



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

Case Reference : CHI/00HA/HMF/2021/0004

Property : 173 Bradford Road, Combe Down,
Bath BA2 5BT

Applicant : Yanfei Jones

Type of Application : Rent Repayment Order: s.41 Housing and
Planning Act 2016

Representative : In person

Respondent : Yunil Angbo

Representative : In person

Tribunal Members : Judge M Loveday
Mr C Davies FRICS
Mr E Shaylor MCIEH

Date of hearing/venue : 8 April 2021 (Remote hearing)

Date of decision : 26 April 2021

DECISION

Summary

1. The Tribunal makes a Rent Repayment Order in the sum of £5,692.
2. The Tribunal also orders the Respondent to reimburse the Applicant's application fee of £100.
3. The Tribunal has made certain important observations at the end of the decision in relation to other possible proceedings.

Introduction

4. This is an application for a Rent Repayment Order under s.41 Housing and Planning Act 2016 ("the 2016 Act"). The matter relates to a tenancy of a property at 173 Bradford Road, Combe Down, Bath BA2 5BT. The Applicant is Yunil Angbo, a former occupier. The Respondent is Yanfei Jones, who is the joint owner of the premises.
5. The application dated 28 January 2021 claimed £6,240 for the period from 16 September 2019 to 16 September 2020.
6. Directions were given on 11 February 2021 which provided, amongst other things, that the matter would be determined by way of telephone conference or video hearing. The parties filed statements of case and the Tribunal notified them on 17 February 2021 that a remote hearing was fixed for 8 April 2021. At the hearing, both the Applicant and the Respondent appeared in person and gave evidence.

The offence

7. The offence itself is at section 72(1) of the 2004 Act:

"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 (see section 61(1)) but is not so licensed."

Section 72(4)(b) provides a special defence:

"In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

...

(b) an application for a licence had been duly made in respect of the house under section 63, and that notification or application was still effective (see subsection (8))."

Section 72(5) provides that:

"In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

- (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
- (b) for permitting the person to occupy the house, or
- (c) for failing to comply with the condition, as the case may be.”

8. Rent Repayment Orders are provided for in Chapter 4 of the 2016 Act. Section 40(3) applies them to certain offences “committed by a landlord in relation to housing in England let by the landlord” which expressly include offences under section 72(1) of the Housing Act 2004. Section 41 of the 2016 Act goes on to provide that:

- “(1) A tenant ... 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) of the 2016 Act then states that:

“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).”

Section 44 is in tabular form. But the material provisions are as follows:

- “(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) ... If the order is made on the ground that the landlord has committed ... an offence [under s.72(1) of the 2004 Act] ... 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.
- (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 ...
- ...
- (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.”

9. In the recent decision in *Awad v Hooley*, [2021] UKUT 0055 (LC), Judge Elizabeth Cooke helpfully summarised the current position:

“38. In *Vadamalayan v Stewart* [2020] UKUT] 183 (LC) the Tribunal said that it was no longer appropriate for rent repayment orders to be limited to the repayment of the profit element of the rent. Nor is it correct for the FTT to deduct from the maximum amount the amount of any fine or civil penalty imposed on the landlord:

“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.”

39. More recently in *Ficcara v James* [2021] UKUT 38 (LC) the Deputy President said this:

‘49... the Tribunal’s decision in *Vadamalayan* ... rejected what, under the 2004 Act, had become the convention of limiting the amount payable under a rent repayment order to the amount of the landlord’s profit from letting the property during the relevant period. The Tribunal made clear at [14] that that principle should no longer be applied. In doing so it described the rent paid by the tenant as ‘the obvious starting point’ for the repayment order and indeed as the only available starting point.’

50. The concept of a ‘starting point’ is familiar in criminal sentencing practice, but since the rent paid is also the maximum which may be ordered the difficulty with treating it as a starting point is that it may leave little room for the matters which section 44(4) obliges the FTT to take into account, and which Parliament clearly intended should play an important role...

40. I agree with that analysis”.

The premises

10. Bradford Road is a busy bus route on the southern outskirts of the city with easy access to the main campus of Bath University. 173 Bradford Road is a mid-terrace house under a pitched roof, having been converted to provide residential accommodation on four floors including an at-

tic and basement. The Applicant explained the internal accommodation as follows:

- (a) Attic – one bedroom (the Applicant).
- (b) First floor – two bedrooms (Mr Lipeng Duan and Mr Prathit Shivade), plus a mezzanine bathroom.
- (c) Ground floor – one bedroom (Mr Harshit Khanna), kitchen and shared living room.
- (d) Basement - one bedroom with *en suite* bathroom (Ms Soniya Bagga).

11. There were various photographs of the interior of the premises which are referred to below.

The Applicant's case

12. The Applicant set out his contentions in a Statement of Case dated 22 February 2021 and a Response dated 9 March 2021. He confirmed this evidence on oath at the hearing and was questioned by the Respondent and by the Tribunal. The Applicant also produced witness statements from Mr Paul Carroll of Bath and North East Somerset Council (hereinafter referred to as “the Council”) and former residents Mr Prathit Shivade, Mr Harshit Khanna and Ms Soniya Bagga. In the event, Mr Carroll’s statement was agreed and (apart from the Applicant himself) only Mr Khanna attended to give evidence on oath at the remote hearing.
13. The Applicant produced a partial copy of his tenancy agreement dated 19 August 2019 headed “Private landlords Tenancy Agreement”. It stated that the tenancy was for:
- “1. a fixed term for 52 weeks.
 - 2. A fixed term weekly [sic] commencing on and including 16-September-2019 and including: 16-September-19”.
- The weekly rent was specified as £120.00. The maximum number of people permitted to occupy the premises was 5. Rent was payable by quarterly instalments of £1,560 on 16 September 2019, 16 December 2019, 16 March 2020 and 16 June 2020 (although the relevant page covering the last two dates was missing from the bundle). The agreement also provided for payment of a deposit of £480 and a cleaning fee of £125. It was common ground that the tenancy was not registered with an approved tenancy deposit scheme and that the Respondent did not provide the Applicant with a gas safety certificate.
14. The Applicant produced bank statements showing payments of quarterly £1,560 rent instalments on 17 September 2019, 16 December 2019 and 18 March 2020. He made three further rent payments of £520 on 26 June, 6 August and 11 August 2020. Total rent paid was therefore £6,240. In addition, the Applicant paid the deposit and the cleaning fee on 17 September 2019 and a further sum of £10.41 on 16 December 2019. These further payments are not the subject of the present proceedings.

15. The Applicant claimed repayment on the basis that he occupied the house with four other people (Mr Khanna, Mr Shivade, Mr Duan and Ms Bagga) even though it did not have an HMO licence. As to the conduct of the Respondent:
 - a. The Respondent had gotten in touch with both Mr Khanna and Mr Shivade asking them to lie to the Council about the conditions they were living in.
 - b. The Respondent and her husband (Mr Garry Jones) had both sent threatening emails/messages over the course of the investigation.
 - c. The Respondent failed to protect the Applicant's tenancy deposit or have gas safety checks.
 - d. The Respondent and her husband (Mr Garry Jones) regularly visited the house without 24 hours' notice, only stopping after the occupants asked them to.
 - e. The Respondent claimed the occupants lived with her son, which they never did.

16. The Applicant explained that the HMO licensing issue emerged during the Covid-19 pandemic. He was a university student affected by the closure of the university campus in 2020. He contacted the Respondent and asked if it would be possible to cut short his tenancy, but she said that even if he left, he would have to pay the rent for the full year. The Applicant therefore contacted Bath University Advice and Support Centre on 1 May 2020. They initially advised him that since he had signed an assured shorthold tenancy for a year, there was little he could do. But since his tenancy deposit was not protected, he could negotiate with the landlord. The Applicant therefore contacted the Respondent asking if it would be possible to strike a deal, but she refused. He was then referred to Shelter, who first identified the issue with the HMO. They in turn referred him to the Council. The Council began to investigate, and it was at that point the Respondent contacted Mr Khanna and Mr Shivade, asking them to lie to the Council about the circumstances of them living at the flat.

17. The Applicant sought a Rent Repayment Order in the full amount of £6,420.

Evidence - the Applicant

18. The Applicant stated that he did not believe Chai Hua lived at the premises prior to moving in – this had not been mentioned by the Respondent at the time. He also did not believe Lipeng Duan was the son of the Respondent's cousin. Lipeng had often mentioned he was an international student, but never suggested he was related to the Respondent. The Applicant also believed Lipeng paid rent, referring to a text sent by the Respondent to all the occupiers (including Mr Duan) about rent on 11 March 2020.

19. The Applicant said the Respondent had attempted to pay Mr Khanna and Mr Shivade cash for them to help her in this case. She also at-

tempted to meet Ms Bagga (for what he guessed was the same reason). The Applicant produced an exchange of text messages as follows (with messages from Ms Bagga in italics):

“Hi Yanfei. You did not give me back the cleaning fee that was 125 GBP. And I got to know from other flatmates that they have received it”. (1.22pm)
Could you please kindly send mine as well? (1.22pm)
These are my bank details.
Metro Bank...
My account details are the same . (1.23pm)

Because we lost your contract [sic] number . (1.24pm)
Are you still in Bath? (1.24pm)

Yes I’m [sic] (1.24pm)
Here is my contact number (1.25pm)
It’s the same (1.25pm)

Okay. (1.25pm)

Thank you. Kindly send me the confirmation once you make the transfer. (1.26pm)

Do you have time could you we meet up have a talk tomorrow. And I can pay you in cash. (1.26pm)

I’m working tomorrow and I won’t be able to meet you in person. I would prefer bank transfer rather than cash (1.41pm)”

He then produced a further version showing the message timed at 1.26 had been deleted by the sender.

20. The Applicant accepted he had delayed paying some of the rent. He was hesitant to pay the rent as he was in the process of seeking advice from Shelter, the University and the Council and he produced correspondence with these agencies. But he did not threaten the Respondent. In particular, the Applicant relied on an exchange of emails with Mr Garry Jones on 5 August 2021 as follows (with messages from the Applicant in italics):

“Ah got it. You’re threatening me to avoid paying your rent. See you in court then. Good luck” (16:40)

*“Hi Gary,
Sorry if you think I am threatening you but I have been advised and have tried my best to use language which indicates I want to settle this is [sic] in a legal and fair manner. I assume your emails tone meant you do not wish to agree to cut the contract?
Regards Yunil”* (17:42)

“You have dug yourself a deep hole. There will be consequences”

This showed the Respondent and Mr Jones stopped treating him respectfully and they were rude and somewhat threatening. He sought advice from Mr Carroll about this.

21. The Respondent had not co-operated with the Council’s enquiries. Indeed, she had tried to get Mr Khanna and Mr Shivade to lie to the Council officer who was investigated 173 Bradford Road. The Applicant produced a text message from the Applicant to Mr Khanna:

“Hi Harshit

Yunil still trying to make troubles with me, if someone from council call you today, just say you have lived 173, you are my son's friend, you're not pay rent just the bills. tell you prahit saying same. Thanks for helping.”

There was a similar text message to Mr Shivade, which gives the date as Saturday 17 October (presumably 2020), and which is timed at 3.14pm:

“Hi Prathit

Sorry to bother you, as you know I had trouble with yunil , he is trying destroy me, because I didn't know I can't rent out 4 people at time so I told the council you and Harshit are my son chai Hua's friend, you are living here just paying your bills but not paying rent

Anyway, I guess you have already had call from council man, but it's not anything will harm you and Harshit, only to help me get out the bad situation. I just wondering what is exactly the council man said to you? Seems Harshit very afraid and he didn't reply to my message, so I am hoping you can help me out here. You will never get trouble with it, he only working for council. Thanks”

22. As to the suggestion the Applicant damaged the carpet, it was already damaged when they moved in. The cost of the damage had not been deducted from the deposit or cleaning fee. No-one deliberately damaged the refrigerator or freezer, the issue started randomly. He did not leave his room empty with a damp towel and clothes. The Applicant had closed the door and window (because of damp in the room) but this had not in any event caused mould. The photos produced by the Respondent had in fact been taken by the Applicant and he had sent them to the landlord about the mould problem. Damage caused to the WC and drain appeared to have occurred before the Applicant moved in. He did not smoke. But in any event, the premises were cleaned before the occupants moved out.
23. The Respondent cross-examined the Applicant with the help of the Tribunal. He explained the witness statements from Mr Khanna, Mr Shivade and Ms Bagga had been prepared in a format provided by the Council and were headed “**STATEMENT OF WITNESS** (Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s.9”. He also ac-

cepted that the statements did not give the witnesses' current addresses. He had been contacted by Mr Carroll and the statements had originally been prepared for the purposes of an investigation by the Council. The Council provided the template with the headings, and the witnesses had filled them out. They were signed digitally because of the pandemic. He agreed there was no statement of truth on the statements.

24. The Respondent indicated she did not challenge the allegation that she had contacted Mr Khanna and Mr Shivade asking them to lie to the Council. No further questions were therefore put to the Applicant about that matter. But as to the remaining issues of conduct at [14] above:

- a. The Applicant denied he was the person who had in fact sent threatening emails/messages. Indeed, he sought advice from the Council and referred to an email dated 2 May 2020 to the Advice and Support Centre which stated that "I do not really know how to start the negotiation" but "I do not want to seem like I am threatening [the Landlord]". The exchange of emails at [19] above was put to the Applicant. He explained he was trying to sort things out and had written to the Respondent in a formal manner. There were previous emails to the ones mentioned above. But he covered the reference to "consequences" to be a threat. The Applicant did not ever intend to go to the Tribunal, his motive was simply to cut the tenancy short – something he repeatedly stated in emails. The response was a threat from Mr Jones about there being "consequences". The Applicant was 100% positive he had not himself been threatening.
- b. The Applicant accepted he had rented properties before, but he had not been aware of the requirements for tenancy deposits. He had only become aware of this when told by the University.
- c. The Applicant had no way of proving the Respondent and her husband regularly visited the house without giving notice – other than his own oral evidence and the evidence of the other occupiers. He accepted he had not confronted the Respondent or Mr Jones – he would have found this "uncomfortable".
- d. The Applicant still did not believe Mr Duan was related to the Applicant. When people live together, you would expect to hear that kind of thing.

25. The Applicant was also questioned about several of the matters at [21] above. The carpet was damaged when he moved in, but it was not a safety hazard and he didn't mind it. He accepted he owned a skateboard, but he had never used it on the stairs. Mr Duan had never complained about the skateboard. The Respondent suggested to the Applicant she had seen him using it herself, on one occasion when she was in the kitchen hidden from view – but the Applicant said this had never occurred. The Applicant denied being responsible for the icing up of the refrigerator. He had first heard about the problem from one of the other housemates. It was a real problem and the refrigerator door would not shut. He did not know who was responsible for it happening. As to the allegations of damp in the room, the Applicant accepted he left the door and windows closed when he went away on holiday for two weeks

at Christmas 2019. The Respondent told him to leave them open in future. The pictures of the drains and WC were the wrong images.

26. In response to questions from the Tribunal, the Applicant stated he had found the room to rent on a property listing website. He was living in a different part of the country at the time. It was advertised as a room to rent and he moved in after having a conversation with the Respondent. There were other rooms available for rent. The others moved in within a short period of time. There were 10-15 visits, and 7-8 of these were without notice. In 2020, they started to give notice after the Applicant asked them to. Sometimes the Respondent or Mr Jones just dropped by, sometimes they came to talk to Mr Duan. On some occasions it was to collect rent. In particular, the Respondent was not happy with Ms Bagga, and she eventually moved out.

Evidence - Mr Khanna

27. Mr Khanna confirmed the contents of his witness statement on oath. In the statement, Mr Khanna stated that he had lived at the premises from 22 September 2019 to 15 September 2020. He confirmed the identity of the other tenants and that none of tenants we related to each other or (as far as he was aware) to the landlord. Mr Khanna said that after the agreement was over, the occupiers moved out, but some of his letters still went to the premises. Mr Khanna eventually received a text message from the Respondent stating that he had a few letters in his name, and she asked what she should do with them. Mr. Khanna asked her to leave the letters somewhere outside the premises, but she suggested they should meet and personally hand over the letters. On 20 February 2021, Mr Khanna therefore went to the premises and met the Respondent. On that occasion, “she asked me to give a false statement for which she was ready to pay me money in cash”, but he refused to do so.

28. In his oral evidence to the Tribunal, Mr Khanna stated that he had text messages to support his witness statement. He elaborated on the incident on 20 February 2021. The Respondent asked him to come and collect some letters from the bank and so on. He texted her back to say that she should leave the letters in the porch so he could collect them later on. The Respondent then said she could not leave the letters for him – and she gave him a date and a time. Unfortunately, he was late and missed that appointment, so they arranged another meeting on 20 February 2021 (he remembered that date because he had a meeting with a lawyer in the morning about his visa). He met her at the house, and she had letters for him. As he started looking at these letters, the Respondent told him that “the case has gone to the court”. She asked him to say that we used to live at the house without paying rent. Mr Khanna said he told the Respondent he could not change his statement about that. The Respondent said she would pay him “to change my statement to lie so that would say I used to live with her son and that I never paid any rent to live at the house.”

29. In cross-examination, the Respondent put to Mr Khanna that this was “a lie”, but he denied it was. The events happened as he said. They had not contacted the Respondent, she had contacted them. Mr Khanna was also asked about the alleged statement that he had “100% backed” the Respondent. He admitted he has said this to the Respondent on or about 20/21 September 2020, but the context was a discussion about the sofa in the premises. The Respondent had told him the other housemates blamed him for damage to the sofa. He had therefore replied he was with the Respondent 100% with respect to any breakages in the house.
30. In relation to the events of 20 February 2021, Mr Khanna accepted he did not have a recording of the conversation with the Respondent, but why would he lie? When they were in the house, the Respondent suggested he should say he had contacted his lawyer and that he “wanted to change his story now”. After that the Respondent said “whatever will happen, will happen”. Mr Khanna continued, “and then she said ‘I will pay £500 in your pocket’”. The Respondent knew his visa was going to finish (i.e. expire), and she said that he could “go back home” with the money, which was a lot of money. The Respondent put to Mr Khanna that the letters he came to collect were wet, and that he simply collected all his wet letters and went. Mr Khanna said “no”. He stayed about 45 minutes and it would not take 45 minutes to read the wet letters.
31. Mr Khanna was also asked about the first text message from the Respondent referred to at [19] above. This message had been sent to him after they left in around October 2020. He confirmed it was sent by the Respondent.
32. When questioned by the Tribunal, Mr Khanna stated that he had a tenancy agreement on 15 September 2019 and paid £100 per week plus a £100 deposit. He confirmed his tenancy deposit was not protected and he did not have a gas safety certificate.

Closing submissions

33. In closing, the Applicant sought a Rent Repayment Order in the full amount of £6,420. He also sought repayment of the application fee of £100.

The Respondent’s case

34. The Respondent set out her case in a statement of case dated 9 March 2021 and oral evidence at the hearing. She was also cross-examined by the Applicant.

Evidence – the Respondent

35. The Respondent confirmed the contents of her statements dated 9 and 10 March 2021 on oath.

36. In her statement of 9 March 2021, the Respondent stated that her son Chai Hua had lived at 173 Bradford Road and (while away on an internship) had allowed his cousin Lipeng Duan to stay in his room for a short time. When the Applicant approached her in September 2019, the Respondent downloaded a copy of a tenancy agreement from the internet. The Applicant did not pay his rent on time, and only eventually paid “after several heated conversations”. Later on, the Applicant tried to blackmail her because she did not have an HMO licence. He threatened to report her to the Council if she did not allow him to remain rent free. The Applicant “obviously” knew there was no HMO licence when he signed the tenancy agreement. She said “[I] wished I had done some research before renting the house”. She accepted she had made a mistake, which was the result of a lack of knowledge of the HMO requirements. By contrast, the Applicant was attempting to get money from his landlord and had “done something similar in the past”. The Respondent then made several specific allegations about the Applicant:

- a. He “deliberately” skateboarded on the stairs, damaging the carpet. The Respondent produced photographs of damaged carpets and a skateboard.
- b. He “deliberately” damaged a 3-year old refrigerator. The Respondent produced photographs of a freezer which had severely iced up.
- c. He left damp towels and clothes in his room, turned off the heating and left the room empty in winter. This caused serious damp and mould. The room needed two days cleaning and painting.
- d. He had accused an electrician of theft.
- e. There were various photographs showing stained a WC pan, cigarette ends and a drain.

In her statement of 10 March 2021, the Respondent stated that her family originally came from China. She had never done anything illegal. The Respondent accused the Applicant of sending “threat messages”, although these messages had been deleted. He had planned this all from the very start, and it was a manipulation “just for free rent”.

37. In cross examination, the Respondent was asked why she deleted the text message to Ms Bagga about meeting up and paying “in cash”. The Respondent stated that she was “very angry” and “really stressful as a result of the case”. She suggested the Applicant had refused to pay the rent at times. The Applicant took her to text messages on 21 and 22 June 2020, where he had explained he had money issues and asked if was “okay to [pay] £520 for this month and we could meet the following months payment later on”. The Respondent had replied “okay, we understand things are difficult for everyone at the moment”. But she suggested that there were other occasions when the Applicant refused to pay. The Applicant said that he had not been prepared to pay until Mr Carroll advised him to do so. The Applicant then asked about the approach to Mr Khanna and Mr Shivade in October 2020. She stated that “I made a huge mistake and I admit asking them to lie to the Council”. She had already apologised for this.

38. In response to questions from the Tribunal, the Respondent said she had no other rental properties. Her son lived at the property until he got an internship in London and he then suggested they advertise on the SpareRoom.com website. She had not made any enquiries about a landlord's duties. The Respondent downloaded a tenancy agreement from the internet. Her husband had advised her against letting to students, who were "very dirty" - but she had gone ahead anyway. She had let the rooms for 12 months, although Ms Bagga had stayed only some time. Three of the tenants paid rent, "because my nephew was never charged anything". The tenants paid either £100 or £120 per week. Mr Carroll had helped her to obtain all the relevant certificates. After she applied for the licence, she spent £5,500 to do the property up before the Council granted her an HMO licence. She paid the fee online on 13 August 2020 or the next day.
39. The Tribunal asked about any previous convictions. She volunteered that the Council had, two days before the hearing, imposed on her a financial penalty of £5,000 for managing the HMO without a licence.
40. As to the Respondent's financial circumstances, she did not work. Her first marriage had broken up and she received a generous financial settlement, which enabled her to buy this property. Her husband had had heart surgery and now worked part-time selling blinds. The Respondent was a little unclear about income, but they had no mortgage and no pension. She received money from China where her son lived.
41. Finally, the Tribunal asked whether the Respondent wished to say anything about Mr Khanna's account of the events in February 2021. It prefaced this with a warning that (if established) the allegations could amount to a contempt of the tribunal and/or the criminal offence of perverting the course of justice. But the Respondent said she wished to say something. She had not said what Mr Khanna alleged. His account was a "manipulation" of an agreement to repay the £125 cleaning charge. She did not need to "make this up" because she had already admitted the earlier Council incident.

Submissions

42. The Respondent suggested that to start with there had not been any requirement to have an HMO licence for fewer than 5 people sharing. But from January 2019 there was a new rule which brought this property within the HMO licencing requirements, which she said she was unaware of at the time. The Applicant had taken the best room in the house and there was central heating throughout. He slept in a kind -size bed and had a walk-in shower. Everything was provided. Why should he occupy it for free? She felt hurt and had treated the residents like her own kids. They had, after all, approached her. She felt tricked.

The Tribunal's Findings of Fact

43. There was no issue about the facts giving rise to the offence itself. It was accepted the premises required an HMO Licence by virtue of the discretionary licensing scheme introduced by the Council in January 2019 and that for much of the tenancy there was no HMO licence in place. The issues of fact relate to the conduct of the landlord and the conduct of the tenant for the purposes of s.44(4) of the 2016 Act.
44. A preliminary observation should be made about the evidence presented by both parties – or perhaps more accurately about the evidence which was not presented by them. The Applicant's evidence originally included witness statements from three witnesses who did not attend the remote hearing, namely Mr Carroll, Ms Bagga and Mr Shivade. Similarly, the Respondent produced a statement from Mr Lipeng Duan, who also did not attend. Mr Carroll's statement was admitted by the Respondent, but the others were not agreed. The Tribunal therefore has no regard to the statements of witnesses who did not give evidence. These are quasi criminal proceedings, and it is inappropriate to admit them. A similar comment can be made about text messages and emails which were not produced at the hearing. On more than one occasion, both the Applicant and the Respondent suggested in oral evidence that their account could be corroborated by emails and text which they might be able to obtain. The Tribunal quite clearly cannot allow witnesses (mid evidence) to pause and search for relevant documents. It may well be there are texts and messages which might be relevant to this application, but the Tribunal can only determine matters on the evidence before it.
45. The Tribunal carefully considered the weight it should attach to the oral evidence of the Applicant and Mr Khanna on the one hand, and the Respondent on the other. Having closely observed the evidence given by all the witnesses, it has no doubt it prefers the evidence of the Applicant:
 - a. The Applicant's account of events was not contradicted by any documents put to him, and his story was corroborated by an independent witness, Mr Khanna.
 - b. The Applicant's approach was always measured. For example, the exchange of messages between the Applicant and the Respondent's husband in August 2020 shows restraint on the part of the former. Where the parties make serious allegations about the others, one can contrast the outcomes. The Applicant's most serious allegation was that the Respondent had encouraged others to "lie" to the local authority – but that allegation is admitted. By contrast, the Respondent alleged the Applicant had tried to "blackmail" her, that he had extracted money from landlords before and that he was well aware of the HMO licensing requirements from the outset – none of which are corroborated by any other evidence.

- c. However, the most significant problem with the Respondent's veracity is the admission that she invited individuals to make false statements to the Council in connection with their enquiries about the Rent Repayment Order. In the light of this dishonesty, it is hard to see how the Tribunal can attach any weight to the oral evidence of the Respondent at all.
- d. Moreover, the Tribunal does not accept the Respondent's explanation for deleting the text message from Ms Bagga. If this message was deleted in a fit of anger, why not the others the Respondent sent in the same message chain? The more likely explanation was that the Respondent deleted this particular message because it mentioned a payment of cash to Ms Bagga, which the Respondent may have found awkward to explain. The Respondent was therefore dishonest about this as well. It is perhaps ironic that the attempted deletion turned out to be irrelevant, since the reference to "cash" in this exchange of messages is evidently a reference to reimbursement of the £125 "cleaning fee" – not to any payment to a witness.

46. The Tribunal makes the following findings of fact in relation to issues in dispute:

- a. Although the Respondent has admitted she wrongfully attempted to persuade others to "lie" to the Council, the Tribunal will record its findings of fact on this important point. The Tribunal finds that on or about 17 October 2020, the Respondent sent Mr Khanna and Mr Shivade the messages set out at [21] above. The messages invited them to state to the local authority they were (i) staying at the premises as her son's friend and (ii) not paying rent. These statements are false, and the Respondent well knew them to be false. They were (as the Respondent admitted) therefore a "lie".
- b. On the limited evidence provided, the Tribunal does not find these approaches in October 2020 went any further:
 - i. There is no evidence these particular approaches were accompanied by any financial inducement to Mr Khanna or Mr Shivade. There is no mention of a financial inducement in the messages themselves. Mr Khanna's oral evidence did not state a bribe was offered in October 2020 (although he suggests a financial offer was made in February 2021).
 - ii. There is again no evidence the Respondent approached Ms Bagga with a similar request to lie to the Council. The text messages at [18] above again do not suggest any such approach and Ms Bagga did not give oral evidence to the Tribunal.

It may be that other evidence emerges on these two points. But for present purposes the Tribunal finds the admissions by the Respondent are limited to those in subpara (a) above.

- c. The Applicant did not send "threatening" emails or messages or attempt to "blackmail" the Respondent. On the contrary, the

Tribunal is satisfied from the email dated 2 May 2020 that he quite sought from the outset to avoid appearing to threaten the Respondent. Moreover, the exchange of emails at [19] above shows what can only be described as a veiled threat by the Respondent's husband in response to a perfectly civilised message from the Applicant.

- d. The Tribunal rejects the suggestion the Applicant adopted a strategy from the start of occupying the premises rent-free. There is no evidence at all he obtained a rent repayment from previous landlords. It accepts his evidence that he was not aware of rent deposit requirements until he sought advice, and his oral evidence on the point is consistent with the exchanges of messages with the University of Bath and Shelter referred to above. The Tribunal accepts the evidence of the Applicant that he raised the issue of licensing in the context of an attempt to obtain early termination of the tenancy. But that is not "blackmail".
- e. Insofar as it is relevant, the Tribunal rejects the Respondent's evidence on the point that Lipeng Duan was related to her. It prefers the evidence of the Applicant that Mr Duan never mentioned the relationship while living at the premises.
- f. The Applicant did not skateboard on the stairs of the property, damaging the carpet. The carpet was already in the condition shown in the photographs at the start of the tenancy. The Tribunal accepts the oral evidence of the Applicant on these points for the reasons given above. The photographs of the skateboard and the damaged carpet produced by the Respondent are wholly neutral on this issue.
- g. The Applicant did not damage the refrigerator, "deliberately" or otherwise. Again, the Tribunal accepts the oral evidence of the Applicant on the point for the reasons given above. The photographs of a refrigerator do not even show damage, merely that the appliance was iced up - and this could have been done by any of the occupants of the house.
- h. The Applicant admits he left the room empty for two weeks and that he kept the windows and door closed for that time. But the Tribunal accepts the Applicant's oral evidence that he did not leave damp clothes in the room or cause mould damage. Damp in residential premises can have several causes, such as rising damp, lack of background heating, inadequate ventilation, overcrowding etc. The Respondent has come nowhere near showing what caused mould growth in the room, let alone that this was caused by the Applicant. The damp could equally have been caused by some default on the part of the Respondent.
- i. The allegation that the Applicant had improperly accused an electrician of theft was not pursued at the hearing.
- j. The Applicant did not cause staining to the WC pan or leave cigarette ends around the house. The Tribunal accepts the oral evidence of the Applicant on these points for the reasons given above. Moreover, Mr Khanna gave some limited support in his oral evidence to the Applicant about "breakages" in the house. The photographs are wholly neutral on this issue.

- k. The Respondent and/or her husband regularly visited the house without giving notice. The Tribunal accepts the oral evidence of the Applicant that during his tenancy there were 10-15 visits, and 7-8 of these were without notice.

47. Note that other facts below were not disputed.

The Tribunal's Decision

48. There is no dispute the grounds for making a rent repayment order are made out. Mr Carroll's evidence was not challenged, and he stated that the property is an HMO that was occupied by 4 persons. He states that it required a licence from 1 January 2019 and that no valid application was received for a licence until 13 August 2020. No procedural or other defence was put forward. The Respondent candidly admitted having no licence and the Tribunal is satisfied beyond reasonable doubt that an offence was committed under s.72(1) of the 2004 Act.

The period of the offence

49. Before turning to the Tribunal's consideration of the factors in section 44(4) of the 2016 Act, it is necessary to say something about the amount of "rent paid" under s.44(2). There is no dispute that the tenant paid rent of £6,240 during the tenancy.

50. The period this rent related to is not entirely clear from the tenancy itself. The term of the tenancy was variously expressed as (i) 52 weeks (ii) a calendar year plus one day and (iii) "weekly". Rent was expressed as a weekly rent of £120 and quarterly payments of £1,560.

51. But in any event, it does not necessarily follow from the above that the whole of the £6,240 rent paid was "in respect of ... a period ... during which the landlord was committing the offence" under s.72(1) of the 2004 Act. This is because (on the Applicant's own case) the Respondent applied for an HMO Licence in August 2020. Mr Carroll's statement says an application for an HMO Licence was "duly made" on 13th August 2020" although the application was not "validated" until 1 September 2020. The Tribunal notes Mr Carroll is careful to adopt the statutory wording of the statutory defence in s.72(4)(b), namely that the application for an HMO licence was "duly made" on 13 August 2020. In her evidence to the Tribunal, the Respondent confirmed to the Tribunal members that she applied for the HMO licence online in August 2020 and paid the fee to the Council at the same time or on the following day. The Tribunal therefore finds the application was "duly made" on 13 August 2020 and that by virtue of s.72(4)(b), the Respondent ceased to commit any offence from that date.

52. The Tribunal has computed the sums which were paid in respect of the period up to and including 12 August 2020. As already explained, there is some confusion about the precise length of the tenancy, and this makes a small difference to the apportionment of payments made by

the Applicant for the period of the offence. However, the Tribunal adopts the weekly rent of £120 set out in the tenancy agreement and applies it to the period from 16 September 2019 to 12 August 2020 (47.43 weeks). This suggests the rent payable in respect of the period of the offence was $47.43 \times £120 = £5,691.60$ (say £5,692). The Tribunal therefore adopts this as the rent paid by the Applicant “in respect of ... a period ... during which the landlord was committing the offence” under s.72(1) of the 2004 Act. The balance of rent paid by the Applicant (£548) is not covered by this Rent Repayment Order.

Conduct of the landlord – s.44(4)(a)

53. The Tribunal has taken into account the following conduct of the landlord under s.44(4)(a):
- a. The initial tenancy arrangements can at best be described as shambolic, at worst unlawful. The parts of the tenancy agreement provided were contradictory and poorly worded. A deposit was admittedly paid, but no attempt was made to comply with s.213 of the Housing Act 2004. Moreover, the Respondent did not comply with para 36(5) or (6) of the Gas Safety (Installation and Use) Regulations 1998. It is also relevant that the initial problems with the tenancy were not isolated issues, in that Mr Khanna’s evidence suggests similar problems arose with his tenancy. The Tribunal considers the initial letting arrangements are an aggravating feature of the landlord’s conduct.
 - b. The Respondent has admitted dishonestly inviting some occupiers to mislead the local authority in connection with the HMO Licence enquiries. Indeed, she admits this and has apologised. But the Tribunal gives no credit to the Respondent for the late admission and apology. No admission was made in the Respondent’s Statement of Case dated 9 March 2021, and it only followed the Applicant’s Reply and Ms Bagga’s witness statement dated 18 March 2021 with evidence of the allegedly incriminating messages. This is a very significant aggravating feature of the landlord’s conduct.
 - c. The Respondent’s husband has made veiled threats in messages. The Tribunal attaches no weight to this because (on present evidence) there is no evidence the Respondent authorised the messages.
 - d. The premises were evidently not initially let to the Applicant in a suitable condition for an HMO. By her own admission, the Respondent spent some £5,500 in 2020/21 before the Council granted an HMO licence.
 - e. The Respondent was evidently not a professional landlord, in that she does not appear to have any other rental properties. This is a mitigating feature of the landlord’s conduct – although plainly ignorance of the legal requirements for an HMO licence are no excuse.
 - f. When alerted to the issue, the Respondent promptly applied for an HMO licence and eventually obtained one. This is a mitigating feature of the Respondent’s conduct.

54. The evidence about the approaches to witnesses in February 2021 is dealt with below. The Tribunal does not consider this is relevant conduct under s.44(4)(a) of the Act.

The conduct of the tenant – s.44(4)(a)

55. The Tribunal can deal with the conduct of the tenant quite briefly. The Tribunal has rejected on the facts the majority of the allegations of misconduct made against the Applicant at [40](c) to (j) above. The Applicant admits he delayed paying rent, and in one quarter [paid by three monthly payments. But it is possibly more remarkable that he paid the rent in full, especially once he had obtained advice about the deposit and HMO position. The Tribunal does not consider there is any conduct on the part of the Applicant which is relevant under s.44(4)(a).

The financial circumstances of the landlord - s.44(4)(b)

56. The evidence of the Respondent's financial circumstances is limited. It is clear the Respondent is of limited means, but she appears to have a regular income from abroad and at least one substantial asset apart from her home (namely the subject premises).

Landlord's previous convictions – s.44(4)(c)

57. At the date of the application, the Respondent had not previously been convicted of a relevant offence. However, in response to questions from the Tribunal, the Respondent admitted the Council had, shortly before the hearing date, imposed on her a financial penalty of £5,000 in connection with managing the HMO without a licence. However, since the penalty was imposed after the events in question (and largely in respect of the same facts), the Tribunal does not have regard to this penalty.

Conclusions

58. The starting point is the total amount of rent paid. The Tribunal has had regard to all the above statutory considerations at [52]-[56] above, and considers it would not be appropriate to depart from that starting point. In particular, the Respondent has admitted acting dishonestly in connection with the local authority's enquiries connected to the HMO. Her conduct of the tenancy (the tenancy agreement, deposit, gas safety certificates and unannounced visits and the condition of the premises) was also poor. By contrast, the Applicant paid his bills and complied with the other obligations of the tenancy.

59. Applying this to the above figure of £5,692 produces a Rent Repayment Order in the same amount.

Reimbursement of Fees

60. The Tribunal's power to reimburse fees is unrestricted, other than by the overriding objective: Willow Court Management Company (1985) Ltd v Alexander [2016] UKUT 290 (LC) at [13]. The Applicant has succeeded and could not have achieved a successful order without incurring the application fee. He has prosecuted the claim without any excessive costs or undue formality. There is no suggestion the Respondent has insufficient resources to reimburse the application fee. The Tribunal therefore also orders the Respondent to reimburse the Applicant's application fee of £100.

Other matters

61. For the avoidance of doubt, these observations do not form part of the Tribunal's substantive decision.
62. There is a serious allegation made by the Applicant and Mr Khanna in connection with the present proceedings to the effect that the Respondent asked Mr Khanna (and possibly others) to give a false statement to the Tribunal for which the Respondent was ready to pay £500 in cash.
63. The allegation (if proven) may amount to a contempt of the Tribunal and/or the criminal offence of perverting the course of justice under common law. This Tribunal has no direct powers to punish for contempt (which can only be dealt with by a court of record). However, the Tribunal has set out above the evidence in relation to the allegation made by the Applicant and Mr Khanna at [19] and [27]-[30] above in case the matter is taken any further. There are also associated findings of fact at [46](a)-(b) above.

Judge Mark Loveday
26 April 2021

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.
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.