



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

<b>Case Reference</b>	: LON/OOAM/HMF/2021/0259
<b>Property</b>	: 23 Sach Road, London E5 9LY
<b>Applicant</b>	: Beatrice Patrick, Omar Khan, Theodora Middleton, Daniel Laverick, Oliver Cronk, Amanda Walters, Daniel Blythin-Hammond.
<b>Representative</b>	: Omar Khan
<b>Respondent</b>	: Jacob Cik, Goldpearl Estates Ltd, Jacob Fekete, Hershel Lebrecht
<b>Representative</b>	: Andrew Kasriel
<b>Type of Application</b>	: <b>Rent Repayment Order</b>
<b>Tribunal Members</b>	: Judge Jim Shepherd Andrew Lerwicki FRICS
<b>Date of Determination</b>	: 15 June 2022

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**Determination**

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1. In this case the Applicants, Beatrice Patrick, Omar Khan, Theodora Middleton, Daniel Laverick, Oliver Cronk, Amanda Walters, and Daniel Blythin-Hammond (“The Applicants”) seek a Rent Repayment Order in relation to premises at 23 Sach road London E5 9LJ (“The premises”). The premises consist of a four bedroom terraced house with shared living rooms over five

floors, one shared bathroom and one shared kitchen. The basement floor was excluded from the tenancy agreement. It is the Applicants' case that during their tenancy the property was converted, and somebody was moved into the basement in July 2020.

2. The Respondents to the application for a rent repayment order are the following: (1) Mr Jacob Cik, (2) Goldpearl Estates Ltd (3) Mr Jacob Mosche Fekete and (4) Mr Herschel Lebrecht. The reasons why there are four Respondents to this application are relatively complex but in broad terms the situation is as follows:
3. Mr Cik granted an assured short hold tenancy to the Applicants. Prior to that he had been granted a tenancy by Goldpearl Estates Ltd and Mr Fekete and Mr Lebrecht are directors of Goldpearl Estates Ltd. It is the Applicants' case that Mr Cik was really only an agent of Goldpearl Estates Ltd and the other Respondents and this is the reason why they have added them as joint respondents. They have however maintained their action against Mr Cik.
4. The Applicants allege that because the premises - an HMO - was unlicensed between the period spanning 10 April 2020 and 9 April 2021 ("The relevant period") they are entitled to a Rent Repayment Order. The rent during this period was £2250 per calendar month which was paid to by the Applicants to City Homes the managing agent in the first instance and later to another agent called Evergreen Estates from 10 July 2021. An HMO licence application was made on 15 June 2021 thereby ending any alleged offence.
5. The Applicants occupied the premises as follows:
  - Beatrice Patrick occupied between 10 April 2020 and 31 October 2020

- Omar Khan occupied between 10 April 2020 and 27 September 2021
  - Theodora Middleton occupied the premises between 10 April 2020 and 27 September 2021
  - Daniel Laverick occupied the premises between 10 April 2020 and 9 April 2021
  - Oliver Cronk occupied the premises between 1 November 2020 and 8 January 2021
  - Amanda Walters occupied the premises between 9 February 2021 and 9 September 2021
  - Daniel Blythin- Hammond occupied the premises between 8 January 2021 and 25 January 2021.
6. Each Applicant had their own bedroom but shared the living room kitchen and bathroom.
7. The Rent Repayment Order sought is £27,000 which rent represents 12 months rent at £2250 per month. There was no Housing benefit or Universal Credit paid. The Applicants also seek the award of their fees paid under rule 13 (2) of the Tribunal rules 2013 namely the application fee of £100 and the £200 hearing fee.

8. In support of their application the Applicants argue that the landlord/s did not comply with HMO regulations in that there are only two smoke alarms in the property the property had no fire doors there were no firefighting devices in the property there was no emergency lighting in the property, there were no safety documents or documents detailing the managing agent's details. They also say that in July 2020 the property was converted creating a separate basement flat and a tenant moved into the basement. This was done without any additional fire safety measures being put into place and without any fire risk assessments been carried out.
  
9. It is the Applicants' case that the landlord agents advertised the property as a four bedroom property but requested that only three tenants were named on the assured short hold tenancy. Beatrice Patrick was not therefore named on the tenancy. Oliver Cronk took over her room on 1 November 2020 and the agents were notified and Daniel Blythin- Hammond took over Oliver Cronk's room on 8 January for a short period until 25 January 2021 and Amanda Walters took over the room on 9 February 2021 and occupied it until 9 September 2021. During the gap in between Daniel Blythin - Hammond and Amanda Walters' occupation the rent was paid in full by the other tenants.
  
10. The central issue in the case was the identity of the landlord. In broad terms the facts were the following in this regard:
  11. Jacob Cik was named as the landlord on the Assured Short hold tenancy agreement. A section 21 notice dated the 7 December 2021 named him as the landlord of the subject property. Mr Cik instructed City Homes Estates Ltd to act on his behalf.
  
  12. Goldpearl Estates Ltd are named on the land registry as the owners of the freehold title. A section 13 notice served on 20 October 2020 states that the landlord was Goldpearl Estates Ltd. A section 13 notice served on 22 March

2021 states that the Landlord was Goldpearl Estates Ltd. A section 13 notice served on 29 June 2021 states that the landlord was Goldpearl Estates Ltd. A section 21 notice served on 5 July 2021 states that the landlord was Goldpearl Estates Ltd.

13. The third and fourth respondents Mr Fekete and Mr Lebrecht are named as Respondents because they are directors of Goldpearl Estates Ltd. The Applicants allege that both Respondents had a role in managing the subject property as illustrated by a mortgage deed for 23 Such Rd signed by both.
14. Pausing here it is relevant to note that neither Mr Fekete or Mr Lerecht took any role in the proceedings save for issuing a general denial statement although Mr Fekete did attend the hearing albeit in a silent role.

#### *The licensing regime*

15. On 10 May 2018 London Borough of Hackney designated the entire area of the borough as subject to an additional licensing scheme which applies to all HMOs that are occupied under a tenancy or license. The definition of a licensable HMO under the scheme is derived from section 254 of the Housing Act 2004 and applies to privately rented properties in which three or four people who are not all part of the same household share accommodation.
16. The Applicants' case is that this property was operated as a privately let HMO and it met the definition in section 254 of the Act in that there were four occupants from more than one household sharing amenities such as the kitchen and bathroom. The London Borough of Hackney confirmed that no licence was in place when the property was let to the Applicants and an application for a licence was only made on 15 June 2021. Accordingly, between 10 April 2020 and 15 June 2021 an offence under section 72(1) of the 2004 Act was committed

### *The landlord issue*

17. The Applicants allege that they were informed by the agents before the start of the tenancy that the owner of the property was a company and on 16 June 2020 the agents notified them that the landlord wanted to move forward with the partition of the basement as they were not currently covering the mortgage from the upper floors. Further in a letter dated 11 September 2020 the agents said that the landlord needed to increase the rent because the current amount did not provide any profit. The applicants also alleged that the agreement between the First Respondent and Goldpearl Estates Ltd was not a genuine agreement. They also alleged that a planning application was made by the Third Respondent on 29 April 2021 and the application for an HMO licence was made in the name of the freeholder of the property on 15 June 2021.

18. In a detailed statement Mr Omar Khan explains how the Applicants obtained the tenancy. He also detailed the the conduct of the landlord/s in relation to the conversion of the basement and the alleged unlawful introduction of a new tenant into the basement. He alleges there was disruption to utilities and services and security breaches as well as health and safety breaches. Because the Second, Third and Fourth Respondents took no active role in these proceedings and because most of these allegations relate to them the evidence must be taken as read because it was not challenged. Supporting evidence was provided by Theodora Middleton the partner of Mr Khan as well as Beatrice Patrick, Daniel Laverick, Amanda Walters, Oliver Cronk and Daniel Blythin - Hammond.

### *The First Respondent's case*

19. The First Respondent was lucky enough to have representation by Counsel, Andrew Kasriel who assisted him in preparing a detailed second witness statement explaining in full his position. His account was as follows-

20. He is married with eight children two of whom are in receipt of disability living allowance. The family needed more living space. He was contacted by Mr Fekete who told him that the premises were available and Goldpearl Estates were willing to rent it out to him. He signed an assured short hold tenancy agreement prepared by Goldpearl at a rent of £2100 per month for a term of two years. After signing the agreement it came to light that the family could not move into the premises. His wife was pregnant with her eighth child which had been unexpected and it was a very hard time to face the stress of moving house. His seven-year-old daughter is hype autistic with ADHD and his nine-year-old the daughter has language and speaking issues. Accordingly for two months the First Respondent had the burden of paying rent on two properties. As a result he was forced to sublet the premises. Mr Fekete told him that he could sublet to one household or to two tenants but not as an HMO. The First Respondent then searched for agents who could sublet the property for him and City Homes were appointed by him. He alleges that City Homes told him that a group of solicitors renting a property is effectively like one household and they could be let the property without the premises being an HMO. City Homes signed the tenancy on his behalf without showing it to him. He says that he did not realise there were three signatures.

21. In his statement he makes it clear that these arrangements were only made by him and not by Goldpearl estates. He also tries to distance himself from the issues of deposit protection, gas safety fire assessment and electrical tests etc. He says that these were the responsibility of the agents.

22. He says that Mr Fekete was interested in making plans to extend the property possibly with a loft conversion and some building alterations to the premises in order to increase the rent. As he had a big family he was in favour of this. He says he paid for Sam Planning to prepare drawings and submit planning applications. No building work in the upstairs was carried out during the Applicants' tenancy although there were minor alterations and improvements

in the basement the cost of which was shared between him and Goldpearl Estates.

23. The First respondent then says that he asked City Homes to increase the rent to cover the shortfall in his own rent that he was paying to Goldpearl estates. The rent could not be increased because the tenancy was only six months old. He then decided he wanted to move into the property and asked City Homes to serve notice. It was at this point that he found out that the notice was not valid because there was no HMO licence. He informed Mr Fekete of this and he was advised to change agencies. He did this to Evergreen Estates and they applied for a licence. In fact it was Goldpearl Estates who instructed Evergreen Estates. According to them the First Respondent had surrendered his tenancy. A section 21 notice was then served on the Applicants.

## **The law**

24. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) order 2018 confirm that the property is an HMO if the following criteria apply-

- it is occupied by five or more persons;
- it is occupied by persons living in two or more separate households;
- it meets the standard test under section 254 (2) of the Act

25. In addition s.56 of the Housing Act 2004 enables a local authority to designate areas subject to additional licensing if there are a significant proportion of



HMOs being managed ineffectively in the area in question. The additional licensing criteria in Hackney are described above.

26. Under section 41(1) of the Housing and Planning Act 2016 a tenant may apply to the First Tier Tribunal for a rent repayment order against a person who it is alleged has committed an offence. Section 43 of the Act permits the FTT to grant a rent repayment order if satisfied beyond reasonable doubt that a landlord has committed an offence under section 72 one of the Housing Act 2004 by failing to obtain an HMO licence. Section 44 of the Act permits the FTT to grant a Rent Repayment Order in respect of the rent paid by the tenant for a period not exceeding 12 months.

## **Determination**

*Who was the landlord?*

27. The facts in this case are confused. There is no doubt that the Applicants signed a tenancy with the First Respondent. It also appears very likely that the First Respondent instructed agents to act on his behalf in his role as landlord. It also appears however that Goldpearl estates retained an active role in the premises, advising the First Respondent as to what action to take in relation to appointing agents, sharing responsibility for building works in the basement and even serving notices as landlord. Practically it seems likely that the Respondents were in fact working together in relation to the management of this premises however the first point of contact for the Applicants was the First Respondent. The rent they paid was paid to him via his agents. His account of his circumstances and the fact that he could not go into occupation of the premises due to stresses of having a large family was credible and was unchallenged. It does appear as though he unwittingly lumbered himself with responsibility for obtaining an HMO licence and failed to do this. As indicated however it seems tolerably clear that Goldpearl estates and Mr Fekete particularly remained

integrally involved in this property and must accept some responsibility for failures that took place.

28. There is insufficient evidence to substantiate the Applicants' claim that the tenancy between Goldpearl and the First Respondent was a sham. It appears a valid document and the practical effect of this was that Mr Cik was the Applicants' landlord and must accept direct financial responsibility in relation to any Rent Repayment Order awarded. The situation is such that one must hope that the other Respondents will bear part of the load once an award is made albeit that the Tribunal cannot order this.

*Should a rent repayment order be made?*

29. It is clear that the premises were unlicensed and should have been licensed during the relevant period. The First Respondent attempted to argue that he had a reasonable excuse because he was given bad advice by his agents. In effect he handed over full responsibility to his agents for management of the premises. In doing so he must accept responsibility for the actions of those agents. The case of *Aytan v Moore* [2022] UKUT 27 (LC) makes it clear that reliance on an agents' advice will seldom provide a reasonable excuse. See para [40]:

*40. We would add that a landlord's reliance upon an agent will rarely give rise to a defence of reasonable excuse. At the very least the landlord would need to show that there was a contractual obligation on the part of the agent to keep the landlord informed of licensing requirements; there would need to be evidence that the landlord had good reason to rely on the competence and experience of the agent; and in addition there would generally be a need to show that there was a reason why the landlord could not inform themselves of the licensing requirements without relying upon an agent, for example because the landlord lived abroad.*

30. In any event the agents in correspondence have denied that they have any liability in relation to the failure to license the premises. Accordingly, it is clear that a rent repayment order should be made in this case.

*What penalty should be awarded?*

31. The Applicants invite the tribunal to award the full amount of the rent paid. They plea in aid of this the conduct of the landlord. Their evidence in relation to alleged harassment was unchallenged as were the allegations in relation to the poor state of the premises in terms of health and safety and fire precautions. Bearing these factors in account it is right that this is a serious case of landlord neglect and the award should be pitched at a higher level.

32. Whilst the First Respondent presented evidence in relation to his background circumstances there was no real documentary evidence of his financial circumstances provided to the Tribunal neither was there any evidence in relation to outgoings other than the rent he was paying to his landlord. It may be that his financial circumstances were difficult at the relevant time because he had a large family and was living on a relatively low income. The fact remains however that no documentary evidence was provided of this and therefore it's very difficult for the Tribunal to take account of it. The Tribunal did however find his evidence in relation to his circumstances as credible and therefore it is considered that a deduction should be made albeit a limited deduction. He was plainly not a professional landlord and was of good character as far as we were made aware.

33. Doing the best we can we consider that a deduction of 20% should be made. This results in an award of £21600. This sum should be paid within 28 days. In addition the Applicants should be paid £300 representing their application and hearing fees.

**Judge Shepherd**

15 June 2022

## ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.