



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

Case reference : **LON/00AJ/HMF/2021/0307**

**HMCTS code
(paper, video,
audio)** : **P: PAPERREMOTE**

Property : **Room 3,15 Rose Gardens, London W5
4JU**

Applicants : **(1)Mihaly Szabo
(2)Kyrzsztof Dzwonkowski**

Representative : **Ms E Salmon, West London Equality
Centre**

Respondents : **(1)Mohamed Ahmed Hai
(2)Bursa Hai**

Representative : **Dale Key Limited**

Type of application : **Rent repayment order**

**Tribunal
member(s)** : **Judge Tagliavini
Mr P Roberts**

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

Date of decision : **6 June 2022**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing on the papers which has been consented by the parties. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined on paper. The documents that the Tribunal were referred to are in the applicants' bundle of 127 pages, the contents of which have been noted.

The tribunal's summary decision

(1) The tribunal finds that the applicants have failed to establish that the respondents were the persons having the control or management of the property at 15 Rose Gardens, London W5 4JU. Therefore, the application for a rent repayment order is refused.

1. This is an application for a rent repayment order pursuant to s.41 of the Housing and Planning Act 2016 an offence having been alleged to have been committed by the respondents under s.72(1) of the Housing Act 2004 i.e., having the control or management of an unlicensed house in multiple occupation (HMO).

The background

2. The applicants became the tenants of Room 3, 15 Rose Gardens London W5 4JU ('the premises') under a tenancy agreement dated 24/04/2021 at a rent of £640 per month inclusive of bills with effect from 24/04/2021. The lease was made between the applicants and Jessica Wang of Dale Key Ltd. The respondents are the registered owners of the subject property at 15 Rose Gardens, London W5 4JU under title no. AGL104252.
3. The premises comprised one room in a two storey 4-bedroom semi-detached house with shared use of kitchen and bathroom/w.c. ('the property'). The property was shared by the applicants with 3 other households with a total of 6 persons living in the property.
4. In their application the applicants alleged the respondents had committed offences under both ss. 30(1) and 72(1) Housing Act 2004. Subsequently, the applicants did not pursue the respondents' alleged failure to comply with an improvement notice (s.30(1) HA 2004).
5. The applicants claimed a rent repayment order in the sum of £3660.96 for the period 24/4/2021 to 14/10/2021 the latter being the date on which the respondents were said to have applied for a HMO licence.

The hearing

6. Initially this application was listed for an oral video hearing but due to the applicants returning to Poland from where they wished to give evidence, it was necessary to adjourn the hearing to a later date in order for the applicants to satisfy the tribunal's requirements for persons giving evidence from abroad.
7. However, Ms Salmon informed the tribunal that the applicants agreed to the application being decided on the papers. The respondents did not

appear and were not represented and failed to submit any evidence upon which they sought to rely. The tribunal therefore determined it was reasonable and appropriate to determine the application on the papers.

8. The applicants relied upon a bundle of documents containing their Expanded Statement of Reasons and the witness statement of the First Applicant dated 07/04/2022. The tribunal was also provided with evidence of the Ealing Designation for an Area of Additional Licensing for HMO's. Initially, this came into effect on 1 January 2017 and was later extended on 21 December 2021 with effect from 1 April 2022. This designation applied to HMOs defined by s.254 of the Housing Act 2004. Subsequently, a mandatory HMO licence was applied for and granted to Dale Key Limited by the London Borough of Ealing.
9. The tribunal was also provided with a copy of the lease and bank statements substantiating the rental payments made by the applicants to Dale Key Ltd. Documentation showing the date of the application for an HMO licence and its subsequent grant on 8 March 2022 in the name of Dale Key Limited was also provided. Copies of an Improvement Notice concerning the subject property did not show the identity of the person(s) on whom they were served.

The tribunal's decision

10. The tribunal is not satisfied so that it is sure the respondents committed the offence specified under s.72(1) Housing Act 2004. The respondents are not named as the landlord on the tenancy agreement, nor were they named as the licence holder in the mandatory licence granted on 8 March 2022 to Dale Key Limited by the London Borough of Ealing. Further, it appears that Dale Key Limited took on the responsibility of carrying out the works of improvement required by the London Borough of Ealing. Therefore, the tribunal is not satisfied that the respondents had the management or control of the subject premises during the relevant period.
11. Currently, case law states that the correct respondent to an application for a rent repayment order is the immediate' landlord (Dale Key Ltd) and not the 'superior' landlord Mohamed Ahmed Hai and Busra Hai; *Rakusen v Jepson & Ors v Safer Renting (intervenor)* (2021) EWCA Civ 1150. Although the Supreme Court has granted permission to appeal the Court of Appeal decision, the decision as it currently stands must be followed by the tribunal.
12. In conclusion, the tribunal finds that the applicants have failed to establish the named respondents have committed the offence of having the management or control of an unlicensed HMO. The application is therefore refused.

Name: Judge Tagliavini

Date: 6 June 2022

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).