FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/HMF/2021/0206**
HMCTS code (paper, video, audio)	:	**V: CVP VIDEO**
Property	:	**Ground Floor Flat, 270 Camden Road, London, NW1 9AB**
Applicants	:	**(1) Owen Webster** **(2) Jasmine Blankennagel** **(3) Phoebe Tierney** **(4) Alexander Haseldine** **(5) Eleanor Greene** **(6) India West** **(7) John Cordey** **(8) Iona Forsyth** **(9) Zoe Le Goff** **(10) Juliette Cataldo**
Representative	:	**Ms Clara Sherratt of Justice for Tenants**
Respondent	:	**O'Neill Investments Limited**
Representative	:	**Mr Thomas Rothwell of Counsel instructed by Mills & Reeve LLP**
Type of Application	:	**Application for a rent repayment order by tenant** Sections 40, 41, 43, & 44 of the Housing and Planning Act 2016
Tribunal Members	:	**Judge N Hawkes** **Miss Rachael Kershaw**
Venue and date of hearing	:	**Remote video hearing on 3 March 2022**
Date of Decision	:	**17 March 2022**

DECISION

Covid-19 pandemic: VIDEO HEARING

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was V: CVP REMOTE. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to are contained in the separate digital bundles provided by the Applicants and by the Respondent, the contents of which we have noted. The order made is described below.

Decisions of the Tribunal

Amended pursuant to Rule 50 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 on 4 April 2022

1. The Tribunal makes a rent repayment order in favour of Owen Webster in the sum of £1,563.71.

2. The Tribunal makes a rent repayment order in favour of Jasmine Blankennagel in the sum of £8,316.

3. The Tribunal makes a rent repayment order in favour of Phoebe Tierney in the sum of £8,261.68.

4. The Tribunal makes a rent repayment order in favour of Alexander Haseldine in the sum of £1,703.36.

5. The Tribunal makes a rent repayment order in favour of Eleanor Greene in the sum of £8,261.68.

6. The Tribunal makes a rent repayment order in favour of India West in the sum of £160.48.

7. The Tribunal makes a rent repayment order in favour of John Cordey in the sum of £1,563.71.

8. The Tribunal makes a rent repayment order in favour of Iona Forsyth in the sum of £8,311.68.

9. The Tribunal makes a rent repayment order in favour of Zoe Le Goff in the sum of £1,426.62.

10. The Tribunal makes a rent repayment order in favour of Juliette Cataldo in the sum of £8,261.68.

11. The Tribunal orders the Respondent to reimburse the Tribunal fees in the total sum of £300 paid by the Applicants.

The background

1. By an application dated 26 August 2021, each of the Applicants applied for a rent repayment order ("RRO") pursuant to section 41 of the Housing and Planning Act 2016 ("the 2016 Act") against the Respondent.

2. The Applicants were tenants of the Ground Floor Flat, 270 Camden Road, London, NW1 9AB ("the Property") for various different periods of time from 2018 to 2020 and the Respondent was their landlord. The living accommodation comprised five bedrooms together with a shared kitchen and a bathroom.

3. At paragraph 10 of their Statement of Case, the Applicants state:

"The Premises were occupied as follows:

• Room 1: Juliette Marie Cataldo occupied the Property from 1/09/2019 until 31/08/2020. Juliette was replaced by Owen Webster who moved in on the 01/09/2020 and continued to live in the Premises after the relevant period.

• Room 2: Phoebe Tierney lived in Room 2 from 01/09/2019 until 31/08/2021.

• Room 3: Iona Forsyth lived in Room 3 from 01/09/2018 to 31/08/2020. Iona was replaced by Alex Haseldine who moved in on the 01/09/2020 and continued to live in the Premises after the relevant period.

• Room 4: Jasmin Blankennagel moved into the Premises on 01/09/2018 and [the] tenancy ended on 31/08/2020. Jasmin was replaced by Zoe Le Goff for the tenancy commencing 01/09/2020. India West replaced Zoe after she move[d] out on 31/10/2020. India moved into the Premises on 01/11/2020 and continued to live in the Premises after the relevant period

• Room 5: Eleanor Greene lived in Room 4 from 01/09/2019 to 31/08/2020. Eleanor was replaced by John Cordey who moved in on 01/09/2019 and continued to live in the Premises after the relevant period."

4. These facts were not disputed at the hearing. The Applicants assert that, during these periods of occupation, the Respondent had control of or was managing a house in multiple occupation ("HMO") which was required by be licenced under the Housing Act 2004 ("the 2004 Act") but which was not so licenced.

5. The Tribunal has been informed that, on 21 January 2021, the Respondent received a Notice of Intent to impose a financial penalty in the sum of £25,000 from the local authority (the maximum amount of any financial penalty is £30,000). However, this was subsequently reduced by a factor of 50%, having regard to the state of repair of the Property (although not fully meeting the requirements of the HMO standards/room sizes) and the speed with which the Respondent made HMO licence applications for its properties following an enforcement visit.

6. On 8 October 2021, the Tribunal issued Directions leading up to a final hearing.

The hearing

7. The final hearing took place by video on 3 March 2022. The Applicants were represented at the hearing by Ms Clara Sherratt of Justice for Tenants and the Respondent was represented by Mr Thomas Rothwell of Counsel, instructed by Mills & Reeve LLP.

8. The Tribunal heard oral evidence of fact from the following Applicants:

   (i) Mr Owen Webster;

   (ii) Ms Eleanor Greene;

   (iii) Ms Iona Forsyth;

   (iv) Ms Zoe La Goff; and

   (v) Ms Juliette Cataldo.

9. The Tribunal heard oral evidence of fact on behalf of the Respondent from Mr Robert Wybrow, one of two property managers working for the Respondent company. Mr Sean O'Neil also attended the hearing on behalf of the Respondent.

The issues in dispute

10. Section 40 of the 2016 Act provides that a RRO is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

11. Statutory guidance for Local Housing Authorities concerning RROs under the 2016 Act was published on 6 April 2017 ("the Statutory Guidance"). The Tribunal has had regard to the Statutory Guidance in determining this application.

12. Section 41 of the 2016 Act provides:

(1) A tenant … 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."

13. Section 43 of the 2016 Act provides:

43 Making 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.

14. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 72(1) of the 2004 Act of controlling or managing an unlicensed HMO.

15. Section 72 of the 2004 Act provides, so far as is material:

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an 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 occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

16. In its statement of case, the Respondent admitted that the Property is a HMO which was required to be licensed but which was not licenced and that the Respondent was a person having control of or managing an HMO within the meaning of section 263 of the 2004 Act. However, the Respondent contended that it had a complete defence to liability under section 72(5) of the 2004 Act. Since filing its statement of case and having considered *Thurrock Council v Daoudi* [2020] UKUT 209 (LC), the Respondent has conceded liability and the only issue in dispute concerns the quantum of the RROs.

17. Further, having considered the evidence in this case, the Tribunal is satisfied beyond reasonable doubt that the alleged housing offence has been committed.

18. It is not in dispute that the offence related to housing that, at the time of the offence, was let to the Applicants and the applicable periods and maximum amount which can be ordered under section 44(3) of the 2016 Act are not in dispute. The sums claimed by the Applicants are as follows:

(i) Owen Webster: is claiming is £1,798.88 for the period of 01/09/2020 to the 09/11/2020. £790.40 pcm: £25.98 per day x 69 days = £1793.01

(ii) Jasmine Blankennagel is claiming is £9,240.00 for the period of 01/09/2019 – 31/08/2020. £770 pcm: £25.31 per day x 365 days = £9,240.00

(iii) Phoebe Tierney: is claiming is £9,235.20 for the period of 01/09/2019 – 31/08/2020. £769.60 pcm: £25.30 per day x 365 days = £9,235.20

(iv) Alex Haseldine, is claiming is £1,798.88 for the period of 01/09/2020 to the 09/11/2020. £790.40 pcm: £25.98 per day x 69 days = £1793.01

(v) Eleanor Greene is claiming is £9,235.20 for the period of 01/09/2019 – 31/08/2020. £769.60 pcm: £25.30 per day x 365 days = £9,235.20

(vi) India West is claiming is £218.08 for the period of 01/11/2020 – 09/11/2020. £790.40 pcm: £25.98 per day x 9 days = £233.87

(vii) John Cordey: is claiming is £1,798.88 for the period of 01/09/2020 to the 09/11/2020. £790.40 pcm: £25.98 per day x 69 days = £1793.01

(viii) Iona Forsyth: is claiming is £9,235.20 for the period of 01/09/2019 – 31/08/2020. £769.60 pcm: £25.30 per day x 365 days = £9,235.20

(ix) Zoe Le Goff is claiming is £1,580.80 for the period of 01/09/2020 – 31/10/2020. £790.40 pcm: £25.98 per day x 61 days = £1585.13

(x) Juliette Marie Cataldo: is claiming is £9,235.20 for the period of 01/09/2019 – 31/08/2020. £769.60 pcm: £25.30 per day x 365 days = £9,235.20

19. The Respondent submits that, in all the circumstances of this case, there should be a substantial reduction and that the RROs should be 50% of these sums.

The Tribunal's determinations

20. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that in certain circumstances the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.

21. Accordingly, in determining the amount of the rent repayment orders in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(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.

22. Mr Rothwell filed and served a skeleton argument on behalf of the Respondent prior to the hearing in which he stated:

17. The correct legal approach to the quantification of RROs was recently considered by the Upper Tribunal in Williams v Parmar [2021] UKUT 244 (LC). There, it was explained that there is no presumption that the maximum amount ought to be ordered. Whilst the Tribunal will logically start from the maximum figure to ensure that its final order "relates" to the rent in accordance with s.44(2) of the 2016 Act, that will not necessarily be the appropriate end point, having regard to all relevant circumstances of the case: see [25].

18. It is also worth noting that, in Williams, the Upper Tribunal explained that the earlier decision in Vadamalayan v Steward [2020] UKUT 183 (LC) was not authority for the proposition that the maximum amount of rent is to be ordered subject only to limited adjustment for the factors specified in s. 44(4): see [26]. Rather, all relevant mitigating factors must be considered in the round.

…

50. … several of the Applicants were late in paying their rent. In Kowalek v Hussanein Limited [2021] UKUT 143 (LC), it was explained that a failure to pay rent on time or at all was a "serious breach of the tenant's obligations" and an important factor for the Tribunal to consider when quantifying any RRO: see [38].

23. At [25] to [26] of *Williams,* the Upper Tribunal stated:

25. However, the amount of the RRO must always "relate to" the amount of the rent paid during the period in question. It cannot be based on extraneous considerations or tariffs, or on what seems reasonable in any given case. The amount of the rent paid during the relevant period is therefore, in one sense, a necessary "starting point" for determining the amount of the RRO, because the calculation of the amount of the order must relate to that maximum amount in some way. Thus, the amount of the RRO may be a proportion of the rent paid, or the rent paid less certain sums, or a combination of both. But the amount of the rent paid during the period is not a starting point in the sense that there is a presumption that that amount is the amount of the order in any given case, or even the amount of the order subject only to the factors specified in s.44(4).

26. In this regard, I agree with the observations of the Deputy President of the Lands Tribunal, Judge Martin Rodger QC, in Ficcara v James [2021] UKUT 0038 (LC), in which he explained the effect of the Tribunal's earlier decision in Vadamalayan v Stewart [2020] UKUT 0183 (LC). Vadamalayan is authority for the proposition that an RRO is not to be limited to the amount of the landlord's profit obtained by the unlawful activity during the period in question. It is not authority for the proposition that the maximum amount of rent is to be ordered under an RRO subject only to limited adjustment for the factors specified in s.44(4).

24. In *Kowlek*, the tenants had allowed arrears of at least £20,373.31 to accumulate (see [4] to [11] and, in particular, [10]) and, at [38] to [39] of *Kowlek*, the Upper Tribunal stated (emphasis supplied):

38. Section 44(4)(a) requires the FTT to take into account the conduct of the tenant when determining the amount of an order. No limit is imposed on the type of conduct that may be considered, and no more detailed guidance is given about the significance or weight to be attributed to different types of conduct in the determination. Those questions have been left to the FTT to resolve. I can think of no reason why relevant conduct should not include the conduct of a tenant in relation to the obligations of the tenancy. Failing to pay rent without explanation (and none was offered to the FTT or on the appeal) is a serious breach of a tenant's obligations. Parliament intended that the behaviour of the parties to the tenancy towards each other should be one factor to be taken into account.

39. ***Once it is determined that non-payment of rent is a matter which can properly be taken into account, it must be left to the FTT to decide what impact it should have on the amount to be repaid.*** *In this case the substantial arrears were the main factor which the FTT relied on in limiting the amount of the order to half of the total rent paid, and I cannot see any basis on which that decision could be regarded as irrational or outside the FTT's discretion.*

25. Ms Sherratt in her closing submissions referred the Tribunal to *Aytan v Moore* [2022] UKUT 27 (LC) at [43] and [51] to [53] (emphasis supplied):

43. Mr Colbey argued that the FTT was wrong to regard the amount of rent paid as any kind of starting point and that the orders should have been made on the basis of what amount was reasonable in each case. He relied on guidance to local authorities issued under Ch.3 of Pt 2 of the 2016 Act, entitled "Rent Repayment Orders under the Housing and Planning Act 2016: Guidance for Local Authorities", which came into force on 6 April 2017. Notably, this is guidance as to whether a local housing authority should exercise its power to apply for an RRO, not guidance on the approach to the amount of RROs. Nevertheless,

para.3.2 of that guidance identifies the factors that a local authority should take into account in deciding whether to seek an RRO as being the need to: ***punish offending landlords; deter the particular landlord from further offences; dissuade other landlords from breaching the law; and remove from landlords the financial benefit of offending****. Although those are identified in connection with the question whether a local authority should take proceedings, they are factors that clearly underlie Ch.4 of Pt 2 of the 2016 Act generally.*

…

50. We are required to look in particular at the factors identified in section 44(4):

"(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."

51. As to (a), there is no evidence about the conduct of the tenants and no suggestion that they have been anything other than satisfactory. The FTT found as a fact that although the tenants had some complaints about the lift, rubbish collection and so on, there was nothing in those complaints that could make any difference to the amount of the order. So the only conduct we can consider is the appellants' failure to get a licence despite being landlords of multiple properties; as well as owning the nine flats in this building, they have extensive commercial property interests and company directorships. They are serious investors in property, and with that investment come responsibilities. There were no practical difficulties standing in the way of their getting hold of the relevant information about licensing. Turning to (c), the appellants have not suggested that they have any financial difficulties There is no suggestion that the landlords have any relevant convictions.

52. Ms Sherratt argues that the landlords' conduct was so serious that it justifies an award in the full amount of the rent. She says that these are professional landlords, that they had no system in place for keeping up to date about licensing requirements, and she points to the fact that the length of time for which the property was left unlicensed. She says that the landlords were interested only in taking the rent and otherwise washed their hands of the property. We accept all those points, but we do not think that taken together they justify an order in the maximum amount in the circumstances of this case where there is no specific,

evidenced harm to the tenants. Whilst it will never be right to make a point by point comparison between different landlords, it will always be realistic to consider whether there is evidence for example that the property was dangerous or that the tenants suffered physical or economic hardship as a result of the absence of a licence, none of which happened in this case.

53. We take a serious view of the landlords' conduct in this case. They own and let out nine residential flats in this particular building, which by themselves must yield a substantial income; in addition, their roles in a number of commercial property companies indicate that they are also major investors in property. On the other hand, the condition of the property was good. We asked Mr Cunliffe what level of award he thought would be appropriate if we were not persuaded that the landlords had a defence, and he suggested 50% of the rent. We take the view that that would be a disproportionate deduction, and that a modest deduction of 15% from the maximum rent is appropriate.

26. Ms Sherratt also referred the Tribunal to [51] of Williams v Parmar:

51. It seems to me to be implicit in the structure of Chapter 4 of Part 2 of the 2016 Act, and in sections 44 and 46 in particular, that if a landlord has not previously been convicted of a relevant offence, and if their conduct, though serious, is less serious than many other offences of that type, or if the conduct of the tenant is reprehensible in some way, the amount of the RRO may appropriately be less than the maximum amount for an order. Whether that is so and the amount of any reduction will depend on the particular facts of each case. On the other hand, the factors identified in para 3.2 of the guidance for local housing authorities are the reasons why the broader regime of RROs was introduced in the 2016 Act and will generally justify an order for repayment of at least a substantial part of the rent. This is what Judge Cooke meant when she said in Vadamalayan that the provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act, which included expressly a criterion of reasonableness. If Parliament had intended reasonableness to be the criterion under Chapter 4 of Part 2 of the 2016 Act it would have said so.

27. In determining the amounts to be repaid, the Tribunals must decide what proportion of the maximum amount, or reduction from that amount, or combination of both, is appropriate in all the circumstances, bearing in mind the purpose of the legislative provisions. This will require an assessment to be made of all relevant factors, including the seriousness of the offence in question.

The conduct of the landlord

28. Mr Wybrow gave oral evidence that the Respondent owns and manages 62 properties in London, 41 of which are in Camden. At paragraph 1.4

of his witness statement, the contents of which he confirmed were true, he stated:

I am responsible for managing a portfolio of 19 properties which are let out by the Respondent. I have held this position for 3.5 years, though I have been working for [the Respondent] in different roles for 20 years in total. Therefore I know a significant amount of information regarding the buildings and the units themselves.

29. When asked what processes the Respondent has in place to make sure it is up to date with its legal obligations, Mr Wybrow stated, *"I am not really in charge of looking at that sort of thing"* and he was unable to point to any process in place to ensure that the Respondent keeps up to date with its licensing obligations.

30. At paragraphs 3.1 to 3.3 of his witness statement, Mr Wybrow set out the circumstances in which the Property came to be unlicenced as follows:

3.1 The fact that 270 Camden Road was unlicensed was an honest mistake made by [the Respondent] and as soon as this mistake was discovered it was quickly rectified by the Respondent. The circumstances around how this mistake was made, and the steps which were taken to rectify this mistake, are set out below.

3.2 In 2013, [the Respondent] received a letter from Camden Council, which said that one of [the Respondent]'s largest properties, 274 Camden Road, London, was no longer an HMO. A copy of this letter can be found at page 2 of Exhibit RW1. The reason given in this letter was that all of the HMO must be wholly spread over 3 storeys or more for it to be deemed licensable. This letter led [the Respondent] to believe that none of its properties needed to be licensed as HMOs. Following the receipt of this letter, no further correspondence was received from the Council, whether about the introduction of a new licensing scheme or otherwise. On 1 October 2020, however, Camden Council wrote to the tenants of 278 Camden Road, London, another of [the Respondent]'s properties, stating that an offence had been committed by [the Respondent] as this property was unlicensed. A copy of this letter can be found at page 3 of Exhibit RW1.

3.3 This alerted [the Respondent] to the fact that its other properties would need to be licensed and therefore it contacted Camden Council to apply for HMO licences straightaway.

31. However, it appears from a table exhibited to Mr Wybrow's witness statement, that no application for a licence was made in respect of the Property until 9 November 2020, over 5 weeks after the date of the Council's letter.

32. In oral evidence, Mr Wybrow reiterated that the Respondent had relied upon the 2013 letter. He explained that he was not saying that the Respondent should therefore not be liable. However, he went on to say that he would have thought that, with something as important as a house in multiple occupation, the Council could have got in touch with the Respondent which did not happen. When then asked by Ms Sherratt whether he believed that the Council was responsible for letting landlords know of licensing requirements Mr Wybrow said that "*I would think they would have let us know*".

33. Mr Wybrow was referred to an e-mail from Camden Council dated 18 February 2021 in which it is stated:

"Most London local authorities have brought in similar additional licensing schemes in the last decade. Those that haven't are generally now in the process of doing so. As these schemes are all slightly different it is beholden on landlords and letting/managing agents to acquaint themselves with the local schemes that apply to the areas in which they own, let and manage property. As a professional property owner and manager in Camden, with a large portfolio, there is really no excuse not to have been aware."

34. Mr Wybrow accepted that this was the position but then went on to say that he would have expected the Council to have directly contacted the Respondent to tell the Respondent about the Licencing Scheme because the Respondent has so many properties.

35. It is of concern that, even at the date of the hearing, there was no evidence that any process had been put in place to ensure that the Respondent keeps up to date with its licensing obligations. Further, Mr Wybrow did not appear to fully appreciate that there should be no expectation that the local authority will contact the Respondent directly to inform the Respondent of the licencing requirements for its properties.

36. Mr Wybrow accepted that the Respondent does not take an inventory at the beginning or end of the tenancy. When it was very fairly put to him by Ms Sherratt that there is therefore no way of comparing the state of the Property at the beginning and at end of the tenancy, Mr Wybrow said *"We all know what it looked like, we have eyes. We can all see."* In our view, it likely that Mr Wybrow would have adopted a similar tone when communicating with the tenants.

37. As regards the cleaning which is to be carried out at the end of the tenancy, in his skeleton argument Mr Rothwell states that an obligation to pay for a clean might not be a "permitted payment" under the Tenant Fees Act 2019 but that all the tenancy agreement requires the Applicants to do is to carry out an "end of tenancy clean". We agree with Mr

Rothwell's analysis of the Applicants' obligation to clean the Property at the end of the tenancy.

38. However, Mr Wybrow initially informed the Tribunal that he relied upon a term of the tenancy agreement stating that the tenants must have the property "professionally cleaned." When it was put to Mr Wybrow by Ms Sherratt that the tenancy agreement does not in fact impose any obligation on the Applicants to have the Property professionally cleaned and that landlords cannot impose a requirement of this nature on tenants, Mr Wybrow said that the tenants could do the cleaning themselves.

39. Ms Sherratt then referred Mr Wybrow to:

    (i) e-mail correspondence dated 26 August 2021 which he sent to one of the Applicants stating *"Can I just clarify that the professional clean has been/being organised for 29th"*;

    (ii) e-mail correspondence dated 31 August 2021 which he sent to one of the Applicants stating *"I will be taking the meter readings with Alex later today. I have let him know that you all need to organise the professional clean which is stated on your tenancy agreement"*.

40. Mr Wybrow responded by stating that he was only referring in these e-mails to what the tenants had already told him they were going to do; that the end of tenancy clean is normally carried out by professional cleaning companies; and that Ms Sherratt was "nit picking".

41. In our view, Ms Sherratt's questions were entirely fair and reasonable. It was not put to the Applicants that they had voluntarily decided to have the Property professionally cleaned and Mr Wybrow's e-mail stating "you all need to organise the professional clean which is stated on your tenancy agreement" does not support his oral evidence.

42. Mr Wybrow accepted that he sent the Fourth Applicant the following text messages (emphasis supplied):

    (i) *"Hi Alex, when do you want to check out? Robb"* (undated).

    (ii) *"Hi Alex, I take it you are leaving tomorrow morning: What's going on with the clean? Robb"* (31 August 2020 at 21.16).

(iii) *"I'm in the property Alex and I can see all your things but not you. Your room doesn't even look like you are ready to leave. I allowed you to stay another night for convenience and to book the professional clean. This is unacceptable.* ***We will be forced to put your belongings on the street if you do not contact me within the next hour.****"*

43. On being questioned about these texts, Mr Wybrow appeared to be unaware of the legal rights of the Respondent's tenants under the Protection from Eviction Act 1977 and stated that he was unsure whether his correspondence was lawful. Mr Wybrow gave evidence that he would not have acted on the statement *"We will be forced to put your belongings on the street if you do not contact me within the next hour"* and that he was facing a situation which had never happened before in which he had a tight schedule and the Applicants were failing to respond to his correspondence. This does not, however, in any way diminish the fact that it is unlawful and wholly unacceptable to make threats of this nature. This correspondence is of very great concern and demonstrates the extent of the Respondent's failure to ensure that it is aware of and abides by its legal obligations.

44. The Tribunal also heard evidence concerning the condition of the Property. In our view, it is likely on the balance of probabilities that any defects in the state of the Property were minor or remedied by the Respondent within a reasonable period of time following the receipt of notice.

45. For example, Ms Cataldo referred to a defective lock to the entrance door but she accepted that, when this defect was reported to the Respondent, appropriate repairs were carried. Ms Forsyth stated that there were scuff marks on the walls and rips to furniture at the start of her tenancy but she also accepted that the Property was "in OK condition" and good enough for her not to wish to leave. Ms Le Goff stated that there was mould in the bathroom this does not appear to have been reported to the Respondent.

46. If the Property had not generally been in reasonably good condition it is unlikely that a licence would have been granted by the local authority without the need for any substantial further work, as happened in the present case.

47. It is not in dispute that the Respondent does not take deposits. There is a difference of opinion between the parties concerning whether or not this is to the tenants' advantage but the Applicants do not assert that the Respondent is under an obligation to take deposits.

48. The Respondent does not dispute that up-to-date copies of a gas safety record, EPC and How to Rent Guide were not always provided when the

tenancy of a room was renewed. Whilst copies of these documents should have been provided whenever the tenancy of a room was renewed, the Applicants confirmed that they had access to these documents and it was not asserted at the hearing that the Respondent was in breach of any of its legal duties concerning the safety of the Property.

49. The Property was not cleaned when new tenancies of rooms were granted. The Respondent states by way of mitigation that there was "a continual stream of tenants" throughout the Applicants' period of occupation, some renewing tenancies of their rooms and some being replaced by others. Accordingly, whilst this cleaning should have been carried out, there was no break in the chain of occupation when the Property could have conveniently been cleaned. The Applicants accept the factual basis of this mitigation.

50. The Respondent has received some good online reviews but limited weight can be placed upon hearsay evidence of this nature. We note that the Respondent has carried out some charitable work unrelated to its property management functions.

51. The Applicants were not given any rent reduction during the covid 19 pandemic (as opposed to the opportunity to reschedule rent payments) but we accept Mr Rothwell's submission that the Respondent was under no obligation to offer a rent reduction. Accordingly, we have not taken this factor into account.

The conduct of the tenants

52. It is the Respondent's case that throughout the period of the Applicant's occupation, the Respondent's staff encountered regular issues with excessive noise emanating from the Property, including rowdy parties, music and the slamming of doors.

53. Ms Le Goff wrote to the Mr Wybrow in October 2020 by e-mail complaining of the noise and stating that she was being kept awake. She stated, *"I just need a quieter environment and this is why I am moving out"*. In giving oral evidence, Ms Le Goff explained that she was older than the other Applicants and particularly sensitive to noise. She informed the Tribunal that, following the incident referred to in her e-mail, noise levels were kept down and that the walls at the Property are thin. She also said that everyone when they are younger likes to talk and listen to music.

54. Mr Wybrow lives above the Property and he gave evidence in his witness statement that, on a number of occasions, he had to leave his flat to ask the Applicants to keep the noise down and to remind them that they had neighbours all around them and that noise travels. He also stated that

there were times when there was excessive noise, including late at night, when he did not complain.

55. On the basis of the limited evidence available, we find that it is likely that, on occasion, the Applicants caused or permitted others to cause excessive noise to emanate from the Property. However, the noise does not appear to have been sufficiently frequent and/or severe to have caused the Respondent to send any formal letters of complaint to the Applicants.

56. There is a dispute concerning the condition in which the Property was left at the end of the Applicants' period of occupancy. Both parties rely upon undated photographs. The Applicants' photographs show the Property in a clean condition and the Respondent's do not. We note that the photographs are not taken from the same vantage points. Doing our best on the limited available evidence we find it likely that parts of the Property were left clean but that others, in particular, the kitchen were not.

57. It is not in dispute that the Tenth Applicant was generally 3-9 days late in paying her rent; the Fifth Applicant was generally 2-13 days late in paying her rent and that the Fourth Applicant was generally 7-28 days late in paying his rent.

58. Although the rent was not paid on time, it was always paid within 2-28 days and so, in contrast with the case of Kowlek, significant arrears never accrued. The Tribunal was not referred to any evidence of financial loss to the Respondent arising from these late payments whether in the form of lost interest or other charges and, at paragraph 7.7 of his witness statement, Mr Wybrow states that the Respondent is "always lenient when tenants are struggling with rent and they allow them ample time to pay including instalments". It is likely that that the Respondent's lenient approach would have been conveyed to the Applicants.

The financial circumstances of the landlord

59. It is not in dispute that the Respondent is a successful business and the Tribunal was referred to its company accounts

Whether the landlord has at any time been convicted of an offence to which this Chapter applies

60. It is not contended that the Respondent has any criminal conviction.

Conclusions

61. In determining this application, the Tribunal has had regard to the statutory provisions, case law, and Guidance referred to above, and to

all the circumstances of this case including the specific findings which the Tribunal has made.

62. We place particular weight on the findings at paragraphs 28 to 43 above and on the fact that the Respondent is a financially successful professional landlord with a large property portfolio.

63. In all the circumstances, save in respect of the Fourth Applicant, we make RROs in the sum of 90% of the maximum with deductions of £50 applied to the Fifth and Tenth Applicants who consistently paid their rent a number of days late (taking into consideration at the matters set out at paragraphs 57 and 58 above) and further deductions of £50 applied to the First, Third, Sixth and Seventh Applicants who were in occupation immediately prior to the end of tenancy clean (taking into account the matters set out at paragraph 56 above).

64. We have considered the position of the Fourth Applicant separately because, whilst we have found that the text messages at paragraph 42 above demonstrate the extent of the Respondent's general failure to ensure that it is aware of and abides by its legal obligations, the texts were addressed to the Fourth Applicant and their content is likely to have been of direct concern to him. Having taken this into account together with all of the circumstances of this case (including, in particular, our findings at paragraphs 56, 57 and 58 above) we make an RRO in favour of the Fourth Applicant in the sum of 95% of the maximum amount.

65. Ms Sherratt applied for an order under rule 13(2) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 requiring the Respondent to reimburse Tribunal fees in the total sum of £300 paid by the Applicants. The Applicants having succeeded in obtaining RROs listed above, we make an order in these terms.

Name: Judge Hawkes **Date:** 17 March 2022

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).