



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

Case Reference : **BIR/00FK/HMK/2019/0048**

Subject Property : **100 Dairyhouse Road
Derby
DE23 8HP**

Applicant : **Miss Hannah Alice Hope Brown**

Representative : **None**

Respondent : **Mr Sajjad Ahmed**

Representative : **None**

Type of Application : **Application under sections 40, 41(1), 43 &
44 of the Housing and Planning Act 2016
for rent repayment orders**

Date of Hearing : **5th November 2019**

Tribunal Members : **Graham Freckelton FRICS (Chairman)
Robert Chumley-Roberts MCIEH, J.P**

Date of Hearing : **5th November 2019**

Date of Decision : **14th November 2019**

DECISION

INTRODUCTION

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. The Housing Act 2004 ('the 2004 Act') introduced licensing for houses in multiple occupation (HMOs). Originally, licensing was mandatory for all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. Since 1st October 2018 all HMOs which are occupied by five or more persons forming two or more households, are subject to mandatory licensing. Under additional licensing, a local housing authority can require licensing for other categories of HMO in its area which are not subject to mandatory licensing. The local housing authority can do this if it considers that a significant proportion of these HMOs are being managed sufficiently ineffectively so as to give rise to one or more particular problems, either for the occupants of the HMOs or for members of the public.
3. Under section 72 of the 2004 Act a person who controls or manages an HMO that is required to be licensed (pursuant to mandatory or additional licensing) but is not so licensed commits an offence and is liable on summary conviction to a fine.
4. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 73 of the 2004 Act, where a person who controls or manages an unlicensed HMO has been convicted, the (former) occupiers of the unlicensed HMO may apply to the First-tier Tribunal for rent repayment orders.
5. However, from 6th April 2017, subject to transitional provisions, the 2016 Act has amended the provisions relating to rent repayment orders in England. Under section 43 of the 2016 Act the First-tier Tribunal may make a rent repayment order in favour of the (former) occupiers if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 72 of the 2004 Act, *whether or not the landlord has been convicted*.

BACKGROUND

6. The Applicant is the former tenant of a room at 100 Dairyhouse Road, Derby DE 23 8HP ('the subject property').
7. The Respondent is the landlord of the subject property. The Respondent submits that he does not own the property but his name is noted as being 'The Landlord' on the tenancy agreement.
8. The Application was received by the Tribunal on 21st August 2019. The Applicant referred to above applied for a Rent Repayment Order under section 41 of the 2016 Act. The Applicant alleges that she was illegally evicted by the Respondent and further that the property was an unlicensed House in Multiple Occupation (HMO). The Application was dated 5th August 2019.
9. Directions were issued on 22nd August 2019 following which submissions were made and copied to the other party.
10. It is apparent from the documentation received from the Applicant that the property was occupied by her on an Assured Shorthold Tenancy dated 26th July 2018 for a term of twelve months from 22nd August 2018 at a rental of £350.00 per calendar month rising to £365.00 per calendar month from 11th September.

11. According to the Tenancy Agreement the Applicant occupied Room 3.
12. The Application infers that the Applicant is requesting a rent repayment for the period 22nd August 2018 to 22nd January 2019 (Five Months). This latter date was the date the Applicant vacated the subject property.

THE LAW

13. The relevant provisions of the 2016 Act, so far as this application is concerned, are as follows –

40 Introduction and key definitions

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

	Act	Section	General description of offence
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

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.

...

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.
- (3) The amount of a rent repayment order under this section is to be determined in accordance with—
 - (a) section 44 (where the application is made by a tenant);

...

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 the table.

<i>If the order is made on the ground that the landlord has committed an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence</i>
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(3) The amount that the landlord may be required to repay in respect of a period must not exceed—

(a) the rent paid in respect of that period, less

(b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

(4) In determining the amount, the Tribunal must, in particular, take into account—

(a) the conduct of the landlord and the tenant,

(b) the financial circumstances of the landlord, and

(c) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

THE PROPERTY INSPECTION

14. The Tribunal was unable to carry out an inspection of the property as the Applicant no longer lives there and the Respondent informed the Tribunal that he was ‘unable to facilitate an inspection’. The Tribunal understands from the Respondent’s submission that he is abroad.

15. However, based on the Application the Tribunal understands that the property comprises of a terraced house with five letting bedrooms over the ground and first floors. The Tribunal understands that there are two letting bedrooms on the ground floor together with one shower room. On the first floor there are three letting bedrooms (one of which has an en-suite) and a bathroom with shower. At the hearing the Applicant confirmed that there was also a communal kitchen and living room on the ground floor.

THE HEARING

16. A Hearing was held at Derby Justice Centre, St Mary’s Gate, Derby DE1 3JR. The Hearing was attended by the Applicant. The Respondent informed the Tribunal that as he was living abroad, he was unable to attend the hearing.

17. The submissions made by the parties in writing and at the Hearing are summarised as follows:

The Applicant’s Submissions

18. The Applicant submitted that on 26th of July 2018 the Applicant paid to the Respondent the sum of £20.00 to secure the tenancy at the property. On 27th July 2018 the Applicant paid £175.00 in cash by way of a deposit which, the

Applicant understands was never put into a deposit protection scheme. At the same time the Respondent failed to provide the Applicant with copies of the current gas or electrical safety certificates.

19. The Applicant further submitted that on 22nd August 2018 she paid the first month's rent of £350.00 although she actually moved in on 14th September 2018. In the meantime, the Applicant had agreed with the Respondent that she would also take a car parking space to the front of the property for an additional £15.00 per month. Therefore, the total rent paid was £365.00 per calendar month.
20. Over the next few months the Applicant submitted that generally things were satisfactory at the property. However, the tenants usually received messages on a weekly basis often saying that the house was messy because there was a box out or there were a few plates that had not been washed up. This meant that the Respondent had visited the property on a weekly basis without warning and this is when problems started to arise.
21. On 22nd November 2018 the Respondent again entered the property without warning and sent a text message threatening to issue an eviction notice under section 8 against whoever was responsible for lights in the property being left on, plates being left in the kitchen and racks being full.
22. It was further submitted that on 8th December 2018 it was one of the other tenants' birthdays and she had arranged a party at the house but unfortunately people attended who were not invited and matters got slightly out of hand. The Applicant submitted that she left the party and retired to her room but while she was there, she heard screaming and someone with a machete had hurt some of the people at the party and caused minor damage to the house. The Applicant submitted that she helped the injured before the police and ambulance had arrived. The Respondent also arrived at the same time.
23. On the following morning (9th December 2018), the Applicant sent the Respondent a text message asking to terminate her tenancy. However, later the same day the tenant's group message chat confirmed that other tenants had received a telephone call from the Respondent being very aggressive towards them and telling them he was going to evict them. Later that day the Applicant received a telephone call from the Respondent which was also verbally aggressive although the Respondent did say that he did not want the Applicant to leave the property and she subsequently agreed to stay. However, the Respondent asked the Applicant to tell the other tenants that she too was being evicted.
24. The Applicant further submitted that on the same day the Respondent demanded £3000.00 from all the tenants to pay for damage to the property and threatened to press charges on all of them for criminal damage and antisocial behaviour. At this time the Applicant submitted that she could no longer take the emotional and verbal abuse and sent a message back to the Respondent refusing to pay for any damage, as nothing of the Respondent's at the property was actually damaged. The Applicant also spent several hours helping to clean the property so that the Respondent did not need to get a professional cleaner. The Applicant further submitted that the Respondent never received the £3000.00 demanded and never prosecuted any of the occupants.

25. The Applicant submitted that she was suspicious of the Respondent as he always obtained payments from the tenants in cash and entered the property unannounced. At this time the Applicant realised that the property was being run as an illegal HMO as the Respondent did not serve any of the occupants with a Section 8 notice which he would be able to do if they were legally living there.
26. The Applicant further submitted that on 22nd December 2018 the Respondent messaged her to enquire where she would be leaving her rent. The Applicant replied asking if she could pay half a month's rent as she was planning on leaving in mid-January. At that time the Respondent messaged the Applicant confirming that he had not agreed to this and that she was no longer being evicted. At the same time the Respondent requested an exit payment for leaving the tenancy early. The Applicant confirmed at the hearing that she had actually paid rent for the whole of January and had not received her deposit back.
27. It was submitted that on 5th January 2019 the Applicant sent a message to the Respondent confirming that she would finally be moving out on 22nd January 2019 as she had found alternative accommodation. The Respondent confirmed that he would call the Applicant to discuss the matter but subsequently did not do so. The Applicant therefore assumed that the original agreement of her being evicted from the property at a later date than the other tenants was still going ahead and she vacated the property and handed her keys to a tenant who still lived there.
28. On 18th January 2019 the Respondent finally contacted the Applicant via text message stating that he had not agreed to terminating the tenancy and that she had signed a new tenancy agreement without talking to him first which was in breach of her tenancy agreement with him. The Respondent then asked for £59.00 for advertising her room and confirmed that she owed him rent for the remainder of her tenancy as per the original tenancy agreement.
29. At that point the Applicant submits that she informed the Respondent that he still held her deposit and that she was not prepared to pay anything extra as she was originally told she would be evicted. The Applicant confirmed to the Respondent that he was fully aware that she was not remaining in occupation for the full month of January and had verbally agreed with her that she would be finally evicted once she found a new property to live in. Copies of all the relevant text messages were included with the Applicant's written submission.
30. Included with the Applicant's submissions was a witness statement from Samuel Swift who submitted that the Respondent seemed very involved with everyone's activity and continuously messaged the Applicant and the other tenants in the property. He also appeared to enter the property frequently without giving 24 hours' notice.
31. Mr Swift confirmed that he was present on the night of the party and the machete attack and that following the incident the Respondent was angry and made it quite clear to everyone that he was going to evict all the tenants. As the Applicant did not feel safe at the property she informed the Respondent that she wanted to move out at the end of January 2019 and Mr Swift understood that this was agreed although the Respondent did not then communicate with her for a period of several days after which he disputed her right to vacate the property.

The Respondent's Submissions

32. The Tribunal received a submission from the Respondent by email dated 11th October 2019.
33. The Respondent submitted that he did not own the property and that it had nothing to do with him. He further submitted that he had been renting the property and then subletting the rooms. As such he had no authority or means to facilitate an inspection.
34. The Respondent submitted that attached to his email were attachments which proved that the Applicant was mistaken but that as he no longer lived in the UK, he would not be able to attend the hearing.
35. At the same time the Respondent confirmed that he did not receive any of the letters which the Tribunal had sent to him.
36. The Tribunal had previously received an email from the Respondent dated 10th October 2019 in which he stated that the property was not required to have an HMO licence and that this had been confirmed by Derby City Council. An earlier email dated 1st October 2019 also confirmed that the Respondent no longer lived in the UK and that he was merely subletting rooms in the property.
37. The Tribunal has received a copy of a letter dated 18th September 2019 from Derby City Council to the Applicant confirming:
 - 1) That there has been no licence for a House in Multiple Occupation (HMO) in accordance with part 2 of the Housing Act 2004 in regards to the property since 1st October 2018.
 - 2) That the owner of the property applied for an HMO licence in May 2017. However, on inspection it was deemed at that time that the property did not require a licence as, although there were five rooms the property only had two stories and therefore did not fall under mandatory licensing.
 - 3) That on 13th November 2018 a letter was sent to the owner of the property advising of the change in legislation and inviting him to apply for a licence. However, no licence application was submitted.
 - 4) That in December 2018 information was received by Derby City Council informing them that the property was occupied by six people. Subsequent enquiries by Derby City Council confirmed that between 1st October 2018 and mid December 2018 the property was occupied by six people, forming two or more households as defined within the act and therefore was identified as requiring a licence in accordance with the Act between 1st October 2018 and mid December 2018.

DETERMINATION OF THE TRIBUNAL

38. The Tribunal considered the application in four stages –
 - (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed an HMO that was required to be licensed under Part 2 of the 2004 Act but was not so licensed.

- (ii) Whether the Applicant was entitled to apply to the Tribunal for a rent repayment order.
- (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
- (iv) Determination of the amount of any order.

Offence under section 72(1) of the 2004 Act

39. In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 72(1) of the 2004 Act. At no time did the Respondent admit that he had committed the offence.

- (i) Throughout the period from 1st October 2018 to mid-December 2019 the subject property was a house in multiple occupation subject to mandatory licensing.
- (ii) The subject property was not licensed.
- (iii) The Respondent was the person having control and/or managing the subject property.

Entitlement of the Applicants to apply for rent repayment orders

40. The Tribunal determined that the Applicant was entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence throughout the period when the subject property was let to the Applicant; and the offence was committed in the period of 12 months ending with the day on which the application was made (5th August 2019).

Discretion to make rent repayment orders

41. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make a rent repayment order in the circumstances of the present case.

Amounts of Rent Repayment Orders

42. In accordance with section 44 of the 2016 Act, first, the amount of an order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing an offence under section 72(1) of the 2004 Act. The Applicants' claim satisfies that condition.

Second, the amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period. Although not specified by the Applicant, the Tribunal calculates that the Applicant claims rent repayment of £922.00 as set out below in paragraph 52. The Tribunal determines that the relevant period commences on 1st October 2018 being the date the relevant legislation came into effect.

On being questioned by the Tribunal the Applicant confirmed that on 16th December 2018 three of the tenants vacated the property. This was approximately one week after the party on December 8th. The Tribunal determined that after that date the property was not therefore an HMO and

did not require to be licenced as there were only three tenants in occupation.

Third, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

43. The discretion afforded to the Tribunal at the final stage of the determination of the amount of any rent repayment order was considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC); and the observations of the President in that case have received express approval in subsequent decisions of the Upper Tribunal. Although those observations were made in the context of the rent repayment order regime contained in the 2004 Act, in the view of the Tribunal many of them remain relevant in the context of the 2016 Act regime.

44. The following observations, contained in paragraph 26 of the decision in *Parker v Waller*, would appear to be relevant in the present case –

(iii) There is no presumption that the Rent Repayment Order (RRO) should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The Residential Property Tribunal (RPT) [now the First-tier Tribunal (Property Chamber)] must take an overall view of the circumstances in determining what amount would be reasonable.

(iv) [The 2004 Act] requires the RPT to take into account the total amount of rent received during any period during which it appears to it that the offence was being committed. It needs to do that because the RRO can only be made in respect of rent received during that period. It is limited to the period of 12 months ending with the date of the occupier's application. But the RPT ought also to have regard to the total length of time during which the offence was being committed, because this bears upon the seriousness of the offence.

(v) The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgment a material consideration or, if it is material, one to which any significant weight should be attached. This is because it is of the essence of an occupier's RRO that the rent should be repaid in respect of a period of his occupation. While the tenant might be viewed as the fortunate beneficiary of the sanction that is imposed on the landlord, it is only misconduct on his part that would in my view justify the reduction of a repayment amount that was otherwise reasonable.

(vi) Payments made as part of the rent for utility services count as part of the periodical payments in respect of which an RRO may be made. But since the landlord will not himself have benefited from these, it would only be in the most serious case that they should be included in the RRO.

(vii) [The Act] requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to

know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

45. However, distilling the substance of those observations in this case the Tribunal determines that no deductions should be made from the maximum amounts set out in paragraph 39. The reasons for this are:
- 1) The Respondent has made no submissions to the Tribunal in respect of any expenses or his personal circumstances despite being instructed to do so in the Tribunal's Directions.
 - 2) The Tribunal is satisfied on the balance of probability that the Respondent has acted in an unsatisfactory manner with regard to his unannounced inspections of the property and his attitude towards the Applicant (as well as the other tenants).
 - 3) The Tribunal accepts that the Applicant was threatened with eviction by the Respondent. The Tribunal also accepts the Applicant's submission that the reason formal Notices were not issued was due to the fact that the Respondent was aware that he was operating an unlicensed HMO and it is quite likely that he would be unable to obtain possession if the matter went to Court.
 - 4) The Tribunal accepts that the deposit paid by the Applicant was not held in an approved Tenant Deposit Scheme.
46. The Tribunal infers from the submissions that the Respondent rented the property as a single unit and it would appear that he made a profit by sub-letting individual rooms. However, no submissions were made as to the amount of rent paid by the Applicant to his superior landlord and the Tribunal is therefore unable to assess the amount of any potential deduction. However, in view of the way in which the Respondent has acted in the conduct of his responsibilities as landlord the Tribunal would not consider a deduction to be appropriate in this case.
47. Although the Respondent submits that he is no longer living in the UK, this was disputed by the Applicant at the hearing and it is apparent to the Tribunal that despite his assertions, he has been able to see the correspondence that the Tribunal sent to him.
48. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of the landlord and tenant. The Tribunal finds that there is no evidence of conduct on the side of the Applicant which would affect its decision.
49. However, the conduct of the Respondent leaves much to be desired for the reasons noted in paragraph 45 above. In addition to this the letter from Derby City Council makes it quite clear that they wrote to the owner of the property on 13th November 2018 informing him that an HMO Licence was required. The Respondent submits that he never owned the property but that does not absolve him of his responsibility to obtain a Licence as he was the 'person who controlled or managed an HMO that was required to be licenced under Part 2 of the 2004 Act but was not so licenced'.
50. The Tribunal accepts the evidence of the Applicant that she was harassed by the Respondent. The copy text messages provide proof of the Respondent's unacceptable behaviour to the satisfaction of the Tribunal

and the only submission from the Respondent appears to be that the Applicant 'is lying'.

51. The Tribunal therefore determines that it will make a Rent Repayment Order for the Period 1st October 2018 – 16th December 2018.

52. The calculation of the rent repayment order is therefore:

Gross Monthly Rent: £365.00 per calendar month

Gross Daily Rent: £365.00 x 12 = £4380.00 pa ÷ 365 = £12.00 per day

The Quantification of the rent repayment order is therefore:

2 Months' rent @ £365.00 per month £730.00

16 days rent @ £12.00 per day £192.00

Total £922.00

53. The Tribunal therefore confirms the total amount of the Rent Repayment Order of £922.00. Payment should be made in full within 28 days of the date of this decision.

54. During the hearing it was confirmed by the Tribunal that under Section 49 of the Act a local authority may help a tenant seeking a rent repayment order.

APPLICATION UNDER RULE 13(2)

55. At the hearing the Applicant verbally submitted to the Tribunal an Application under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requesting reimbursement of £300.00, being the Application and Hearing Fee paid.

56. At the hearing the Applicant submitted that she had not requested a hearing on her Application Form but that the Tribunal determined that the matter could not be dealt with as a paper determination and that a Hearing had to be arranged. This had cost the Applicant an additional £200.00 which she had struggled to find. At the same time the behaviour of the Respondent had been upsetting and had he obtained an HMO Licence she would not have had to pursue him for the rent repayment order.

57. After careful consideration the Tribunal determined that it was just and equitable that the Application Fee of £100.00 and the Hearing Fee of £200.00 should be reimbursed to the Applicant. The Respondent shall, within 14 days reimburse the Applicant the sum of £300.00 being the Application Fee and Hearing Fee paid in relation to this Application.

APPEAL

58. Any appeal against this Decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intend to rely in the appeal.

Graham Freckelton FRICS
Chairman
First-tier Tribunal (Property Chamber) (Residential Property)