



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

Tribunal Case reference : **LON/00AN/HMF/2022/0143**

Property : **1 Auriol Mansions, Edith Road,
London W14 0ST**

Applicant : **Kasjan Jekaterynczuk**

Representative : **In person with his mother,
Wieslawa Jekaterynczuk**

Respondent : **Love (UK) Limited**

Representative : **No appearance**

Type of application : **Rent repayment order**

Tribunal Judge : **Judge Adrian Jack, Tribunal
Member Appollo Fonka MCIEH
CEnvH M.Sc**

Date of decision : **2nd March 2023**

DECISION

IMPORTANT – COVID 19 ARRANGEMENTS

This matter was determined after a hearing face-to-face. The respondent landlord did not appear.

Procedural

1. The tenant alleges that he rented a room in a self-contained flat, which was a house-in-multiple-occupation (“HMO”) from 10th July 2021 to 3rd May 2022. (Although the rent agreement is expressed to be licence not a tenancy, in accordance with the House of Lords decision in *Street v Mountford* [1985] AC 809, it is in our judgment a tenancy as a matter of law.) He says that the landlord was in breach of the licensing requirements for HMO’s of Hammersmith and Fulham London Borough Council. He seeks a rent repayment order in the sum of £6000, the whole of the rent paid by him (less a sum for utilities) pursuant to the provisions of Chapter 4 of the Housing and Planning Act 2016.
2. The tenant says that under section 214 of the Housing Act 2004 he would also be entitled to a payment of treble the amount of the deposit paid by him. However, this Tribunal has no jurisdiction to entertain this claim. Section 214 gives authority to make such order to the County Court. It does not appear that the tenant’s application does in fact make a claim to this Tribunal, so we do not need to deal with it further.
3. The tenant’s application was issued on 25th June 2022. Directions were given by the Tribunal on 8th August 2022. These were amended on 10th October 2022. The tenant has complied with the directions; the landlord has not. Indeed the landlord has taken no part in the application.
4. The Tribunal heard the matter as an in-person case at 10 Alfred Place. The tenant was represented by his mother. The landlord did not appear.

The law

5. Section 40 of the Housing Act 2016 confers power on this Tribunal to make a rent repayment order “where a landlord has committed an offence to which this Chapter applies.” The only relevant offence is that in section 72(1) of the Housing Act 2004 (control or management of an unlicensed HMO). Under section 41 a tenant can apply for a rent repayment order in respect of housing let to him in breach of, inter alia, section 72(1). By section 43(1) this Tribunal may only make a rent repayment order if it is satisfied beyond reasonable doubt that a landlord has committed a relevant offence, here under section 72(1).
6. Because cases have to be proved to the criminal standard of proof, the burden is on the tenant to establish that an offence has been committed. The landlord has the right to silence. There is no provision for judgment by default. Accordingly, even where the landlord fails to appear (as has occurred in this case), the Tribunal must examine the evidence adduced by the tenant to ensure that each element of the relevant offence is made out.
7. Section 254 of the 2004 Act defines an HMO (so far as material to the current case) as follows:

“(1) For the purposes of this Act a building or a part of a building is a ‘house in multiple occupation’ if—

(a) it meets the conditions in subsection (2) (‘the standard test’);

(b) it meets the conditions in subsection (3) (‘the self-contained flat test’);

(c) it meets the conditions in subsection (4) (‘the converted building test’);

(d) an HMO declaration is in force in respect of it under section 255; or

(e) it is a converted block of flats to which section 257 applies.

(2) A building or a part of a building meets the standard test if—

(a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;

(b) the living accommodation is occupied by persons who do not form a single household (see section 258);

(c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);

(d) their occupation of the living accommodation constitutes the only use of that accommodation;

(e) rents are payable or other consideration is to be provided in respect of at least one of those persons' occupation of the living accommodation; and

(f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

(3) A part of a building meets the self-contained flat test if—

(a) it consists of a self-contained flat; and

(b) paragraphs (b) to (f) of subsection (2) apply (reading references to the living accommodation concerned as references to the flat).”

The evidence and our conclusions

8. The tenant has made a witness statement and exhibited various documents. These show that the relevant housing authority, the London Borough of Hammersmith and Fulham, required an additional HMO licence in respect of premises, such as the present, where (a) 3 or 4 people live there (b) in 2 or more households and (c) share amenities

such as a kitchen, toilet or bathroom and (d) it is their only or main residence and rent is payable.

9. There are in our judgment two substantial deficiencies in the evidence adduced by the tenant. Firstly, although he shared with another three persons, he gives no evidence that any of these other occupiers had “their only or main residence” in the flat. This is a requirement under section 254(2)(c) of the 2004 Act, as applied by section 254(3). Accordingly the tenant has failed to show that this flat was an HMO, either under the Act or under the housing authority’s requirements for an additional HMO licence.
10. Secondly, the tenant has adduced no evidence to show that the premises were not licensed by the housing authority. Normally, this is done by obtaining a letter from the housing authority. In submissions, the tenant’s mother submitted that the housing authority had a website which showed which premises were licensed. The difficulty with this is twofold. The landlord had not been put on notice of this point on the existence of the website and could not (if it has wished to) file evidence in response. We were not asked to examine the website ourselves and it would in any event have been inappropriate. Further the website is likely to show the position in 2023. That would not be evidence of the existence or otherwise of an HMO licence in 2021 and 2022.
11. For these reasons, we hold that the tenant has not established a case to answer. We find that the tenant has not established that the landlord has committed an offence under section 72(1) of the Housing Act 2004. Accordingly, we dismiss the claim for a rent repayment order.

Costs

12. As to costs, the Tribunal has a discretion as to the costs payable to the Tribunal. As the tenant has lost, those costs should fall on him. Accordingly we make no order for costs.

DECISION

We dismiss the tenant’s applications with no order in respect of the costs payable to the Tribunal.

Judge Adrian Jack 2nd March 2023