



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

Case Reference : **LON/00BK/HMF/2022/0227**

HMCTS Code : **V: CVP REMOTE**

Property : **12 Hawthorne House, Churchill Gardens, London SW1V 3ES**

Applicants : **Ms Eileen Vanessa Hahn (1)
Ms Miyin Sofia Delgado Karl (2)
Ms Felicia Hu (3)**

Representative : **Ms Eileen Vanessa Hahn**

Respondents : **Mr Girish Madhru (1)
Mrs Chandni Mashru (2)**

Representative : **Unrepresented**

Type of application : **Application for a Rent Repayment Order by Tenants – Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016**

Tribunal members : **Judge Donegan
Ms Susan Coughlin MCIEH
(Professional Member)**

Date of hearing : **21 February 2023**

Date of decision : **27 February 2023**

DECISION

Covid-19 pandemic: description of hearing

This has been a remote video hearing, which has not been objected to by the parties. The form of remote hearing was V: CVPREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined at a remote hearing. The Tribunal were referred to documents in the applicants' bundle of 209 pages and those detailed at paragraph 18 of this decision, the contents of which have been noted.

Decision of the Tribunal

1. **The Tribunal makes the following rent repayment orders:**
 - (a) **The respondents shall repay the sum of £3,760 (Three Thousand, Seven Hundred and Sixty Pounds) to the first applicant, Ms Eileen Vanessa Hahn, by 27 March 2023.**
 - (b) **The respondents shall repay the sum of £3,760 (Three Thousand, Seven Hundred and Sixty Pounds) to the second applicant, Ms Miyin Sofia Delgado Karl, by 27 March 2023.**
 - (c) **The respondents shall pay the sum of £3,760 (Three Thousand, Seven Hundred and Sixty Pounds) to the third applicant, Ms Felicia Hu, by 27 March 2023.**
2. **The respondents shall reimburse the Tribunal fees paid by the applicants in the total sum of £300 (Three Hundred Pounds). The respondents must pay this sum to the applicants by 27 March 2023.**

The background

3. This application concerns an assured shorthold tenancy of 12 Hawthorne House, Churchill Gardens, London SW1V 3ES ('the Property'). The tenancy agreement is dated 15 September 2021 and named the respondents as the "*Landlord(s)*" and the applicants as the "*Tenant(s)*". It was for a term of one year commencing on 18 September 2021 at a rent of £2,350 per month. The tenancy was extended by two weeks, by agreement and the applicants vacated on 01 October 2022.
4. The tenancy was arranged by letting agents, Red Cube Limited ('Red Cube'). The applicants' point of contact at RCL was Ms Anusha Aukhaj.
5. The tenancy agreement includes the following wording:
*"Landlord's Agent Red Cube Ltd
and Address Balfour House 741 High Road, London, N12 0BP
Note: Under s. 48, Landlord and Tenant Act 1987, notices can be served on the Landlord at the above address"*
6. The Property is a three-bedroom flat in a local authority block, comprising kitchen, bathroom/WC, separate shower room, sitting room and three bedrooms. The applicants are not members of the same family, and each had their own bedroom. The kitchen, bathroom/WC, shower room and sitting room were communal.
7. On 21 April 2021 Westminster City Council designated an additional licensing scheme in respect of houses in multiple occupation ('HMOs').

The designation applies to the entire district of the City of Westminster and came into force on 30 August 2021. It applies “to all HMOs as defined by section 254 of the Housing Act 2004 that are occupied by 3 or more persons comprising 2 or more households, and HMOs as defined in section 257 of that Act where less than two-thirds of the self-contained flats are owner-occupied...” subject to certain exemptions.

8. During the designation every HMO in the designated area must be licensed under section 61 of the Housing Act 2004 (‘the 2004 Act’)
9. The Property is within the designated area and was not licensed throughout the applicants’ occupation.

The application and procedural history

10. The applicants each seek a rent repayment order (‘RRO’) pursuant to sections 40 to 44 of the Housing and Planning Act 2016 (‘the 2016 Act’). They nominated Ms Eileen Hahn as the lead applicant.
11. The Tribunal originally received a combined RRO application dated 30 September 2022. At the Tribunal’s request, the applicants then submitted individual applications. Panel 4 of the application forms named the respondents as “*Mr. Girish Madhru & Mrs. Chandni Mashru*” and gave their address and email address as “*Red Cube, Balfour House, 741 High Road N12 0BP*” and “*lettings@redcubeproperty.com*”. All Tribunal correspondence has been sent to the respondents at both addresses. They have not responded to this correspondence or engaged with these proceedings. Ms Aukhaj of Red Cube was clearly aware of the RRO applications as she referred to them in a WhatsApp group conversation with the applicants on 03 October 2022.
12. The tribunal issued directions on 17 November 2022 and the case was subsequently listed for a remote video hearing on 21 February 2023. Directions 5-11 dealt with digital bundles. Direction 5 required the applicants to produce their bundle by 16 December 2022 and Direction 9 required the respondents to produce their bundle by 20 January 2023. Direction 9 listed the documents to be included in the respondents’ bundle, including:
 - “(a) *a full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advance by the Applicant, and dealing with the issues identified above*
 - (b) *a copy of all correspondence relating to any application for a licence and any licence that has now been granted*
 - ...
 - (f) *a statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see Annexe), including full details of any conduct by the tenant said to*

be relevant to the amount of the Rent Repayment Order sought. If reliance is placed on the landlord's financial circumstances, appropriate documentary evidence should be provided (redacted as appropriate)".

13. The applicants produced their bundle in accordance with the directions. The respondents did not.
14. The relevant legal provisions are set out in the appendix to this decision.

The hearing

15. The hearing took place on 21 February 2023, by remote video conferencing. All three applicants attended and gave oral evidence. The respondents did not attend and were not represented.
16. Prior to the hearing the case officer wrote to Ms Hahn querying if she had alternative contact details for the respondents. She replied in an email dated 16 February 2023, giving Red Cube's address and telephone number and two alternative numbers.
17. The Tribunal is satisfied these proceedings have been validly served, as they were served on the respondents at Red Cube's email and postal addresses. The latter was given as their address for service of notices in the tenancy agreement. Further, Ms Aukhaj of Red Cube was clearly aware of the RRO applications, as evidenced by the WhatsApp conversation on 03 October 2022.
18. The applicants' bundle included copies of the Tribunal applications and directions, the tenancy agreement, a statement of case, witness statements, evidence of the rent payments, screenshots of the WhatsApp conversation, correspondence with Westminster City Council and other relevant documents. It did not include Land Registry entries for the Property or the additional licensing designation. At my request, Land Registry entries for the freehold and leasehold titles were produced the morning of the hearing and the designation was supplied during a short break in the hearing.
19. The registered leaseholders of the Property, as shown on the Land Registry entries, are Girish Mashru and Chandni Mashru. The former differs slightly from the name given on the tenancy agreement and the Tribunal application (Girish Madhru).
20. At the start of the hearing, Ms Hahn described the layout of the Property and addressed the rent payments. The total sum paid in the 12 months to 01 October 2022 was £28,200. The bundle included a statement from Red Cube, detailing these payments and bank statements from the applicants.

21. The applicants then gave oral evidence and confirmed their witness statements, each dated 09 October 2022. These were extremely brief and gave limited information about their tenancy and rent payments and confirmed they shared amenities at the Property, including bathroom and kitchen facilities. There was no information about the condition of the Property, the seriousness of any offence or the respondents' conduct. I explained their evidence was restricted to the information in their statements.
22. In response to questions from Ms Coughlin, the applicants provided further details of their rent payments. Ms Hahn had a guarantor and paid her rent monthly, throughout. Ms Delgado Karl and Ms Hu did not have guarantors, so each paid six months' rent in advance and then paid monthly. On one occasion, in January 2022, the rent was paid late. The arrears were cleared in February 2022, after notification from Red Cube.

Findings

23. The Property was an HMO throughout the applicants' occupation. It meets the standard test at s.254(2) of the 2004 Act in that the living accommodation was occupied by them as their only or main residence, their occupation constituted the only use of that accommodation, they paid rent for this occupation, they did not form a single household and they shared one or more of the basic amenities (the kitchen, bathroom/WC, shower room and living room).
24. The Property is within the City of Westminster, so the 2021 designation applies. As at 03 October 2022, there had been no HMO licence application, as evidenced by an email in the bundle from Mr Trevor Withams of Westminster City Council. The Tribunal is satisfied the Property was unlicensed throughout the applicants' occupation.
25. The respondents were the applicants' landlords throughout the tenancy (18 September 2021 to 01 October 2022), as evidenced by the tenancy agreement.
26. The Tribunal is satisfied, beyond a reasonable doubt that an offence has been committed under section 72(1) of the 2004 Act in that the respondents controlled or managed an unlicensed HMO which was required to be licensed. They are the landlords named in the tenancy agreement and at least one of them, Chandni Mashru, is a registered leaseholder of the Property.
27. The respondents have not filed a bundle or engaged with these proceedings. There was no evidence or information to suggest they had a reasonable excuse for their failure to licence the Property.

The Tribunal's decision

28. Having satisfied itself that an offence had been committed under section 72(1) of the 2004 Act, the Tribunal then considered whether to make an RRO. Given the respondent's failure to licence the Property throughout the tenancy and the nature of the offence it is appropriate to make such an order.
29. This is an application under section 41 of the 2016 Act and the amount of the RRO falls to be determined under section 44. The respondents have not been convicted of any offence (s44(4)(c)) and did not supply details of their financial circumstances (s44(4)(b)).
30. There have been numerous Upper Tribunal decisions on the quantification of RROs, including ***Acheampong v Roman [2022] UKUT 239 (LC)*** where Judge Cooke gave the following guidance:
- “20. The following approach will ensure consistency with the authorities:*
- a. Ascertain the whole of the rent for the relevant period.*
 - b. Subtract any element of that sum that represents payment for utilities that only benefited the tenant, for example gas, electricity and internet access. It is for the landlord to supply evidence of these, but if precise figures are not available and experienced tribunal will be able to make an informed estimate.*
 - c. Consider how serious this offence was, both compared to other types of offence in respect of which a rent repayment made by made (and whose relative seriousness can be seen from the relevant maximum sentences on conviction) and compared to other examples of the same offence. What proportion of the rent (after deduction as above) is a fair reflection of the seriousness of this offence? That figure is then the starting point (in the sense that that term is used in criminal sentencing); it is the default penalty in the absence of any other factors but it may be higher or lower in light of the final step.*
 - d. Consider whether any deduction from, or addition, to that figure should be made in the light of the other factors set out in section 44(4).”*
31. Following this approach, the rent paid during the relevant period (02 October 2021 to 01 October 2022) was £28,200. There is no deduction for utilities, as the applicants paid these in addition to their rent. There was no evidence as to condition of the Property or the seriousness of the offence. The inevitable conclusion is the offence is at the lower end of the range, albeit it occurred throughout the applicants' tenancy

(approximately 12.5 months). Having regard to these findings, the offence justifies repayment of 40% of the rent.

32. Finally, the Tribunal considered the s.44(4) factors. There was no evidence of the respondents' conduct, good or bad and there was nothing from them to suggest poor conduct on the part of the applicants. The January 2022 rent was paid late but the arrears were cleared within a month or so. There was no evidence or information about the respondent's financial circumstances. Given the absence of relevant evidence and information the Tribunal makes no adjustment to the 40% assessment.
33. All of this means the respondent must repay £11,280 to the applicants being 40% of the total rent paid during the relevant period (£28,200). This equates to £3,760 per applicant and these sums must be repaid within 28 days of this decision.
34. Given the outcome of the RRO applications and the respondents' lack of engagement, the Tribunal also orders reimbursement of the application and hearing fees paid by the applicants, pursuant to rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules. These total £300 and must be reimbursed within 28 days of this decision.

Name: Judge Donegan

Date: 27 February 2023

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.

Appendix of relevant legislation

Landlord and Tenant Act 1987

48 Notification by landlord of address for service of notices

- (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenants.
- (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
- (3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of any order of any court or tribunal, there is in force an appointment of a receiver or a manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

Housing Act 2004

PART 2

LICENSING OF HOUSES OF MULTIPLE OCCUPATION

55 Licensing of HMOs to which this Part applies

- (1) This Part provides for HMOs to be licensed by local housing authorities where –
 - (a) they are HMOs to which this Part applies (see subsection (2)), and
 - (b) they are required to be licensed under this Part (see section 61(1)).
- (2) This Part applies to the following HMOs in the case of each local housing authority -
 - (a) any HMO in the authority's district which falls within any prescribed description of HMO, and
 - (b) if an area is for the time being designated by the authority under section 56 as subject to additional licensing, any HMO in that area which falls within any description of HMO specified in that designation.
- (3) The appropriate national authority may by order prescribe descriptions of HMOs for the purposes of subsection 2(a).

...

56 Designation of areas subject to additional licensing

- (1) A local housing authority may designate, either -
 - (a) the area of their district, or
 - (b) an area in their district,as subject to additional licensing in relation to a description of HMOs specified in the designation, if the requirements of this section are met.

...

61 Requirement for HMOs to be licensed

- (1) Every HMO to which this Part applies must be licensed under this Part unless –
 - (a) a temporary exemption notice is in force in relation to it under section 62, or
 - (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4.
- (2) a licence under this Part is a license authorising occupation of the house concerned by not more than a maximum number of households or persons specified in that licence.

...

72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control or managing a HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

...

- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse –
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupying the house, or
 - (c) for failing to comply with the condition,as the case may be.

...

254 Meaning of “house in multiple occupation”

- (1) For the purposes of this Act a building or a part of a building is a “house in multiple occupation” if
 - (a) it meets the conditions in subsection (2) (“the standard test”);
 - (b) it meets the conditions in subsection (3) (“the self-contained flat test”);

- (c) it meets the condition in subsection (4) (“the converted building test”);
 - (d) an HMO declaration is in force in respect of it under section 255; or
 - (e) it is a converted block of flats to which section 257 applies.
- (2) A building or a part of a building meets the standard test if –
- (a) it consists of one or more units of living accommodation not consisting of a self-contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household (see section 258);
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (see section 259);
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation; and
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities.

...

258 HMOs: persons not forming a single household

- (1) This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254.
- (2) Persons are to be regarded as not forming a single household unless –
 - (a) they are all members of the same family, or
 - (b) their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purposes of subsection 2(a) a person is a member of the same family as another if –
 - (a) those persons are married to, or civil partners of, each other or live together as if they were a married couple or civil partners;
 - (b) one of them is a relative of the other; or
 - (c) one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple.
- (4) For these purposes –

- (a) a “couple” means two persons who fall within subsection (3)(a);
- (b) “relative” means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
- (c) a relationship of the half-blood shall be treated as a relationship of the whole blood, and
- (d) the stepchild of a person shall be treated as his child.

...

259 HMOs: persons treated as occupying premises as only or main residence

- (1) This section sets out when persons are to be treated for the purposes of section 254 as occupying a building or part of a building as their only or main residence.
- (2) A person is to be treated as so occupying a building or part of a building if it is occupied by the person –
 - (a) as the person’s residence for the purpose of undertaking a full-time course of further or higher education,
 - (b) as a refuge, or
 - (c) in any other circumstances which are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.

...

SCHEDULE 4

LICENCES UNDER PARTS 2 AND 3: MANDATORY CONDITIONS

...

- 1A- (1) Where the HMO is in England, a licence under Part 2 must include the following conditions
- (2) Conditions requiring the licence holder –
 - (a) to ensure that the floor area of any room in the HMO used as sleeping accommodation by one person aged over 10 years is not less than 6.51 square meters.

...

Housing and Planning Act 2016

40 Introduction and key definitions

- (1) This Chapter confers power on the First-tier Tribunal to make a rent repayment order where a landlord and 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 to that landlord.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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 a rent repayment order

- (1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond a reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord had 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 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 this table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
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 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,
 - (c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.