FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00BH/HMK/2018/0017**
Property	**:**	**70 Devonshire Close, E15 1UG**
Applicants	**:**	**Mr Kyler Furlotte** **Ms Nicole McGraw**
Respondent	**:**	**David Aviram**
Present at hearing	**:**	**All parties**
Type of Application	**:**	**Rent Repayment Order – s.43 Housing and Planning Act 2016**
Tribunal	**:**	**Mr M Martyński (Tribunal Judge)** **Mrs H Bowers MRICS** **Mrs L West**
Date of Hearing	**:**	**30 August 2018**
Date of Decision	**:**	**5 October 2018**

DECISION

Decision summary

1. The tribunal finds, beyond reasonable doubt, that the Respondent has committed an offence under section 95(1) Housing Act 2014 (control or management of an unlicensed house).

2. The tribunal is not satisfied, beyond reasonable doubt, that the Respondent has committed an offence under the Protection from Eviction Act 1977 (eviction or harassment of occupiers).

3. The tribunal makes a Rent Repayment Order against the Respondent in the sum of £3,300.

4. The Respondent must also pay to the Applicants the sum of £300.00 being the fees that they have paid to the tribunal in these proceedings.

5. The total sum of £3,600 must be paid by the Respondent to the Applicants within 28 days of the date of this decision.

Background

6. 70 Devonshire Close ('the Property') is a two-storey house. At the material time it had been converted into two flats by the addition of the construction of two internal doors behind the main front door so as to create separate flats on the ground and first floor. Certainly, at the material time, according to a witness statement from a Council Officer which was produced to us, no planning permission had been given for this conversion and the Property was registered as one single unit for the purposes of Council Tax.

7. The freehold interest in the Property is held by Vilma Jackute and Nerijus Jackus (registered on 14 November 2013).

8. By an agreement in writing and dated 22 June 2017, the Applicants agreed to rent the ground floor flat in the Property for a fixed term starting on 23 July 2017 and ending on 22 July 2018. The agreement records that the rent was £1200.00 per calendar month inclusive of £100.00 monthly Council Tax. The agreement names the Respondent as the Landlord.

9. In January 2018, Mr Furlotte wrote to the local authority outlining some concerns that he had with the Respondent, Mr Aviram, and his tenancy. This resulted in the local authority sending a letter to Ms Jackute dated 11 January 2018 informing her that it was a legal requirement for the Property to be licensed and that, according to their records, the Property was not licensed. By a further letter to Ms Jackute, the Council informed her that they would be inspecting the Property on 16 February 2018.

10. It was agreed between the parties that the total rent paid by the Applicants during the period of their occupation was £7,200.00.

11. The Applicants vacated the Property by mutual agreement on 10 February 2018.

12. At all relevant times, the local authority, Waltham Forest, operated a licensing scheme in respect of all rented properties in the borough with the effect that any property let out to tenants required a licence from the local authority.

13. There is no dispute that the Property was not licensed at any time during the Applicants' occupation. A licence was eventually granted in respect of the Property on 20 February 2018.

The application and the defence to the application

14. Mr Furlotte's application to the tribunal for a Rent Repayment Order ('RRO') was made in May 2018. Ms McGraw was subsequently added as an Applicant.

15. An oral Case Management Hearing was held on 5 June 2018. All parties attended that hearing and directions were given following the hearing.

16. The Applicants' application was made on the grounds that the Respondent had committed two relevant offences;
    (a) managing or controlling an unlicensed house
    (b) eviction or harassment of the Applicants

17. The Respondent's case was that; first, he did not own the Property and that he had no interest in it and that he was not the landlord; second, he denied eviction or harassment of the Applicants.

Evidence

Applicants

18. We were shown a copy of the tenancy agreement referred to earlier in this decision. The only thing to add to our comments on this is that there is a clause in the agreement forbidding the keeping of pets at the Property.

19. The Applicants produced evidence by way of emails from L.B. Waltham Forest ('the Council') and a witness statement from a Council officer to the effect that the whole of the borough was designated as a selective licencing area as from 1 April 2015 and that an application for a licence was only received from Vilma Jackute on 11 January 2018.

20. The Applicants told us that they rented the flat through a letting agency. They paid the deposit to that agency. The Applicants said that

they specifically told the agency that they had two dogs. The agency had said that this was fine and that they would amend their copy of the tenancy agreement to delete the clause forbidding pets. Mr Furlotte said that it was important that they were clear about the dogs as he and Ms McGraw were moving from Canada and were bringing their dogs with them, they therefore had to make sure that keeping dogs was agreed. The Applicants both denied that their dogs had caused any damage in the Property.

21. Mr Furlotte told us that he and Ms McGraw had not heard of Vilma Jackute but that some post had arrived for her whilst they were in occupation, they assumed she was a former tenant.

22. According to Mr Furlotte, the Respondent contacted them by telephone when they first moved in and told them that he was their landlord and that he was out of the country at that time. He told them that he had a repair man called Mehmet.

23. We were referred to copies of some text messages between the parties; in particular one dated 18 January 2018 – a text from the Respondent saying; "*I'm David the landlord*"

24. Mr Furlotte said that the arrangement for the utility bills was that they would be charged an extra £50 per month for these. Mr Furlotte demonstrated, with reference to documents that he had produced, that his first month's rent payment was for £1250 (that is £1200 rent and £50 for bills). He stated that in subsequent months, they would pay £1200 for the rent and an extra £50 for bills. It was explained that the first two rental payments were made electronically but that the remaining payments were cash payments made to Mehmet, the Respondent's agent.

25. We were shown a copy of the agreement regarding moving out of the Property agreed between the parties. The agreement is dated 2 February 2018 and at the outset states; "*For the purpose of ending short hold lease, as requested by the landlord*". The agreement goes on to provide that the Applicants would leave on 10 February 2018 and that due to the short notice, they had requested the full return of their deposit in advance of leaving and that they would not have to pay the rent instalment which would have been due on 23 January 2018. That part of the agreement is then signed by all parties, the Respondent's signature comes under the words; "*Signed, (Landlord)*". There is then another section with the agreement that deals with the return of the deposit.

26. So far as the issue of harassment is concerned, the Applicants put their case in their joint statement in the following ways;

> (a) .....once he [the Respondent] became aware of our complaint to the council in January 2018, he informed us that we had no choice but to leave the flat. He then harassed us throughout the three weeks between

this notice and our moving out of the flat, frequently threatening to withhold parts of our deposit if we did not comply with his terms.

(b) Exhibit 9 illustrates us informing Mr. Aviram that we would not be moving. However, via a phone call on 20/01/18, Mr Aviram informed us that we must vacate the property – we did not have a choice. Initially he gave us until the end of February to vacate the premises, but throughout our discussions of the details of our move, this time frame began to decrease to the 23 of February .....and then to "before the 10th"

(c) We only "agreed" because we do not trust Mr. Aviram; leaving was our only real option.

(d) This eviction was illegal: we received no written notice, and the notice we had was only given roughly 3 weeks prior to us vacating the property.

(e) ....Mr. Aviram was very difficult to work with, and many of our conversations dissolved into threats and hostility on his part.

27. In their oral evidence at the hearing, the Applicants added the following:

(a) Mr Furlotte stated that in January 2018 during a telephone call with the Respondent he was interrogated as to what he had told the Council. He said that Mr Aviram had then commented; "you don't sound very happy, I believe you should move". Mr Furlotte told him that they did not have the money to move. Mr Avriam was also alleged to have said words to the effect that Leyton and Stratford may not be a safe place for the Applicants, which Mr Furlotte took to be a threat.

(b) Mr Furlotte went on to say that he and Ms McGraw discussed the matter in January 2018 and decided that they would leave in response to the Respondent's suggestion that they leave.

(c) After this, Mr Furlotte said that he went on to say to the Respondent that there was no way that they could leave unless Mr Aviram was very accommodating.

(d) After Mr Furlotte had sent a text to the Respondent saying that they would not be able to move, the Respondent called him and said that the Applicants had no choice, that they had to move as he was having to carry out repairs that he was required to do by the Council.

(e) Mr Furlotte said that he and Ms McGraw tried to keep things civil and kept negotiating, he added that the text messages between the parties did not tell the whole story, there were a lot of telephone conversations and there was pressure to leave and the time frame in which to leave got shorter and shorter. He was getting calls from the Respondent, on average, every other day from around 18 January to 10 February 2018.

(f) Ms McGraw added that the timing of the move was very inconvenient, she did not get an offer of a job in the new area that they moved to until after they moved and Mr Furlotte was having to return to Canada for an operation the day after they moved.

28. A sample of the text messages between the parties in the period mid-January to early February 2018 on the issue of moving out is as follows:-

A to R – if we are to find somewhere to live, we need the deposit before the day we move….the faster we have the deposit money to pay for a new place, the faster we're out.
R to A – you can move out on 23 February
A to R - …..we have been discussing it and it is actually just an incredibly inconvenient time to move, so we will instead just stay until the lease comes to an end in July…….
R to A – I think is best to meet face to face…..
A to R – I don't think we need to meet. We have decided that moving is not really an option for us right now, and we know our rights to remain as tenants; I don't know why we would need to meet.
A to R – This does not solve the problem……Send someone to confirm that no damage has occurred, give us back our money, and we could be out by the end of next week. We are going to look at places tomorrow.
R to A – Morning Kyler, I've decided to give you £1000 before you move and the rest on the day you moved.
A to R – The only way we can move out by the date we agreed is if you give us the entire amount. There isn't another way.
R to A – Can Mehmet come and see the house tomorrow? Choose the time?
A to R – How do I know he will actually show up?……if he comes to see the house and sees everything is fine which it is, I would like our deposit back in FULL tomorrow.
A to R – Ok but we aren't leaving the flat until we get our entire deposit back. I hope that's clear.
A to R - …..Mehmet came yesterday and said everything was fine. We will need our deposit back this week to secure a new place.
R to A – I need you to move out before the 10th, I have to start work in the house
A to R – You can't keep changing our agreements. We are doing the best we can with the small amount of notice we were given. Our new place has a move in date of February 10th. We agreed on that date and that's what's going to happen.

29. The Applicants told us that when Mehmet came round to inspect the Property, he had two others with him and that they inspected the Property closely.

30. The Applicants produced a copy of an Enforcement Inspection Form completed by an officer of the local authority from its inspection of the Property. That form set out the following concerns:-
    - Gaps around rear door, excess cold, dust, pests and damp. Narrow hallway
    - The property is split in two, so in breach of planning regulations
    - There is an unknown number of tenants residing in the upper flat
    - No smoke alarm or carbon dioxide detector

Respondent

31. The Respondent stated that he had instructed Movers estate agents to let the Property as they were an agent that he had dealt with in the letting of his own property for several years. In his witness statement he commented that Movers clearly assumed that the Property was his and proceeded with a tenancy agreement in his name. The Respondent provided entries from the Land Registry showing that the Property was

owned by Vilma Jackute and Nerijus Jackus. The Respondent's witness statement continues; "*My involvement with the property was to deal directly with any matters relating to the management of the property on a day to day basis.*"

32. The Respondent alleged that the rent for the Property was inclusive of not only Council Tax but also utility bills. He stated in his witness statement that the rent was £1250; "*of which approximately £250 contributed towards the gas, electric, water and council tax bills.*"

33. On the question of the licensing of the Property, the Respondent did not make any comment on the issue of whether the Property required a licence other than he supposed the Council required a licence and that Ms Jackute applied for a licence as soon as the requirement was known. His only comment on the question of licensing generally was that the local authority had not advertised the scheme properly and that he was unaware of it. He stated that he had properties in the London Borough of Newham where licences were required and they had advertised the scheme fully.

34. On the issue of harassment, the Respondent's statement contained the following:

> In January I received a call from the Landlords to make me aware that Mrs Nicole McGraw & Mr Kyler Furlotte had notified the local authority of some repairs that needed to be carried out. The complaint was that there was a draft coming through the backdoor of the kitchen. I called Mr Furlotte to ask why he had notified the local authority as opposed to calling me which he had done for the past six months. I suggested to him for you to have contacted the local authority you must be unhappy or are you looking to vacate? Mr Furlotte's response was yes because my wife now has a new job in the Barnet area and the travel would be too much for them from this property. We have found a new property in area which we would like to move to. I simply asked why did you not come to me and his response was because I would be breaking the contract and therefore lose the right to reclaim my security deposit as I had signed a twelve month agreement with no break clause. I advise Mr Furlotte that had he spoken to me it wouldn't have been a problem I would have returned his deposit and we would have re let the property. His response was I can move within the next week as he had already found another property near to Mrs Nicole McGraw's new place of employment in the Barnet area.....Two days later Mr Furlotte rang me to state that he was now staying until 10th February 2018.....

The statement goes on to detail the discussions regarding the ending of the tenancy and moving out.

35. In general, the Respondent denied that he had harassed or threatened the Applicants.

36. The Respondent goes on to allege in his statement that the Applicants were in breach of the tenancy by keeping two dogs, he states:

> This cost considerable reinstatement costs due to the decline of the property. The floors had to be completely replaced as well as the floor

> boards as the urine had penetrated through. The walls were completely repainted due to the scratches from the dogs in addition to the washing machine being replaced as it was full of dog hair and not working sufficiently. We also replace the sofa and the double bed as the dogs had fouled all over these due to being locked in the property all day……

The Respondent produced an invoice from a building company in the sum of £4340.00 for the work/replaced items described in his statement. He further claimed a lost month's rent of £1200 for the period during which the works were being carried out.

37. The Respondent produced a letter from Movers estate agents written by a Mr Lee Lingard. Mr Lingard stated that they may have incorrectly listed the Respondent as the landlord for the Property, adding that Movers were instructed by the Respondent and that they therefore assumed he was the legal owner. On the question of pets, the letter adds; "*We always advise tenants to speak to the Landlord in the event they intend to introduce a pet further down the line*".

38. We asked the Respondent if he wished to give us any details regarding his finances, he declined to do so.

The law

39. The relevant parts of the Housing and Planning Act 2016 provide as follows:

> **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).

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.

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).

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	a period, not exceeding 12 months, during which the

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*
table in section 40(3)	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.

Decision

The landlord

40. We are satisfied that the Respondent was the landlord in respect of the Applicants' tenancy for the purposes of the making of a Rent Repayment Order against him. We have come to this conclusion for the following reasons:-
    (a) The Respondent allowed the tenancy agreement to be signed for him in the capacity of landlord
    (b) The Respondent clearly represented to the Applicants that he was the landlord of the Property.
    (c) The Respondent produced no evidence from the freehold owners of the Property to suggest that he was not the landlord.
    (d) Even if the Respondent had no legal interest in the Property and thus no right to create a tenancy, the Respondent has purported to grant a tenancy and is accordingly estopped from denying that he could not create a legal tenancy in favour of the Applicants[1].

Licencing

41. We are satisfied beyond reasonable doubt that the Respondent was guilty of an offence of the control or management of an unlicensed house (section 95(1) Housing Act 2004) throughout the period of the Applicants' tenancy. We are further satisfied that the Respondent did not have a reasonable excuse for failing to licence the Property.

42. There is no doubt that the Property required a licence and that it did not have one and there is no doubt, even on his own case, that the Respondent was managing the Property in that period.

[1] *Bruton v London & Quadrant Housing Trust* [2000] 1 A.C. 406

Harassment/eviction

43. We are not satisfied beyond reasonable doubt that the Respondent committed any offence of eviction or harassment under the Protection from Eviction Act 1977.

44. The texts that we have referred to between the parties do not suggest that there was harassment or eviction as to create an offence under the Protection from Eviction Act; they suggest that the Applicants knew their rights and were prepared to assert these in the negotiations regarding the giving up of the tenancy.

45. We note that we were told by Mr Furlotte that the telephone conversations between the parties were of a different order but we were not given firm or further details of what was said other than; "*you are not happy here*" and the suggestion that the Applicants may not be safe in the local area. We do not consider that these alone amount to harassment or that they were acts likely to interfere with the peace or comfort of the Applicants with the intention to cause the Applicants to leave the Property. We consider the nature of the discussions between the parties as being part of the normal negotiation process regarding the vacation of the property.

The amount of the order

46. In arriving at the sum of £3,600 we have taken into account the following matters.

47. According to the evidence provided from the local authority, there were safety/disrepair issues at the Property. One of the reasons for the licensing scheme is to ensure that such issues do not arise or that they are spotted straight away. So, for example, the application form for a licence requests information about the size of the Property so that the number of occupants can be regulated; it asks for confirmation of the existence and number of smoke alarms. We consider therefore that there is a connection with the safety/disrepair concerns and the lack of a licence in respect of this Property.

48. We do not accept the Respondent's allegations regarding the alleged damage done to the Property by the Applicants' dogs. We are satisfied that the Applicants did seek permission for the dogs especially as they were re-locating the dogs from Canada. We did not find the Respondent to be a credible witness in certain respects of his evidence. First, he produced no evidence form the owners of the Property that he was not entitled to let the Property out; second, we found that he was not credible on the issue of the rent being inclusive of all the utility bills; third, the Applicants demonstrated that his assertion that Ms McGraw wanted to move as she had a job in Barnet was simply not correct; fourth, there was evidence that both the Respondent and his agent Mehmet considered that the Property had been left in a good condition when agreeing to return their deposit in full (we do not accept the Respondent's assertion

that the alleged damage was not evident on the inspections - at least some of the damage would have been evident).

49. We accept the Applicants' evidence that the rent for the Property was £1200 which included £100 Council Tax and that they were paying £50 on top of this per month in cash for utilities. The tenancy agreement clearly records that the rent was £1200 per month and we do not accept, in the light of this and the Applicants' evidence, the Respondent's assertion that this was a mistake and that the rent should have been £1250 per month including £250 bills.

50. We have therefore taken the net rent to be £1,100 per month.

51. We do not consider that the relevant starting point is to assume a Rent Repayment Order of 100% of the net rent. The Act provides that the tribunal must make an order of the maximum amount if the landlord has been convicted of an offence relating to eviction or harassment or breach of a banning order. This would indicate that a lesser amount should be at least considered where there is no such conviction. We have to take an overall view.

52. The failure to licence the Property is a serious matter and one which had real consequences as outlined above.

53. It is clear that the Respondent, even if not a professional landlord, has considerable dealings in the rented property market. In his evidence (as recorded above) he told us that he had other licensed properties in another borough.

54. We have balanced this against the fact that we have not found the allegations regarding harassment to have been proved to the criminal standard of proof.

55. We have taken the net rent at £1,100 per month which produces a total of £6,600 for the period of the Applicants' occupation. We have then applied a rate of 50% deduction in respect of the amount of the Rent Repayment Order resulting in an award of £3,300.

56. There is no reason why we should not make an order that the Respondent pay to the Applicants the sum of £300, that being the amount that they have paid in tribunal fees in pursuing their application.

Mark Martyński, Deputy Regional Tribunal Judge
5 October 2018

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.