



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

**Case Reference** : **MAN/00DA/HMF/2019/0010 – 0012;  
0015 & 0040 – 0042**

**Property** : **7 Richmond Mount, Hyde Park,  
Leeds LS6 3JS**

**Applicants** : **(1) Marie Gould-Yates  
(2) Jess Fowler  
(3) Elena Panayiotou  
(4) Charlotte Ireland  
(5) Jack Mackintosh  
(6) Georgina Davis  
(7) Lucy Brose**

**Representative** : **Justice For Tenants**

**Respondent** : **Harish Hirani**

**Representative** : **N/A**

**Type of Application** : **Rent Repayment Order  
Housing and Planning Act 2016 – s41**

**Tribunal** : **Judge J Holbrook  
Deputy Regional Valuer N Walsh**

**Date and venue of  
Hearing** : **Determined without a hearing**

**Date of Determination** : **24 October 2019**

**Date of Decision** : **26 November 2019**

**DECISION**

## DECISION

- A. **Mr Hirani is ordered to repay rent to the applicant tenants. The amount of rent which must be repaid is shown in the following table.**

<b><u>Applicant's Name</u></b>	<b><u>Rent to be repaid</u></b>
<b>Marie Gould-Yates</b>	<b>£4,849.28</b>
<b>Jess Fowler</b>	<b>£4,849.28</b>
<b>Elena Panayiotou</b>	<b>£4,849.28</b>
<b>Charlotte Ireland</b>	<b>£4,537.90</b>
<b>Jack Mackintosh</b>	<b>£4,848.00</b>
<b>Georgina Davis</b>	<b>£4,745.06</b>
<b>Lucy Brose</b>	<b>£4,849.28</b>

- B. **In addition, Mr Hirani must reimburse Ms Ireland, Mr Mackintosh, Ms Davis and Ms Brose £100 each for the tribunal application fees they have incurred in these proceedings.**

## REASONS

### Background

1. Between 25 April 2019 and 9 July 2019, the Tribunal received seven applications under section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order. The names of the Applicants are shown in the above table.
2. All seven Applicants seek repayment of rent which they have paid to the Respondent, Harish Hirani of 21 Bourne End Road, Northwood HA6 3BP, in respect of their occupation of the Property, 7 Richmond Mount, Hyde Park, Leeds LS6 3JS. The Tribunal must determine whether it has jurisdiction to make a rent repayment order in each case and, if so, the amount which Mr Hirani must repay to each Applicant.
3. On 25 July 2019, the Tribunal issued Directions to the parties in respect of all seven applications stating that the matter would be dealt with by way of a determination on the basis of the written submissions and documentary evidence, without the need for an oral hearing unless any party requested one. No party requested an oral hearing and therefore the Tribunal convened on the date of this decision to consider the applications on the basis of the written representations of the Applicants. No representations (or communications of any kind) were received from the Respondent, Mr Hirani, who has apparently declined to engage with these proceedings in any way.

4. The Tribunal did not inspect the Property, but we understand it to comprise a four-storey terraced house with seven bedrooms and a shared kitchen, bathroom and living room.

## **Law**

5. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal on 25 July. The list includes the offence (under section 72(1) of the Housing Act 2004 (“the 2004 Act”)) of controlling or managing an unlicensed house in multiple occupation (“HMO”). The offence must have been committed by the landlord in relation to housing in England let by him.
6. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
7. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
8. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:
  - a) the rent paid in respect of the period in question, less
  - b) any relevant award of universal credit or housing benefit paid (to any person) in respect of rent under the tenancy during that period.

9. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:
- 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 any of the specified offences.

## **Facts**

10. The Applicants occupied the Property as joint tenants from 1 July 2017. They had all entered into an assured shorthold tenancy agreement with Mr Hirani on 20 January 2017 for a term of one year from 1 July. The rent payable under the tenancy was expressed to be £33,944.99 and was payable by advance quarterly instalments. The rent included the cost of utilities, including electricity, gas and water charges.
11. It appears that each Applicant assumed responsibility for a notional share of the annual rent in the sum of £4,849.28. Three of them paid this amount to Mr Hirani; three of them paid slightly less; and one (Ms Brose) paid significantly more. We assume that Ms Brose paid more because her occupation of the Property may have extended beyond the 12-month term of the tenancy, but for present purposes it is necessary to restrict our review to the rent paid in respect of a period of no more than 12 months. The relevant rent payment position was therefore as follows:

<b>Tenant</b>	<b>Rent paid</b>
Marie Gould-Yates	£4,849.28
Jess Fowler	£4,849.28
Elena Panayiotou	£4,849.28
Charlotte Ireland	£4,537.90
Jack Mackintosh	£4,848.00
Georgina Davis	£4,745.06
Lucy Brose	Capped at £4,849.28
<b>TOTAL</b>	<b>£33,528.08</b>

12. It also appears that, throughout the period of the tenancy, the Property was an HMO for which a licence was required under Part 2 of the 2004 Act, but that no such licence was either applied for or issued.
13. On 1 March 2019, Mr Hirani was convicted at Leeds Magistrates Court of the offence under section 72(1) of the 2004 Act of controlling or managing an unlicensed HMO. The offence was committed in respect of the Property and Mr Hirani was fined £1,000. He was also ordered to pay a victims' surcharge and costs totaling a further £2,686.48.

## **Jurisdiction to make a rent repayment order**

14. It is clear that Mr Hirani has committed one of the offences specified in section 40(3) of the 2016 Act. The period during which the offence was committed is slightly less clear as the court record merely states that the offence was committed on 16 May 2018. Nevertheless, it is plain that the Property was a mandatory HMO during the entire period of the Applicants' tenancy and that it was unlicensed throughout that period. We are therefore satisfied, beyond reasonable doubt, that the offence was committed from 1 July 2017 until 30 June 2018. Given that each of the Applicants applied for a rent repayment order within 12 months of the end of that period, the Tribunal does have jurisdiction to make such an order in each case.

## **Whether a rent repayment order should be made**

15. We are satisfied that it is appropriate to make a rent repayment order on the ground that Mr Hirani has committed an HMO licensing offence. In coming to this decision, we are mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed HMO; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants.

## **Amount of the order**

### *Maximum possible amount*

16. The maximum amount for which a rent repayment order could be made in favour of each Applicant in the present circumstances is the amount stated in the relevant entry in the table at paragraph 11 above, being the amount of rent which each of them paid in respect of the 12-month period during which the offence was being committed. There is nothing to indicate that any of the Applicants were in receipt of universal credit or housing benefit which would need to be deducted from that maximum amount.

### *Principles guiding the Tribunal's determination*

17. It is important to note that the Tribunal is not *required* to make an order for the maximum amount in the circumstances of this case, and that there is no presumption that the order should be for the maximum amount. Rather, the Tribunal should take an overall view of the circumstances in determining what amount to order the landlord to repay (taking particular account of the factors listed in paragraph 9 above). The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration, but the circumstances in which the offence is committed are always likely

to be material. A deliberate flouting of the requirement to obtain a licence would merit a larger amount than instances of inadvertence, and a landlord who is engaged professionally in letting is likely to be dealt with more harshly than a non-professional landlord.

*Whether the landlord has any relevant convictions*

18. We note that, in addition to being convicted of the licensing offence in respect of the Property on 1 March 2019, Mr Hirani was also convicted of the same offence in respect of another property in Leeds.

*The financial circumstances and conduct of the landlord*

19. Mr Hirani has not provided any information about his financial circumstances. However, it is evident that he receives significant rental income in respect of at least two HMOs.
20. As far as Mr Hirani's conduct is concerned, the Applicants allege that he was a poor landlord who was unresponsive to their reporting of issues affecting the Property. They say that no keys were provided for any of the windows; there was a serious leak in one of the bedrooms which was never rectified, and a leak from the bathroom into the kitchen; there was no toilet seat; there were periods when there was no hot water or heating. In addition, the Property lacked adequate fire safety measures such as hard-wired smoke alarms and fire doors. Finally, the Applicants allege that Mr Hirani attempted to withhold their deposit at the end of the tenancy because of faults that were pre-existing and had been reported to him. In the absence of any rebuttal from Mr Hirani, we accept the Applicants' evidence on these matters.

*The conduct of the Applicant tenants*

21. We are not aware of any evidence relating to the Applicants' conduct which would affect our decision in this case.

*The Tribunal's determination*

22. We consider it appropriate to make a rent repayment order for the maximum possible amount in each case. Mr Hirani would appear to be a professional landlord who has disregarded the licensing and other regulatory requirements to which the landlord of an HMO is subject. He has let out accommodation which was unlicensed and substandard, and has apparently disregarded his tenants' requests for basic repairs. He has also been convicted of similar conduct in respect of a separate property. Moreover, by declining to participate in these proceedings, Mr Hirani has shown no reason why rent repayment orders should not be made for the maximum amount.

### **Reimbursement of tribunal application fees**

23. Four of the Applicants have incurred a tribunal application fee of £100 each in connection with these proceedings (the remaining Applicants were granted fees remission). As they have succeeded in obtaining a rent repayment order, it is appropriate for Mr Hirani to reimburse the four Applicants concerned for those fees in addition to repaying rent.

J Holbrook  
Tribunal Judge  
26 November 2019