



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

Case reference : **LON/00AY/HMF/2020/0220**
HMCTS Code : **VIDEO REMOTE**

Property : **Room 4 41 Valley Road, London**
SW16 2XL

Applicant : **Mr Mohammad Lallmamode**

Representative : **In person**

Respondent : **TLK Property & Investments Ltd**

Representative : **Mr Rees Phillips, counsel**

Type of application : **Rent repayment order**

Tribunal : **Judge Tagliavini**
Mrs J Mann, MCIEH

Place and date of hearing : **10 Alfred Place, London WC1E 7LR**
17 May 2021

Date of decision : **18 May 2021**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was **V:VIDEOREMOTE**. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing. The tribunal was referred to the applicant's documents and the respondent's documents 1 to 139. The order made is described at the end of these reasons.

Summary decision of the tribunal

- (1) The tribunal finds that the applicant has failed to prove beyond reasonable doubt that an offence was committed at the relevant time of a failure to obtain a HMO licence under s.72(1) of the Housing Act 2004 or that the respondent was in breach of s.1 of the Protection from Eviction Act 1977.**
 - (2) The application for a rent repayment order is refused.**
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The application

1. This is an application for a rent repayment order in the sum of £8,400 under s.41 of the Housing and Planning for alleged breaches of s.72(1) of the Housing Act 2004 and s.1 of the Protection from Eviction Act 1977.

Preliminary issue

2. At the hearing the applicant made an application to add his joint tenant and partner Ms Elzbieta Milewska to the application. This application was opposed by the respondent, as it necessitated an adjournment for either further evidence to be provided by the applicant and/or further evidence from the respondent to answer it. Mr Lallmamode already had ample time to prepare his case and to ask his partner to make a witness statement.
3. The tribunal refused the application to add Ms Milewska to the proceedings, as she had not indicated a wish to be joined and did not appear at the oral hearing, either as a witness for the applicant or simply to provide informal support to the applicant.

Background

4. By a written tenancy agreement dated 3 March 2018 the applicant became the joint assured shorthold tenant with his partner Elzbieta Milewska of Room 4, 41 Valley Road, London SW16 2XL ('the premises') at a rent of £700 per calendar month for a term of 12 months. On 26 February 2020 an application for an HMO was received by the London Borough of Lambeth in which the property was described as semi-detached two-storey house with 6 units occupied by 9 persons with shared use of kitchen and bathroom/w.c. facilities. A HMO licence was granted to the respondent on 31 August 2020 for a period of one year.

The applicant's evidence

5. In support of the application the applicant provided the tribunal with a number of documents which included a copy of the tenancy agreement; bank statements showing payments made to the respondent; an email from Ms Christianah Babalola EHO of the London Borough of Lambeth confirming that 41 Valley Road, London SW16 2XL was being used as an HMO; photographs of smoke alarms fitted, previous county court proceedings and emails from the respondent asking all occupants to relocate to alternative accommodation to allow emergency works to be carried out.
6. In oral evidence the applicant told the tribunal that he was seeking to recover the rent for period 3 March 2018 to 2 March 2019. The applicant told the tribunal that he had continued to live at the premises with his partner since the expiry of his 12 months contractual term and that rent had not been paid in full, from about July 2019 and on questioning by Mr Rees Phillips agreed that rent arrears now amounted to £13,900 as at May 2021.
7. The applicant told the tribunal that in respect of the offence of harassment, he relied on the two county court claims made against him and the email/letter request for him and his partner to vacate the premises and relocate to alternative accommodation because of an emergency arising in the house with respect to the supply of electricity and problems with the drains.
8. The applicant told the tribunal that the bank statements provided showed that his partner, Ms Milewska had paid the respondent all of the rent due from her bank account and that he would pay 50% of that amount in cash to his partner which represented his 'share' of the rent. On cross-examination, the applicant refused to confirm that he was willing to start paying rent again and accused the respondent of being a 'fraudster' and was unwilling to 'support' a persistent offender and repeated these remarks in his closing statements.
9. On questioning by the tribunal, the applicant provided 4 names of other persons living at 41 Valley Road when he moved into the

premises but could not be sure of which rooms they occupied or how long they had remained there.

The respondent's evidence

10. The respondent relied on its documentary evidence only and did not request Ms Jordan Ellis to give oral evidence in support of her witness statement dated 29 March 2021.
11. Mr Rees Phillips submitted that despite being a joint tenant, Mr Lallmamode had not joined his joint tenant and partner to the application at the outset and it was unclear as to whether she had acquiesced in the applicant seeking repayment of 100% of the rent. Mr Rees Phillips submitted that there was no evidence that the applicant had paid any rent at all and had agreed there were now rent arrears in the sum of £13,900 owing to the respondent. Therefore, the applicant could not benefit from a rent repayment order when in fact there was no evidence to establish that he had paid any rent at all.
12. Mr Rees Phillips also submitted that the applicant had failed to establish that an offence of failing to licence an HMO was being committed, during the 12 months period 3 March 2018 to 2 March 2019. The only evidence of an offence for failing to licence was contained in the single email from the London Borough of Lambeth dated 11 February 2020, which confirmed visits to 41 Valley Road, had taken place on 6 and 9 January 2021. Witness statements from any of the persons found at the premises on those visits had not been provided to the tribunal. A claim for a rent repayment order covering a later period i.e. from 6 or 9 January 2021 required the applicant to have been paying rent in the first instance.
13. Mr Rees Phillips submitted that the conduct of the respondent did not nearly amount to harassment of the applicant and this part of the claim should be dismissed by the tribunal. Lastly, Mr Rees Phillips submitted that if any rent repayment order was to be made this should be greatly reduced to reflect the applicants conduct in his failing to pay rent for an extended period.

The tribunal's decision and reasons

(1) Failure to obtain HMO licence

14. The tribunal finds that the applicant has failed to prove beyond all reasonable doubt that an offence was being committed under s.71(2) of the Housing Act 2004 by the respondent at any time before an application for a HMO licence was made by the respondent on 26 February 2020 after which date, a defence by virtue of s.73(2)(b) of the Housing Act 2004 can be relied upon by the respondent. Although a litigant in person, the applicant failed to provide any witness statements from any of the other tenants, including his partner and

joint tenant, from which the tribunal could make findings or reasonable inferences. Therefore, the application for a rent repayment order for the period 3 March 2018 to 2 March 2019 or any other period in the sum of £8,400 (or other sum) is refused.

(2) Harassment

15. The tribunal finds that the actions of the respondent on which the applicant relies, do not amount to harassment under the provisions of s.1 of the Protection from Eviction Act 1977. Therefore, the tribunal dismisses the application and refuses to make a rent repayment order as sought by the applicant.
16. Although, the respondent made a counterclaim for rent arrears in the sum of £12,500 this was not pursued at the hearing of the application other than as reason to make a reduction in any rent repayment order made as it ordinarily falls outside of the jurisdiction of the tribunal.

Name: Judge Tagliavini

Dated: 18 May 2021

Rights of appeal from the decision of the tribunal

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).