



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

Case Reference : **CAM/00JA/HMG/2019/0001**

Property : **46 Shore view, Hampton Hargate,
Peterborough, Cambridgeshire PE7 8FS**

Applicant : **Suraj Mudhar (Tenant)**

Respondents : **Satpal Singh (Landlord)**
Agent : **Smart Move Property Services**

Date of Application : **22nd February 2019**

Type of Application : **Application by a tenant for a Rent
Repayment Order (RRO) where there has
been no conviction of the landlord and no
imposition of a financial penalty on the
landlord by the local authority Section 41
Housing and Planning Act 2016**

Tribunal : **Judge JR Morris
Mr R Thomas MRICS**

Date of Hearing : **21st May 2019**

Date of Decision : **23rd May 2019**

DECISION

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Decision

1. The Tribunal makes no Rent Repayment Order.

Reasons

Application

2. On 22nd February 2019 the Applicant applied for a Rent Repayment Order as a Tenant.

Applicant's Statement

3. The Applicant provided written statements dated 10th May 2019 and a copy of an email to the Agent dated 5th July 2018. In the statements and email the Applicant said that the Property was a House in Multiple Occupation being a six-bedroom detached house with three floors and therefore should have a House in Multiple Occupation Licence (HMO Licence) as required by section 61 Housing Act 2004. He said he moved into the Property on 1st July 2017 and has lived there ever since. He said there had always been 5 tenants in occupation.
4. He said that it recently came to light that the Respondent Landlord did not have an HMO Licence which is an offence under section 72(1) Housing Act 2004. The Applicant said that he had spoken to Peterborough City Council, the charity Shelter Housing and the Landlord's Agent who informed him that he was entitled to obtain a Rent Repayment Order for the 12 months rent totalling £4,200 equivalent to £350.00 a month for 12 months under sections 41, 43 and 44 Housing and Planning Act 2016. The rent included all services.
5. He said that he understood the previous owner and landlord had an HMO Licence but this was only effective until March 2017 when the Property was sold to the Respondent because the Licence was not transferrable. The Applicant also said that he knew the Landlord had an HMO Licence now which was issued in March 2018. However, there was no Licence between March 2017 and March 2018.
6. He submitted that the Respondent Landlord should have known when he bought the Property in March 2017 that the previous owner's HMO Licence could not be transferred and that he should have obtained a new licence. Although Peterborough City Council which is the local housing authority (the Authority) and the body which issues licences, accepted the Respondent's explanation that he was "unaware" that the Property needed an HMO Licence as this was his first Property, the Applicant said he found the explanation unacceptable. He said the Respondent works in the property industry, being a director of his Agent's company, and he would have all the appropriate information to run the Property legally.
7. The Applicant submitted that since the Respondent had committed the offence of running an unlicensed house in multiple occupation there was nothing further to prove.

Respondent's Statement

8. The Respondent provided a written statement saying that he had a valid HMO Licence from 14th March 2018 (copy provided). He had purchased the Property in March 2017 as an existing licensed HMO and that licence was still in place until May 2018.
9. He said that he had applied for a new licence in March 2018 to replace the previous licence. Since this was his first purchase of a House in Multiple Occupation, he said he was not aware of the timescales to replace the Licence into his own name. The Authority have accepted his reasoning for the delay in applying for a new licence.
10. A copy of an email from Ms Jo Bezant, of Peterborough City Council Prevention and Enforcement Service – Housing, dated 7th August 2018 was provided which stated that:

“I can confirm that I have looked into your case following our discussions and advise that I am happy with the reasoning given for the delay in applying for your licence. I confirm that you have made a valid licence application that is being processed and that there is no reason for the Council to consider taking any prosecution action against you for the period your property was not licensed in your name.”
11. Ms Bezant in an email dated 14th May 2019 produced at the hearing confirmed that the Property had been run as a licensed HMO since 2008 and that the last licence was issued on 23rd May 2013 and was due to expire on 22nd May 2018. The Authority's enforcement officers have inspected the Property regularly and have not found any hazards and all fire safety requirements have been in place and in good working order.
12. The Respondent also stated that there were valid and up to date Gas and Electrical Certificates and Energy Performance Certificate (Copies were provided). In addition, he said that no improvement notice had been served or banning order made.

The Law

13. The relevant provisions regarding the offence are in Chapter 5 Part 2 Section 72 of the Housing Act 2004 (2004 Act) as follows:
14. **Section 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.
 - (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and

- (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,
 and that notification or application was still effective (see subsection (8)).
- (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.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—
 - (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are—
 - (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).
15. The relevant provisions regarding the Rent Repayment Orders are in Chapter 4 sections 40, 41, 43 and 44 of the Housing Act 2016 (2016 Act) as follows:
16. **Section 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
- (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 by 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).

17. **Section 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.

18. **Section 42 Notice of intended proceedings**

- (1) Before applying for a rent repayment order a local housing authority must give the landlord a notice of intended proceedings.
- (2) A notice of intended proceedings must—
 - (a) inform the landlord that the authority is proposing to apply for a rent repayment order and explain why,
 - (b) state the amount that the authority seeks to recover, and
 - (c) invite the landlord to make representations within a period specified in the notice of not less than 28 days (“the notice period”).
- (3) The authority must consider any representations made during the notice period.
- (4) The authority must wait until the notice period has ended before applying for a rent repayment order.
- (5) A notice of intended proceedings may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates.

19. **Section 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);

- (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).

20. Section 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</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 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.

Discussion

- 21. A hearing was held, attended by Mr Singh the Respondent Landlord and Ms Sharon Sutton on behalf of the Agents. The Applicant did not attend.
- 22. The Tribunal made the following initial findings.
- 23. Firstly, the Tribunal found that the Application was valid in that the alleged offence had occurred between March 2017 and 14th March 2018 and the Application was received on 22nd February 2019 which was within 12 months of the offence taking place under section 41 of the 2016 Act.

24. Secondly, the Tribunal found that the period for which the Applicant could claim a Rent Repayment Order was from 1st July 2017 when he began his occupation of the Property until 14th March 2018 when the alleged offence ceased on the granting of a new HMO Licence to the Respondent. This was a period of eight and a half months under section 44 of the 2016 Act.
25. Thirdly, with regard to assessing any rent to be repaid the Tribunal found that so far as the Respondent was aware, no Universal Credit or similar benefit had been claimed by the Applicant in respect of the rent. The Respondent confirmed that the services of gas, electricity, water and internet connection were included. In addition, he paid insurance and had substantial mortgage with repayments. The Respondent added that the Applicant was an excellent tenant.
26. Fourthly, the Tribunal found that no notice of intended proceedings had been served by the local housing authority on the Respondent Landlord under section 42 Housing and Planning Act 2016. It followed that the Respondent had not been convicted of an offence under section 72(1) nor had the Authority imposed a financial penalty.
27. The Tribunal then considered whether it was satisfied beyond a reasonable doubt that an offence had been committed to which the Rent Repayment Order provisions applied. In this case whether the Respondent had committed an offence under section 72(1) of the 2004 Act.
28. From the evidence adduced the Tribunal found that the Authority had determined that although the Respondent had control of or managed the Property as an HMO which was required to be licensed but was not so licensed nevertheless the defence in section 72(5) of the 2004 Act applied.
29. The defence is that the Respondent had reasonable excuse for having control of or managing the Property as an HMO.
30. In answer to the Tribunal's questions at the hearing the Respondent said that he owned and ran an estate and letting agency called Smart Move in Essex. He said that his Agency does not and has never let or managed HMOs. This has not been a disadvantage to his business because until now there have been relatively few HMOs in Essex.
31. He said he purchased the Property in Peterborough for family reasons. As he was inexperienced in HMOs he purposely looked for one that was 'up and running' and was in good condition to ensure that he was fully legally compliant. To purchase the Property, he obtained an HMO mortgage. The mortgagee was satisfied that the Property already had an HMO licence but at no time advised him that he would have to have the licence transferred into his own name. Similarly, his solicitor was aware of the existing licence and that it only had a year to run and advised the Respondent that he would have to renew it. However, the Respondent certainly did not recall being told nor reading in correspondence that the existing licence was not transferable and a

new licence would have to be issued in the Respondent's name and failure to do so was an offence.

32. The Respondent said that the Authority told him that the previous owner and landlord had not told them that he was selling the Property as they would have contacted the Respondent to ensure that he was a fit and proper person prior to issuing a new licence. The Tribunal gave weight to the local housing authority's decision to accept that the Respondent had reasonable excuse in not obtaining a licence in his own name immediately. The Authority has experience in granting licences and would have had the benefit of reading the information submitted by the Respondent to show he is a fit and proper person when applying for the new licence.
33. The Tribunal found the Respondent to be a credible witness and having taken all the evidence into account, it accepted, as had the Authority, that the defence in section 72(5) applied.
34. The Tribunal therefore was not satisfied beyond a reasonable doubt that the offence of section 72(1) of the 2016 Act had been committed by the Respondent.

Decision

35. As the Tribunal had found that the Respondent had not committed an offence to which Chapter 4 of the Housing and Planning Act 2016 applied it made no Rent Repayment Order.

Judge JR Morris

ANNEX - 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.

