



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

Case Reference : CHI/43UD/HMF/2020/0027

Property : Room 4, 30 Woodbridge Road, Guildford,
Surrey GU1 1ED

Applicant : Petrok Lawrence

Representative :

Respondent : David Wilce
dwilce@hotmail.com

Representative :

Type of Application : Application for a rent repayment order by
Tenant
Sections 40, 41, 42, 43 & 45 of the Housing
and Planning Act 2016

Tribunal Member : Judge D R Whitney
Ms J Coupe FRICS

Date of hearing : 1st April 2021 by CVP

Date of Determination : 1st April 2021

DETERMINATION

Background

1. On 24th September 2020 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenant for a rent repayment order (RRO) against the Respondent landlord.
2. Directions were issued on 15th October 2020 and on 3rd February 2021. These later directions fixed the date for the hearing as 1st April 2021 to take place remotely via video.
3. In particular the Tribunal directed that the proceedings and the like be served upon the Respondent by sending copies of all documents to his following addresses:
 - By email dwilce@hotmail.com
 - By post to 3 Compton Heights, Guildford, Surrey GU3 1DA
 - By post care of Haart Lettings, 6 Epsom Road, Guildford GU1 3JQ
 - By post to 30 Woodbridge Road, Guildford, Surrey GU1 1ED
4. The hearing was attended by the Applicant. Mr Wilce did not attend and was not represented. The Tribunal had a bundle prepared by the Tribunal and references in [] are to pages within that bundle.

The Law

5. The relevant law is contained within the Housing and Planning Act 2016 (“the Act”). The relevant sections are set out in Annex A.

Hearing

6. Mr Lawrence attended the hearing which convened by CVP Video hearing. Mr Wilce did not attend and there was no contact from him. Mr Lawrence was able to be seen and heard throughout the hearing which was recorded.
7. The Tribunal explained to Mr Lawrence that Judge Whitney had been part of a Tribunal panel in the matter CHI/43UD/HMF/2020/0030 Rodriguez v. Wilce Property: Room 6 30 Woodbridge Road, Guildford which issued a decision dated 4th February 2021. Mr Lawrence was not aware of this decision. The Tribunal summarised that in that case it had been found Mr Wilce had been convicted of an offence under Section 72 of the Housing Act 2004 for the period 28th November 2018 to 31st October 2019. The Tribunal in that case had received a statement confirming the conviction from Mr S Grady of Guildford Borough Council.
8. Mr Lawrence confirmed he was relying upon the conviction as his entitlement for a rent repayment order. He confirmed his statement [71] that Mr Grady had advised him of the conviction and that this entitled him to apply for a rent repayment order. Mr Lawrence also relied upon a statement from Mr S Grady of Guildford Borough Council [72-77].

9. Mr Lawrence accepted that during the period of the conviction he had made 6 rental payments. These being 3rd December 2018, 2nd January 2019, 1st February 2019, 1st March 2019, 1st April 2019 and 1st May 2019. On each occasion he had paid £500 to SHRL as evidenced on the bank statements [78-88]. Mr Lawrence confirmed he believed SHRL was Spicer Haart Residential Lettings Limited who were referred to within the statement of Mr Grady [72-77] as being the letting agent for the Respondent and who collected his rents.
10. Mr Lawrence stated he was seeking a rent repayment order for the £3,000 paid in this period.
11. Mr Lawrence confirmed he occupied the property pursuant to a tenancy agreement. A copy was not within the bundle. The tenancy began in June 2018 for a period of 12 months and Mr Lawrence left at the end of the 12 month term.
12. Mr Lawrence also indicated he was seeking an order that the Respondent should reimburse him the Tribunal fees paid being £100 application fee and £200 hearing fee.

Determination

13. The Tribunal did consider whether it was appropriate for the Tribunal to determine the matter in the absence of Mr Wilce. The Tribunal noted that all of the papers had now been sent by post to the Respondent at what was believed to be his home address, the actual Property address and that of his agents who had collected the Applicant's rent.
14. The Tribunal was satisfied that Mr Wilce was aware or ought to be aware of the proceedings and the hearing. Mr Wilce had, as was his prerogative, decided not to take part in the same. The Tribunal was satisfied that it was in the interests of justice to proceed and determine the matter.
15. The Tribunal notes that none of the evidence is challenged.
16. The Tribunal places reliance upon the earlier decision in case reference CHI/43UD/HMF/2020/0030. Judge Whitney had been a member of the Tribunal which determined that application which had before it evidence from Mr Sean Grady as to the exact period of the conviction. The Tribunal is satisfied that Mr Wilce was convicted on 9th September 2020 of having control of a House in Multiple Occupation that is required to be licenced under the Housing Act 2004, but was not so licenced, contrary to section 72 of the Housing Act 2004 for the period 28th November 2018 to 31st October 2019.
17. The Tribunal finds beyond reasonable doubt, relying upon the decision in CHI/43UD/HMF/2020/0030 and the witness statement of Mr S Grady in these proceedings [72-78], that Mr Wilce was committing an offence for which a rent repayment order may be made being a breach of section 72 of the Housing Act 2004.

18. Mr Lawrence accepted the period of such offence should be for the period that Mr Wilce was convicted being 28th November 2018 until 31st October 2019. Mr Lawrence did not seek to persuade the Tribunal that it should determine the offence was being committed for any longer period. This Tribunal determines that in its judgment that it is satisfied beyond reasonable doubt relying principally upon the conviction that during this period the Respondent was in breach of section 72 of the Housing Act 2004.
19. The Tribunal is satisfied that a conviction of such offence entitles the Applicant to request a rent repayment order pursuant to section 41 of the Housing and Planning Act 2016. The Application was received on 24th September 2020 and so was made within 12 months of the offence ending being 31st October 2019.
20. The Tribunal considers in all of the circumstances of this case that it is just and equitable for a Rent Repayment Order to be made.
21. The Tribunal is satisfied on the evidence of the Applicant that during the period of the offence he paid a sum totalling £3000 being the following payments of £500 per calendar month paid by the Applicant on or about the first day of each month from December 2018 until his final payment on 1st May 2019. The Applicant has produced copies of his bank statements showing payments were made to the Respondents agent SHRL [78-88].
22. Mr Grady in his witness statement dated 23rd March 2020 prepared for the criminal proceedings explains how he had to obtain a warrant to enter the premises on 1st May 2019. The council had been alerted to the Property following a fire in March 2019. During this inspection various deficiencies in the fire safety of the Property were noted. Mr Grady's statement states that Victoria Cascini of SpicerHaart told him that Mr Wilce had advised SpicerHaart that he had an HMO Licence for the Property. Mr Wilce had not co-operated with the council and did not make any contact with them.
23. As stated above the Tribunal is satisfied that Mr Wilce has chosen not to take part in these proceedings. He did not do so in the earlier case referred to despite having spoken to a Tribunal Clerk in respect of that case. This includes putting forward any evidence or submissions to mitigate the amount of any rent repayment order.
24. Whilst no authorities were placed before the Tribunal the Tribunal accepts that the starting point is to award the full amount of the rent paid during the relevant period. No evidence has been put forward suggesting a reduction in the amount. The Tribunal takes account of the matters raised by Mr Grady in his statement and is satisfied that these are aggravating matters. The Tribunal is satisfied that a rent repayment order for the full amount paid by the Applicant of £3,000 should be made in all the circumstances of this case.
25. Turning to the Applicant's application for reimbursement of the fees paid of £300 the Tribunal agrees to make such an order. The Applicant has been wholly successful in his application and the Respondent's failure to engage has

led to the fees being incurred and it is just and equitable for these to be added to the sums to be paid to the Applicant.

Conclusion

26. The Tribunal makes a Rent Repayment Order in favour of the Applicant that within 28 days of this determination the Respondent should pay a sum of £3,000 to the Applicant.
27. Further the Tribunal orders that within 28 days of this determination the Respondent should pay to the Applicant £300 as reimbursement of fees paid by the Applicant to the Tribunal.

RIGHTS OF APPEAL

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 rpsouthern@justice.gov.uk being 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