



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

**Case Reference** : LON/00BK/HMF/2020/0039  
LON/00BK/HMF/2020/0044  
LON/00BK/HMF/2020/0045  
LON/00BK/HMF/2020/0100  
LON/00BK/HMF/2020/0109  
LON/00BK/HMF/2020/0113

**HMCTS** : V: CVPREMOTE

**Property** : 13 St Stephens Gardens, London,  
W2 5QU

**Applicants** : Mr Mihai Brostian  
Ms Marina Flores Herrero  
Mr Stefano Cisano  
Ms Ilaria Bucci  
Ms Anael Virmoux  
Mr Richard Anthony De Villa

**Representative** : Mr Mihai Brostian (lead Applicant)

**Respondent** : Bartlett Management Company  
Limited

**Representative** : Ms Jacqueline Rubens (Counsel)

**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** : Judge Robert Latham  
Trevor Sennett MA FCIEH

**Date and Venue of  
Hearing** : 19 April 2021  
10 Alfred Place, London WC1E 7LR

**Date of Decision** : 21 April 2021

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## DECISION

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### **Covid-19 pandemic: description of hearing**

This has been a remote video hearing which has not been objected to by the parties. The form of remote hearing was V: CPVEREMOTE. 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 have considered the documents listed at 2 below.

### **Decision of the Tribunal**

1. The Tribunal dismisses the applications for rent repayment orders.
2. The Tribunal makes no order for the reimbursement of tribunal fees.

### **The Application**

1. The tribunal is asked to determine six applications for Rent Repayment Orders (“RRO”) against the Respondent pursuant to Part I of the Housing and Planning Act 2016 (“the 2016 Act”) in respect of accommodation which they occupied at 13 St Stephens Gardens, London, W2 5QU (“the Property”).
2. On 5 February 2021, the Tribunal gave Directions, pursuant to which:
  - (i) The Applicants have filed a Bundle of Documents which extends to 252 pages, reference to which will be prefixed by “A.\_\_\_\_”. The Bundle does not include any witness statements.
  - (ii) The Respondent has filed a Bundle of Documents which extends to 300 pages, reference to which will be prefixed by “R.\_\_\_\_”. This includes witness statements from (a) Anna Tromochimczuk, Housekeeper (R.10-21); (b) Jim Ryan, Building Contractor (R.22-26); (c) Piotr Marcinik, Repairs and Maintenance Contractor (R.27-33); (d) Michael Worrall, Maintenance Contractor (R.34-44); (e) Pilar Lopez, lettings manager (R.45-114); and (f) Michael Bartlett, Surveyor (pR.115-162).
  - (iii) The Applicants have filed a Bundle in Response of 13 pages. His include witness statements from two additional tenants, Elspeth Proudlock and Nneka Emeka.
  - (iv) On 15 April, the Respondent filed some evidence in response to this new evidence.

### **The Hearing**

3. The following Applicants attended the hearing: Mr Mihai Brostian, Mr Stefano Cisano, Ms Ilaria Bucci and Ms Anael Vermoux. Mr Brostian spoke on behalf of the Applicants.
4. Ms Jacqueline Rubens (Counsel) appeared for the Respondent instructed under the direct access scheme. She agreed that the appropriate title for the respondent is Limited” “Bartlett Management Company” and the tribunal amended the proceedings accordingly. She also agreed that the Applicants have identified the appropriate respondent.
5. Ms Rubens invited the Tribunal to determine a preliminary issue namely whether the Applicants have satisfied us beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”), namely the control or management of an unlicensed HMO. The issue is whether there was an HMO that required a licence.
6. Mr Brostian argued that the Property was an HMO and that all the Applicants were entitled to claim RROs. His secondary argument was that the Ground Floor unit was an HMO entitling him to a RRO. Mr Brostian gave evidence on this issue. Ms Rubens did not adduce any evidence.

### **The Housing and Planning Act 2016 (“the 2016 Act”)**

7. Section 40 of the 2016 Act provides:
  - “(1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which this Chapter applies.
  - (2) A rent repayment order is an order requiring the landlord under a tenancy of housing in England to—
    - (a) repay an amount of rent paid by a tenant, or
    - (b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.”
8. Section 40(3) a list of seven offences. This includes an offence under section 72(1) of the 2004 Act of “control or management of an unlicensed HMO”.
9. Section 41 deals with applications for RROs. The material parts provide:

“(1) A tenant or a local housing authority 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.

10. Section 43 provides for the making of RROs:

“(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).”

11. Section 44 is concerned with the amount payable under a RRO made in favour of tenants. By section 44(2) that amount “must relate to rent paid during the period mentioned” in a table which then follows. The table provides for repayment of rent paid by the tenant in respect of a maximum period of 12 months. Section 44(3) provides:

“(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.

12. Section 44(4) 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 Housing Act 2004 (“the 2004 Act”)**

13. Part 2 of the 2004 Act relates to the licensing of HMOs. Section 61 provides for every prescribed HMO to be licensed. It is open to local

housing authorities to adopt additional licencing schemes. Unlike other London authorities, the City of Westminster (Westminster) has not elected to do so. We are therefore required to consider the mandatory licencing arrangements.

14. HMOs are defined by section 254 which includes a number of “tests”. Section 254(2) provides that a building or a part of a building meets the “standard test” if (emphasis added):

“(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.”

15. Section 254(8) defines “basic amenities”:

“basic amenities” means– “(a) a toilet, (b) personal washing facilities, or (c) cooking facilities”

16. Section 254(8) also defines a “self-contained flat”:

“‘self-contained flat’ means a separate set of premises (whether or not on the same floor)–

(a) which forms part of a building;

(b) either the whole or a material part of which lies above or below some other part of the building; and

(c) in which all three basic amenities are available for the exclusive use of its occupants.”

17. The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 prescribes those HMOs that require a licence. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the standard test under section 254(2) of the 2004 Act.

### **The Property**

18. The Property at 13 St Stephens Gardens is a substantial Victorian terraced property with five floors, including a lower ground floor. It would originally have been occupied by a single family. At some stage it was converted to create a large number of lettings. Mezzanine floors have been added to the ground, first, second and third floor to provide additional sleeping space. There is a plan at R.52.
19. On the 1<sup>st</sup> to 3<sup>rd</sup> floors, there are 11 self-contained studio flats. Each room has its own cooking facilities and bathrooms. Most of the bathrooms consist of a toilet and shower. Some of the bathrooms have a bath. Five of the Applicants occupied such flats. It is common ground that were all the flats in the Property to be such self-contained units, this would not be a HMO.
20. On the ground floor, there is a self-contained unit with three bedrooms. The front bedroom is described as a “double” whilst the two other bedrooms are “singles”. Each bedroom has been subject to a separate tenancy. The three tenants share a kitchen. The middle and back rooms contain ensuite bathroom facilities. The front room has an ensuite shower and basin. However, the toilet is situated towards the back of the ground floor, by a door out onto the garden.
21. In the lower ground floor, there is a similar self-contained unit with three bedrooms. Each bedroom has been subject to a separate tenancy. The three tenants share a kitchen. The middle and back rooms contain ensuite bathroom facilities. The front room has a bathroom consisting of a shower and toilet in the middle of the lower ground floor. The tenant accesses this from the communal passageway.
22. The Tribunal is required to determine the following applications:
  - (i) LON/00BK/HMF/2020/0039: On 17 March 2020, Mr Mihai Brostian issued this application. He was the tenant of a front ground floor flat between 13 September 2013 and 12 June 2020. He claims a RRO of £12,996 over the period 18 March 2019 to 17 March 2020. His tenancy agreement, dated 3 September 2013, is at R.53. The room described as the “ground floor flat (front double)”. His girlfriend, Ms Jade Gambrill, is named as a joint tenant. However, she left some years ago. His tenancy is an assured shorthold tenancy for a term of six months. However, he remained in occupation pursuant to a statutory periodic tenancy.

(ii) LON/00BK/HMF/2020/0044: In March 2020, Ms Marina Flores Herrero issued this application. She was the tenant of Bedsit 6 between September 2009 and November 2020. She claims a RRO of £11,700 over the period 18 March 2019 to 17 March 2020. This was a self-contained studio flat at the back of the second floor. Her tenancy agreements are at R.164-176.

(iii) LON/00BK/HMF/2020/0045: On 17 March 2020, Mr Stefano Cisano issued this application. He was the tenant of Flat 3 between 9 June 2017 and 19 November 2020. He claims a RRO of £11,700 over the period 18 March 2019 to 17 March 2020. This was a self-contained studio flat towards the rear of the first floor. His tenancy agreement is at A.85.

(iv) LON/00BK/HMF/2020/0100: On 4 June 2020, Ms Ilaria Bucci issued this application. She was the tenant of Bedsit 12 between 13 September 2018 and 13 December 2020. She claims a RRO of £11,184 over the period 5 June 2019 and 4 June 2020. This was a self-contained studio flat at the front of the third floor. Her tenancy agreement is at A.96.

(v) LON/00BK/HMF/2020/0109: On 27 July 2020, Ms Anael Virmoux issued this application. On 10 September 2019, she was granted a tenancy of Studio 10. She still occupies the flat. She claims a RRO of £10,483 over the period 1 September 2019 to 31 July 2020. This is a self-contained studio flat at the front (right) of the third floor. Her tenancy agreement is at A.99.

(vi) LON/00BK/HMF/2020/0113: On 6 July 2020, Mr Richard Anthony De Villa issued this application. He was the tenant of Flat 8 between 20 May 2013 and 20 August 2020. He claims a RRO of £10,920 over the period 7 July 2019 to 6 July 2020. This was a self-contained studio flat at the front (left) of the second floor. His tenancy agreement is at A.101.

23. It is common ground that all the tenants had keys to the front door of the Property and to their individual rooms. There was a self-closing door into the Ground Floor unit. There was a single lock on this door which is shown in the photo at R139. This was a fire lock, so it could always be opened from the inside. Mr Brostian stated that in practice, the tenants did not use the lock. In October 2020, the landlord added an additional yale lock to the door. Only the landlord and the ground floor tenants have copies of this key. We suspect that this new lock was installed to reinforce the advice from Westminster that the Property is not an HMO. However, we are satisfied that this is not critical to the issue which we are required to determine.
24. Ms Tromochimczuk states that the landlord has only permitted a maximum of four people to occupy the ground floor unit. The front room is a double bedroom and that in the past this has been occupied by two people. The two other rooms are single bedrooms. During the period over which Mr Brostian contends that an offence was committed, he was the only occupant of the front room.

25. Westminster has expressed differing views as to whether the Property is an HMO:

(i) On 26 February 2020 (at A72), Moses Barrie, an Environmental Health Officer, wrote to Ms Bucci stating that the authority had “recently become aware” that the Property required a licence and advised the tenants on their right to apply for a RRO.

(ii) On 20 February 2020 (at R.145), Mr Moses wrote to the landlord stating that the Property required a licence as it fell within the “converted building” test as defined by section 254 of the 2004 Act.

(iii) On 16 February 2021 (at R.158), Mark Pledger, Housing Standards Taskforce Manager, informed the landlord that the authority had concluded that the Property was not licensable under the mandatory HMO licensing requirements as it “appears that it consists of a number of self-contained flats”. Mr Pledger notes that Westminster may introduce an Additional HMO licencing scheme which would change the situation.

### **Our Determination on the Preliminary Issue**

26. The first issue which we must determine is whether the Property is an HMO. The parties are agreed that the relevant issue is whether the Property meets the “standard test” as defined by section 254(2) of the 2004 Act (see [14] above). This specifies six criteria in sub-paragraphs (a) to (f). It is agreed that five of these are met. This issue is rather the requirement in sub-paragraph (a) namely whether the Property is “a building or part of a building” which:

“consists of one or more units of living accommodation not consisting of a self-contained flat or flats”.

27. Mr Brostian argues, on behalf of the tenants, that neither the Ground Floor or Basement units are self-contained flats. They are rather HMOs meeting the “standard test” as two or more households occupy these units and share a basic amenity, namely a kitchen. In each unit, three separate households share cooking facilities. Thus, the Property is an HMO.

28. Ms Rubens, on behalf of the landlord, conceded that if the Ground Floor and Basement units are treated as part of the building, these units are HMOs falling within the “standard test” of an HMO. This is separate issue which is considered below.

29. However, Ms Rubens submitted that the issue is rather whether the Property is an HMO which falls within the statutory definition. She refers us to section 254(8) which defines “self-contained flat” (see [16] above). This specifies three relevant criteria which need to be applied separately to the Ground Floor and Basement units each of which are a “separate set of



premises”. Each unit meets the statutory definition of a “self-contained flat” in that:

- (a) they form part of the building;
- (b) the whole of each unit “lies above or below some other part of the building”; and
- (c) “all three basic amenities are available for the exclusive use of the persons” occupying the Ground Floor and Basement units.

30. We agree with Ms Rubens’ interpretation. Both the Ground Floor and Basement units are “self-contained flats”. There are three rooms in each of these units. The occupants of these rooms have exclusive use of the basic amenities, namely a toilet, personal washing facilities and cooking facilities. They do not share these basic facilities with any other household in the Property. The other households in the Property are all living in the 11 self-contained studio flats which have their own basic amenities. We thus conclude that the Property is not an HMO.
31. The Tribunal must also consider whether the Ground Floor unit is an HMO which requires a mandatory licence. Both parties are agreed that the Ground Floor unit is an HMO falling within the “standard test” as the households who occupy the three rooms share a basic amenity, namely the cooking facilities.
32. However, an HMO only requires a licence if it meets the additional requirements of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018. Article 4 provides that an HMO is of a prescribed description if it (a) is occupied by five or more persons; (b) is occupied by persons living in two or more separate households; and (c) meets the “standard test” under section 254(2).
33. Thus, the Ground Floor unit would only require an HMO licence were it to be occupied by five or more persons. We accept the landlord’s evidence that the front room was let as a double room, whilst the two other rooms were let as singles. Mr Brostian had a tenancy of the ground floor double room. At the material times, he occupied it on his own. The two other rooms were let to single people. There is no evidence that the landlord permitted five or more people to occupy the Ground Floor unit. We are therefore satisfied that the Ground Floor unit did not require a licence.
34. The Tribunal therefore accepts the landlord’s argument that neither the Property nor the Ground Floor unit required licences as HMOs. The Applicants have therefore failed to satisfy us to beyond reasonable doubt that an offence under section 72(1) of the Act has been committed. We must therefore dismiss the application.

35. The Applicants have applied for a refund of the tribunal fees which they have paid. However, in view of our decision to dismiss the applications, it would be inappropriate to make such an order.
36. We would like to record our appreciation to the assistance provided by both Mr Brostian and Ms Rubens in addressing the complex issues raised by this application.

**Judge Robert Latham**  
**21 April 2021**

### **RIGHTS OF APPEAL**

1. 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.
2. 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.
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 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.