



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

Case Reference : **LON/00BG/HMF/2020/0015**

Property : **61 Cleveland Way, London E1 4TZ**

Applicant : **Johan Chin Yue Ng**

Representative : **None**

Respondent : **Dr Krishane Rajakumar**

Representative : **None**

Type of Application : **Application for Rent Repayment Order
under the Housing and Planning Act
2016**

Tribunal Member : **Judge P Korn**

Date of Decision : **11th May 2020**

DECISION

Description of hearing

This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was **P**. A face to face hearing was not held because it was not practicable and the issues could be determined on paper. The documents to which I have been referred are in a series of electronic bundles, the contents of which I have noted. The order made is described at the end of these reasons.

Introduction

1. The Applicant has applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. The basis for the application is that, according to the Applicant, the Respondent was controlling or managing an unlicensed house in multiple occupation (“**HMO**”) which was required to be licensed at a time when the Property was let to the Applicant and to others but was not so licensed.
3. The claim is for repayment of rent paid by the Applicant between 1st April and 2nd September 2019 totalling £3,180.00.

Applicant’s case

4. The Applicant moved in to the Property (occupying one of the rooms) on 1st September 2018, and during the course of his occupancy he paid rent to the Respondent at a rate of £650 per calendar month. He did not have a written tenancy agreement as he was unhappy with the contents of the tenancy agreement that he had been asked to sign, but he nevertheless went into occupation and started paying rent, and the rent was accepted by the Respondent.
5. On 1st April 2019 the local authority introduced an additional HMO licensing scheme, and it is the Applicant’s position that under that additional scheme the Property required a licence from that date for the whole of the period of his claim.
6. The Applicant has been supported in this claim by the local authority and Mr Muhammed Williams, a Housing Adviser employed by the London Borough of Tower Hamlets, has given a written witness statement. Mr Williams states that Mr Jonathan Batson, a Principal Environmental Health Officer employed by the London Borough of Tower Hamlets, inspected the Property on 25th July 2019 and found that the Property was unlicensed despite its having required a licence under the additional licensing scheme since 1st April 2019.
7. Mr Batson also informed the Respondent that she had contravened management regulations by failing to provide certain health and safety equipment including no smoke alarm or fire door to the lower floor rear room. In addition, the lower floor water closet had a leaking soil pipe and damp, and the kitchen had no heat detector or functioning fire door.
8. Mr Williams noted that the Applicant had been asked by the Respondent to vacate the Property by 31st August 2019 and said that the Applicant was very concerned that the Respondent might force him out without going through a legal process. The Applicant did not want to pursue a rent repayment application at that stage as he did not want to escalate problems at the Property.
9. In his own witness statement, the Applicant complains about a leak, damp and mould at the Property and a failure on the Respondent’s part to undertake

repairs despite having received notice of disrepair. His hearing bundle includes photographs of items in disrepair. He states that he found it difficult to get problems fixed because the Respondent was living in Australia and only communicated via Facebook, whilst her father – who was managing the Property in her absence – took a long time to respond to complaints which he often downplayed or dismissed. When the Applicant's co-tenants vacated the Property they were replaced by the Respondent's boyfriend and cousin, and the Applicant saw this as a ruse to get him out of the Property.

Respondent's case

10. The Respondent accepts that the Property required an HMO licence under the additional licensing scheme as from 1st April 2019 and that it was unlicensed for the whole of the period of the Applicant's claim. She also accepts that the Applicant was her tenant, despite the absence of a signed tenancy agreement, as she was receiving rent from him.
11. She states that she is an Emergency Medicine Trainee on the ACCS Training Program currently working between Emergency and Acute Medicine at the Princess Alexandra Hospital in Harlow. She is working extremely long hours at present, largely due to the outbreak of COVID-19 and her status as a key worker.
12. In relation to the period of the claim, the Respondent was at that time renting out the Property for a year whilst in Australia. Being in Australia, she was entirely unaware of the introduction of the additional licensing scheme. Her father was looking after the Property on her behalf and he was also unaware of the scheme.
13. Despite the Applicant knowing that she was in Australia he gave the local authority an address for her in London so that none of the local authority's correspondence came to her attention at the relevant time.
14. On 10th July 2019 she wrote to the Applicant to express her expectation that he would move out by the end of the tenancy, namely on 31st August 2019. At no point did she indicate that the Applicant would be evicted; she only advised that eviction would take place if and when a court made a possession order.
15. Regarding the amount of rent paid by the Applicant, the Respondent has created her own table to highlight the differences between her and the Applicant's respective positions. Her table does not include an amount for 1st April 2019 on the basis that she received that sum on 31st March 2019. She also states that the two figures of £165.00 should be £162.50. In addition, she states that the tenancy was a bills-inclusive tenancy, that the various utility bills are attached "at pages 14 – 28", and that the amount of £238.10 should be deducted from the total to reflect the fact that this amount was for outgoings and did not represent rent.

16. The Respondent describes the Applicant's complaints about failures to deal with repairs as being entirely unparticularised. When tenants raised issues she dealt with them promptly, and she has provided details of an example of this. In her view, some of the problems were caused by tenants' failure to keep the Property clean and tidy such as a failure to remove hair from the shower drains which caused blockages and leaks. Some matters were simply not reported to her. As regards the general level of management, she has attached letters from the other tenants expressing satisfaction.
17. As regards Mr Baston's inspection, the Respondent's father contacted Mr Baston on 19th July 2019 to arrange a suitable date for the inspection to ensure that he could attend in her place as she was in Australia, but Mr Baston declined to rearrange the inspection and the inspection went ahead on a date on which her father could not attend. Had her father been in attendance, he might have been able to provide information and assist the inspection.
18. As regards her financial circumstances, the Respondent states that any rent repayment order will be a significant financial burden on her. She is a junior doctor paid £2,549.98 per month after tax. She is not a professional landlord and was simply letting out her home whilst travelling in Australia.

Relevant statutory provisions

19. Housing and Planning Act 2016

Section 40

- (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 ...
- (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
1	Criminal Law Act 1977	section 6(1)	violence for securing entry

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2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice
4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

- (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.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	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.

Housing Act 2004

Section 72

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part ... but is not so licensed.

Analysis

20. Although the Applicant has not made clear the precise basis on which the Property required a licence (i.e. exactly how it met the additional licensing test), there is a witness statement from a local authority housing adviser confirming that the Property was required to be licensed and the Respondent herself accepts that it was required to be licensed. On that basis I am satisfied that a licence was required for the whole of the period of the claim. The Respondent accepts that a licence was not in place and was not applied for during that period.
21. Under section 41(1) of the 2016 Act, a tenant may apply to the First-tier Tribunal for a rent repayment order against a person who has committed one of certain offences, including one under section 72(1) of the Housing Act 2004 (“**the 2004 Act**”). Under section 72(1), a person commits an offence if he or she is a person having control of or managing an HMO which is required to be licensed but is not so licensed.
22. Under section 263(1) of the 2004 Act, “person having control” means *“the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person) ...”*. Under section 263(3), “person managing” means *“the person who, being an owner or lessee of the premises ... receives (whether directly or through an agent or trustee) rents or other payments from ... persons who are in occupation as tenants or licensees of parts of the premises ... and includes, where those rents or other payments are received through another person as agent or trustee, that other person”*.
23. It is common ground between the parties that the rent was paid direct to the Respondent and therefore that she received it. The Respondent has not sought to argue that she does not fit the definition of a “person having control” or a “person managing”, and the evidence – including the fact that the rent was paid direct to the Respondent – indicates that she was both a “person having control” of and a “person managing” the Property.
24. Under section 43 of the 2016 Act, the First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that an offence under section 72(1) of the 2004 Act has been committed. For the reasons given above I am so satisfied.
25. Based on the above findings, I have the power to make a rent repayment order against the Respondent, and I consider on the facts of this case that it would be appropriate to do so.
26. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.

27. In this case, the claim is for the period 1st April to 2nd September 2019, and I am satisfied that this is a period, not exceeding 12 months, during which the landlord was committing the offence. There is no evidence of any universal credit having been paid, and therefore the maximum amount repayable is the whole of the amount claimed, i.e. £3,180.00, subject to the question of whether this is indeed the amount of rent paid.
28. The Applicant has set out the amount of rent paid in tabular form, but both parties' copy bank statements show that the two payments made on or about 2nd and 8th August 2019 were for £162.50, not £165.00, and therefore the reference to £165.00 is an error. As regards the payment of £650.00 attributed by the Applicant to 1st April 2019, the Respondent states that the payment was received on 31st March 2019 and therefore appears to be suggesting that it falls outside the period of claim. However, under section 44(2) of the 2016 Act the amount of rent that is potentially repayable "*must relate to ... rent paid by the tenant in respect of ... a period, not exceeding 12 months, during which the landlord was committing the offence*". The issue is therefore not when it was paid but what period it relates to, and although the Applicant did not end up signing a tenancy agreement the form of tenancy agreement relied on by the Respondent requires payment monthly in advance. Therefore, on the basis of the evidence before me the £650.00 received on 31st March 2019 can be included as it is likely to relate to the month of April. It follows that the maximum amount repayable is £3,175.00 after adjusting for the Applicant's minor error in stating that two payments of £165.00 (rather than two payments of £162.50) were made.
29. Under sub-section 44(4), in determining the amount of rent repayment 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 the relevant part of the 2016 Act applies.
30. The Upper Tribunal decision in *Parker v Waller and others (2012) UKUT 301 (LC)* is a leading authority on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. The case was decided before the coming into force of the 2016 Act but in my view the basic principles that it lays down apply equally to rent repayment orders under the 2016 Act, subject obviously to any relevant differences in the statutory wording.
31. In his analysis, based in that case on section 74 of the 2004 Act, the then President of the Upper Tribunal, George Bartlett QC, discussed the purpose of rent repayment orders in favour of occupiers. Under section 74 the amount payable is "such amount as the tribunal considers reasonable in the circumstances" and section 74 goes on to specify five matters in particular that should be taken into account, including the conduct of the parties and the financial circumstances of the landlord. This contrasts with rent repayment orders in favour of a local authority in respect of housing benefit under the 2004 Act, where an order for the full amount of housing benefit must be made unless

by reason of exceptional circumstances this would be unreasonable. There are therefore different policy considerations under the 2004 Act depending on whether the order is in favour of an occupier or in favour of a local authority.

32. The President of the Upper Tribunal went on to state that in the case of a rent repayment order in favour of an occupier there is no presumption that the order should be for the total amount of rent received by the landlord. The tribunal must take an overall view of the circumstances. Section 44 of the 2016 Act does not state that the amount repayable to an occupier should be such amount as the tribunal considers reasonable in the circumstances, but neither does it contain a presumption that the full amount will be repayable.
33. Starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence.
34. On the issue of the parties' conduct, one point that needs to be made is that – whilst both parties have agreed to a paper determination in the context of COVID-19 – this does mean that it has not been possible to test the parties' witness evidence in cross-examination. However, based on the evidence before me, I consider the Applicant's conduct to have been reasonable. There is some evidence to suggest that initially he was reluctant to apply for a rent repayment order and therefore that in contacting the local authority he was not merely motivated by the possibility of getting some of his rent back. In addition, the photographic evidence suggests that some of his concerns about the condition of the Property have a factual basis and that the problems cannot all be explained away by alleged failings on the part of the tenants themselves. His claims that he found it difficult to communicate with the Respondent and to get her father (as manager of the Property) to take his concerns seriously, whilst not proven beyond reasonable doubt, are credible.
35. As for the Respondent's conduct, I note that in her witness statement she places significant emphasis on the fact that she is currently an Emergency Medicine Trainee working extremely long hours due to the outbreak of COVID-19. However, this point is not relevant to the period of the claim, as she was travelling in Australia at the time, and it is disingenuous to have raised the point in the way in which it has been raised. Regarding her ignorance of the legal position on licensing and the fact that she was in Australia, I accept that it is likely that she did not know that the Property needed a licence and that therefore this was not a deliberate failure to obtain a licence. However, she was nevertheless letting out a property in England and had entrusted her father with day to day management in her absence, and therefore it was incumbent on the two of them jointly to ensure that the Property was being let in accordance with the relevant legislation. There has been much publicity in relation to the additional licensing scheme and all property owners who are letting out properties to others need to make themselves aware of all legislative requirements, particularly those which are designed to protect the health and safety of their occupiers.

36. As regards how responsive the Respondent and her father were to legitimate concerns about the state of the Property, the position is less clear. It appears that letters and notices were for a time being sent to the wrong address, although later this was corrected and therefore the Respondent did not remain in ignorance of the concerns being raised. There is some evidence of other tenants being satisfied, albeit that this evidence has not been tested in cross-examination, and there is some evidence that certain problems were attended to and that certain problems may have resulted from the tenants' own failings. However, there is also some witness and photographic evidence of a few significant concerns which appear not to have been taken seriously enough by the Respondent and/or her father.
37. On the issue of whether the Respondent threatened to evict the Applicant, the evidence available to me indicates that there was no clear threat of eviction but that the request for the Applicant to leave was not couched in terms designed to encourage him to explore his legal rights.
38. As regards the Respondent's financial circumstances, the Respondent has provided evidence of her current salary and I note her comments regarding the affordability of a large rent repayment. I note that there is no evidence before me, and no suggestion, that the Respondent has committed any previous offences. It is also a point in the Respondent's favour, in the context of a rent repayment application, that she is not a professional landlord and was just letting out the Property whilst travelling in Australia.
39. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, **in particular**, take into account" the specified factors. One potential additional factor is expenditure on outgoings such as utilities, and the Respondent has claimed that the amounts paid by the Applicant include an element of contribution towards outgoings. In doing so the Respondent purports to refer the tribunal to evidence of expenditure on utilities in her bundle of documents, but there is no such evidence within the bundle provided to the tribunal. Accordingly, there is insufficient evidence on the subject of utilities for me to be able to make any deductions for utilities.
40. Taking all of the circumstances into consideration, I consider that an appropriate amount to be ordered to be repaid is 40% of the maximum amount payable, i.e. 40% of £3,175.00. The tribunal has discretion as to the amount payable, and I consider that this is a suitable amount in the circumstances. The amount of rent to be repaid is therefore £1,270.00.

Order

41. The tribunal orders the Respondent to repay to the Applicant the sum of £1,270.00.

Cost applications

42. No cost applications have been made.

Name: Judge P Korn

Date: 11th May 2020

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.