



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

Case Reference : LON/OOBH/HMG/2021/0040
Property : 55 Brookdale Road, E17 6QH
Applicant : Isobel Gibbin, Jessica Lee and Leigh
Wetherall
Representative : Ms Sherratt
Respondent : Joel Hopkins
Representative : Ms Jacobs
Type of Application : Rent Repayment Order
Tribunal Members : Judge Shepherd
Susan Coughlin MCIEH
Date of Determination : 20th May 2022

Determination

1. This is an application for a rent repayment order made by Isobel Gibbin, Jessica Lee and Leigh Wetherall (“the Applicants”). The Respondent is their former landlord, Joel Hopkins. Mr Hopkins (“The Respondent”). He was represented by Ms Jacobs and the Applicants by Ms Sherratt

2. The application was made under section 41 of the Housing and Planning act 2016 on the basis of an allegation that the Respondent has committed the offence of having control of or managing an unlicensed House in Multiple Occupation (HMO) under section 72 one of the Housing act 2004.

3. Section 72 (one) states:

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

4. The Housing act 2004 section 61 (1) states:

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 one of part four.

5. Section 55 of the Housing act 2004 states:

(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

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 the designation.....

6. It was common ground that the premises in which the Applicants formerly lived and which the Respondent owns, namely 55 Brookdale Rd, Walthamstow London E17 6QH ("the premises") was located within an area designated by the London Borough of Waltham Forest for both selective licensing and additional licensing. The selective licensing scheme came into force on 1 May 2020, replacing a similar scheme which ceased to be operative on 31 March 2020 under which the Respondent held a license for the property. However from 1 April 2020 Waltham Forest also operated an Additional Licensing scheme for HMO's for the first time which applied to all HMO properties which were not subject to mandatory licensing. It was the Applicants' case that the premises were occupied by at least four people at all points during the relevant period of 1st April 2020 to 16 February 2021 ("the relevant period"). Each tenant occupied their own room on a permanent basis with one tenancy for all of the tenants of which they had joint and several liability in relation to the obligations therein. The tenants occupied the premises as followed:
7. Room one was occupied by Isobel Gibbin between 28 February 2020 and 15 July 2021; room two was occupied by Jessica Lee between 16 March 2019 and 15 July 2021; room 3 was occupied by Thomas O'Driscoll between 16 March 2019 and 15th of July 2021 and room four was occupied by Leigh Wetherall between 13 September 2019 and 15 July 2021.
8. It was common ground between the parties that an HMO licence was not held during the relevant period and the Respondent's application for a licence was only made on 17 February 2021. The application made was for a selective licence

although the premises remained in multiple occupation until July 2021. The Respondent had held a selective licence between 14 June 2016 and 31 March 2020 when the first scheme ended.. Because the premises were not licensed during the relevant period the Applicants claim a rent repayment order for this period. The sum claimed in their application was £18,159.67 representing the rent paid for the relevant period.

9. In support of their application the Applicants relied on allegations that the premises had problems with the electrics in the kitchen and there was no gas safety certificate in place throughout the tenancy.

10. It is clear that Churchill lettings who were managing the property on behalf of the Respondent were fully aware of the need for a licence for the premises because at one point they asked the Applicants to pay for the cost of obtaining one. Having considered the matter the Applicants decided not to pay for the application. Pausing here it is somewhat surprising that the Respondent through Churchill Estates sought to obtain the cost of obtaining a licence from the tenants. This is very unorthodox and questionable and the tribunal were not impressed by Mr Wheeler's evidence in this regard. Mr Wheeler was the agent managing the property on behalf of Churchill Estates.

11. The Applicants provided witness statements from Jessica Lee, Isobel Gibbin and Lee Wetherall. The Applicants stated that when they moved into the property there were not given a gas safety certificate or how to rent guide, none of the rooms had fire doors, smoke detectors were not in all of the rooms, there was no fire blanket in the kitchen and there was a carbon monoxide alarm but it was never working. They also complained of issues with the electrics. They said that just before Isobel Gibbin moved in in February 2020 she was told by Churchills that the landlord was going to apply for an HMO licence and so adding a fourth person to the tenancy was okay. In July 2020 the Applicants were asked to sign a new contract with Isobel's name on it. They did so but shortly afterwards were called by Churchill Estates to say that they would be

served with a section 21 notice of possession because the landlord had not in fact applied for a license and had no intention of doing so.

12. There are various documents attached to the witness statements of the Applicants which support their account including communication with Mr Wheeler from Churchill Estates. In addition, there is communication from the local authority in relation to the fact that the property did not have a licence. In particular, there is an email summary of a phone conversation with an officer at Waltham Forest Council where he confirms that the previous licence had expired on 31 March 2020 and the landlord needed to obtain a new licence. The advice given to the Applicants was that the section 21 notice served by the landlord was invalid and they should not vacate the property.

13. In his written response Mr Wheeler on behalf of the Respondent accepted that Waltham Forest's current licensing scheme came into force on 1 April 2020. He said that the local authority afforded landlords and letting agents a three month grace period/"earlybird" discount to encourage early applications to be made. He also said that there was no determined deadline by which an application had to be made only that the application should be made as soon as possible. He then said that the three month grace period was later extended to a six-month period. Churchills who were managing the property at the time he said were confronting difficult situations with tenants falling into arrears etc as a result of the Pandemic and the licensing of the property was not prioritised. He also said that the landlord would have had to obtain planning permission to allow the property to be used as an HMO rather than just a family dwelling.

14. Mr Wheeler said that because the property was lacking in evidence of uninterrupted and continuous use as a small HMO since September 2014 it would be "futile" to make an application for the lawful development certificate and the tenancy had to be ended. He said that the option of asking the tenants to pay for the cost of the additional licence was not a serious option. He was critical of the conduct of the Applicants in remaining in the premises when they

had indicated that they would probably move out. He said that Churchills only became aware that the Applicants were intending to remain in the property on 14 October 2020 when the property was already being marketed. He said that the Applicants were trying to take advantage of the landlord. He also accused the Applicants of providing false and misleading information relating to the service of relevant safety documents including the energy performance certificate, electrical installation condition report and gas certificates. He relied particularly on the fact that the Applicants signed tenancy agreements confirming receipt of those documents. Mr Wheeler exhibited copies of licenses granted to the Respondent for other properties, which clearly demonstrated his knowledge of the requirements of the licensing regime.

15. In the Respondent's bundle there are copies of gas safety certificates which are not signed as received by the tenants, in particular one dated 4 May 2020 which states *CV 19* which was apparently denoting the fact that the form had not been signed as a result of the pandemic.
16. Ms Sherratt for the Applicants said that the Respondent's defence in relation to the earlybird discount did not work because although the council had extended the period of time for the discount this did not mean that landlords were excused from applying for the licenses.
17. In cross-examination of the Applicants, Ms Jacobs went to lengths to outline the fact that they had signed tenancy agreements confirming that they had received particular documents. Ms Lee insisted that she had not received a gas safety certificate from Churchill Estates. She maintained the position that there was a carbon monoxide alarm but it was not working. She was accused of removing a smoke alarm but she said that the alarm was only removed to replace the batteries. Ms Gibbin gave similar evidence as did Ms Wetherall.
18. Ms Jacobs called Mr Wheeler who confirmed his view that the landlord was unlikely to get planning permission for an HMO and the landlord did not want to throw good money after bad. He said that a complaints of disrepair were

handled by the maintenance department, he denied that any of the doors were defective. In cross-examination he maintained his position that the earlybird discount meant they didn't need to apply for the licence. Ms Sherratt put to him that the landlord could have applied for a licence for a shorter term in order to regularise the position but did not do so. He had not however contacted the local authority to discuss this, nor had sought advice through his professional association but relied on his own professional knowledge having attended a seminar. Mr Wheeler maintained his position that the section 21 notice was valid notwithstanding the fact that the landlord did not have an HMO licence. He accepted that there were no fire doors in the premises and there was no centralised fire detection, no fire extinguishers or fire blankets.

19. In her closing Ms Jacobs said that it was not possible to obtain one of the new licenses until 1 April 2020. She said that the earlybird discount could not just be an enticement. She said that everyone could not apply on 1st April because the council could not deal with it and therefore the earlybird scheme had to be regarded as a grace period. She referred to it as an “invitation to treat”. She said that landlords in effect therefore had six months to apply and this went to a reasonable excuse defence in the Respondent's case. She said that the Applicants had kept secret from the landlord their intention to remain in the property. If they had told the landlord that they were not moving out the landlord may have obtained a licence. She said in relation to mitigation that the Respondent had no previous convictions and no problems had been outlined by the local authority. She relied on the signatures on the tenancy agreements to prove receipt of the safety documents. She said that the property was not in a poor condition and there was no danger and no disrepair. She said the landlord was not a serial offender or a slum landlord and she said therefore a 50% reduction was appropriate.

20. In response Ms. Sherratt said that the earlybird discount was not a grace period and that the new licensing scheme came into force on 1 April 2020 and the landlord was expected to apply for a licence.

21. Ms Sherratt said that the Respondent had given three reasons for a reasonable excuse:- First that their property would not be granted a license as planning permission was required. She said that the council would have granted a licence for a shorter period if planning was required but the Respondent didn't try and get advice or didn't take any steps to clarify what the position was. She said clearly the deterrent was the cost and the landlord did not want to pay for the licenses. The second reason given was the disruption caused by the Pandemic which affected Churchill's ability to apply for a licence from May 2020. She said that from May 2020 most people were back to work and they should have applied for a licence. The third reason for the reasonable excuse defence was that the landlord wanted to revert the property back to a family home. She said however that the landlord was nonetheless obliged to comply with his legal obligations and get a licence. Rather than doing this he didn't apply. She said that there were no submissions on financial circumstances and no evidence of these. She said the starting point was the maximum penalty and a high award was justified because there was no real basis for the allegations of bad conduct by the tenants who had a right to remain and were not required to notify the landlord of this. There were no arrears and they were truthful in their evidence. She said that the landlord was fully aware of the situation and didn't apply for the license.

22. Ms Sherratt said that there were fire safety issues at the premises and a lack of proper fire protection and protection remedies. There was concern about the front door and security. She said that although the Applicants had signed the tenancy agreements they maintained that had not received the relevant documents.

Determination

23. The Tribunal rejects the proposition that the “early bird” discount was in effect a grace period for license applications. The discount was to encourage landlords to license their HMO properties. The fact that the council were having to offer a discount doesn’t in any way mean that they were excusing landlords from complying with the law. Although the Tribunal had no evidence from the local authority (if the Respondent wanted to run this defence he should have secured evidence from the local authority) it is tolerably clear that the discount was nothing more than it said – a discount. Churchills were wrong to advise the client that he didn’t need to apply for a license if indeed that was their advice. As indicated the Tribunal were not impressed by Mr Wheeler’s evidence. He demonstrated a lack of understanding of basic housing law which one would expect of someone in his role. He was also cynical and dismissive in relation to the Applicants’ rights. He was wrong to invite the Applicants to pay the license fee. In addition, he appears to have advised the Respondent that a planning application would be “futile”. This may be true but it did not excuse the Respondent from complying with the law. As indicated by Ms Sherratt he could have obtained a license for a shorter period to regularize the position. Instead of doing this the Respondent knowingly broke the law for a sustained period of time.

24. The Respondent is plainly a professional landlord as evidenced by the fact that he obtained licenses for other properties. He and Churchills should have known better and should have licensed the property at the outset instead of putting the Respondent’s interests first. The Tribunal were not impressed by the Respondent’s attempts through his legal representative to belittle the risk to the Applicants of living in an un - licensed properties in which fire safety particularly had been ignored. In addition on a balance of probabilities the Tribunal finds that Churchills did not serve the requisite documents on the Applicants. The fact that the Applicants signed a tenancy saying they had received them is not determinative.

25. In light of the Tribunal's findings of serious and deliberate breach in this case and the fact that the Respondent provided no evidence of his financial circumstances it orders the Respondent to pay the full amount claimed, namely £18,159.67. Although it was said that the Respondent had no previous convictions or complaints from the local authority the breach was sufficiently serious to warrant the full award.

26. In summary the Respondent shall pay the Applicants £18159.67 . The said sum shall be paid within 14 days of receipt of this determination. The Respondent shall also pay the Applicant's application and hearing fee.

Judge Shepherd

20th May 2022

ANNEX - RIGHTS OF APPEAL Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional tribunal office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.
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 state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers
5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.