



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

Case References : **CHI/43UM/HMF/2020/0024
CVP/VIDEO**

Property : **96, Enterprise Place, 175 Church St East,
Woking, Surrey GU21 6AG**

Applicants : **Francisca Fonseca Jose Ramalho
Paulino &
Roberto Paulo Racha Luis**

Representative : **In person**

Respondent : **Daniel Jose Lewis (landlord)**

Representative : **Mr R Cifonelli of Counsel**

**Type of
Application** : **Application for a rent repayment order**

Tribunal Members : **Judge F J Silverman MA LLM
Mr K Ridgeway MRICS
Ms J Dalal**

**Date of CVP
remote hearing** : **7 December 2020**

Date of Decision : **10 December 2020**

DECISION

Decision of the Tribunal

- 1. The Tribunal makes a rent repayment order against the Respondent and in favour of the Applicants jointly and severally in the sum of £12,956.00.**

Reasons

- 1 This application received by the Tribunal on 4 September 2020 is made by the Applicants under section 41 of the Housing and Planning Act 2016 (“the Act”) requesting a rent repayment order against the Respondent in respect of the property known as 96, Enterprise Place, 175 Church St East, Woking, Surrey GU21 6AG (the property) for the period 1 April 2019 to 26 September 2019 during which time the property was unlicensed.
- 2 The subject property falls within the area specified by a selective licensing order made by Woking Borough Council requiring all properties within that area to be licensed as from 1 April 2018. That order is effective for a period of five years from that date.
- 3 A landlord who fails to obtain a valid licence is committing a criminal offence under s95(1) Housing Act 2004.
- 4 Owing to restrictions imposed during the Covid19 pandemic, the Tribunal was unable carry out a physical inspection of the property but had the benefit of photographs included in the Respondent’s hearing bundle (page R76).
- 5 The hearing took place by way of CVP Video conference on 07 December 2020 at which the Applicants appeared in person and the Respondent was represented by Mr R Cifonelli of Counsel.
- 6 The undisputed facts of this case are that the Applicants were in lawful occupation of the property during the entire period covered by this application. They occupied the property under a series of tenancy agreements and the rent payable during the relevant period covered by this application was £1,250 per calendar month. The property is a recently constructed 2 bedroom flat in a six storey block and is in good condition. The rent was paid regularly and proof of payment was produced to the Tribunal (pages A 4-5).
- 7 The Applicants say that they were unaware of that the property either needed a licence or that it did not have one until informed of the fact by a letter from Woking Council in 2020. They say that they would not knowingly have rented an unlicensed property. They had practically no contact with the Respondent during the period of their tenancy. Contact had been through the Respondent’s father or with the agents.

- 8 The Respondent said that he did not know that the property needed a licence until informed of the fact by the Council in September 2020. He applied for a licence six days after receiving notification from the Council. He said that he had agents looking after the property and they had not informed him of the need for the property to be licensed.
- 9 The unchallenged evidence was that the subject property was a flat which was subject to a selective licensing scheme and had never been licensed during the entire occupation by the Applicants. It is clear that the council in its letter to the Respondent had formed the view that the offence of failing to obtain an HMO licence had been committed although it is accepted that they took no further action in that respect. Moreover, on 26 September 2020, the Respondent considered it necessary to apply for such a licence rather than seek clarification from the Council as to whether a licence was required at all. The inference to be drawn is that the Respondent also considered that the property needed to be licensed.
- 10 The Tribunal was, therefore, satisfied beyond reasonable doubt that the Respondent had committed an offence under section 95 (1) of the Housing Act 2004 (as amended), namely, that he had been in control or management of an unlicensed house.
- 11 It follows that the Tribunal was also satisfied that it was appropriate to make a rent repayment order under section 43 of the Act in respect of the Applicants jointly and severally for the 12-month period commencing on 1 April 2018. Any award could not exceed the total rent of £15,000 received by the Respondent for this period of time.
- 12 As to the amount of the order, the Tribunal had regard to the following circumstances under section 44(4) of the Act.
- 13 The Tribunal accepts that the failure to apply for a licence was inadvertent but this is not a defence under the Act.
- 14 The Respondent had professional agents acting for him who should have advised him of the need to obtain a licence. The Respondent said they did not communicate this to him. This is unfortunate but is not a defence under the Act.
- 15 The property was adequately maintained and in good condition.
- 16 The Applicants themselves had been unaware of the licencing requirement until after they had vacated the property.
- 17 Given the above, the Tribunal does not categorise the Respondent as a rogue landlord.
- 18 That, once the Respondent became aware of the need to obtain a licence he applied for one promptly.
- 19 That the Respondent did not have any previous convictions of this kind and importantly, the Council did not consider the Respondent's offence to be sufficiently serious to prosecute him.
- 20 The Tribunal did not have details of the Respondent's financial circumstances other than that he had not claimed benefits. No plea of financial hardship was made on his behalf. The Applicant set out in his witness statement (page A70) a list of his outgoings and expenditure on the property during the relevant period but did not

substantiate them with receipts. These were: Estate Agents Fees: £1,200.00; Service Charges: £1,594; Ground rent: £250.00; Water rates: £200.00; Tax:£3,700 ; and Mortgage (approx.): £2,500.

- 21 On balance, taking into account the Respondent's conduct and the fact that the Applicants suffered no inconvenience during their occupation, the Tribunal considers that it would be reasonable to deduct from the maximum possible award of £15,000 the utility type outgoings which the Respondent paid during the relevant period. These (service charges, ground rent and water rates) together amount to £2,044 leaving a net sum of £12,956 which is the sum awarded under this Order.

22 Relevant Law

Making of rent repayment order

Section 43 of the Housing and Planning Act 2016 ("the Act ") provides:

“(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).

Amount of order: tenants

16. Section 44 of the Act provides:

(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.

If the order is made on the ground that the landlord has committed

an offence mentioned in row 1 or 2 of the table in section 40(3)

an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)

the amount must relate to the rent paid by the tenant in respect of the period of 12 months ending with the date of the offence

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.”

Name: Judge Frances Silverman **Date:** 10 December 2020
as Chairman

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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. Under present Covid 19 restrictions applications must be made by email to rpsouthern@justice.gov.uk.

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.