FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AN/HMK/2019/0038**
Property	**:**	**56 Rosaline Road, Fulham, London SW6 7QT**
Applicant	**:**	**Octavia Griffiths, Catherine Cooper, Ashely Gillan and Marisa Dipre**
Representative	**:**	**Ms O Griffiths & Ms A Gillan**
Respondent	**:**	**(1) Angela Marie Bryan & (2) Marcia Antoinette Bryan**
Representative	**:**	**Mr. Gilbert, counsel for first respondent instructed by Stephensons Solicitors LLP**
Type of application	**:**	**Rent repayment order**
Tribunal members	**:**	**Judge Tagliavini** **Mr. C Gowman MCIEH MCMI BSc** **Mr. J Francis QPM**
Date and venue of hearing	**:**	**5 September 2019 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**12 September 2019**

DECISION

Decisions of the tribunal

(i) The tribunal make a Rent Repayment Order in the total sum of £6,586.66. This sum to be paid by the first and second respondents to the applicants within 28 days of the date of this decision.

The application

1. In an application dated 12th April 2019, the applicants seek a determination under section 41 of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order in the sum of £39507.96 (sic) representing 12 months rental income paid on the grounds that (i) the first and second respondents failed to obtain a HMO licence for the subject property and (ii) for breaches of the Protection from Eviction Act 1977.

Background

2, By a written tenancy agreement made between the applicant tenants and the respondent landlords, the respondents agreed to let to the applicants the subject property situate at 56 Rosaline Road, London SW6 7QT ("the premises") for a period of 12 months commencing on 29th October 2017 at a rent of £3293.33 per month. The premises comprise a four bedroom terraced house on three floors with shared use of the kitchen, bathroom and toilets and dining/living spaces.

3. The first respondent conceded that the premises were an HMO that required a licence granted by the relevant local authority, Hammersmith and Fulham. The first respondent also conceded that a HMO licence had not been obtained during the 12 months period of the applicants' tenancy.

4. The second respondent did not seek to play any active role in these proceedings and did not appear and was not represented at the oral hearing. Further no written representations were received from the second respondent or any other evidence provided on which she sought to rely. However, the tribunal was satisfied she was aware of this application and had been provided with every opportunity to participate had she wished to do so. Further, the tribunal did not receive any application from the second respondent asking that she be removed from the proceedings as a second respondent and it was confirmed with Mr. Gilbert of counsel that he acted only for the first respondent. Mr. Gilbert told the tribunal that it was only the first respondent that received the rent, as the co-owner of the premises was

the first respondent's sister who had no involvement with the lettings, having only agreed to be a joint mortgagor in order to enable the first respondent to obtain a mortgage, although he accepted both names appeared on the applicants' tenancy agreement as the landlord.

5. In addition to the allegation that the respondents had failed to obtain an HMO licence for the premises, the applicants also sought to assert that the first respondent had breached section 1(3A)(a) and (b) of the Protection form Eviction Act 1977 ("the 1977 Act"). The applicants specifically asserted that the first respondent had failed to provide 24 hours' notice of a workman attending to repair a showerhead in the premises; had allowed a shower support to become loose; drains to become blocked and smelly; damp patches to appear in the hall, a living room and a bedroom; some of the furniture provided was different to that believed to have been promised; the chimney in one room was noisy when conditions outside were windy; a bed sheet was soiled by an oily substance and the first respondent would not always respond to emails of complaint in a timely manner and sometimes not at all.

The hearing

6. At the hearing of the application, Mr. Gilbert made a preliminary application for the tribunal to use its discretionary power to strike out that part of the applicants' case as relied upon in their allegations of breaches of the 1977 Act under the provisions of rule 9(3)(e) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 where *"the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding."*

7. In support of his preliminary application Mr. Gilbert submitted that the allegations, which were alleged by the applicants concerned a failure to act and were "omissions" and that did not fall within the 1977 Act. Further, Mr. Gilbert submitted that the evidence did not establish that there had been a persistent withholding of services as the longest period the applicants had had to wait for non-urgent repairs was the 8 days for repairs to the drains to be carried out.

8. Mr. Gilbert submitted that there was no evidence to establish beyond all reasonable doubt, that there were any acts by the first respondent that were done with the intention of forcing the applicants out of the premises. Consequently, Mr. Gilbert submitted that the applicants were unlikely to succeed on this part of their application and it should be struck out.

9. In response, the applicants stated they accepted during the period of their tenancy they had not at any time been left without water, electricity or washing and toilet facilities or that any part of the premises had become unusable or uninhabitable. However, the first respondent was a professional landlord and her acts of not responding

to emails of complaint by return of email with explanations of the repairs to be carried out or were 'passive acts' of harassment. The applicants told the tribunal that they had made complaints of problems with the shower on three occasion; had complained about the drains on approximately 20 occasions; there had been one incident where a workman had attended the premises without 24 hours-notice being given; there were three areas of damp which had not been fully addressed and one incident of damage to their property (a bedsheet stained by an oily substance), as well as noise in a bedroom coming from the chimney when conditions outside were windy, lightbulbs needing replacement and a fuse 'blowing' and a loose cover to the electrical box in the cellar area. The applicants accepted that repairs/works to the shower, drains and chimney were carried out and the damaged bedsheet was replaced.

The tribunal's decision on the preliminary issue

10. In reaching its decision the tribunal considered the parties' submissions and the evidence relied upon by the applicants to prove their allegations of breaches of the 1977 Act, section 1(3A)(a) and (b) which states:

> *(3A)Subject to subsection (3B) below, the landlord of a residential occupier or an agent of the landlord shall be guilty of an offence if-*
>
> *(a)he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or*
>
> *(b)he persistently withdraws or withholds services reasonably required for the occupation of the premises in question as a residence,*

11. The tribunal finds that the allegations made by them are of relatively minor matters which, the tribunal would reasonably expect to occur during the course of a tenancy and are not of such a severe or persistent nature that was likely to materially interfere with the applicants' use of the premises or enjoyment of their tenancy. Further, the tribunal finds the evidence relied upon by the applicants to be manifestly insufficient to establish on the criminal standard of proof, that an offence has been committed under either s.1(3A)(a) and s.1(3A)(b). Therefore, the tribunal finds it reasonable and appropriate to exercise its discretion and strikes out that part of the application that relies on allegations of breaches of the 1977 Act.

The issues

11. The only substantive issue that remained for the tribunal to determine was the quantum of any rent repayment order after having regard to the conduct of the parties and the circumstances (including financial) the first respondent having admitted the offence of a failure to obtain an HMO licence for the subject premises; the rent paid by the applicants and the period for which a rent repayment order could be made not in dispute.

The applicants' case

12. In support of their case, the applicants provided the tribunal with a lever arch file of documents, a Response and a witness statement from Mr. A Collard a Public Protection and Safety Officer in the Environmental Health Service of the London Brough of Hammersmith and Fulham (LBHF). Ms Griffith and Ms Gillan both gave oral evidence to the tribunal. The applicants stated that they were seeking a rent repayment order in the sum of £39,507.96 (sic) representing the total amount of rent paid by them during the 12 months period of their tenancy.

13. The applicants told the tribunal that they had initially found the subject premises on a website and had contacted the agent Chard to organise a viewing. The applicants told the tribunal that they had believed their landlord to be a Mr. Kelly Case and the first respondent the agent whom they should contact if a repair was required etc. Rent was paid on a monthly basis directly into Chard's bank account as directed. The applicants told the tribunal that the repairs had been carried out after complaints had been made but complained that the email responses of the first respondent became more delayed as the tenancy progressed and on occasions she failed to inform them when repairs had been carried out, leaving them to seek confirmation that they had. The applicants accepted that their complaints were always dealt with but had only been notified of the problem with the external drain by the builders carrying out works to the next door property. The applicants denied that hey had been responsible for blocking the drains or having caused any damage to the property that could not be classified as "fair wear and tear."

14. The applicants stated that they had contacted H&F after a dispute with the first respondent about the return of their deposit and learnt about the HMO licence requirement and rent repayments orders. The applicants told the tribunal that they were genuinely concerned for the next tenants who occupied the property and felt that they had been mistreated by the first respondent and had had less pleasant experience than had been anticipated during the period of the tenancy.

15. Mr. Collard spoke to his witness statement dated 19/07/19 and told the tribunal that he had inspected the property on 2nd April 2019 and gain on 12th July 2019 when other tenants were in occupation. Mr. Collard

stated that he had identified some hazards in the property but was unable to be sure that they had existed during the period of the applicants' tenancy. Mr. Collard told the tribunal that therefore, the only offence for which a summons was due to be issued against the first respondent was for the offence of being in control of an unlicensed HMO under section 72(1) of the Housing Act 2004.

The first respondent's case

16. The first respondent provided a lever arch file of indexed and paginated documents upon which she relied upon, her witness statement dated 16/04/2019 and a witness statement of Marcin Czajkowsngki dated 22/08/2019 detailing the repairs he had carried out at the premises during the applicants' tenancy. In oral evidence to the tribunal, the first respondent stated it was a genuine oversight in her failure to complete the application for an HMO licence which she had started in September 2017. Ms A Bryan told the tribunal she had been granted a HMO licence on 23/08/2019 by LBHF which was valid for 3 years. Ms. Bryan also stated that despite not having a licence in place during the period of the applicants' tenancy she had complied with all safety aspects that would have been required for the grant of a licence by having in place a valid electrical certificate and a valid gas safety certificate copies of which were in the bundle of documents provided to the tribunal.

17. The first respondent provided a copy of her previous employment and current occupation as a freelance (self-employed) property manager together with her self-assessment tax return sent to HMRC for 2017/18 and a budget of income and expenditure for 2018/19. Ms Bryan state she also owned and let a two bedroom flat in Lewisham and had mortgages on that flat, the subject premises as well as her own accommodation. Consequently, her total net income from both property rental and earned income was in the region of £40,000 per annum. No other relevant circumstances were relied upon by the first respondent as being relevant to the issue of quantum.

The tribunal's decision and reasons

18. In light of the first respondent's admission and in the absence of any representations by the second respondent, the tribunal is satisfied beyond reasonable doubt, that an offence has been committed under 95 of the Housing Act 2004 by reason of the respondents being in control of an unlicensed HMO. The tribunal in considering what, if any amount, a rent repayment order should be made had regard to provisions of section 44 of Housing and Planning Act 2016. The tribunal particularly had regard to the first respondent's conduct in respect of the subject property; her employment and character; the first respondent's financial circumstances; the conduct of the applicants and the prospect of future criminal proceedings in respect of same matters.

The tribunal also had regard to the absence of any complaints made by the applicants in respect of the second respondent's conduct.

19. The tribunal finds the conduct of the first respondent to have been responsive when issues were raised by the applicants and that repairs were carried out in a timely and reasonable manner. The tribunal accepts that the first respondent made a genuine oversight in not completing her application for a HMO licence for the subject property and finds that she nevertheless had the relevant gas and electricity safety certificates in place throughout the duration of the applicants' tenancy. Further, the tribunal finds that there is no evidence to show that neither respondent have previously been convicted of any offence in relation to these premises. The tribunal also notes the first respondent's net income and the heavy financial commitments made in respect of the significant mortgage repayments she is responsible for in respect of her three properties. In the absence of any evidence from the second respondent, the tribunal is unable to take her financial status or any other relevant matters that she might otherwise, have wished the tribunal to take into account for the purpose of determining the amount of the rent repayment order.

20. The tribunal finds that having regard to all of the circumstances relevant to this application, the applicants were able, for the majority of the time able to enjoy their occupation of the premises without any real inconvenience and is mindful that a rent repayment order should not represent a "windfall." However, the tribunal accepts the requirement of licensing HMO's is an important mechanism widely utilised by local authorities to ensure the maintenance of properties by reputable landlords operating in the private rental sector. Therefore, the tribunal finds that the appropriate amount to be repaid to the applicants by way of a rent repayment order is £6,586.66 representing two months rental payments.

21. Although, the first respondent maintained that her sister, the second respondent did not receive any rent in respect of the subject premises, the tribunal finds that Chard's statements of account detailing the rent collected with management fees deducted were addressed and paid to both respondents. Further, in the absence of any evidence or representations from the second respondent, the tribunal is not satisfied that the second respondent did not receive the benefit of rental payments or did not have control or management of the premises while it was unlicensed, but finds she continued throughout to hold herself out as the landlord to their letting agents Chard and the applicant tenants . Therefore, the tribunal makes the rent repayment order in respect of both respondents and directs that this sum should be paid to the applicants within 28 days of this decision.

Name: Judge Tagliavini **Dated: 12 September 2019**

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).