FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AG/HMK/2020/0032**
HMCTS code (paper, video, audio)	**:**	**V: CVP VIDEO**
Property	**:**	**21 Fortess Grove, London NW5 2HD**
Applicant	**:**	**Elisa Fontaine and Clara Geneau**
Representative	**:**	**In person**
Respondent	**:**	**Crown Homes UK Co (1)** **Mr Daniel William Jones (2)**
Representative	**:**	**The Second Respondent attended the hearing in person**
Type of Application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal Members	**:**	**Judge N Hawkes** **Mr A Fonka MCIEH CEnvH M.Sc**
Venue and date of hearing	**:**	**Remote video hearing on 20 August 2021**
Date of Decision	**:**	**16 September 2021**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are contained in the Applicants' 56-page bundle, the contents of which we have noted. The order made is described below.

Decisions of the Tribunal

(1) The Tribunal makes a rent repayment order in favour of the First Applicant, Ms Elisa Fontaine, against the First Respondent, Crown Homes UK Co, in the sum of £4,409.15.

(2) The Tribunal makes a rent repayment order in favour of the Second Applicant, Ms Clara Geneau, against the First Respondent, Crown Homes UK Co, in the sum of £4,190.47.

(3) The Tribunal does not make a rent repayment order against the Second Respondent, Mr Daniel William Jones.

The background

1. By an application dated 8 September 2020, Ms Elisa Fontaine ("the First Applicant") and Ms Clara Geneau ("the Second Applicant") each applied for a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act").

2. The Respondents to this application are Crown Homes UK Co ("the First Respondent") who is named as landlord on the tenancy agreement and Mr Daniel William Jones ("the Second Respondent"), who is the registered owner of the property.

3. On 22 April 2021, the Tribunal issued Directions ("the Directions") leading up to a final hearing which took place on 19 August 2021.

4. The Applicants attended the hearing in person together with their witnesses, Mr Mark Verspoor and Mr Peter Daly, who gave evidence that they were also tenants at the property at the material time. The First Respondent did not attend the hearing and has taken no steps to comply with the Tribunal's Directions.

5. The Second Respondent attended the hearing in person. He applied for an adjournment to enable him to submit evidence in response to the application stating that he does not use e-mail and that he only became aware of these proceedings when he received documents which were

sent to him by post, two weeks prior to the hearing. The Tribunal explained that it may not in any event have jurisdiction to make an RRO against the Second Respondent if he is a superior landlord.

The application for a RRO against the Second Respondent

6. In *Rakusen v Jepsen* [2021] EWCA Civ 1150, the Court of Appeal held that section 40(2)(a) of the 2016 Act only enables a RRO to be made against an immediate landlord and not against a superior landlord.

7. The Tribunal asked the Case Officer to provide the Applicants with a copy of the Court of Appeal judgment in *Rakusen* and adjourned for over 30 minutes in order to enable the judgment to be sent out and considered.

8. It was not possible to send a copy of the judgment to the Second Respondent because he had informed the Tribunal that he does not use e-mail. However, the nature of the ruling in *Rakusen* was explained to the Second Respondent who confirmed that he understood.

9. Following the adjournment, the Applicants accepted that the Tribunal has no jurisdiction to make a RRO against a superior landlord and that the Tribunal can only potentially make a RRO against an immediate landlord. The Applicants stated that they did not seek any stay of the proceedings against the Second Respondent pending any further appeal in the *Rakusen* case.

10. The Second Respondent informed the Tribunal that he had let the property to the First Respondent who had in turn sublet it to the Applicants. He gave evidence that he became aware of the First Respondent through a leaflet which was put through his letterbox and that he had had no direct dealings with the Applicants. He stated that his point of contact at Crown Homes UK Co was a man named David Gibb. Accordingly, on the Second Respondent's evidence, he is a superior landlord.

11. The First Respondent has not provided any contact address on the tenancy agreement. The Applicants gave evidence that they communicated with the First Respondent by email. They stated that their point of contact was a man named David but that other representatives of the First Respondent came to the property.

12. The Applicants did not claim to have had any direct contact with the Second Respondent. However, they stated that the name of the bank account into which rent payments were made changed from Crown Homes to D W Jones. Single payments to an account in the name of DW Jones appear at pages 14 and 39 of the hearing bundle. The

Second Respondent denied that this was his personal bank account and the Applicants did not seek to challenge this denial at the hearing.

13. Mr Verspoor gave evidence that he was provided with two telephone numbers for the First Respondent, one or both of which had initially worked. He stated that these appeared to be temporary numbers and that they are both now out of use. He gave evidence that, on an occasion when there was a leak into his room, he managed to speak to a man called David and that contractors then came to remedy the leak. At the end of his tenancy, he met with a man called David.

14. Mr Daly gave evidence that he did not know whether the person managing the property was representing himself or Crown Homes UK Co. He said tradespeople came to the property at weekends as if they were family friends and the First Respondent may not be a legitimate agency. He said that the person who came to the property was accessing it as if they were the owner. In our view, whether or not an immediate landlord is the freehold owner is unlikely to change the way in which an immediate landlord will conduct themselves when carrying out repairs and accessing a property.

15. At the conclusion of the hearing, the Second Respondent was directed serve on the Tribunal and on the Applicants a copy of the written agreement by which he let the property to the First Respondent and any other relevant information he has concerning the First Respondent (for example, the First Respondents' business address, website address, telephone number(s), and the names of the members of staff who were managing the property on his behalf) by 5 pm on 24 August 2021. The Applicants were directed to serve on the Tribunal and on the Second Respondent any representations concerning these documents by 5 pm on 1 September 2021.

16. The First Respondent has filed and served a witness statement dated 24 August 2021 with a signed statement of truth attached stating:

"1. In August 2019 I agreed for Crown UK Homes to manage my property. At this time, I am unable to locate the signed agreement I had with the agent.

2. I dealt with an agent at Crown Homes UK named David Gibbs. All contact was via telephone on their mobile number 074487 15399 or in-person meetings at the property on two occasions.

3. I was also provided their email address londoncentralco@gmail.com which I did not use as I do not use email."

17. The Applicants responded stating:

"Following the hearing on the 20th of August 2021 concerning 21 Fortess Grove, we have received a letter from Mr Jones who was unable to provide us with a signed contract with Crown Homes or any further information about this agency. We only received the name David Gibbs and a phone number which goes directly to voicemail.

Furthermore, looking through Companies House, we were unable to find a Crown Homes UK or Mr David Gibbs related to this company. Please see the screenshot attached for reference.

Finally, as mentioned during the hearing, our housemates were told to make the rent payment to an account that was originally said to belong to D W Jones, however, their bank verified the account as Crown Homes. But on the final month of our lease, the name on the account changed back from Crown Homes to D W Jones, with no action on their part. Please see their bank statement attached."

18. The Applicants do not challenge the account given by the Second Respondent at the hearing that his belief was that he had let the property to the First Respondent and that his point of contact was a man named David Gibbs. No witness claimed to have had any direct dealings with the Second Respondent himself. Further, whilst it is asserted that the name on the bank account changed, the Second Respondent's assertion that the bank account into which rent was paid was not his bank account has not been expressly challenged.

19. It is possible that the First Respondent does not exist as a legal entity. Chitty on Contract, 33rd Edition, provides in relation to contracts reached with a non-existent person (emphasis supplied):

Non-existent person

3-044

It seems that if the rogue purports to be not another individual who exists but a non-existent person, then even when the contract is in writing ***it will normally be between the mistaken party and the rogue****. In King's Norton Metal Co v Edridge, Merrett & Co Ltd the plaintiffs had despatched goods to one Wallis, who had written to them posing as a member of a mythical firm named "Hallam & Co". Wallis subsequently sold the goods so obtained to the defendants, who took in good faith and for value. The Court of Appeal held that the plaintiffs had intended to contract with the writer of the letter, although they had invested him with the attributes of solvency and respectability. A.L. Smith L.J. said that if there had been a separate entity called Hallam & Co the case might have been within Cundy v Lindsay. In the Shogun case, Lord Phillips said that in the King's Norton case:*

"… the plaintiffs intended to deal with whoever was using the name Hallam & Co. Extrinsic evidence was needed to identify who that was but, once identified as the user of that name, the party with whom the plaintiffs had contracted was established. They could not demonstrate that their acceptance of the offer was intended for anyone other than Wallis."

The King's Norton decision does not completely preclude a finding that the mistaken party intended to contract only with a person who does not in fact exist but, as Lord Hobhouse pointed out in the Shogun case, in a credit agreement it would be useless to use a pseudonym as there would be no actual person against whom a credit check could be run.

20. Accordingly, if the First Respondent does not exist (and we heard insufficient evidence and argument to make a finding on this point), the Second Respondent will have let the property to David Gibbs and the Second Respondent himself will remain a superior landlord. The Tribunal therefore finds that it does not have jurisdiction to potentially make a RRO against the First Respondent.

The application for a RRO against the First Respondent

21. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

22. Statutory guidance for Local Housing Authorities concerning RROs under the 2016 Act was published on 6 April 2017 ("the Statutory Guidance"). The Tribunal has had regard to the Statutory Guidance in determining this application.

23. Section 41 of the 2016 Act provides:

(1) A tenant … 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."

24. Section 43 of the 2016 Act provides:

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.

Whether the Tribunal is satisfied beyond reasonable doubt that the First Respondent has committed a relevant offence

25. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the Housing Act 2004 ("the 2004 Act") of controlling or managing an unlicensed house in multiple occupation ("HMO").

26. Section 72 of the 2004 Act provides, so far as is material:

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.

…

(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)

27. By section 263(3) of the 2004 Act:

(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 … 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.

28. The Applicants and their witnesses gave evidence concerning the letting of the property. This included evidence that the property was let to five tenants who did not form a single household, who shared basic amenities such as one bathroom, and who paid rent to Crown Homes UK Co. At times, the subletting of rooms was agreed. The Tribunal has considered the test for a standard HMO (section 254(2) of the Housing Act 2004) and is satisfied on the balance of probabilities on the basis of the evidence of the Applicants and their witnesses that all elements of this test are met.

29. The Applicant referred the Tribunal to an email dated 8 April from the Royal Borough of Camden stating:

"I can confirm that no HMO licence application has ever been submitted for 21 Fortess Grove, NW5 2HD"

30. They gave oral evidence that this email was sent to them by the Council in April 2021 and that, through an online search, they have ascertained that the property still remains unlicenced.

31. Having carefully considered all of the evidence, the Tribunal is satisfied beyond reasonable doubt that the First Respondent committed the offence of controlling or managing an unlicensed house in multiple occupation.

Did the offence relate to housing that, at the time of the offence, was let to the tenants?

32. The Applicants referred the Tribunal to a written tenancy agreement dated 1 March 2020 and the Applicants and their witnesses gave evidence that they were tenants at the property at the material time.

33. The Tribunal accepts this evidence and is satisfied that the offence related to housing that, at the time of the offence, was let by the First Respondent to the Applicants.

What is the applicable period and what is the maximum amount which can be ordered under section 44(3) of the 2016 Act?

34. The amount of any rent repayment order must relate to rent paid by the Applicant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence (see section 44(2) of the 2016 Act).

35. By section 44(3) of the 2016 Act:

(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.

36. The Applicants each seek a RRO in respect of rent paid for the months of March to July 2020 inclusive ("the relevant period"). They gave oral evidence that they paid rent during this period and they relied upon their bank statements as evidencing their payments. The rent payable by each Applicant was £881.83 per month.

37. The bank statements show that the First Applicant paid rent in the total sum of £4,409.15 and the Second Applicant paid rent in the total sum of £4,190.47 during the relevant period. The Second Applicant explained that that she had deducted a sum equivalent to bills which she had paid which were the First Respondent's responsibility for the rent. Both Applicants gave evidence that they were not in receipt of universal credit.

The amount of the rent repayment order

38. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that in certain circumstances the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.

39. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(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.

The conduct of the tenant

40. The First Respondent did not attend the hearing to make any representations concerning the conduct of the Applicants.

The financial circumstances of the landlord

41. The First Respondent did not attend the hearing to make any representations concerning its own financial circumstances.

Whether the landlord has at any time been convicted of an offence to which this Chapter applies

42. The Applicants are not aware of any criminal conviction.

The conduct of the landlord

43. Firstly, we take into account the fact that the First Respondent has failed to comply with the Tribunal's Directions and has failed to attend the hearing.

44. We also take into account the First Respondent's failure to provide its address and full contact details on the tenancy agreement.

45. We accept evidence given by the Applicants and their witnesses that:

(i) Their deposits were not protected under a tenancy deposit scheme.

(ii) Their deposits have not been returned.

(iii) The Applicants were left without hot water for the last two weeks of their tenancy.

(iv) The First Respondent informed the Applicants that bills would be included in their rent but then failed to pay the relevant electricity and gas bills.

(v) Burning toast failed to activate the fire alarm at the property.

46. Having considered the Statutory Guidance and all of the circumstances of the present case, including the specific findings set out above

concerning the conduct of the First Respondent, the Tribunal is satisfied that a RRO should be made (i) in favour of the First Applicant against the First Respondent in the sum of £4,409.15; and (ii) in favour of the Second Applicant against the First Respondent in the sum of £4,190.47.

Name: Judge Hawkes **Date:** 16 September 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).