



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

Case reference : **LON/00AG/HMF/2020/0237**

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

Property : **23 Lydford House, Royal College Street,
London. NW1 0SA.**

Applicant : **McKenna Adler, Alyssa Palma, Sydney
Weil.**

Representative : **N/A**

Respondent : **Afia Choudhoury.**

Representative : **Mr Wahid Miah**

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

**Tribunal
member(s)** : **Judge H. Carr
Ms Fiona McCleod MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **12th July 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which was not objected to by the parties. The form of remote hearing was **V: CVPREMOTE** . A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The tribunal were provided with an electronic bundle prepared by the applicants comprising 85 pages, and a response of 46 pages. The respondent did not provide a bundle but 4 statements and a further response to the applicants. The applicants also provided a skeleton argument. The determination below takes all the documentation and oral evidence into account:

Decisions of the tribunal

- (1) The tribunal determines to make a Rent Repayment Order in the sum of £28,080.
- (2) The tribunal determines that the respondent reimburse the applicants for their application and hearing fees, totalling £300.
- (3) The tribunal makes the determinations as set out under the various headings in this decision.

The application

1. The applicant tenants seek a determination pursuant to section 41 of the Housing and Planning Act 2016 (the Act) for a rent repayment order (RRO).
2. The applicants seek a RRO for the period 7th September 2019 to 6th September 2020. The applicants allege that the respondent landlord has committed the offence of control or management of an unlicensed HMO under s,72(1) of the Housing Act 2004. The applicants made their application on 14th December 2020

The hearing

3. Ms McKenna Adler and Ms Alyssa Palma attended the hearing together with their McKenzie friend, Mr Nicholas Coomber from Student Services University of London. Ms Sydney Weil had indicated that she would not attend but that she was to be represented by Ms Adler and Ms Palma. Ms Lois Shearing also attended and gave evidence on behalf of the applicants.
4. The respondent landlord, Ms Afia Choudhoury attended the hearing. Mr Wahid Miah the husband of the respondent, who manages the property

for her, attended the hearing on behalf of the respondent and represented her.

The background

5. The property is a third floor two bedroom flat in a purpose built block of flats. It comprises two bedrooms a kitchen a bathroom and a living room which, at the relevant time, was used as a bedroom. The property is situated in the London Borough of Camden, which operates an additional licensing scheme that requires any property with 3 or more unrelated sharers to be licensed.
6. The applicants lived in the property as a group of three international student tenants who are unrelated and form 3 separate households. The applicants had the benefit of a joint assured shorthold tenancy. The tenancy began on 7th September 2019 and ended on 6th September 2020.
7. The applicants paid rent of £2340 exclusive of bills per calendar month. They paid a deposit of £2700.
8. The respondent is the freehold owner of the property and is named on the tenancy agreement as the landlord. The respondent has owned the property since 2015. There is a mortgage on the property. At the time of the purchase the respondent owned two other properties.
9. The property was managed by Mr Wahid Miah, the respondent's husband.

The issues

10. The issues that the tribunal must determine are:
 - Is the tribunal satisfied beyond reasonable doubt that the landlord has committed the alleged offence?
 - Does the landlord have a defence of a reasonable excuse?
 - What amount of RRO, if any, should the tribunal order?
 - What is the maximum amount that can be ordered under s.44(3) of the Act?
 - What account must be taken of
 - The conduct of the landlord
 - The financial circumstances of the landlord:
 - The conduct of the tenant?
 - Should the tribunal refund the applicants' application and hearing fees?

The determination

Is the tribunal satisfied beyond reasonable doubt that the respondent has committed the alleged offence?

- (4) The applicants provided confirmation from Camden council that the property has never been licensed and that no application for a licence had been received. That email is dated 27th October 2020 and was sent by Ms Sharon Reed HMO Licensing Officer with Camden.
- (5) The respondent conceded that the property required licensing and it was not licenced. Mr Miah told the tribunal that he had submitted the licence application on 24th June 2021, the day before the hearing.

The decision of the tribunal

11. The tribunal determines that the respondent has committed the alleged offence.

The reasons for the decision of the tribunal

12. The tribunal relies on the evidence from the applicants, the information from the local authority and the concessions of the respondent.

Does the respondent have a reasonable excuse defence?

13. The respondent states that the reason the property was not licensed was that her husband who was responsible for the management of the property was not aware of Camden's policy on HMO licensing. If he had known he would have put an HMO licence in place.
14. The applicants say that ignorance of the law is not a reasonable excuse defence. They also state that Mr Miah held himself out to them as employed by an estate agent, Cloisters which is his brother's agency. They say that he must have some knowledge of property law as he worked in this agency.
15. They point out that Mr Miah and his wife have rented out two properties in Camden since 2015. If he was in any doubt about the responsibilities of a landlord, he could have telephoned the council.
16. Mr Miah says that it is misleading to suggest that he has any knowledge of the obligations of landlords because of working for his brother's agency. His employment there was very sporadic, he worked in sales and not rentals and in reality his experience and expertise is in the

hospitality trade. He only worked for his brother to stop himself becoming depressed when he was made unemployed two or three years ago.

The decision of the tribunal

17. The tribunal determines that the respondent has failed to establish a defence of reasonable excuse.

The reasons for the decision of the tribunal

18. The tribunal's starting point is that the burden of proof for establishing the defence falls on the respondent who has to establish the defence on the balance of probabilities.
19. In these particular circumstances, the tribunal does not find that the respondent has made out a reasonable excuse defence. A lack of knowledge of licensing does not constitute a reasonable excuse. It is incumbent upon a landlord to find out his legal responsibilities. The respondent is not a new entrant to the sector and even if neither she nor her husband was fully aware of their responsibilities, they had close contact with property professionals who should have been able to provide them with the necessary advice.

Should the tribunal make an award of a RRO? If so, for what amount?

20. In their application, which was made on 14th December 2020, the applicants applied for £21,463.47 for the period 03/12/2019 to 06/09/2020. The directions, which were issued without a hearing, referred to a claim of £14,040.00 for the period 7th September 2019 to 6th September 2020 - the full 12 months of the tenancy but not the annual rent paid. In the skeleton argument the applicants applied for the 12 months of rent for the full period of the tenancy. The total rent paid in that period is £28,080. The applicants explained that they had misunderstood the law and thought that they were only entitled to rent for the period of 12 months ending with the date of their application. As their application was made in December 2020 they believed that they were not entitled to repayment of rent paid in September, October and November.
21. They argued that the respondent was not prejudiced by this extension of their claim.
22. The respondent made no comment on this.

23. The tribunal determines that the maximum amount of the claim is £28,080.
24. The tribunal accepts the argument of the applicants.

Quantum

25. In determining the amount of the award the tribunal heard evidence about
 - (i) The conduct of the landlord
 - (ii) The conduct of the tenants
 - (iii) The financial circumstances of the landlord.

The conduct of the landlord

26. The applicants state that the landlord failed to provide them with a functional smoke alarm until 5th November 2019. This was in breach of both the HMO licensing regulations for Camden Council, and the Smoke and Carbon Monoxide Alarm (England) Regulations 2015. The matter was only resolved by Mr Miah providing a fire alarm through the letter slot on November 5th.
27. The only other fire safety equipment was a carbon monoxide alarm.
28. The landlord did not provide any evidence of conducting an annual gas safety check in accordance with the Gas Safety (Installation and Use) Regulations 1998.
29. The property was in a poor state of cleanliness when the tenants arrived. There was mould in the bathroom and the inside of the toilet was a dark brown. There were the belongings of previous tenants in the property that the applicants were required to dispose of for themselves.
30. The applicants' deposit of £2700 was not put in any government backed protection scheme and prescribed information was not served. When the applicants raised this with Mr Miah in August 2020, he said he would look into the matter but he did not get back to them. The applicants then emailed Mr Miah on 8th September 2020 and he telephone them about this on 21st and 22nd September. In the second phone call the applicants say that Mr Miah was very threatening and said he would sue the applicants for large amounts of money and report them to the university. The applicants' full deposit was refunded on 07/09/2020.

31. The applicants are also concerned that Mr Miah appeared to them to be a property expert which meant that they felt they could rely on him to manage the property well. They say they were not aware that the property was owned by his wife until they were discussing the fact that the deposit had not been protected.
32. The respondent states that the property was fully managed and looked after by her husband and she did not get involved.
33. There was some confusion between the respondent and her husband about registering the deposit. The respondent says that she was under a lot of pressure at work at the time and was not sure how to register the deposit so she asked Mr Miah to do this. At the time there were problems with the mental health of their daughter and Mr Miah was suffering from anxiety and depression. Mr Miah says that he forgot to register the deposit because he was under so much stress at the time the tenants were moving in.
34. Mr Miah says he was not reminded by the tenants at any point during the tenancy about the deposit certificate until just before the tenancy was due to expire. The tenancy deposit was paid in full on one day after the end of the tenancy. Mr Miah says that he apologised to the applicants for the failure to register the deposit.
35. Mr Miah says that the property was fully cleaned prior to the tenants arrival including the windows. He tested the smoke alarm and the carbon monoxide device which he says were working on the day the tenants moved in. In his account he stated that he told the tenants that the smoke alarm looked old and perhaps needed replacing. In the meantime he advised the tenants to carry on using the current one as it is still working and he would buy a new one soon.
36. Mr Miah gave no evidence to contradict the applicants' statement that he posted the replacement smoke alarm through the letterbox.
37. When asked by the tribunal about his knowledge of appropriate fire safety equipment he said that he asked Curry's to advise him on the correct smoke alarm. He told the tribunal that it was a battery alarm. When asked about fire doors in the property Mr Miah had no knowledge about the fire resistance of the doors.
38. Mr Miah says that there was a gas certificate in place. He has not been able to find a paper copy, but says there is no reason why a gas certificate would not be done as it only costs £60, He also said that if there had been a problem with the fire alarms the gas engineer would have told him.

39. When asked by the tribunal Mr Miah was not able to name the gas engineer he says that he used. The tribunal also asked the applicants if they had any memory of gas installations inspection and they said they did not.
40. Mr Miah stated that the applicants' claim that the toilet was stained brown is incorrect. He states that the applicants did not raise any concerns about the state of the flat. When he asked if everything was ok at check in Ms Palma said that it was. He argues that if there had been a problem it should have been raised at the commencement of the tenancy when he could have contacted the cleaners to put right their faults.
41. Ms Palma said that at first glance everything looked satisfactory, it was only later that the state of the toilet became apparent. She also said that the light shades were dusty, and this made her doubt the property had been professionally cleaned.
42. Mr Miah says that his background is in catering and retail but he lost his job and has been out of work for the last two years. He did not hold himself out as a property expert. He did not mislead the applicants about the fact that the property was owned by his wife. He only worked for his brother to give him something to do. He agreed that his LinkedIn profile said that he was a founding partner of Cloister but he said that this was just the typical self aggrandisement that his brother had told him was necessary for success in estate agency.
43. The property was not let through his brother's agency. Mr Miah says the only thing taken from the office was a blank template for the AST.
44. The applicants say that they relied on his apparent property expertise. They are international students and do not know the regulations or the law.

The conduct of the tenants

45. The applicants state that their conduct was exemplary. The tenants have complied with all of their tenancy terms. They paid all rent required.
46. The landlord makes no allegations about the conduct of the tenants although the statements of Mr Miah suggest that they thought that the applicants were exploiting the law for their own benefit.
47. He also made a suggestion that Ms Weil was not in reality involved with the proceedings. He suggested that her signature on the document authorising the applicants to represent her does not match the signature on her passport.

48. The applicants stated that they had the authority of Ms Weil to represent her and that it was a joint tenancy so they were all jointly and severally liable for the rent. They offered to try to obtain an email to satisfy the tribunal that they had been given authority by Ms Weil. They sent that email at 3.45 pm on the day of the tribunal. As Ms Weil was in the USA they were not able to obtain it earlier due to the 8 hour time difference.

The financial circumstances of the landlord

49. The respondent and Mr Miah argue that they are not able to repay the sum claimed because of the financial circumstances of the family. Mr Miah says that the family is in debt of around £60,000 and are really struggling to keep everything together. He provided a financial statement in the original documents provided to the tribunal which he updated on the day before the tribunal in response to issues raised by the applicants. In particular the applicants raised inaccuracies in that statement and the issue that in the original documents there was no mention of further assets.
50. The applicants pointed out in their response that they had found out during the course of the proceedings that the address, 48 Troutbeck they had been provided with as the address of the landlord was in fact a tenanted property. They also had evidence that the respondents owned another property, 34 Oakington Avenue Wembley.
51. The respondent clarified some of these issues in an updated statement.

Submissions on quantum

52. The respondent asks the tribunal to have compassion in particular with regard to the family's financial circumstances and the stresses they have been under because of Mr Miah's unemployment and his daughter's mental health condition. Mr Miah told the tribunal that during the last fortnight his daughter had been admitted to hospital because of self-harming.
53. The applicants ask the tribunal to award them the maximum RRO. They say that the respondent was an experienced landlord, that the additional licensing scheme has been running in Camden for some years, that the property was poorly managed and that there were serious health and safety failings in the property. They say that the respondent has substantial assets.

The decision of the tribunal

54. The tribunal determines to make a RRO of 100% of the amount claimed i.e. £28,080.

The reasons for the decision of the tribunal

55. The tribunal takes as its starting point that 100% of the rent paid is repayable under a RRO. It also notes that the Upper Tribunal has indicated that it should exercise its discretion with care particularly when only one offence has been committed under the Act.
56. The respondent has only committed one offence – a failure to licence the property. The tribunal has therefore taken great care exercising its discretion and considering whether a lesser penalty is appropriate. In this case it has decided that there is no reason to reduce the level of the penalty from 100%.
57. Its starting point is the general context and importance of licensing. In setting the level of penalty the tribunal has taken into account the length of the failure to licence. Additional licensing has been a feature of Camden's private rented strategy since 2015. The respondent is familiar with Camden as she has lived there in the past. There was available to the respondent expert advice about renting, either from the council or indeed from her brother-in-law. The tribunal has also taken into account the importance of licensing as a tool to ensure the health and safety of tenants occupying Houses in Multiple Occupation and the level of RRO must reflect this. It also notes the importance that landlords who do licence their properties are not disadvantaged by the non-compliant behaviour of other landlords.
58. In this case there are three particular factors over and above the general issues arising from the operation of licensing that the tribunal has taken into account in exercising its discretion about the level of the penalty.
59. First the tribunal considers that Mr Miah has had a flagrant disregard for the health and safety of the applicants. The tribunal accepts the evidence of the applicants that the smoke alarm was not working. It does not find credible Mr Miah's explanation that he was replacing an old but still working smoke alarm. Mr Miah does not deny posting the smoke alarm through the letterbox rather than fitting it himself. This does not suggest a landlord taking his responsibilities seriously. It also does not accept Mr Miah's evidence that there was a gas certificate for the property. Mr Miah was not able to tell the tribunal the name of the gas engineer who he instructed or the date of the visit. He did not provide previous gas certificates or a current gas certificate.
60. The tribunal was shocked by Mr Miah saying he took advice from the sales assistant at Currys in deciding what smoke alarm to buy rather than seeking out proper advice. It was also shocked by Mr Miah saying that he relied on the gas engineer to tell him whether there was a need for further fire precautions. When asked by the tribunal Mr Miah appeared never to have heard of a requirement for fire doors and was

certainly not able to state whether there were any fire doors in the property. He did not accept that there was a greater fire risk in properties which are multi-occupied. The tribunal was not told of the layout of the property, but it considers that a two bedroom flat in which the living room is occupied as a bedroom needs an expert eye to ensure that proper measures are put in place to protect the occupiers from the risk of fire. That is one of the advantages of a licensing system. Because Mr Miah has only just submitted an application for a licence the tribunal did not have the benefit of an assessment by Camden Council. Nonetheless it had serious concerns that the occupiers of the property were at risk.

61. The second factor is the poor management of the property. The tribunal accepts the evidence of the applicants who were credible witnesses that the property was not professionally cleaned and that belongings of former tenants were left in the property. Mr Miah provided no concrete evidence to the contrary such as an invoice from a professional cleaner and simply asserted that the work had been done. He does not appear to have checked the state of the property himself, saying that the tenants should have told him if there were problems. The tribunal also determines that Mr Miah did not check the smoke alarm at the commencement of the tenancy. The failure to protect the deposit as required by statute is also evidence of poor conduct by the respondent. Mr Miah and his wife gave evidence that this was an oversight or a mistake. The address of the landlord on the AST was also inaccurate and in breach of statutory requirements. Perhaps for a landlord who was new to renting these oversights could be understood, but the respondent and Mr Miah have been renting out properties since 2015. They should have been registering deposits, carrying out proper tenancy checks etc for five years and failure to have proper management systems is not acceptable.
62. Mr Miah also did not respond in a professional way to the applicants in connection with the failure to protect their deposit. The tribunal accepts the evidence of the applicants that he threatened them with huge costs and with reporting them to the university. The tribunal finds them to be credible witnesses who gave very clear evidence in response to questions from Mr Miah.
63. The final factor is that the tribunal accepts the evidence of the applicants that Mr Miah held himself out as a property professional. There are two elements to this. First the applicants thought that Mr Miah was a property professional. He sent the applicants emails from the firm's email account and the applicants collected the keys from the Cloisters. This is something more than an unfortunate aggrandisement of Mr Miah's status which was how he explained his linked in profile which described him as a founding partner of Cloisters. The applicants thought that Mr Miah was from a reputable estate agency, with solid credentials and that they could rely on his professional expertise as a manager of the property. This reassurance is of particular

importance to international students who are unfamiliar with local laws on the protection of tenants. Second it suggests that Mr Miah was more familiar with the requirements of property management than he suggests. His evidence was not very clear about the extent of his involvement with the Cloisters. What he did make clear is that his involvement was with property sales and not rental management. The tribunal also notes that Mr Miah is a company director of a property firm.

64. The tribunal notes the respondent's claim about the financial circumstances of the respondent and Mr Miah. It does appear that the family is overstretched as it has a lot of debts.
65. The tribunal notes the assets of the respondent. She purchased 48 Troutbeck in 2003 for a price of £115,000. That property was mortgaged in 2017. She purchased 34 Oakington Avenue in 2010 for £380,000. That property was subsequently mortgage and it is the respondent's family home. She purchased 23 Lydford House for £380,000 in 2015 with the benefit of a mortgage.
66. The tribunal notes that the additional rental property, 48 Troutbeck was only disclosed following evidence provided by the applicants. It is also concerned that the updated financial circumstances were only provided just before the hearing providing the applicants with no opportunity to challenge the figures. The tribunal is not convinced that the respondent has provided full disclosure of her property portfolio.
67. The main point that Mr Miah made is that they have a monthly income of around £4000 and outgoings (not including food and clothing) of around £6000. He says they rely on support from their 22 year old son in order to make ends meet. However this calculation is only accurate if one discounts the rental income from 48 Troutbeck. Mr Miah considers that should not be taken into account as the rent was paid up front and used to pay off a loan. The tribunal consider that the income from Troutbeck remains relevant in assessing the level of an RRO. It calculates that the rental income from the two properties is over £50,000 per annum.
68. The tribunal also notes that no income has been disclosed in relation to Mr Miah's activities with the Cloister agency.
69. Whilst the statute provides that financial circumstances should be taken into account when determining the level of the RRO, the tribunal considers that it cannot overlook the fact that the the property that the family owns is worth in excess of £1.5 million and that the value of the property has increased substantially since acquisition. Nor can it be right that a landlord who acquires property by overextending themselves financially should be treated more favourably in assessing the level of an award than a more prudent landlord who ensures that

s/he has available the necessary resources to run a property business properly.

70. in the light of the above determinations the tribunal also orders the respondent to reimburse the applicants their application fee and hearing fee.

Name: Judge H Carr

Date: 12th July 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).