



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

Case reference : **LON/00AY/HMF/2021/0039**

HMCTS code (paper, video, audio) : **V: CVPREMOTE**

Property : **7 Burnley Road, London SW9 0SH**

Applicants : **Chris Brazier & Saul Reid**

Representative : **In person**

Respondent : **Mary Jenkins**

Representative : **In person**

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

Tribunal members : **Mr I B Holdsworth FRICS MCI Arb
Peter Roberts Dip Arch RIBA**

Remote : **Remote Hearing**

Date of decision : **6th March 2022**

DECISION

Covid-19 pandemic: description of hearing: This has been a remote video hearing, which had not been objected to by the parties. The form of the remote hearing was V: Skype remote. A face-to-face hearing was not held because it was not practicable under the current covid restrictions. The documents the Tribunal referred to are in three bundles submitted respectively by the Applicants and the Respondent.

Determination

1. The tribunal has determined that the following Rent Repayment Orders should be made:
 - A sum of **£1,489.50** is payable to Applicant 1, Chris Brazier; and
 - A sum of **£4,192.00** is payable to Applicant 2, Saul Reid.
2. These monies should be paid to the Applicants within 2 weeks of issue of this Decision.

Application

3. This is an application made under section 41 of the Housing & Planning Act 2007 (**the “2016 Act”**) made by the Applicants for a Rent Repayment Order (RRO).
4. It is asserted that the landlord committed an offence of control or management of an unlicensed HMO contrary to section 72(1) of the Housing Act 2004.

Hearing

5. A video hearing was held on 17 February 2022.
6. The parties represented themselves at the hearing and gave evidence to the tribunal.

Background

7. Chapter 4 of the Housing & Planning Act 2016 makes provision for RRO's to be made against the landlord when a landlord has committed certain offences. The respondent is the freeholder of 7 Burnley Road, London SW9 0SH (the **“Property”**).
8. This is a house in multiple occupation and the tribunal are told that over many years the property was occupied by 5 or 6 tenants.
9. The London Borough of Lambeth require mandatory HMO licencing and the tribunal are told this requirement has been in place for a number of years.

10. The respondent did not comply with the mandatory licencing requirements and was found guilty of breaching the legislation in March 2021. The Authority issued a final penalty notice of £10,000 on 24 May 2021. The Authority subsequently reduced the penalty to £8,000 and the respondent paid this sum.
11. It is not in dispute the landlord respondent breached the licencing regulations between 1 August 2019 to 5 October 2020 as she failed to licence the house in multiple occupation, and therefore committed an offence under section 72(1) of the Housing Act 2004. This is confirmed to the tribunal by correspondence submitted from London Borough of Lambeth.
12. The applicants now seek Rent Repayment Orders for periods when they occupied the unlicensed property. Mr Brazier seeks a repayment order of **£6,600** for the 12-month period, **1 October 2019 to 30 September 2020**. Mr Reid seeks a repayment order of **£5,700** for the period **1 December 2019 to 31 November 2020**.

The Legislation

13. Section 254 of the 2004 Act defines an HMO. The definition includes a self-contained house where two or more households who occupy the living accommodation share a toilet or cooking facilities. Accordingly, the Property is an HMO.
14. Section 61 of the 2004 Act requires an HMO to be licenced, by section 72 of the 2004 Act a person commits an offence, if a person having control of or managing an HMO which is required to be licenced but is not so licenced.
15. By section 263 of the 2004 Act a person has control of the premises if he receives the rent.
16. Section 40(1) Housing & Planning Act 2016 confers powers on the tribunal to make a repayment order (RRO) where a landlord has committed an offence including a breach of section 72 of the 2004 Act. Section 40(2)(a) of the 2016 Act provides that a rent payment order is an order requiring the landlord to repay an amount of rent paid by the tenant.
17. By section 43 of the 2016 Act the tribunal may make an RRO if satisfied beyond reasonable doubt that a landlord has committed an offence to which chapter 4 of the 2016 Act applies, this includes a breach of section 72 of the 2004 Act.
18. By section 44(2) of the 2016 Act the amount of RRO must relate to rent paid during a period not exceeding 12 months during which the landlord was committing the offence.
19. By section 44(4) of the 2016 Act in determining the amounts of an RRO 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 chapter 4 applies.

The Applicants evidence and submission

Applicant 1 Mr Brazier

- 20. Mr Brazier told the tribunal that he occupied his room at the Property in July 2019. The rent payable was £550 per month. He received Universal Credit payments from May 2020.
- 21. He alleges he was only a short time at the Property before the radiator in his room failed. He claims he was unable to make contact with the landlord and he had no space heating for some 4 months prior to repair.
- 22. He explained to the tribunal that his room was affected by extensive ivy growth to the exterior of the Property. He alleges that he agreed with the landlord to remove the ivy as it impacted on sunlight penetrating his room, encouraged dampness and affected the warmth of the living space. In March 2020 he claims he devoted some time to removal of the ivy, and he alleges agreed with the landlord a sum of £500 in recompense for this work.
- 23. Mr Brazier emphasised to the tribunal that there was a lack of fairness in the way he had been treated and this is reflected in the response from the landlord over the radiator and more recently the withdrawal of the monies for removal of the ivy.
- 24. Mr Brazier supplied the tribunal with details of his rent payments. He claims his contributions included an additional £550 made during the claim period but this is not acknowledged by the landlord in her rent schedule.

Applicant 2 Mr Reid

- 25. Mr Reid is a long-term resident at the Property. The tribunal were told that he first occupied a room at the Property in December 2014 and still resides at the premises.
- 26. Mr Reid confirmed his rent over the period was £475 per month.
- 27. Mr Reid acknowledges that Miss Jenkins the landlord has made efforts in the past to engage with the tenants about property management. He told the tribunal she had carried out works to the Property to maintain and improve the dwelling.
- 28. He was disappointed by the landlords' desultory approach to licencing of the property. He explained the improvement works were to improve fire precautions and included the installation of a fire alarm, improved means of escape, fire doors and fire door closers. He strongly contended that without these works there was enhanced passive risk to the residents of the HMO and a significantly increased probability of harm. He told the

tribunal that in his opinion, this was the underlying rationale for the Local Authority requirement to undertake the licencing works.

The Respondents evidence and submission

29. The landlord advised the tribunal that she accepts she contravened the legislation and failed to secure a licence for the house in multiple occupation. The tribunal were told that the Property is now licenced and that upgrading of fire safety and other licencing requirements is now satisfactorily completed.
30. This necessary upgrading work was undertaken after an Improvement Notice was made by the Authority.
31. The respondent contends that the residents at the Property suffered no prejudice or detriment from the lack of licencing. She referred the tribunal to a letter issued by Richard Umelo, Environmental Health Officer at London Borough of Lambeth. She referred us to his statement that *“on the balance of merits, we believe there is likely a low risk of harm here comparative to general licensable HMO”*.
32. The Environmental Health Officer also stated, *“the property is up to date with modern safety provisions and all long-standing occupiers appear to have a very good relationship with the landlord”*.
33. The landlord emphasised that she was in regular contact with the applicants throughout the claim period.
34. She explained that the rent monies payable by the tenants included their Council Tax payments. She told the tribunal that the Council Tax contribution made by her during the claim period on behalf of Mr Brazier was £496 and for Mr Reid £460.
35. The landlord told the tribunal that Mr Brazier did not pay his rent for part of the claim period. She explained he did not pay rent during the months November 2019 to January 2020. She provided a schedule of rent payments and confirmed that she sought £1,700 arrears for the claim period after an allowance of £100 to compensate for disturbance and inconvenience arising from his failed room heating.
36. She also disputed the need to carryout work to cut back the ivy to the outside of the Property. Mr Brazier had carried out this work without her authorisation or written confirmation. It was her opinion that this work was not needed.

Discussion and conclusion

37. The tribunal are provided with a detailed rent payment schedule from the respondent for Mr Brazier, evidence of contributions to Council Tax and details of the rent paid by Mr Reid. Mr Reid provided comprehensive details of his rental payments through the relevant period.

38. The financial information provided by Mr Brazier was incomplete with rent payment details for the period November 2019 to March 2020 not provided. The tribunal relied upon the financial information provided by the landlord for this period of the claim.
39. Mr Brazier did provide details of the Universal Credit payments he received for the months May 2020 through to September 2020.
40. The tribunal are guided in the analysis of the information and determination of the RRO by the Upper Tribunal Decision in **Vadamalayan -v- Stewart 2020UKUT183(LC)** and **Williams -v- Parmar & ORS 2021UKUT244(LC)**.
41. The RRO guidance provided by the authority Vadamalayan asks the tribunal to start with 100% of the rent paid by each tenant and then deduct payments for utilities and Council tax. The decision Williams -v- Parmar ORS explains that the factors to be taken into account in determining a RRO are not limited to those listed at s 44(4) of the 2016 Act and summarised at section 18 of this decision. The guidance requires the tribunal *“to take into account the purposes intended to be served by the jurisdiction in making the RRO”*.
42. The tribunal guided by the relevant authorities has considered the written statements, testimony and supporting financial information submitted by all parties in reaching their decision.
43. Mr Brazier made a claim for £6,600 in rent repayment order for the period 1 October 2019 to 30 September 2020. He paid £550 per calendar month which amounted to £6,600 over the 12 months claim period. The tribunal has made the following deductions:

Council Tax	£ 496
Unpaid rent	£ 1,700
Universal Credit	£ 2,750
Rent Balance	£ 1,654

44. The landlord had no previous conviction and by the testimony of Mr Reid was committed to ensuring the wellbeing of the tenants albeit without licencing the premises.
45. The tribunal had a particular concern at the landlord’s failure to perceive the potential risks to her HMO tenants arising from the inadequate fire safety works at the property. It is also noted that the landlord failed to address the concerns of Mr Brazier with regard to the defective radiator. They also had regard to the fact that the failure to licence the premises was her first conviction. The tribunal make a deduction of 10% to the rent balance to reflect these factors. The rent repayment order is therefore **£1,489.50**.
46. Mr Reid claims for a period of 12 months from 1 December 2019 to 31 November 2020. He paid £475 per month during this claim period which amounts to £5,700. The tribunal made the following deductions:

Council Tax	£ 460
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Rent balance £5,240

47. The tribunal made an adjustment of 20% to this sum to reflect the landlord's reasonable management of the premises and that the failure to licence the premises was her first conviction. The rent repayment order payable is **£4,192.00**.
48. In the circumstances of this case after taking into account the undisputed deductions for the cost of Council Tax, unpaid rent by Mr Brazier and Universal Credit contribution, a modest reduction to the assessed Rent Balances of 10% and 20% respectively was deemed appropriate given the otherwise good condition of the Property and the previous satisfactory behaviour of the landlord.
49. The tribunal consider these Rent Repayment Orders reasonable and appropriate in the circumstances.

Name: Ian Holdsworth **Date:** 6th March 2022
Valuer Chairman

ANNEX - RIGHTS OF APPEAL

- i. 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.

- ii. 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.

- iii. 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.

- iv. 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.