FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMF/2019/0056**
Property	**:**	**46a Eversholt Street, London NW1 1DA**
Applicant	**:**	**Christopher Bishop (1); Jonas Deconinck (2); Aidan Carling (3) and Stephen West (4)**
Representative	**:**	**Christopher Bishop**
Respondent	**:**	**Mr Jitendra Manandhar**
Representative	**:**	**Mr D Giles – Counsel instructed by Kenton Solicitors**
Type of application	**:**	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal	**:**	**Tribunal Judge Dutton** **Mr W R Shaw FRICS**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of hearing	**:**	**15th January 2020**
Date of decision	**:**	**16th January 2020**

DECISION

DECISION

The Tribunal determines that by reason of section 40(3) of the Housing and Planning Act 2016 (the 2016 Act) and section 72(1) of the Housing Act 2004 an offence has been committed of failing to licence the property at 46a Eversholt Street, London NW1 1DA (the Property) and that a Rent Repayment Order in the sum of £17,600 should be paid by the Respondent to the Applicants within 28 days of the date of this decision.

BACKGROUND

1. The tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenants for a rent repayment order (RRO) on 1st September 2019.

2. The application alleged that the Respondent, the freehold owner of the Property, had failed to obtain a licence for the flat, it being a property which was required to be licensed under Camden Council's borough wide additional licensing scheme introduced in December 2015. This required that any property within the Council area having three or more persons sharing a property, who were not a family, was required to be licensed as it was an HMO.

3. The history of the occupancy is briefly as follows. The Applicants entered into a one year fixed term AST agreement with the respondent from 20th August 2018 to 19th August 2019. The monthly rent was £3,466.66. On 26th April 2019 the Council attended the Property and became aware that it was an HMO that required licensing. The letter, addressed to the occupiers informed them of certain rights they had where a landlord failed to licence an HMO. It would appear that before this letter was sent it came to the attention of the Respondent that the Property did require licensing as he made an application on 15th April 2019.

4. The Applicants sought to recover by way of a Rent Repayment Order (RRO) under s44 of the 2016 Act, the rent for the period from 20th August 2018 to 14th April 2019. The sum claimed was £27,062.31.

5. Prior to the commencement of the hearing of this matter we were provided with four bundles of papers, two from each side. In the Applicants' bundles we had a copy of the application, the tenancy agreement, the reasons for the application, letters from the Council, copies of the freehold title, evidence of rental payments made and a calculation of the sum claimed. The second bundle sought to rebut the evidence of the Respondent, especially in respect of the history and complained about the late delivery of the Respondent's evidence.

6. The Respondent's bundles contained two witness statements, one providing background to the alleged offence and the second setting out expenses. We shall refer to these papers as necessary during the course of this decision.

7. In addition to the above we were provided with a skeleton argument by Mr Giles. Initially this sought to argue that there was no jurisdiction for the application but this was not a matter pursued at the hearing. The skeleton did set out the basis upon which we should deal with any award and referred us to the Upper Tribunal case of Parker v Waller [2012]UKUT (LC) 2012.

HEARING

8. We invited Mr Giles to proceed first. He told us that Mr Manandhar accepted that the property was an HMO and that the Council had designated the whole of the Borough as an area requiring licensing for properties having three or more persons sharing. Further he accepted that the Respondent did not have a licence and that accordingly an offence under s72(1) of the Housing Act 2004 (the 2004 Act) had been committed.

9. The hearing therefore proceeded on the basis of what amount, if any, we should allow to reduce the admitted maximum sum recoverable as an RRO of £27,062.31. Mr Gibbs starting point was that the Order should be for 10% - 20% of the amount claimed by the Applicants.

10. Mr Gibbs submitted that the Respondent was an amateur landlord, that he had not been fined by the Council for this offence and that there was no element of conduct we should take into account. He was of the view that following the UT decision in Parker v Waller we should concentrate on the profit made by the landlord and fixed the Order accordingly.

11. We then heard from Mr Manandhar. He had provided two witness statements. The first said that he was a waiter and that this provided his main source of income. He asked us to disregard any issues of conduct alleged by the Applicants. He told us he had two other properties, one in Camden and one in Islington. His reason for not applying for a licence for this Property was that he considered he was letting to one group under one agreement and that accordingly it was not a property which required to be licensed.

12. His statement went on to confirm that he had applied for a licence on 14th April 2019 and considered that the Applicants were using "fishing tactics" to get money out of him. He sought a dismissal of the RRO.

13. His second statement briefly set out details of expenses he considered we should take into account when making any Order and exhibited some email exchanges.

14. In evidence at the hearing he told us that the mortgage, which he wanted to offset against the rental income, was partly to refurbish the Property and the other flat at 46 Eversholt Street at a cost of £33,000, as well as to assist in the purchase of the other rental properties he owns with his wife. His

schedule of expenses indicated that the amount he considered should be offset was £34,769.47, giving on his calculation a profit, before tax of £6,830.45.

15. He told us that he had applied for a licence in respect of the other property he owned with his wife in Camden as this was let to three woman who it seems had taken separate tenancies. This licence application was made in 2017.

16. In answer to questions by Mr Bishop he accepted that most of the expenses he listed would have been incurred whether the Property was let or not. He accepted that the tenants had conducted themselves throughout the tenancy.

17. In answer to questions from us he said that he was not just a waiter at the restaurant but in fact a director, with two brothers, of the Company which ran the restaurant. Apparently, he was front of house and did some cooking.

18. We then heard from Mr Bishop. He confirmed that there was no issue on conduct, for either side. He considered that it might be reasonable to offset some expenses, those relating to building insurance and carpeting might be reasonable. He thought it was charitable to describe the Respondent as an amateur landlord.

19. In final submissions to us Mr Giles was of the view that this was an "oversight case" that is to say the failure to licence was not deliberate. The Respondent was not a 'rogue landlord'.

FINDINGS

20. It is not in dispute that the Property required an HMO licence from the time it was let to the Applicants until an application was made on 14th April 2019. The only issue for us to decide is the amount of the RRO.

21. We bear in mind the following. The Respondent is an owner, either with his wife or brother of at least 4 flats and therefore is not in truth an amateur landlord, although, to use the parlance, not a 'big player' in the private rental world. We are prepared to extend the benefit of the doubt to the Respondent concerning his reason for not applying for a licence, albeit that the excuse is somewhat weak given that he obtained a licence for his other property in Camden in 2017. We struggle to see that four students, clearly not related, would be any difference for licensing purposes than three females who shared his other flat in Camden. Further he was somewhat disingenuous in his description of his role as a waiter and it was only under questioning from us that the situation with regard to the mortgage became clearer.

22. There are no issues of conduct on either side.

23. The maximum amount that can be awarded is agreed at £27,062.31. We have considered the judgment in Parker v Waller. In our finding this is still good law, notwithstanding the introduction of the 2016 Act. From the

maximum sum we can make deductions to reflect the financial position of the Respondent.

24. The sums he sought to apply are not in our finding wholly allowable. We were told that the stair carpet was laid just before the letting and an additional fridge freezer purchased to accommodate four tenants. Further the applicants accepted that the sum of £500 was deductible for the replacement of a door. The carpet cost is £469.50 and the fridge freezer and a cooker is £624. These total £1,593. In respect of the mortgage, doing the best we can we assess that £33,000 was required for the refurbishment of the Property and the flat above. At 5% interest on a repayment basis over 20 year this would give an annual amount of £3,150. The rental period for which the Order is to be made is just under 8 months. Accordingly, taking a rough and ready approach, we would allow £2,000 in respect of the mortgage payments. This gives an allowance of £3,593, reducing the RRO to £23,470.

25. However, we consider that some allowance should be made against that amount to reflect the profit the Respondent would make on this Property. We bear in mind that the RRO is meant to be a penalty against a landlord who does not follow the law. It is a serious offence which could lead to criminal proceedings. Taking these matters into account and the lack of issues surrounding conduct, we consider it is reasonable to reduce the award by 25%. Accordingly, we find that an RRO should be made against the Respondent in the sum of £17,600, which should be paid to the Respondents, presumably to Mr Bishop for distribution amongst the Applicants, within 28 days of the date of this decision.

Name: Tribunal Judge Dutton **Date:** January 2020

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 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 to 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 (ie 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.

The Relevant Law - Housing and Planning Act 2016

41Application 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.

43Making 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).

44Amount 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

47Enforcement of rent repayment orders
(1)An amount payable to a tenant or local housing authority under a rent repayment order is recoverable as a debt.

(2)An amount payable to a local housing authority under a rent repayment order does not, when recovered by the authority, constitute an amount of universal credit recovered by the authority.

(3)The Secretary of State may by regulations make provision about how local housing authorities are to deal with amounts recovered under rent repayment orders.