



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

Case reference : LON/00BG/HMF/2022/0152

Property : 25 Alderney Road, London E1 4EG

Applicant : Maria Fernandez-Salamanca (A1)
Sharma Kansal (A2)
Edward Anderson (A3)
Brook Leung (A4)

Representative : In person

Respondent : Lynn Garrett

Representative : In person

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

Tribunal member(s) : Judge D Brandler
Ms S Coughlin MCIEH

Venue : 10 Alfred Place, London WC1E 7LR
(remotely)

Date of hearing and decision : 9th January 2023

DECISION

Decision of the tribunal

(1) The Respondent shall pay to the Applicants a Rent Repayment Order in the sum of £1,029.70. This sum to be paid within 28 days of this order to the Applicants in the following proportions:

- (i) To Maria Fernandez-Salamanca (A1) the sum of £273.52**
 - (ii) To Sharma Kansal (A2) the sum of £260.00**
 - (iii) To Edward Anderson (A3) the sum of £243.15**
 - (iv) To Brook Leung (A4) the sum of £253.03**
- (2) The Respondent is further ordered to repay the Applicants the sum of £300 for the fees paid to this tribunal in relation to this application within 28 days of this order.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons for the tribunal's decision

Background

1. The Tribunal received an application from the tenant Applicants dated 14/07/2022 seeking a Rent Repayment Order (“RRO”) under section 41 of the Housing and Planning Act 2016.
2. Directions were issued on 27/07/2022.
3. The application alleged that Lynn Garratt, “the Respondent” landlord, failed to obtain an HMO licence for 25 Alderney Road, London E14 4EG (“the property”), in breach of the additional HMO licensing requirements operated by the London Borough of Tower Hamlets (“the Council”).
4. The additional licensing scheme introduced by the Council became mandatory on 01/04/2019 and required all properties located within the Council area occupied by three or more persons comprising two or more households, to be licenced under an additional HMO licensing scheme.
5. The property is a three-bedroom terraced house on three floors. The Respondent let the living room as a fourth bedroom. On the ground floor entrance level there is a small bathroom and kitchen with access to a small garden. The first floor contains two bedrooms and a bathroom and there are two bedrooms and a utility room on the top floor. The 4 occupants shared the bathroom and kitchen facilities.
6. On 06/07/2021 Maria Fernandez-Salamanca (“A1”), Sharma Kansal (“A2”), Edward Anderson (“A3”) and Brook Leung (“A4”) signed an assured shorthold tenancy agreement in relation to the property at a monthly rent of £3,011.66. The agent is named as Iconia London and the

Respondent is named as the landlord. The term of the tenancy was from 16/07/2021 until 15/07/2022.

7. By a letter dated 24/05/2022 from the Council addressed to the Occupiers at the property, the Applicants became aware of a Notice of Intention to grant a licence for a house in multiple occupation for the property [A/11]

8. By a letter dated 29/06/2022 [A/14] the Applicants discovered that the property was about to be licenced by the Council. The Licence holder was named as Maddie Spearing and the Manager as Iconia (London) Ltd. [A/16].

9. The Applicants assert that they have lived at the property throughout their tenancy without the protection of a licence and assert that there was a failure by the Respondent to comply with the Guidance on fire safety provisions and the Standard Conditions for Additional Licensing, in particular breaches of section 5.11 and 5.12. [A/9]

10. In response, the Respondent acknowledges that she did not licence the property, but claims a reasonable defence on the basis that she sold the property for £500,000 to Maddie Spearing on 29/07/2021 and that she is liable to pay a Rent Repayment Order to the Applicants for a period of only 13 days. That is from the start of the tenancy on 16/07/2021 to 28/07/2021.

11. The Respondent reports having had a telephone conversation with the Council and she recites what she reports was said: *“Miss Garrett, it is the responsibility of the owner of the property to make sure the house is licensed on day or before the property is rented, in order that it complies with HMO Additional licensing regulations. If you submit your application and make all the payments as required and provide these details online, then at the time the application is submitted you will be issued with a license number, which will mean you have complied with the HMO licensing rules to rent the property out, But if you sell the property in a matter of days as you are confirming, then the new owner will be required to carry out the same process themselves, as under the HMO regulations, licensing of properties is not transferable between different ownerships/names if a property is sold”*. No date is provided for this telephone call. [R/2 paragraph 4]

12. The Respondent’s excuse for her failure to licence the property for the 13 day period during which time she was in control and managing the property, was that the application would have to be made again by the new owner and the fee of £600 would have to be paid again. [R/3]

13. The new owner of the property and the assignee landlord, Maddie Spearing, from 29/07/2021 has played no part in these proceedings. The Applicants’ position being that they were unaware that there had been a change of landlord. Miss Spearing made an application to the Council on 22/10/2021 for a licence.

14. The Respondent seeks to rely on an undated and unsigned letter from the Agent Iconia London stating “*We are writing to confirm that as mentioned to you prior to your tenancy, the Landlord Miss Lynn Garrett, has now sold the house you are renting, The sale of the property completed on 29/07/2021... we will continue to manage the property on behalf of the new landlady*”. That letter gives the name of the assignee landlord. [R/52]

15. In the alternative, the Respondent argues that she did everything necessary for fire safety in the property.

16. The period for which the Applicants seek a rent repayment order is from 16/07/2021 to 15/07/2022.

THE HEARING

17. The Tribunal did not inspect the property as it considered the documentation and information before it in the trial bundles enabled the Tribunal to proceed with this determination. The Applicant provided a bundle of documents of [51] pages referenced in the decision as [A/page number]. The Respondent provided a bundle of documents of [78] pages referenced in the decision as [R/page number].

18. This has been a face-to-face hearing. Maria Fernandez-Salamanca (“A1”) and Sharma Kansal (A2) joined by video. A3 and A4 were not able to attend due to work commitments as hospital doctors. Lynn Garrett (“the Respondent”) joined by video accompanied by her partner Matthew Bonner. Debbie Clarke of Iconia was expected to attend, but failed to join. The Respondent explained her absence to be due to another appointment.

Breach of HMO Regulation

19. The Respondent acknowledges that she was in breach of the additional licensing scheme introduced by the Council with effect from 01/04/2019. She confirmed that she purchased the property as an investment in 2004. The Property has been let since that date and she has never applied for a licence. She stated that she owned no other investment properties.

20. She was vague as to the make-up of previous tenants in the property. She said that there had been a mixture over the years some family lets, and other HMO lets. However, she did not dispute the assertion made by A1 that when they visited the property prior to signing the tenancy agreement, there had been four individual students in occupation, who were renting the property. It was put to the Respondent that this must have been an unlicensed HMO since the start of the previous tenancy, at least since July 2020. She said she had not brought records of the previous tenancy with

her but did not dispute either that the previous tenancy had been for a year, or that she was in breach of the licensing regulations during the course of that previous tenancy.

21. She stated that she had no connection to the purchaser of the property and was asked why she would go to the trouble and expense of letting the property some 13 days prior to completion of the sale, with all the expense and responsibility that entailed. In response she stated that she had not wanted “*to lose the sale*”. However, she could not explain why not letting the property at that stage would have lost her the sale, and why someone would go to such lengths to instruct an agent, let out a property, and contract with tenants when she knew that her liability towards the tenants would end at the date of the sale. Her sole response to that was that the completion date had been delayed, and the agents had found the tenants and she had agreed to put the tenancy in her name.

22. She was asked whether the purchaser had reimbursed her for the finding fees that she refers to in her statement as her expense [R/76]. The Respondent stated that the purchaser had reimbursed her.

23. Although the Respondent sought to rely on an undated letter from the Agent to the “Tenants” [R/52] to show that they had been notified, the Respondent seemed unsure initially how that letter had come into her possession, when pressed she said she had asked for documents to defend the claim. The Applicants however stated that they had not been aware that the landlord had changed until they had received the response from the Respondent. They had downloaded a Land Registry ownership document which showed that Maddie Sperling had purchased the property on 29/07/2021, but as they stated in oral evidence, they had no idea that the Respondent was no longer involved as the landlord. As the agents were not present at the hearing this issue could not be clarified, but the Respondent stated that she had not received any rent from the time she sold the property, and there was no evidence to suggest otherwise.

Occupation and rent paid

24. In oral evidence the A1 confirmed she and the other three Applicants had moved into the property on 16/07/2021. A1 was responsible for the payment of the rent of £3066.11 pcm and the others accounted to her for their liability. The proportion of each Applicant’s rent was in accordance with the size of the room. A1 paid £800 pcm, A2 paid £760 pcm, A3 paid £711.66 pcm and A4 paid £740 pcm. This was evidenced by bank statements in A’s bundle. The rent did not include any utilities which were paid by the Applicants.

The conduct of the Applicant

25. The Respondent makes no assertions in relation to the Applicants conduct. Indeed, the full deposit was returned to them when they moved out indicating that there were no issues during the course of the tenancy.

The conduct of the Respondent

26. The Applicants assert that there was a problem with fire safety in the property but A3 was the tenant who had looked into this issue, and he was not present to provide evidence on this issue. Neither A1 nor A2 could assist the Tribunal and the documentary evidence produced by the Respondent appeared to support her assertion of having provided a fire alarm system certified in March 2020.

27. In oral evidence A1 asserted that they had ongoing problems throughout the tenancy with lack of repairs, leaks and lack of responses from the Agents to their emails/text messages and telephone calls. No evidence was produced to support that assertion.

28. What is asserted by the Applicants is that they were not made aware of the change of landlord when the property changed hands. This despite there being a letting agent involved in the management of the tenancy.

FINDINGS

29. The Tribunal finds that the Respondent landlord had control of the property and failed to apply for the requisite HMO licence.

30. The Respondent let the property from at least July 2020 as an unlicensed HMO to 4 students until the current Applicants moved into the property on 16/07/2021.

31. The Respondent was aware of the requirement for additional licencing of the property although she was unable to say at what stage she had become aware. She did however make a deliberate decision not to licence at the start of the Applicants' tenancy because of the imminent sale.

32. From the date of sale of the property, the Respondent was no longer a person in control of or managing the HMO property and could not therefore commit an offence after that date.

33. The relevant period for this claim is from the start of the Applicants' occupation 16/07/2021 until 28/07/2021, the last day that the Respondent was the landlord of the property prior to the completion of the sale on 29/07/2021. That is 13 days.

34. The Tribunal find beyond reasonable doubt that the Respondent was in breach of her requirement to licence the property under the HMO licensing

scheme managed by the Council. She does not have a reasonable excuse for her failure to licence the property during the relevant period. Being aware of the licensing scheme, she should either have already licenced the property during the previous tenancy, or should not have let the property as an HMO when she was about to complete on the sale.

35. Therefore, the only further issue for determination by the Tribunal is the amount of the RRO.

36. The monthly rent paid by the Applicants was £3,066.11. The daily rate was £90.01. The rent paid for the 13 day period was £1,287.13.

37. In determining the amount, the Tribunal must have regard to the conduct of both landlord and tenant, the landlord's financial circumstances and whether the landlord has been prosecuted.

38. There is no evidence to demonstrate that the landlord has been prosecuted.

39. In relation to the Respondent's financial circumstances, the Tribunal know that the Respondent sold the house for £500,000 on 29/07/2021. She claims in her "*statement of justification as to a reduction*" that she did not profit from the rental income because any monies she should have received were taken "*by the agent and offset against the fees that they were entitled to for finding the tenants at the start of the tenancy*" [R/76]. However, this was contradicted by her in oral evidence when she told the Tribunal that the purchaser had reimbursed her for these expenses. The Tribunal find no financial hardship from these contradictory statements.

40. The Tribunal find that the Respondent showed poor conduct in relation to her responsibilities as a landlord by her failure to licence the property since at least July 2020, and her failure to inform the tenants that she had ceased to be their landlord on 29/07/2021.

41. The Tribunal has regard to the principles most recently set out in *Acheampong v Roman* [2022] UKUT 239 (LC) at paragraphs 8-21.

- a. The total rent paid is £1,287.13 for the period of 13 days from 16/07/2021 to 28/07/2021
- b. The Respondent was a professional landlord with ownership of this investment property since 2004. She had failed to licence the property when the additional licencing became mandatory on 1/4/2019.
- c. However, the Respondent has not been prosecuted and there is no evidence before the Tribunal of any previous convictions. Considering the cases cited in paragraph 16 of the *Acheampong* case cited above, the starting point in this case is 80% and on a par with *Williams v Palmer* [2021] UKUT 244 (LC)
- d. The Respondent demonstrated no financial difficulties
- e. There is no assertion that the Applicants conduct was poor.
- f. The Tribunal consider the lack of licencing since at least July 2020 to be an aggravating factor. The Tribunal therefore

consider that 80% of the net rent for the period is repayable. Accordingly, we find that an RRO be made against the respondent in the sum of **£1,029.70**

42. The Respondent is also ordered to repay to the applicants the sum of £300 being the tribunal fees paid by her in relation to this application.

Name: Judge D. Brandler **Date:** 9th January 2023

ANNEX - 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.

Appendix of relevant legislation

Housing Act 2004

Section 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.

(2) A person commits an offence if–

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if–

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time–

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(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), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(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.

(3) A reference to “an offence to which this Chapter applies” is to an offence, of a description specified in the table, that is committed by a landlord in relation to housing in England let by that landlord.

Act	section	general description of offence
1 Criminal Law Act 1977	section 6(1)	violence for securing entry
2 Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3 Housing Act 2004	section 30(1)	failure to comply with improvement notice
4	section 32(1)	failure to comply with prohibition order etc
5	section 72(1)	control or management of unlicensed HMO
6	section 95(1)	control or management of unlicensed house
7 This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(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.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 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.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
- (a) section 44 (where the application is made by a tenant);
 - (b) section 45 (where the application is made by a local housing authority);
 - (c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

- (1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.
- (2) The amount must relate to rent paid during the period mentioned in the table.

If the order is made on the ground that the landlord has committed

the amount must relate to rent paid by the tenant in respect of

an offence mentioned in row 1 or 2 of the table in section 40(3)

the period of 12 months ending with the date of the offence

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

a period, not exceeding 12 months, during which the landlord was committing the offence

- (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.
- (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.