



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

**Case Reference** : CHI/00HB/HMF/2020/0012

**Property** : 128 Ashley Down Road Bristol BS7 9JS

**Applicants** : Alexander Sams, Macenzy Bown, Holly Taylor, Sean Williams & Rory Summers

**Representative** : Holly Taylor

**Respondent** : Manzoor Hussain

**Representative** : Shazia Malik Wecare Foundation

**Type of Application** : Application for a rent repayment order by a tenant. Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016 (**the Act**)

**Tribunal Members** : Judge C A Rai  
Mr R Brown FRICS Mr M Woodrow  
MRICS

**Date and venue of the Hearing** : 14 July 2020 by Cloud Video Platform

**Date of Decision** : 27 July 2020

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**DECISION**

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1. The Tribunal orders the Respondent to pay the Applicants the sum of **£18,522.58** by way of a rent repayment order within 28 days from the date of this decision. The payment should be made in accordance with the instructions set out in paragraph **Error! Reference source not found.** below.

## **Background**

2. On 2 April 2020, the Applicants, the tenants of 128 Ashley Down Road Bristol BS7 9JS, (the Property), applied to the First Tier Tribunal for a rent repayment order. The Applicants applied for a rent repayment order in the sum of £18,522.58 with the assistance of Bristol City Council.
3. The Applicants made the application after they became aware that the Property was not licenced as an HMO, (House in Multiple Occupation), at the date of the commencement of their tenancy. It is not disputed that the Property should have been licenced as an HMO and that it was not licenced until 18 December 2019.
4. On 14 May 2020 Judge J. Dobson issued Directions which recorded that the Respondent had requested further time to prepare his case because he said that he had not received any papers from the Tribunal by post. In fact, the Tribunal had not posted any papers to the Respondent but corresponded with him only by email because of the limitations imposed on the operation of its office due to the Covid 19 pandemic. The Respondent told the Tribunal that he had not seen the emails because the Tribunal's email had gone into his "junk" box. Those Directions replaced or varied previously issued directions and set out what was required from the Respondent with a time frame within which he had to respond. Judge Dobson determined that the application was not suitable for a paper determination and listed it for determination by remote video hearing.
5. It was directed that the Application with its accompanying documents would stand as the Applicants' case and the Respondent was required to provide a response to that case, which he did.
6. A few days prior to the Hearing the Tribunal received notification that the Respondent would be out of the country on the day of the hearing and unable to log into the video proceedings but would be represented by the Wecare Foundation (Wecare).
7. The Applicants were notified that Wecare would represent the Respondent at the Hearing.

## **The Hearing**

8. The Hearing was attended by all the Applicants and Rob Ellison, an Environmental Health Officer at Bristol City Council, who assisted the Applicants with the application. (Rory Summers left before the Hearing ended). Shazia Malik from the Wecare Foundation represented the Respondent

9. Before the Hearing the Tribunal received electronic copies of the Directions, the Applicants' bundle and the Respondent's statement and documents, (the bundles).
10. In reliance on the information contained in the bundles, the Tribunal asked for confirmation of those matters which were already agreed. Shazia Malik confirmed, as was recorded in the written statement, that the Respondent accepted that on the date the Applicants' occupation of the Property commenced, (4 April 2019), there had been no HMO Licence for the Property and that was a contravention of section 72(1) of the Housing Act 2004. It was agreed by both parties and Bristol City Council that the Respondent's application for an HMO Licence was registered on 18 December 2019 which is the day the HMO Licence came into force.
11. The Respondent's Representative confirmed, as was recorded in the Respondent's statement, that he accepted that it was his responsibility to obtain an HMO licence for the Property and that he had not done so until 18 December 2019. The Respondent accepted that his failure to obtain a licence for the Property was an offence.
12. Although only three of the five Applicants were signatories of the Tenancy Agreement, both parties agreed that all five were tenants of the Property for the duration of the offence and that they were jointly and severally responsible for payment of the rent of Two Thousand Two Hundred Pounds (£2,200) per month for the whole of that period.
13. The Respondent's Representative, Shazia Malik, confirmed that the Applicants had collectively paid rent of £2,200 per month and that the total amount paid during the period of the claim, as evidenced in the bundles, was not disputed. She agreed the calculation of the maximum amount of rent which the Applicants could reclaim calculated by Rob Ellison and referred to in the Application is £18,522.58.
14. Holly Taylor, speaking for the Applicants, stated that none of the Applicants had received universal credit during any of the period of the tenancy for which they are claiming a rent repayment. There are individual statements supporting this in the bundles.
15. Holly Taylor said that the Applicants had occupied the Property pursuant to the Tenancy Agreement. The Tenancy Agreement was for a fixed term of six months following which it continued as a monthly periodic tenancy. [Clause 5(7) Page 11 of the Applicant's bundle].
16. She said that she was shown the Property by the letting agent. The Property was advertised as a five-bedroom house suitable for students or young professionals. She and the other four Applicants were keen to jointly rent a property. She said that the letting agent had promised that improvements to the Property would be made before the Applicants occupied it. Although the Property was let as "furnished", some of the furniture was broken, unstable or unsuitable. She referred to there being no bed in her room and a broken table and wardrobe. She also said that the Property had an inadequate fire alarm system and lacked fire doors. When the Applicants moved into the

Property, the Respondent had been out of the country. She said she had no contact with anyone until the Respondent returned from abroad some three months after the tenancy commenced. She said the garden was overgrown too. It was only later that the Applicants had discovered that the Property was not licenced as an HMO.

17. The Applicants' evidence about the condition of the Property and the furniture was disputed by Shazia Malik. She also referred to a video sent to the Tribunal by the Applicants in response to the Respondent's statement and which she suggested was not a true reflection of the facts. She said that there had been fire doors at the start of the tenancy, but these were upgraded during the tenancy. She disputed Holly Taylor's comment regarding the furniture. She said the Property was managed on behalf of the Respondent by a paid letting agent throughout the tenancy. Shazia Malik told the Tribunal that neither the Respondent or the agent had received any correspondence or complaints about the Property from the Applicants.
18. The Tribunal members had not received a copy of the link to the Applicants' video before the Hearing. (This was later discovered to be on account of some technical difficulty with the email to which the link was attached).
19. There was no agreement between the parties regarding the basement of the Property and whether it was included and whether the Applicants were entitled to gain access to it. The Respondent has suggested it was locked and that the Applicants were told they could not use it. The Applicants alleged it had been full of rubbish. Holly Taylor said that the Applicants had been obliged to unscrew the padlock on the door to gain access to a meter located within and found it full of unpleasant rubbish which during the summer months had attracted flies.
20. The Respondent alleged that the Applicant had broken the padlock on the basement door and dumped the unwanted furniture in the basement. It was established that it was unnecessary to go through the basement to gain access to the rear garden.
21. Information contained in the bundles refers to a water leak from the kitchen into the basement. It is also stated that the Applicants fitted a dishwasher in the kitchen which was not properly connected and leaked.
22. The condition of the basement is referred to in the schedule which accompanied Rob Ellison's letter to the Respondent dated 24 January 2020, sent following his inspection of the Property on 16 December 2019. Page 135 of the Applicants' Bundle refers to "a large amount of flammable materials such as mattresses (sic) and items of furniture". It was not disputed that the Respondent arranged and paid for the removal of items removed from the basement but there was no agreement as to the nature and amount of that rubbish and whether or not the Applicant had accepted a deduction from the tenancy deposit to defray the costs incurred by the Respondent.
23. The Respondent's representative suggested that the invoice which showed how much the Respondent paid for disposing of the waste is evidence that the amount and type of waste was not excessive. [See page 34 of the

Respondent's bundle which is an invoice in the sum of £160.66 for the disposal of mixed waste on 6 February 2020]. There is nothing on that invoice to correlate the origin of the waste referred to on it as being waste that had been removed from the Property as opposed to elsewhere.

24. Holly Taylor said that the complaint made about the condition of the basement is recorded in the copies of the text messages in the bundle. [See page 175 of the Applicants' Bundle]. She told the Tribunal that the Respondent had blamed the Tenant for the problems with the basement and she rejected his representative's suggestion that the Applicants were responsible for its condition.
25. In response to a question from the Tribunal as to why the Applicants remained at the Property after the first six months of the tenancy she said that it had not been possible to find another property at that time because five bedroom houses in Bristol are scarce and sought after by students. In September 2019, the Applicants would have been competing with students.
26. Holly Taylor also said that although the Applicants had been promised an inventory of the furniture by the agent at the beginning of the tenancy, it was not provided. She claimed that the Applicants had made their own video record of the furniture but that the agent refused to accept it as a valid record.
27. In response Shazia Malik said she had seen a video of some of the Applicants visiting the Property prior to the commencement of the tenancy which suggested that they had been happy with the condition of the Property at that time.
28. The Respondent had suggested the Property was occupied by additional unauthorised people and the bundles indicate that one of the Applicants girlfriends, (Katie), was present when Rob Ellison visited the Property in December 2019. Holly Taylor told the Tribunal that that Katie Roberts had stayed there from time to time but disputed that she was continuously resident. She said that she stayed for two or three nights, from time to time.
29. Shazia Malik said her client admitted that he had not applied for an HMO licence until December 2019. In mitigation the Respondent said that he had found the online application process difficult and only managed to successfully submit the application and pay the fee after he had spoken to Rob Ellison. He has a limited grasp of the English language and was not computer literate. He said he did not know that a tenant could seek repayment of the rent because of his failure to comply with the law or that such failure could lead to a conviction. Shazia Malik said that her client also found it difficult to gain access to the Property to carry out the works which Bristol City Council required him to undertake following his application for an HMO licence.
30. Shazia Malik told the Tribunal that her client is the father of eight children, five of whom are aged under 7, with another child due in September or October. She said he claims no benefits and his disposable income is between £3,000 - £4,000. Three of his ten properties are mortgaged and that the mortgage on the Property is an interest only mortgage. The Property

is the largest of his properties. The others have two to three bedrooms and are family homes. Four are currently empty and two are occupied by families who are unable to pay the full rent, although he anticipated that this would be temporary.

31. When asked about his financial position, she told the Tribunal that the Respondent had been unable to produce the accounts for the current year to the Tribunal because of the Covid 19 pandemic.
32. The Tribunal advised both parties that there had been a recent decision made by the Upper Tribunal which contained guidance that was relevant to this rent repayment application and provided the parties with the name and reference to that case. (*Vadamalayan v Stewart* [2020] UKUT 0183 (LC)).
33. It explained that although it had heard submissions from both parties regarding the condition of the Property, and also from the Respondent in relation to the financial circumstances of the Respondent, the guidance in the *Vadamalayan* case suggested that in accordance with the Act, the starting point for the amount of a rent repayment order would be the maximum amount attributable to the period of the offence, which amount in this case is agreed.

### **The Law and the Reasons for its Decision**

34. The current jurisdiction of the Tribunal to determine the Application is contained in Chapter 4 of the Housing and Planning Act 2016. The 2004 Housing Act introduced Rent Repayment Orders as an additional measure to penalise landlords managing or letting unlicensed properties. The Act extended the powers to make Rent Repayment orders to a wider range of “housing offences”.
35. Section 40 of the Act confers the Tribunal with power to make a rent repayment order where a landlord has committed an offence to which applies.
36. Section 40(3) contains a table listing the offences and included in the list at row 5 is the control or management of an unlicensed HMO in breach of section 72(1) of the Housing Act 2004. The offence of failing to comply with section 72(1) is a strict liability offence subject to the statutory defences of (1) at the material time an application for the licence had been duly made, and (2) a reasonable excuse.
37. A tenant may apply for a rent repayment order only if the offence relates to housing that at the time of the offence was let to the tenant and the offence was committed in the period of 12 months ending with the day on which the application was made. (Section 41 of the Act).
38. Section 43 provides that the Tribunal may make an order if it is satisfied beyond reasonable doubt that a landlord has committed an offence to which this Chapter of the Act applies whether or not the landlord has been convicted.

39. The amount of the rent repayment order is to be determined in accordance with section 44 where, as in this application, the application was made by the tenant.
40. In this case, the offence is an offence mentioned in row 5 of the table in section 40(3), (see paragraph 36 above), so the amount must relate to rent paid by the Applicants for a period, not exceeding 12 months during which the landlord was committing the offence.
41. Section 44(3) states that the amount order must not exceed the rent paid less any relevant award of universal credit paid to any person in respect of the rent during that period.
42. Whilst the starting point for the amount which the Tribunal can order the Respondent to repay to the Applicants is the maximum amount, section 44(4) states that in determining the amount (of the Order) the Tribunal must, in particular, take into account (a) the conduct of the landlord and the tenant, and (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted on an offence to which this chapter of the Act applies.
43. In the very recent Upper Tribunal decision in *Vadamalayan v Stewart* [2020] UKUT 0183 (LC), Judge Elizabeth Cooke reviewed both the law and the leading case authorities relating to rent repayment orders, *Parker v Waller* [2012] UKUT 301 (LC) and *Fallon v Wilson* [2014] UKUT 0300 (LC). Critically both these decisions were made in relation to the Tribunal jurisdiction under the Housing Act 2004 before the Act came into force. Judge Elizabeth Cooke explained the difference between the former and current statute. She stated in paragraph 11 that the statutory wording, on which the statement made by President George Bartlett QC in *Parker v Waller* that there was no requirement in the 2004 Housing Act that the RRO should be for the total amount received by the landlord during the relevant period, is absent from the Act. “There is no presumption that a payment in favour of the tenant should be reasonable.” She concludes that those two decisions are not relevant to the provisions of the Act.
44. In paragraph 14 of her decision, Judge Elizabeth Cooke stated:
- “The rent repayment order is no longer tempered by a requirement of reasonableness; and it is not possible to find in the current statute any support for limiting the rent repayment order to the landlord’s profits. That principle should no longer be applied”.
45. She went on to say in paragraph 19:
- “The only basis for 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’s 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.”

46. This application for a rent repayment order was made on 2 April 2020. The Applicants occupied the Property as a tenant under a written six-month tenancy agreement, which later became a monthly periodic tenancy, from the 4 April 2019 until early March 2020. It is not disputed by the Respondent that the offence commenced on 4 April 2019, when the tenancy of the Property commenced, and continued until 18 December 2019, when the Respondent's Application for an HMO licence was registered. The Tribunal is therefore satisfied that the offence was committed in the period of 12 months prior to the date of the Application.
47. The Applicants confirmed that none of them were receipt of universal credit during this period and the Respondent accepted that rent of £2,200 per month was paid by the Applicants during the entire period of the offence.
48. The offence was committed on the 4 April 2019 and continued until the 18 December 2019, (which is less than 12 months), so the Tribunal can make an order in respect of all the rent paid between those dates.
49. The Applicants calculate that they are entitled to repayment of 8 months and 13 days rent and has calculated this to total £18,522.58. This is  $8 \times 2,200 + (2,200/31) \times 13$ . The Tribunal accepts that calculation and that £18,522.58 is the maximum amount it can order the Respondent to repay. The Respondent accepted that this is the maximum amount of rent he can be ordered to repay.
50. The Respondent has admitted that he let the Property without an HMO licence and by so doing that he committed the offence in section 72(1) of the Housing Act 2004. The Tribunal is therefore satisfied beyond reasonable doubt that the Respondent committed the offence. The Tribunal acknowledges, as confirmed by Rob Ellison of Bristol City Council at the Hearing, that the Respondent has not been convicted of the offence that he has admitted.
51. The Respondent's statement confirms he has not been convicted of any previous offence in the Housing Act and his representative also confirmed that at the Hearing. The Applicants neither claimed nor suggested that the Respondent has been convicted of any other "Housing Act" contravention. In response to a question from the Tribunal, Rob Ellison confirmed that he was unaware that the Respondent had any other convictions under the Act.
52. The Applicants provided oral and written evidence that the condition of the Property was unsatisfactory before and during the tenancy and that although improvements had been promised these did not materialise quickly or at all.
53. In rebuttal of these submissions, Shazia Malik said that the Applicants had provided no evidence they had made any written complaints to the Respondent or his agent regarding the condition of the Property at the commencement of the tenancy. Although the written evidence in the bundles and the oral submissions at the hearing demonstrated that the parties do not agree about the condition of the Property at the commencement of the tenancy the Tribunal concluded that any dispute regarding this could and should have been resolved between the parties



either during the tenancy, or at its conclusion when the Respondent dealt with the return of the tenant's deposit. It has concluded it is not relevant in its assessment of the conduct of the Landlord or Tenant in the context of section 44.

54. In mitigation of the Applicants claim for the maximum amount of rent to be repaid, the Respondent provided the Tribunal with background information about his family circumstances and financial position which he suggested has been made worse by the current Covid 19 pandemic. However, the Covid 19 pandemic resulted in the curtailment of movement within the country in early March 2020 so had no impact upon the Respondent during the period which the rent repayment is claimed.
55. The Respondent disclosed that he is an experienced landlord who employed a professional managing agent and that he has been a landlord for many years and lets ten properties.
56. This Tribunal, guided by *Vadamayalayan*, has therefore considered carefully if there is any basis in section 44 of the Act for limiting the amount of the rent repayment order in this case.
57. It heard submissions from the parties regarding alleged promises made to the Tenant prior to the commencement of the tenancy. It has noted the allegations in the documents within the bundles that the Tenant installed a dishwasher which was badly plumbed resulting in a water leak and consequential damage. It has found that there is disagreement between the parties as to the condition of the Property at the commencement and during the tenancy and whether or not works were promised to induce the tenant to take the tenancy and then either not undertaken or delayed as a result of the landlord's absence from the country. The Applicants admitted it was difficult to find another property of a comparable size to rent within Bristol and that they therefore remained in occupation of the Property after the expiry of the initial six-month tenancy.
58. The Tribunal has not considered the video response made by the Applicants to the Respondent's statement. None of its members had seen that response before the Hearing.
59. Whilst the Tribunal accepts that the Covid 19 pandemic may have made it more difficult for the Respondent to access professional advice, it does not accept this as a reason or excuse for the failure of the Respondent to provide information to substantiate his claim that that he is financially compromised. He should have been in possession of the accounts submitted when making his previous year's tax return and in the absence of information for the current year, he could have supplied historic information to substantiate his written statement, but failed to do so.
60. For all the above reasons, the Tribunal makes an order that the Respondent repay the Applicants the maximum sum it can award of £18,522.58.
61. Since there are five Applicants who paid unequal shares of the rent, the Tribunal is concerned that the repayment it has ordered be divided between

the individual Applicants in the same proportions each paid rent. Unless one of the Applicants is able to provide a written undertaking to the Respondent and Tribunal that if repayment of the whole amount ordered is made to that Applicant and that he or she will act as trustee of the money for the benefit all the Applicants and indemnify the Respondent from any liability for the payment to the other four Applicants, this payment should be divided between the five Applicants as set out below.

Tenant Name	Share of monthly Rent	Repayment
Alexander Sams	£480	£4,041.63
Macenzy Bown	£420	£3,537.81
Holly Taylor	£450	£3,787.87
Sean Williams	£450	£3,787.87
Rory Summers	£400	£3,367.40

## Appeals

1. A person wishing to appeal this decision to the Upper Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.