of any benefits.

27. The Applicant seeks a RRO in the sum of in the sum of £16,320 in respect of the rent which they paid in the period of 12 months ending on 19 October 2021.
28. Section 44 of the 2016 Act, requires the Tribunal to take the following matters into account:
 - (i) The conduct of the landlord: The Applicants made a number of complaints about the condition of the Flat. At the commencement of the tenancy, the Flat had not been cleaned. There were mice traps and they found a dead mouse. An old and broken table had been left in a wardrobe. The intercom was not working and this was not repaired for some twelve months. The washing machine broke down and was not replaced from some 10 to 15 days. The Applicants complained of the delay before the Respondent remedied these defects. The Tribunal notes that this was during the Covid-19 lockdown period. The Tribunal is satisfied that there was some disrepair. However, this could not be described as serious.
 - (ii) The conduct of the tenant: There is no criticism of the conduct of the tenant.
 - (iii) The financial circumstances of the landlord: There is no evidence of this.
 - (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. There is evidence of any relevant conviction.
29. 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). We note that the relevant factors which we should take into account are not limited to those mentioned in section 44(4).
30. Having regard to findings above, we are satisfied that it is appropriate to make a RRO in the sum sought. We see no reason for making any reduction from the sum sought. Mr Bhundia is the manager of a firm of estate agents. He should have been aware of the need to licence this Flat. He has not submitted any mitigating circumstances.

31. We are also satisfied that the Respondent should refund to the Applicants the tribunal fees of £300 which they have paid in connection with this application.

Judge Robert Latham
29 April 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 property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.