



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

Case Reference : (1) BIR/OOCN/HMK/2020/0030
(2) BIR/OOCN/HMK/2020/0031
(3) BIR/OOCN/HMK/2020/0032
(4) BIR/OOCN/HMK/2020/0034
(5) BIR/OOCN/HMK/2020/0035
(6) BIR/OOCN/HMK/2020/0036
(7) BIR/OOCN/HMK/2020/0039
(8) BIR/OOCN/HMK/2020/0040

Subject Property : 89 Teignmouth Road
Selly Oak
Birmingham
B29 7AX

Applicants : (1) Thomas Osborne
(2) Gyan Chadda
(3) Isabella Daniel
(4) Sophie Jones
(5) Eleanor Stickler
(6) Ruth Melling
(7) Kishanbhai Patel
(8) Molly McCourt

Representative : None

Respondent : Amar Ali also known as Abdul Majid

Representative : None

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

Tribunal Members : Graham Freckelton FRICS (Chairman)
A Lavender BSc (Hons) Dip Law Dip Surv

**Date and Place
of Hearing** : 30th October 2020. The matter was
dealt with by a paper determination

Date of Decision : 5th November 2020

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.
3. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as Rent Repayment Orders. Under section 96 of the 2004 Act, where a person who controls or manages an unlicensed property has been convicted, the (former) occupiers of the unlicensed property may apply to the First-tier Tribunal for a rent repayment order.
4. 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 95(1) of the 2004 Act, *whether or not the landlord has been convicted*.

BACKGROUND

5. The Applicants are the former tenants of 89 Teignmouth Drive, Selly Oak, Birmingham, B29 7AX ('the subject property').
6. The Respondent is the landlord of the subject property.
7. The initial Application from Mr Osborne was dated 26th April 2020 and received by the Tribunal on 11th May 2020. The Applicants referred to above applied for a Rent Repayment Order under section 41 of the 2016 Act. The Applicants allege that the property was unlicensed.
8. Following the initial application by Mr Osborne the remaining tenants also applied to the Tribunal for Rent Repayment Orders. The details of the applications are as follows:

Name	Date of Application	Date Application Received
Thomas Osborne	26/04/2020	11/05/2020
Gyan Chadda	11/05/2020	15/05/2020
Isabella Daniel	11/05/2020	28/05/2020
Sophie Jones	11/05/2020	15/05/2020
Eleanor Stickler	11/05/2020	15/05/2020
Ruth Melling	11/05/2020	28/05/2020
Kishanbhai Patel	18/05/2020	28/05/2020
Molly McCourt	21/05/2020	28/05/2020

9. Directions were issued on 4th June 2020 following which submissions were made by the Applicants and copied to the Respondent.
10. The Directions required the Respondent to provide a statement of case by 7th August 2020. The Respondent failed to do so and on 10th August 2020 the Tribunal wrote to the Respondent requiring compliance within seven days.
11. The Tribunal received no submission from the Respondent and therefore on 19th August 2020 sent Notice to the Respondent confirming that as the Respondent had failed to comply with Directions the Tribunal was minded to bar the Respondent pursuant to rule 9 (3)(a) and rule 9 (7)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
12. On 4th September 2020 the Respondent telephoned and emailed the Tribunal with a short statement which confirmed that he did not want to be barred. The Tribunal accepted this email as the Respondents statement of case.
13. It is apparent from the documentation received from the Applicants that the property was occupied by them on an Assured Shorthold Tenancy for a term of twelve months commencing on 1st July 2019 at a rental of £3,200.00 per calendar month to include gas, water, electricity and internet charges. This equates to £400.00 per tenant per month.
14. The Application infers that the Applicants are requesting a rent repayment for the period 1st July 2019 to 22nd March 2020 (Nine Months). The latter date was the date the Applicants vacated the property due to Covid-19 restrictions. The Applicants therefore seek a rent repayment order of £28,800.00 (£3,200.00 x 9 months).

THE LAW

15. 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
1	Housing Act 2004	Section 95(1)	Houses to be Licenced by the Local Authority

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.

(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

16. Due to the Covid-19 Pandemic, in accordance with the revised Tribunal Regulations the Tribunal was unable to inspect the property. This was accepted and agreed by the parties.

THE SUBMISSIONS

17. Both parties provided written submissions. These are summarised as follows:

The Applicants' Submissions

18. Mr Osborne acted as the representative on behalf of the Applicants and submitted that during the period of the occupation the property did not have the necessary HMO licence. It was the understanding of the Applicants that the HMO licence for the property remained outstanding.

19. The Applicants submitted that during the tenancy the Respondent had consistently failed to respond to the Applicants concerns and Local Authority requests regarding the renewal of the HMO licence.

20. It was further submitted that the Respondent landlord appeared to operate under two names; Mr Amar Ali and Mr Abdul Majid, the former being the

name on the tenancy agreement and the latter being the account holder at the bank that the rent was paid to and the subject of the Local Authority investigation. This had caused confusion and concern for the Applicants.

21. In the submission of the Applicants the Respondent had failed to respond in a reasonable time, if at all, to requests for repairs and rectification of faults at the property. For example, the Respondents were informed that the old sofas would have been exchanged by the time the tenancy commenced. However, it took several requests and two months to provide new seating for the living room.
22. The Applicants further submitted that the wall area around the fuse box would consistently leak when there was heavy rainfall and that this situation was never resolved despite requests and the obvious danger to both the property and the Applicants. There was also a recurring leak to the first-floor bathroom which was never resolved during the tenancy period.
23. Following the UK lockdown, the Applicants submitted that they attempted to communicate with the Respondent regarding either discounting the rent payments or applying the collective deposit as a rent payment for the final month as no one was occupying the property. Numerous emails and text messages were sent and despite one reply advising that the Respondent would 'check his emails', no response had been received. The Applicants submitted that whilst they appreciated that there was no legal obligation for the Respondent to respond to requests regarding the lockdown, in their opinion it served to illustrate the complete lack of care and attention provided to the tenants.
24. The Applicants further submitted a letter from Ms Melanie Bramich, a Prosecution Officer of the Controlling Migration Team of Birmingham City Council dated 16th June 2020 confirming that as at that date the Local Housing Authority had not received an HMO licence application in respect of the property. That letter also confirmed that action had been taken in line with Birmingham City Council's enforcement policy.
25. The Applicants also submitted copies of bank statements for each of them individually confirming the monthly rent payments made.

The Respondent's Submissions

26. The Respondent's submission was contained in his email to the Tribunal dated 4th September 2020.
27. The Respondent submitted that he had applied to Birmingham City Council for an HMO licence in June 2019 but had heard nothing further from them. However, in the opinion of the Respondent the property was fully up to date with HMO requirements.
28. The Respondent further submitted that the Applicant tenants had enjoyed the property fully and with everything in working order. During the term of the tenancy the Respondent had paid £700.00 per month for utility bills and £1,200.00 per month for mortgage payments. In addition to this, general outgoing had cost £300.00 per month.
29. In conclusion the Respondent submitted that he was unemployed and that the property itself was not rented out at the present time. As a result of this his finances were in a poor state.

DETERMINATION OF THE TRIBUNAL

30. 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 79(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed a property that was required to be licensed but was not so licensed.
- (ii) Whether the Applicants were 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 95(1) of the 2004 Act

- 31. 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 95(1) of the 2004 Act.
- 32. Throughout the period from 1st July 2019 to 22nd March 2020 the subject property was subject to mandatory Licensing as an HMO. When the Applicants left on 22nd March the property was no longer subject to mandatory licensing as it was no longer occupied by five or more persons forming two or more households.
 - (i) The subject property was not licensed.
 - (ii) The Respondent was the person having control and/or managing the subject property.

Entitlement of the Applicants to apply for a Rent Repayment Order

- 33. The Tribunal determined that the Applicants were entitled to apply for rent repayment orders pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence throughout the relevant period when the subject property was let to the Applicants; and the offence was committed in the period of 12 months ending with the day on which the applications were made to the Tribunal (11th -28th May 2020).

Discretion to make Rent a Repayment Order

- 34. 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.
- 35. Section 72(5) of the 2004 Act provides a defence for Respondents of 'reasonable excuse' for not obtaining a licence. The Tribunal determined that there was no reasonable excuse for not obtaining a licence in this case.

Amount of Rent a Repayment Order

- 36. 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 95(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. The Applicants claim a total of £28,800.00, being nine months' rent at £3,200.00 per calendar month.

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.

37. In the first instance the Tribunal considered the period during which the property required to be licensed. In order to require an HMO licence, a property must be occupied by five or more persons forming two or more households.

38. It was confirmed by the Applicants that the tenancy commenced on 1st July 2019 and terminated on 22nd March 2020 when they vacated. The Tribunal therefore determined that this was the eligible period during which the property was operated as a licensable HMO. No evidence was provided by the Respondent to contradict this.

39. The rent was £3,200.00 per calendar month which equates to £38,400.00 per annum. The daily rate for rent is therefore £105.20 per day ($£38,400.00 \div 365 = £105.20$).

40. Based on the above time frame determined in paragraph 37 the Tribunal assessed the maximum amount of any Rent Repayment Order as follows:

Rent due 1 st July 2019-28 th February 2020 (8 months)	25,600.00
<u>Rent due 1st – 22nd March 2020 (22 days @ £105.20 per day)</u>	<u>2,314.40</u>
Maximum Rent Repayment Order	£27,914.40

41. The Tribunal had regard to the case of *Vadamalayan-v-Stewart and others* (2020 UKUT 0183) which concerned the calculation of a rent repayment order under section 44 of the 2016 Act. In that case Judge Elizabeth Cook held that:

18. ... under the current statute, in the absence of the provision of reasonableness, it is difficult to see a reason for deducting either a fine or a financial penalty, given Parliament's obvious intention that the landlord should be liable both (1) to pay a fine or civil penalty, and (2) to make a repayment of rent.

19. The only basis or deduction is section 44 itself and there will certainly be cases where the landlord's good conduct, or financial hardship, will justify an order less than the maximum. But the arithmetical approach of adding up the landlord expenses and deducting them from the rent, with a view to ensuring that he repay only his profit, is not appropriate and not in accordance with the law. I acknowledge that that will be seen by landlords as harsh, but my understanding is that Parliament intended a harsh and fiercely deterrent regime of penalties for the HMO licensing offence. -

*53. The provisions of the 2016 Act are rather more hard edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in *Parker-v-Waller* [2012 UKUT0301]. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances.*

42. Therefore, distilling the substance of the Act in this case the Tribunal determines that deductions should be made from the maximum amount set out in paragraph 41. The reasons for this are:

- 1) The rent included gas, electricity and water charges together with internet. The Tribunal is prepared to allow payment of these to be deducted from the rent repayment order as they are paid by the Respondent to a third party on behalf of the Applicants.

43. The Respondent, in his submission refers to the cost of utility bills as amounting to £700.00 per month. No invoices have been provided to support this and the figure appears slightly excessive. Based on its knowledge and experience the Tribunal assesses these charges as follows:

Gas Charges

£250.00 per month x 12 = £3,000.00 per annum ÷ 365 = £8.21 per day

Electric Charges

£200.00 per month x 12 = £2,400.00 per annum ÷ 365 = £6.57 per day.

Water Charges

£100.00 per month x 12 = £1,200.00 per annum ÷ 365 = £3.29 per day

Internet Charges

£50.00 per month x 12 = £600.00 per annum ÷ 365 = £1.64 per day

Therefore, the deductions relevant to this determination are calculated as follows:

Gas Charges

1 st July 2019 – 28 th February 2020 (8 months @ £250.00)	2,000.00
1 st – 22 nd March 2020 (22 days @ £8.21)	180.62
Deduction	£2,180.62

Electricity Charges

1 st July 2019 – 28 th February 2020 (8 months @ £200.00)	1,600.00
1 st – 22 nd March 2020 (22 days @ £6.57)	144.54
Deduction	£1,744.54

Water Charges

1 st July 2019 – 28 th February 2020 (8 months @ £100.00)	800.00
1 st – 22 nd March 2020 (22 days @ £3.29)	72.38
Deduction	£872.38

Internet Charges

1 st July 2019 – 28 th February 2020 (8 months @ £50.00)	400.00
1 st – 22 nd March 2020 (22 days @ £1.64)	36.08
Deduction	£436.08

44. Further, in accordance with section 40 of the 2016 Act the Tribunal is obliged to take into account the personal circumstances of the Respondent.

45. The only information provided to the Tribunal on this matter is in the email submission of 4th September 2020. In this the Respondent submits that he

has mortgage payments on the property of £1,200.00 per month (although no documentation has been provided to confirm this) and general expenses of £300.00 per month. The Respondent also submits that the property remains unlet and that he is unemployed although again, no documentation was provided to confirm this.

46. Following the case of *Vadamalayan-v-Stewart and others* (2020 UKUT 0183) the Tribunal cannot take into account mortgage payments but on the basis of information provided the Tribunal determined that it was appropriate to make a deduction of 20% of the rent repayment order due to personal circumstances.
47. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of the Applicant and Respondent.
48. The Applicants allege that the Respondent had committed an offence in not having an HMO licence and had not attended to repairs and renewals promptly, if at all. The Tribunal accepts that the property did not have a valid HMO licence. Had it done so there would be no need for the current application to be considered by the Tribunal.
49. The Respondent submitted that he applied for an HMO licence in June 2019 but had heard nothing further. No documentation was provided to support that. This is not confirmed by the Local Housing Authority who in June 2020 confirmed to the Applicants that it had not received an application for an HMO licence for the property. The Tribunal clearly prefers the evidence of the Applicants on this issue and regards the submission of the Respondent to be misleading. For this reason, the Tribunal reduces the deduction of 20% detailed in paragraph 45 to a 15% deduction.
50. The Tribunal therefore determines that it will make a Rent Repayment Order for the Period 1st July 2019 – 22nd March 2020 as detailed in paragraph 32 above.
51. The Quantification of the rent repayment order is therefore:

Maximum amount of any order as set out in Paragraph 39	27,914.40
Less:	
Gas Charges (as per paragraph 42)	2,180.62
Electric Charges (as per paragraph 42)	1,744.54
Water Charges (as per paragraph 42)	872.38
<u>Internet Charges (as per paragraph 42)</u>	<u>436.08</u>
Total deduction	<u>5,233.62</u>
Amount of Rent Repayment Order following deductions	22,680.78
Less 15% for personal circumstances (as per paragraph 48)	<u>3,402.12</u>
Amount of Rent Repayment Order	£19,278.66

52. The Tribunal therefore confirms the total amount of the Rent Repayment Order of £19,278.66 (Nineteen Thousand Two Hundred and Seventy-Eight Pounds Sixty-Six Pence) Payment should be made in full within 28 days of the date of this decision. This equates to £2,409.83 for each Applicant

APPLICATION UNDER RULE 13(2)

53. Although the Applicant, in his Application to the Tribunal did not submit an Application under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requesting reimbursement of the Application Fee paid, this is a matter which the Tribunal can consider on its own initiative.

54. After careful consideration the Tribunal determined that it would be just and equitable that the Application Fee of £100.00 should be reimbursed to the Applicants in this case.
55. Payment of £100.00 should be made by the Respondent to the Applicants in full within 28 days of the date of this Decision. This equates to £12.50 for each Applicant.

APPEAL

56. 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 of this Decision specified above stating the grounds on which that party intend to rely in the appeal.

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