



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

Case Reference : **MAN/00DA/HMF/2019/0050**

Property : **42 Royal Park Avenue
Leeds
LS6 1EY**

Applicant : **Ms Eva Morris**

Representative : **Mr Mark Morris**

Respondent : **Mr Abdolhamid Keshmiri**

Representative : **Cartwright King, Solicitors**

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 Decision : **29 October 2019**

DECISION

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- A. The application for a rent repayment order is refused.**
- B. The Respondent's application for a costs order is also refused.**

REASONS

Background

1. On 25 July 2019, Eva Morris applied to the Tribunal under section 41(1) of the Housing and Planning Act 2016 ("the 2016 Act") for a rent repayment order. The application was made on Ms Morris' behalf by her father, Mark Morris.
2. The application seeks an order for repayment of rent which has been paid in respect of the Applicant's occupation of the Property, 42 Royal Park Avenue, Leeds LS6 1EY. The person named as the Respondent to the application is Abdolhamid Keshmiri of 97 Wragby Road, Lincoln LN2 4PG. The application states that the Respondent is "known as Ali" and "name also given as Allameh Keshmiri".
3. The Tribunal must determine whether it has jurisdiction to make a rent repayment order and, if so, the amount which the Respondent must repay to the Applicant.
4. On 26 July 2019, the Tribunal issued Directions to the parties 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 application on the basis of the written representations of the parties. In addition to the parties' formal statements of case, we have taken account of the further written submissions they have made.
5. The Tribunal did not inspect the Property, but we understand it to comprise a five-bedroom terraced house occupied by students.

Law on rent repayment orders

6. 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 26 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.

7. 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.
8. 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).
9. 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 sections 44 and 46 of the 2016 Act.

Facts

10. The Applicant occupied the Property, together with four other students, as a joint tenant for a period of 12 months from 1 July 2018. During that period, rent of £2,513.33 per calendar month was payable to the landlord. The Applicant paid a share of this rent: in total, she paid £6,032.04 in rent.
11. There is some dispute and/or uncertainty as to the identity of the landlord. The Tribunal has not been provided with a full copy of the tenancy agreement, signed by the parties. However, the Applicant provided a copy of a document with her statement of case which appears to be the first page of a tenancy agreement for the Property. It names the Respondent as the landlord and a company called Elements Build Ltd as the landlord's agent. The names of the five tenants (including the Applicant) are shown in manuscript. The Applicant also provided a copy of her tenancy deposit protection certificate. This names "Allameh Keshmiri" as the landlord, who also appears to be the registered proprietor of the freehold title to the Property at HM Land Registry.
12. It appears that the rent was paid to Elements Build Ltd and that Abdolhamid Keshmiri was a director of that company until 20 September 2019. Elements Build Ltd was also the entity which served a Notice Requiring Possession on the tenants in April 2019.
13. We note that earlier this year Leeds City Council brought a criminal prosecution against Allameh Keshmiri and Elements Build Ltd for

alleged offences relating to the Property under section 72(1) of the 2004 Act. The Applicant provided a witness statement for the purposes of those proceedings. However, the criminal proceedings against Allameh Keshmiri were dismissed with an order for costs in the defendant's favour. We gather that the proceedings against Elements Build Ltd have also been discontinued. No criminal proceedings have been brought against Abdolhamid Keshmiri.

No jurisdiction to make a rent repayment order

14. The Tribunal could only make a rent repayment order in this case if we are satisfied, beyond reasonable doubt, that the Respondent has committed the offence (in relation to the Property) of controlling or managing an unlicensed HMO, and that he was the landlord of the Property at the time.
15. The Respondent denies that he has ever been the owner or landlord of the Property, or that he is known by any name other than Abdolhamid (or Hamid) Keshmiri. He has produced a photocopy of his driving licence, together with a copy of a driving licence issued to one Allameh Keshmiri. It is clear from this evidence that Abdolhamid Keshmiri and Allameh Keshmiri are two individuals – and we note that they have different residential addresses. It is not clear whether either of these individuals is known as “Ali”.
16. It appears that, at the time of making the application to the Tribunal, the Applicant and her father did not appreciate that Abdolhamid Keshmiri and Allameh Keshmiri are separate individuals. Referring to the information provided in the tribunal application form (see paragraph 2 above), Mr Morris has since commented: “At the time of the application we did not know whether these names represented three different people, two people or even just one person!”. He also says that “... the respondent names of Abdolhamid Keshmiri and Allameh Keshmiri were both provided as the true identity of the landlord was never clear to us.”.
17. The sole respondent to this application is Abdolhamid Keshmiri. On the basis of the available evidence, the Tribunal cannot be satisfied that he is – or ever has been – the landlord of the Property. The only evidence which points towards the Respondent being the landlord is the unsigned copy of the tenancy agreement. The Respondent denies that he authorised the production of a draft agreement in this form or that he entered into such an agreement, and there is no evidence to prove otherwise. The fact that the tenants paid rent to a company of which the Respondent was a director does indicate a strong likelihood that he had *some* connection with the Property, but it does not prove that he was the landlord.
18. On the other hand, there is evidence which casts significant doubt on the assertion that the Respondent was the landlord. This includes the fact that Allameh Keshmiri appears to own the freehold title and is named as

landlord on the tenancy deposit certificate, as well as the involvement of Elements Build Ltd with the Property.

19. It is apparent that Mr Morris feels aggrieved that his application for a rent repayment order on behalf of his daughter may be thwarted by what he sees as a strategy to disguise the identity of the landlord. Nevertheless, the fact remains that a person seeking such an order must be able to prove, to the criminal standard of proof, that the named respondent to the application is (or was) the landlord, and that that person has committed a relevant criminal offence. The Applicant has failed to discharge that burden of proof in this case: in truth, she still is not sure who her landlord was. Given that the Applicant has not established that the Respondent was her landlord, it is inevitable that the application for a rent repayment order against him must be refused.
20. It is unnecessary in these circumstances to go on to consider whether an offence has been committed in relation to the Property under section 72(1) of the 2004 Act. We make no findings in respect of that issue.

Costs

21. Following exchange of statements of case, the Respondent's solicitors made an application for costs of £720 against the Applicant. The grounds for the costs application are that the Applicant had not attempted to follow pre-action protocols or to contact the Respondent; had not attempted to obtain a definitive copy of the tenancy agreement; had missed deadlines for providing documents in line with the Tribunal's directions; and had provided sworn evidence to the magistrates' court that a different individual was her landlord.
22. The Tribunal's powers to make orders for costs are governed by rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The general principle (set out in rule 13(1)(b)) is that the Tribunal may only make an order in respect of costs if a person has acted unreasonably in bringing, defending or conducting proceedings before the Tribunal. The application of rule 13 was considered and explained by the Upper Tribunal (Lands Chamber) in the case of *Willow Court Management Company (1985) Ltd v Alexander* [2016] UKUT 290 (LC). The correct application of the rule requires the Tribunal to adopt the following approach when determining an application for costs:
 1. Is there a reasonable explanation for the behaviour complained of?
 2. If not, then, as a matter of discretion, should an order for costs be made?
 3. If an order for costs should be made, what should be the terms of that order?

23. In the present case, we are satisfied that there is a reasonable explanation for the behaviour complained of. The Applicant understood – mistakenly as it turns out – that her landlord was an individual named Ali Keshmiri, who also went by the names of Abdolhamid and Allameh. The evidence she gave in her witness statement to the magistrates' court was consistent with this understanding. Moreover, given that the Respondent clearly did have at least some connection with the Property (see paragraph 17 above), the Applicant's confusion about the identity of her landlord was not unfounded. As far as the Respondent's other stated grounds are concerned, there are no pre-action protocols which need to be followed before an application for a rent repayment order is made. Nor do we consider there to be other conduct on the Applicant's part (whether occurring before or after the application was made) which could properly be described as unreasonable conduct in bringing or conducting these proceedings. The Respondent's application for costs is therefore refused.

J Holbrook
Tribunal Judge
29 October 2019