



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

Case reference : **LON/00AM/HMF/2021/0161**

HMCTS code : **V: CVPREMOTE**

Property : **6 Cowper Road
London N16 8PF**

Applicant : **Maggie Goss**

Representative : **Derek Goss**

Respondent : **Hawkes Property Group (1)
Hawkes Properties Ltd (2)**

Representative : **Jem Akdogan, Director of R2**

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

**Tribunal
member(s)** : **Judge D Brandler
Andrew Lewicki**

Venue : **10 Alfred Place, London WC1E 7LR
By remote video hearing**

Date of hearing : **27th October 2021 &
17th February 2022**

Date of decision : **22nd February 2022**

DECISION

Decision of the tribunal

(1) The application for a Rent Repayment Order is dismissed.

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. The tribunal received an application under section 41 of the Housing and Planning Act 2016 from the Applicant tenant for a rent repayment order (“RRO”).
2. The application alleged that the landlords had failed to obtain an HMO licence for 6 Cowper Road, London N16 8PF (“The property”). Maggie Goss (“the applicant”) was granted a tenancy for a room in the property on 15/03/2021 by Hawkes Properties Ltd, the second respondent (“R2”). Hawkes Property Group (“R1”) are also named on the tenancy agreement but are not named as the landlord. The applicant is one of 4 tenants named on an Assured Shorthold Tenancy agreement (“AST”) for the property commencing on 15/03/2021 for a term of three months. Thereafter the Applicant remained living at the property under a statutory periodic tenancy. The monthly rent liability for the whole property as stated on the AST was £2595.00 pcm. The applicant asserts that her rent liability was £615 pcm. The tenants were responsible for the utilities.
3. The applicant moved out of the property on 11/08/2021. She claims a rent repayment order (“RRO”) for the period 15/3/2021-11/08/2021 in the sum of £2,312.50.
4. The property is an ex Local Authority house situated in the L.B. Hackney (“the Council”). It contains 2 bedrooms on the 2nd floor with a bathroom/wc, 2 bedrooms on the 1st floor, and a kitchen/dining room and a shower room/wc on the ground floor. The house has the benefit of a back garden.
5. The Council introduced an additional licencing scheme which was effective during the period claimed in this application.
6. The Tribunal issued directions to prepare the parties for a hearing listed for 27/10/2021.
7. At the hearing on 27/10/2021, the only person joining the remote hearing was Mr Goss, the Applicant’s father and representative. He apologised for the applicant’s absence. He didn’t know she would have to attend.
8. The respondents at that time had played no part in the proceedings, such that on 20/10/2021 the Tribunal wrote to R1 reminding them that

no bundle had been received, and warning them that they could be struck out if they fail to comply with directions.

9. At the hearing on 27/10/2021, the Tribunal did not consider it to be in the interests of justice to hear the application without hearing from the applicant.
10. Having noted that R2 was not named on the application as the landlord, although the AST clearly names R2 as such, Mr Goss asked for permission to amend the application. This was granted.
11. Hawkes Properties Ltd were therefore joined as R2.

The hearing

12. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination and also because of the restrictions and regulations arising out of the Covid-19 pandemic.
13. This has been a remote hearing which has not been opposed by the parties. The form of remote hearing was coded as CVPREMOTE with all participants joining from outside the court. A face-to-face hearing was not held because it was not possible due to the COVID-19 pandemic restrictions and regulations and because all issues could be determined in a remote hearing. The tribunal had the benefit of a number of individual documents provided by the applicant, which include an expanded statement of case and bank statements for the relevant period.
14. The applicant joined the reconvened video hearing on 17/02/2022 with Mr Goss, her father/representative.
15. The respondents, having played no part in these proceedings, sent a representative to this hearing. That representative was Mr Jem Akdogan. He explained his position as a Director of R2. He apologised for not having taken part in the proceedings to date. He confirmed he had no excuse for not having complied with previous directions but sought to adduce new evidence today.
16. The basis of his application was that the application did not provide an accurate description of the situation and much information had been left out. For example, details of the rent arrears owed by the tenants; the fact that the property was let under a joint tenancy such that the tenants were jointly and severally liable for rent due; and that when one of them moved out, he was not replaced nor was his portion of the rent paid, leaving the landlord out of pocket. He confirmed that the deposit had recently been used to reduce the rent arrears.

17. Mr Goss objected to this late application for new evidence to be adduced by the landlord on the basis that they have had every opportunity to take part in the proceedings and had failed to do so and that it is unfair to allow them do so now.
18. Having considered both arguments, and having taken note of the complete lack of engagement by either R1 or R2 throughout these prolonged proceedings, and finding that R2 had no reasonable excuse for not engaging prior to attending the hearing today, permission to adduce new evidence was refused. Mr Akdogan was permitted to test the applicant's case by asking her questions during the course of the hearing.

The Council's Additional HMO licensing requirements.

19. Although the applicant had failed to provide evidence of when this requirement came into force, Mr Akdogan confirmed in oral evidence that the respondents had been aware of this requirement since November 2018. At that time, they wrote to all of the landlords whose properties they manage, in order to advise them of the HMO licencing requirement. Mr Akdogan confirmed that they had written to the freeholder of the property, who they say was responsible to apply for such a licence. He further confirmed that a follow up telephone call would have been made to the freehold owner to chase him to make an application for a licence.
20. It is R2 who is named as the landlord on the tenancy agreement, and it is also R2 who collected the rent from the tenants and were the contact for any issues arising at the property. This would suggest that R2 had control of and managed the property. Nevertheless, Mr Akdogan told the Tribunal that when R2 made a successful application for an HMO licence for the property on 20/11/2021, they did so on behalf of, and in the name of the freeholder. There is no evidence that the freeholder was in control of the property at all. The Tribunal had no sight of the application or any HMO licence. Nevertheless, it was clear from the evidence from R2's representative, that the HMO licencing requirement for additional licencing was in force during the relevant period for this application.

The occupation of the property

21. In oral evidence the applicant confirmed that when she moved into the property, she lived there initially with Bence, Christina and Suki.
22. Shortly after she moved in, Bence moved out some 1-2 weeks later. She was pressed on when exactly Bence moved out. Eventually she came to the conclusion that Bence moved out at the end of March 2021. She explained that Bence had found a replacement for the room. That replacement was Adam but he only stayed 4 days. She didn't know exactly why he didn't stay longer. She only knew that Adam had

mentioned that his bed was in a really bad condition and that the “bed was squeaky”. Mr Akdogan stated that Adam had moved out because of the condition of the property, although he qualified that to be in relation to the hygiene within the property, rather than the property condition.

23. The applicant confirmed that after Bence and Adam moved out of the property, she lived in the property with Christina and Suki.
24. Christina moved out around the end of July 2021 or the beginning of August 2021. The applicant could not be sure of the date. The applicant herself moved out on 11/08/2021, after finding a replacement tenant for her room. The tribunal were told that Suki remained in the property after that date.

The rent paid by the applicant

25. The applicant submitted bank statements for the period 28/02/2021-27/07/2021. In oral evidence the applicant confirmed paying the following amounts in rent:
 - (a) £465 on 16/03/2021 for the period 16/03/2021-16/04/2021
 - (b) £515 on 16/04/2021 for the period 16/04/2021-16/05/2021
 - (c) £515 on 17/05/2021 for the period 16/05/2021-16/06/2021
 - (d) £510 on 16/06/2021 for the period 16/06/2021-16/07/2021
 - (e) £307.50 on 16/07/2021 for the period 16/07/2021-11/08/2021
26. Although she claimed in oral evidence that she had originally moved in on 15/02/2021, there was no evidence demonstrating that she paid rent earlier than 15/03/2021. She initially sought to argue that the rental payment made on 16/03/2021 was for the period from 15/02/2021 for a month, but on further investigation by the Tribunal, it transpired that she had paid a deposit of around £600 to the previous tenant of that room, Celia, and that she had been unable to pay rent for the room prior to 16/03/2021 because she did not have R2’s bank details.
27. The applicant asserted that her portion of rent liability was £615 pcm. Mr Akdogan disputes this and says that the previous tenant of that room paid £625 pcm.
28. The applicant in oral evidence explained the reduced payment on 16/03/2021 was because of two deductions made by her from the rent:
 - a. A deduction of £100 was made because of what she claims was the poor state of the windows. She explained that each of the 4 tenants deducted £100 pcm from their rental payments to R2, and

- b. A deduction of £50 to pay for a replacement mattress because when she moved into the room, the mattress was so stained she could not use it.
29. In relation to the £100 deduction per tenant per month, the tribunal was told that was decided between the tenants with no discussion with R2. The applicant denied having contacted the landlord herself in this regard, although she thought Christina, one of the other tenants, had contacted them. She didn't know whether there had been any response from the landlords in this regard. In oral evidence, Mr Akdogan said that R2 had not agreed to this reduction, that the tenants had just decided to do this and explained that had caused extensive arrears of rent amounting to approximately £6000.
30. In relation to the replaced mattress, although this was a furnished property, R2 had not agreed to replace the mattress. In oral evidence, Mr Akdogan stated initially that if tenants wanted a new mattress, R2 would purchase one for them. He then stated that in this case the freeholder of the property did not agree to buy a new mattress. In his opinion that was because of the large rent arrears. That was difficult to reconcile with the fact that the applicant had only just moved in, and could not have been responsible for any rent arrears at that stage.
31. Mr Akdogan's position was that mattresses were not necessarily included in the rent. Some tenants liked to bring their own mattress, and others, he said used the ones in the property. In an attempt to establish what furniture was included in the agreement the Tribunal asked about the inventory. Unfortunately, R2 did not take an inventory. Mr Akdogan explained this was not done because tenants moved in and out with such regularity, they could not keep tabs on what was going on.
32. Turning to the rent paid for April/May and May/June, the applicant's evidence was that she paid £515 per month. This was her liability reduced by £100 per month because of what she said was the poor condition of the windows. No photographic evidence was produced to demonstrate this complaint, although the applicant stated that when it rained, the windows were in such poor condition that the rain came into the room, and there was a constant draft.
33. In relation to the rent paid for June/July this was paid in the sum of £510. The applicant was asked why that amount differed from other payments. She told the Tribunal in oral evidence that that was a mistake.
34. In relation to the rent paid for July/August this was paid in the sum of £307.50. This was, the applicant said, the amount that was owed up to 11/08/2021 and she was not liable for more because the rent date was coming up.

35. The applicant was asked if she had given notice to leave, but she could not be sure if she had.
36. The applicant confirmed in oral evidence that after Bence and Adam moved out of the property, and they were in effect a tenant short, that no one made up the amount to the contractual rent stated on the AST agreement. She seemed to have no concept of having entered into a joint tenancy, or her legal requirements under that agreement. Her evidence was that people came and went and that it was the responsibility of the outgoing tenant to find a replacement tenant. If there was no replacement, she did not consider that that the missing rent should be covered by the remaining joint tenants.
37. In fact, it was not until she contacted the landlord herself in July 2021 when the washing machine had stopped working, asking for a replacement or a repair, that she acknowledged that there were rent arrears. The landlord refused to replace the washing machine because of the rent arrears.

Universal Credit and Housing Costs

38. It was clear from the bank statements produced by the applicant that Universal Credit (“UC”) had been in payment during the relevant period. It was equally clear that the applicant did not understand on what basis she had been paid that benefit.
39. When asked for the breakdown of each payment of UC in her bank statements, the applicant appeared to have no concept that part of the payment was for her personal allowance and part of it was towards her housing costs. No evidence had been adduced in relation to that because, as her representative said, he was not aware that UC would restrict the award of a tenant reclaiming rent paid.
40. The tribunal offered the applicant every opportunity to provide an explanation as to how much of the UC payment constituted a payment for housing costs. The applicant was allowed an opportunity to look at her UC Journal and was invited to tell the Tribunal how much was for housing costs. This as it turned out was not particularly helpful without seeing the award calculation. It was clear from what was read out to the Tribunal that the amounts awarded had been reduced because of the applicant’s earnings. The exact amount of earnings were unknown, and without the tribunal carrying out a forensic examination of all the bank statements and all the income, this would not be possible. The tribunal was not prepared to do so. It was for the applicant to make her case.
41. What was clear was that for every month during the relevant period, a substantial amount of UC was paid into the applicant’s bank account.

The Tribunal’s findings

42. R2 is the landlord and failed to licence the property in breach of the Council's additional licencing requirements. Mr Akdogan admitted that there had been a failure to do so, and the first application for a licence was made on 20/11/2021.
43. The tribunal found the landlord's conduct to be poor in relation to the management of the property. No inventory was taken when the tenant moved in, rare if any inspections were carried out, and although the property was advertised as furnished, the tenant had to replace a soiled mattress at her own expense. There was no photographic evidence of the windows being in a poor state but the Tribunal accepted the applicant's evidence in part in relation to the poor condition. However, the applicant chose to stay in the property until August 2021 which was difficult to reconcile with the level of window leakage claimed.
44. The occupation of the property was such that an additional licence was required. Initially when the applicant moved into the property there were 4 occupants from separate householders. From the end of March 2021 to the end of July 2021 there were 3 occupants in the property from separate households.
45. However, although the applicant confirmed payment of rent in the total sum of £2,312.50 during the relevant period, the payments of UC during that period demonstrated that at the very least a large proportion of her housing costs were paid by the Department for Work and Pensions. As such, any UC housing payments must be excluded in a calculation for a potential award of a RRO. The tribunal were not persuaded by the applicant's evidence that she had paid any rent, other from UC payments received. On that basis, the tribunal could not make an award of a rent repayment order.
46. The tribunal therefore decline to make a rent repayment order against the Respondents. Nor do they order that the application fee be refunded.

Name: Judge D Brandler

Date: 22.02.2022

ANNEX - 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.

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

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

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse–

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

262 Meaning of “lease”, “tenancy”, “occupier” and “owner” etc.

(1) In this Act “lease” and “tenancy” have the same meaning.

(2) Both expressions include—

(a) a sub-lease or sub-tenancy; and

(b) an agreement for a lease or tenancy (or sub-lease or sub-tenancy).

And see sections 108 and 117 and paragraphs 3 and 11 of Schedule 7 (which also extend the meaning of references to leases).

(3) The expressions “lessor” and “lessee” and “landlord” and “tenant” and references to letting, to the grant of a lease or to covenants or terms, are to be construed accordingly.

Section 263 Meaning of “person having control” and “person managing” etc.

(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.

(4) In its application to Part 1, subsection (3) has effect with the omission of paragraph (a)(ii).

(5)References in this Act to any person involved in the management of a house in multiple occupation or a house to which Part 3 applies (see section 79(2)) include references to the person managing it.

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(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.

(2) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(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.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(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).

Section 44 Amount of order: tenants

(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

the amount must relate to rent paid by the tenant in respect of

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

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

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.