



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

**Case Reference** : CHI/43UD/HMF/2020/0030

**Property** : Room 6, 30 Woodbridge Road, Guildford,  
Surrey GU1 1ED

**Applicant** : David Edward Perez Rodriguez  
davidperez@live.co.uk

**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  
Mr P Turner-Powell FRICS  
Mr D Johnson

**Date of hearing** : 3<sup>rd</sup> February 2021 by CVP

**Date of Determination** : 4<sup>th</sup> February 2021

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**DETERMINATION**

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## **Background**

1. On 30 October 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 6<sup>th</sup> November 2020 which included the matter being listed for a hearing on 15<sup>th</sup> December 2020 by CVP. The hearing took place remotely and was attended by the Applicant. The Respondent did not attend.
3. The Tribunal issued further Directions on that date together with an Order that Mr Sean Grady of Guildford Borough Council answer certain questions. 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](mailto: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
4. Mr Grady responded to the Order providing various information as to the conviction of Mr Wilce. The Applicant has complied with his obligations. No contact has been received from Mr Wilce save that a case officer spoke with him on the telephone when he asked for documents to be sent to him at the Property address. Documentation was sent to him but no response has been received.

## **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 Rodriguez attended the hearing which convened by CVP Video hearing. Mr Rodriguez could not be seen or heard and he subsequently joined by telephone whilst the Tribunal remained on CVP. Mr Wilce did not attend and there was no contact from him.
7. Mr Rodriguez confirmed he had seen the response and attachments sent by Mr Grady. He had prepared his statement in response and he confirmed he had sent this to Mr Wilce. He confirmed he had received no contact from Mr Wilce.

8. The Tribunal confirmed it had received the documents from Mr Grady which included his response to each of the questions posed by the Tribunal in its Order dated 15<sup>th</sup> December 2020. A copy of his response is Annexed hereto marked “Annex B” (without attachments).
9. Mr Rodriguez confirmed that the documents headed “Statement of Truth by David Rodriguez” was true and accurate. This document relied upon the information provided by Mr Grady.
10. Mr Rodriguez was seeking a Rent Repayment Order for the period 28<sup>th</sup> November 2018 to 31<sup>st</sup> October 2019 on the basis of Mr Wilce’s conviction under Section 72 of the Housing Act 2004 for that period of time. Mr Rodriguez produced copies of his Halifax bank statements for that period showing payments of £400 to SPICEHAART (sic) on or about the 26<sup>th</sup> day of each month. This was in line with the tenancy agreement produced by the Applicant which included a standing order mandate to pay rent to “Spicerhaart Residential Lettings Client Account”. The monthly rental under the agreement dated 16<sup>th</sup> October 2018 between the Respondent and the Applicant was £400 per calendar month to be paid on the 26<sup>th</sup> day of each month.
11. Mr Rodriguez confirmed he relied upon the information supplied by Mr Grady and he was seeking a rent repayment order of £4,400 equivalent to the 11 payments of £400 paid between 28<sup>th</sup> November 2018 and 31<sup>st</sup> October 2019. Mr Rodriguez also invited the Tribunal to order that Mr Wilce should refund to him the Tribunal fees paid of £300.

## **Determination**

12. 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 his address for service within the Applicant’s tenancy agreement, the actual Property address and that of his agents who had collected the Applicant’s rent. Further Mr Wilce had spoken to a Tribunal clerk who had told him of the forthcoming hearing.
13. The Tribunal was satisfied that Mr Wilce was 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.
14. The Tribunal notes that none of the evidence is challenged. The Tribunal accepts the reply of Mr Grady as being evidence of Mr Wilce’s conviction. The Tribunal is satisfied that Mr Wilce was convicted on 9<sup>th</sup> 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 28<sup>th</sup> November 2018 to 31<sup>st</sup> October 2019. The Tribunal finds beyond reasonable doubt relying upon this evidence that Mr Wilce was committing an offence for which a rent repayment order may be made during the period of the conviction.

15. 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 20<sup>th</sup> October 2020 and so was made within 12 months of the offence.
16. The Tribunal considers in all of the circumstances of this case that a Rent Repayment Order should be made.
17. The Tribunal is satisfied on the evidence of the Applicant that during the period of the offence he paid a sum totalling £4,400. The Applicant suggests matters are aggravated by the Respondent's failure to engage in this process and with the Council.
18. Mr Grady in his witness statement dated 23<sup>rd</sup> March 2020 prepared for the criminal proceedings explains how he had to obtain a warrant to enter the premises on 1<sup>st</sup> 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.
19. As stated above the Tribunal is satisfied that Mr Wilce has chosen not to take part. This includes putting forward any evidence or submissions to mitigate the amount of any rent repayment order.
20. 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 and relied upon by the Applicant as aggravating matters. The Tribunal is satisfied that a rent repayment order for the full amount paid by the Applicant of £4,400 should be made in all the circumstances of this case.
21. 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**

22. 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 £4,400 to the Applicant.
23. 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.

