FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AG/HMG/2019/0021**
Property	**:**	**Flat (above) 7 Brecknock Road, London, N7 0BL**
Applicants	**:**	**(1) Bethany Balkham** **(2) Jessica Hardcastle** **(3) Barbara Lanne**
Representatives	**:**	**Ms Balkham and Ms Hardcastle**
Respondent	**:**	**Demetra Charalambous**
Representative	**:**	**Miss Todd of Counsel**
Type of application	**:**	**Application under sections 40, 41, 43 & 44 of the Housing & Planning Act 2016 in respect of a Rent Repayment Order**
Tribunal members	**:**	**Tribunal Judge I Mohabir** **Mr K Ridgeway MRICS**
Date and venue of determination	**:**	**20 January 2020** **10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**20 January 2020**

DECISION

Introduction

1. This is an application made by the Applicants under section 41 of the Housing and Planning Act 2016 ("the Act") for a rent repayment order against the Respondent in respect of Flat (above) 7 Brecknock Road, London, N7 0BL ("the property").

2. The factual background to the application is largely a matter of common ground.

3. The Respondent is the freehold owner of the property. There is a hair salon business below the property, which is owned and operated by her.

4. On 15 September 2018, the Respondent granted an assured shorthold tenancy of the property to the Applicants for a fixed term of 12 months ending on 14 September 2019. The total rent payable was £2,145 in advance on 15th day of each calendar month. A deposit of £2,970 was paid by the Applicants. The tenancy agreement was prepared by the Respondent's letting agent, Winkworth estate agents.

5. The rent was apportioned by the Applicants at £690, £705 and £750 per calendar month respectively in relation to the size of the rooms they occupied separately.

6. Subsequently, the First Applicant sub-let her room (with consent) to a Michael Skvarenina from 22 June 2019 to 27 July 2019 and then to a Claire Smith from 27 August 2019 to 14 September 2019. The Third Applicant sub-let her room to a Charlotte Plucknett from 18 May 2019 to 14 September 2019.

7. It is the First Applicant's case that she did not profit from the subletting and the Third Applicant unintentionally made a profit of £17.91.

8. In or around August 2019, an Environmental Health Officer from the London Borough of Camden ("the Council") attended the property to investigate reported cracks in the internal walls. The officer formed the view that the property ought to have an HMO licence. On 25 September

9. It seems that the Council wrote to the Respondent care of Winworth on or about 13 September 2019 regarding the offence of failing to obtain an HMO licence for the property. Apparently, Winkworth did not forward this correspondence to the Respondent. When the Respondent later became aware of the requirement to obtain a licence, she made an application on 25 September 2019.

10. In an undated letter, the Council wrote directly to the Respondent stating that *"an offence has been committed by you of failing to licence an HMO which requires a licence in relation to Flats 1st & 2nd Floor, 7 Brecknock Road, N7 0BL under section 7291) of the Housing Act 2002"*. It is clear from the letter that the Council were satisfied that the offence had been committed.

11. Enclosed with the letter was a Notice of Intent dated 22 November 2019 to impose a financial penalty of £1,500 for the offence. The letter went on to state that the Council did not consider it in the public interest to seek to impose a financial penalty, as the Respondent was making progress in carrying out the works that were the subject matter of an improvement notice served earlier on 24 October 2019. At the hearing, the Tribunal was told that the Respondent had in fact paid the penalty of £1,500 that was imposed by the Council.

12. The improvement notice resulted from the inspection carried out in August 2019 by the Council's Environmental Health Officer who expressed significant concerns about poor fire safety measures at the property. In particular, the separation between the ground floor hairdressers and the escape route shared by the property and Flat 9a was very poor with insubstantial walls and a very flimsy door meaning there was very little to prevent smoke and flame from spreading rapidly.

13. At the hearing, the Tribunal was told that the Respondent had taken significant steps to ensure the remedial work was carried out and has spent approximately £16,000 so far in this regard.

14. On 7 September 2019, the Applicants made this application for a rent repayment order.

Relevant Law

Making of rent repayment order

15. Section 43 of the Housing and Planning Act 2016 ("the Act ") provides:

> "(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—
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> (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).

Amount of order: tenants

16. Section 44 of the Act provides:

(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 the 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."

Hearing

17. The hearing in this case took place on 20 January 2020. The first and Second Applicants appeared in person. Miss Todd of counsel appeared for the Respondent. Both parties agreed that it was appropriate to deal with the case by way of submissions, which the Tribunal then heard.

18. The issues before the Tribunal were whether an offence had been committed by the Respondent under section 40 of the Act and whether it was

appropriate to make a rent repayment order. If so, the amount of any such order in respect of each of the Applicants.

19. The legal requirement for an HMO to be licensed commenced on 1 October 2017. The unchallenged evidence was that the subject property was a house of multiple occupation and had never been licensed during the entire occupation by the Applicants. The Tribunal did not accept Miss Todd's primary submission that the absence of the Council's licensing policy or scheme meant that it could not be satisfied that an HMO licence was required. The absence of this was irrelevant. As stated above at paragraph 10, it is clear that the council in its letter to the Respondent had formed the view that the offence of failing to obtain an HMO licence had been committed by her. Moreover, on 25 September 2019, the Respondent considered it necessary to apply for such a licence rather than seek clarification from the Council as to whether a licence was required at all. The inference to be drawn is that the Respondent also considered that the property needed to be licensed.

20. The Tribunal was, therefore, satisfied beyond reasonable doubt that the Respondents' had committed an offence under section 72(1) of the Housing Act 2004 (as amended), namely, that they had been in control or management of an unlicensed HMO.

21. It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in respect of each of the Applicants for the 12-month period commencing on 15 September 2018. Any award could not exceed the total rent of £25,740 received by the Respondent for this period of time.

22. As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act see: ***Parker v Waller*** [2012] UKUT 301 (LC) at paragraph 26

(a) that at the time of the letting, the Respondent had the benefit of professional advice from her letting agent, Winkworth. Indeed, at paragraph 6 of her witness statement, the Respondent concedes that she was advised by Winkworth in these terms, yet she made no application for a licence.
(b) had the Respondent make such an application, it would have revealed the fire hazard (albeit category 2) in respect of which the improvement notice was issued. This posed a potentially serious safety risk to the occupants of the property.
(c) on balance, the Tribunal was prepared to accept that the Respondent was not a "rogue" landlord and her ignorance of the need to obtain an HMO licence was unintentional. Nevertheless, this does not provide a defence to liability under the Act.
(d) that during the term of the tenancy, the Respondent had addressed the Applicants' complaints about minor disrepair and the absence of a microwave or vacuum. The Tribunal considered that the remaining complaint regarding the broken outer glazing of the bathroom window

and the temperature control on the hob did not have a material effect on the amount of its award.

(e) that, once the Respondent became aware of the need to obtain a licence she applied promptly and also commenced the works that are the subject matter of the improvement notice promptly. It was not challenged that in the course of these works, the Respondent had kept both the occupiers and the Council informed of the progress of the works.

(f) that the Respondent did not have any previous convictions of this kind.

(g) importantly, the Council did not consider the Respondent's offence to be sufficiently serious to prosecute her or to impose a fine greater than £1,500.

(h) the Tribunal had no evidence about the Respondent's financial circumstances.

23. Having regard to the above matters, the Tribunal concluded that a global award of £5,000 should be made in favour of the Applicants to be apportioned in accordance with their rental liability. The Tribunal reached this figure by having regard to the £16,000 spent by the Respondent so far on remedial works and the £1,500 she has already paid to the Council. When these are added to the Tribunal's award, it equates to approximately £25,000, which is the rental income received by the Respondent during the term of the tenancy.

Tribunal Judge I Mohabir

20 January 2020

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).