



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

Case Reference : **MAN/00BY/HMF/2020/0026**

Property : **15 Highgate Street, Liverpool, L7 3ET**

Applicants : **(1) Alicja Partridge
(2) Daniel John Pearson**

Represented by : **Ms Sherratt of Justice for Tenants**

Respondents : **(1) West Village Liverpool Limited
(2) Trophy Homes Limited
(3) Sean Broadhurst, Director of (1) and (2)
(4) Robert Broadhurst, Director of (1) and (2)**

Type of Application : **Application for a Rent Repayment Order,
section 41 of the Housing and Planning Act
2016**

Tribunal Members : **Judge C. P. Tonge LLB, BA
Mr J. Faulkner FRICS**

Date of Decision : **26 October 2021**

Date of Determination : 15 November 2021

DECISION

© CROWN COPYRIGHT 2021

Application and Background

1. On 1 September 2018 Ms Alicja Partridge "the First Applicant" and Mr Daniel John Pearson "the Second Applicant" became tenants in separate bedrooms at 15 Highgate Street, Liverpool, L7 3ET "the property". Each tenancy being commenced by a separate Assured Shorthold Tenancy Agreement, dated respectively, 26 June 2018 and 17 August 2018.
2. At all material times West Village Liverpool Limited " the First Respondent" has been the owner and landlord of the property.
3. At all material times Trophy Homes Limited "the Second Respondent" has been the management agent and joint landlord of the property.
4. At all material times Sean Broadhurst "the Third Respondent" has been a Company Director of both the First and Second Respondents' and registered as such at Companies House (Applicants' bundle, page 90 to 99).
5. At all material times Robert Broadhurst "the Fourth Respondent" has been a Director of both the First and Second Respondents' and registered as such at Companies House (Applicants' bundle, page 90 to 99).
6. The First and Second Applicants' made a joint application to this Tribunal, dated 11 February 2020 and 13 February 2020, respectively, received by the Tribunal on 24 March 2020. The application seeks a rent repayment order for the benefit of each Applicant, relating to their tenancies at the property, on the ground that this tenancy was of a House in Multiple Occupation that required a licence to be run as such, but the Respondents' did not have such a licence, contrary to section 72(1) of the Housing Act 2004.
7. The application was copied to all four Respondents', the First and Second Respondents' sharing the same registered address.
8. Directions were issued on 3 February 2021. They have been complied with by the Applicants' but not by the Respondents', who have chosen not to serve any evidence at all.
9. The case was listed for final hearing via a video platform on 26 October 2021.

The law

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

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

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

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

(a) a notification had been duly given in respect of the house under section 62(1), or

(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)).

(5) 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.

The Housing and Planning Act 2016

Section 40 Introduction and key definitions

(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, or

(b) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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
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

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that

section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(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.

(3) A local housing authority may apply for a rent repayment order only if—

(a) the offence relates to housing in the authority's area, and

(b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applies (whether or not the landlord has been convicted).

(2) A rent repayment order under this section may be made only on an application under section 41.

(3) The amount of a rent repayment order under this section is to be determined in accordance with—

(a) section 44 (where the application is made by a tenant);

(b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

(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.

The Applicants' written evidence

10. The Respondents' have not sought to challenge any of the Applicants' written evidence and the Applicants' statements contain certificates of truth.
11. The property has 6 rooms available for occupation by 6 separate tenancies, paying separate rents, on three floors, intended by the Respondents' to attract student tenants. The property has a shared kitchen/living room and four shared bathrooms. As such the property falls within the definition of a

HMO which requires a licence, pursuant to article 3 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) (England) Order 2006. That order was in force until 30 September 2018 and required that the building have 3 storeys, providing occupancy by 5 or more persons, in two or more households. As from 1 October 2018, the definition of a HMO which requires a licence was modified to remove the requirement that the building have three storeys by article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.

12. The property has at all material times required such a licence, it having been occupied by 5 such tenants for all of the relevant period and 6 such tenants for a short period during the relevant period, all of whom were paying rent and all of who were in separate households (statements of both Applicants', Applicants' bundle, pages 107 to 113, with an advertising feature at pages 105 to 106 and a photograph at page 86).
13. The First Applicant was reading for a masters degree and became a tenant at the property by virtue of an Assured Shorthold Tenancy Agreement "tenancy agreement", signed by the First Applicant on 26 June 2018. There is a space for the signature of the landlord or agent of the landlord, but it is not signed. The landlord is stated to be Trophy Homes Limited, but this is qualified on the first line of the first paragraph with the words 'as agent'. The top of the tenancy agreement has the words 'Trophy Homes Student Lettings'. The Third Respondents' name appears on the last page of the tenancy agreement, entitled 'Signable' as being the person who generated the package. The tenancy agreement commencing on 1 September 2018, terminating on 15 September 2019, at a rent of £98 per week (Applicant's bundle, page 33 to 38). The Tribunal notes that the property subject to the tenancy is described in the tenancy agreement as, Luxe Room, Highgate Court, 9 Highgate Street, Liverpool, L7 3QA. The address of the property is 15 Highgate Street, Liverpool, L7 3ET.
14. The Second Applicant, a student at Liverpool University, became a tenant at the property by virtue of a tenancy agreement, signed by the Second Applicant on 17 August 2018. There is a space for the signature of the landlord or agent of the landlord, but it is not signed. The landlord is stated to be Trophy Homes Limited, but this is qualified on the first line of the first paragraph with the words 'as agent'. The top of the tenancy agreement has the words 'Trophy Homes Student Lettings'. The Third Respondents name appears on the last page of the tenancy agreement, entitled 'Signable' as being the person who generated the package. The tenancy agreement commencing on 1 September 2018, terminating on 30 June 2019, at a rent of £88 per week (Applicant's bundle, page 27 to 32). The Tribunal notes that the property subject to the tenancy is described in the tenancy agreement as, Luxe Room, Highgate Court, Highgate Street, Liverpool, L7 3QA. The address of the property is 15 Highgate Street, Liverpool, L7 3ET.

15. The First Applicant paid £4,576 in 3 instalments of rent (Applicants' bundle, pages 24 to 42). The First Applicant was required to move to an alternative address by her landlords on 1 July 2019, so that the property could be refurbished.
16. The Second Applicant paid £4,240 in 3 instalments of rent (Applicants' bundle, pages 43 to 46). The Second Applicant remaining as tenant to the end of the tenancy agreement.
17. The First Respondent is the registered freehold owner of the property (Applicants' bundle, pages 48 to 49).
18. Both tenancy agreements contain the same provision at clause B1, that the annual rent paid by the tenant includes a charge of £360 to contribute to the cost of utilities paid for by the landlord, but used by the tenant. The Tribunal takes this to mean that in any one year of rent payments, the landlord can deduct £360 as a contribution to the cost of utilities that the landlord is paying on behalf of the tenant.
19. The Applicants' bundle of evidence also contains evidence in support of the alternative allegation that the property falls within the area of selective licensing as designated by Liverpool City Council on 17 October 2014 and effective between 1 April 2015 and 31 March 2020. As such the property would require an HMO licence in any event (Applicants bundle, page 87).
20. Liverpool City Council have stated, in an email chain, that the property did have an HMO licence from 6 June 2015 to 5 June 2018. The property did not have a licence to be operated as an HMO during the period 1 September 2018 to 1 July 2019 (Applicants' bundle, pages 50 to 54).

The Hearing

21. The hearing was held via the full video hearing platform, commencing at 10am on 26 October 2021. The two Applicants' were present along with their representative, Ms Clara Sherratt, of Justice for Tenants.
22. The Second Applicant dealt with his rent payments. The bank statements record that his £4,240 rent payments were to a Sophie Homes. This had been as a result of his making the first payment over the telephone banking system. The bank employee had obtained the correct bank account number, but had misheard the name of the recipient, Trophy Homes as Sophie Homes. That mistaken name only appeared on the Second Applicants bank statements. The money went to the landlord. The Second Applicant did try to have the bank remedy this mistake, but he was told that they could not. The Second Applicant pointed out that the bank statement clearly shows that the first payment of rent by telephone

- banking and that after each payment the account balance is reduced by the amount of the payment. There is no repayment of the rent shown in the bank statements.
23. Both Applicants' confirmed the occupancy of the same rented building as follows. Ground floor, some of the shared facilities as already described. First floor, the First Applicants' room occupied as a separate household and a Laura North who was a tenant from 8 September 2018 to 1 June 2019, a second year student at Liverpool University and paying rent, in her own household. There is a third bedroom on this floor, it was occupied by a tenant for a few weeks in October 2018. Second floor, the Second Applicants' room, occupied a separate household. Also, Leon Hughes, being a tenant paying rent as a separate household, occupied from 12 September 2018 to 1 June 2019, a student at Liverpool University. Also, Leon McVey, being a tenant paying rent as a separate household, occupied from 12 September 2018 to 1 June 2019, a student at Liverpool University.
 24. The Applicants' both confirmed that dealings were always with employees of Trophy Homes who were active in the granting of the tenancies, any problems that required dealing with and it was this company to which both of them paid their rent.
 25. The First Applicant confirmed the evidence from her bank statements that she had paid £4,576 in rent, stating that she had been required by Trophy Homes to vacate the property on 1 July 2019, so that the property could be refurbished. The First Applicant also stated that the tenancy agreement incorrectly recorded the weekly rent as £98 per week, it was in fact £88 per week.
 26. The Tribunal raised the issue that although both tenancy agreements state that the property let has a different address from the other tenancy agreement, neither gives the address of the property subject of this case. The Tribunal asked the Applicants' to explain, if they could, how this could be? The Applicants' stated that they had both been tenants in the same building. They had both understood this to be 15 Highgate Street, Liverpool, L7 3ET. They had used this address on all postal letters and incoming letters had used this address. The description of Luxe Room was in their opinion just an advertising feature, not part of the address. Highgate Court may signify that there is a court on Highgate Street and both confirmed that the building they were in appeared to be a new build.
 27. The Tribunal pointed out that one of the tenancy agreements used the number 9, indicating that the property let was 9 Highgate Street and that both used the post code L7 3QA and not the post code of the property L7 3ET, seeking further clarification of the address of the property that the two Applicants' had occupied. The Applicants' were granted a brief stand down to consider this.

28. Ms Sherratt then shared her screen with the members of the Tribunal, showing a Google Street View of Highgate Street, Liverpool. The two Applicants' both stated that the building that they had occupied was the last in a row of terraced buildings with, on the shared screen, a blue wheelie bin outside. When Ms Sherratt put her cursor over this building the computer indicated that the building has an address, identical to that of the property in this case, 15 Highgate Street, Liverpool, L7 3ET. Ms Sherratt then moved the cursor to the left on the screen, to a building nearby on the same street, the computer indicating that we were now looking at 9 Highgate Street, Liverpool, L7 3QA.
29. Both Applicants' stated that although the tenancy agreements require an administration fee of £98 to be paid, this was paid separately and is not included in the rent payments that the Tribunal has seen being taken from the Applicants' bank accounts.
30. Ms Sherratt submitted that she is very concerned that any rent repayment order made should actually be paid to the Parties, pointing out how that could easily be avoided if limited companies were dissolved. She further submitted that since the evidence does establish that the Third and Fourth Respondents are both Directors of the First and Second Respondents, that the Tribunal could make a joint and severable rent repayment order against both Directors pursuant to section 251 of the Housing Act 2004.
31. Section 251 of the Housing Act 2004 provides that where an offence under the Act has been committed by a body corporate, with the consent, connivance, or neglect of a Director of the company, the Director also commits the offence and can be punished accordingly. This offence is alleged to be control or management of a licensable, but unlicensed HMO, contrary to section 72 of the Housing Act 2004. The Directors of the companies, if the companies are found to have committed the offence, could therefore also be held responsible. This would ensure that any rent repayment order made would be paid.

The Determination

32. The Tribunal, having considered all the evidence referred to above and in particular paragraphs 26 to 28, above, is sure that the property in which these two Applicants' had tenancies in this case is properly detailed as 15 Highgate Street, Liverpool, L7 3ET. Any suggestion in the tenancy agreements to the contrary is a mistake.
33. The Tribunal is sure, from considering all the evidence referred to above, that the property is an HMO that required a licence to be operated as such in the period relevant to this case.

34. The Tribunal is also sure that, in the relevant period, being 1 September 2018 to 1 July 2019, in considering the evidence referred to above, the property was being operated as licensable HMO, without there being a licence. This property has been operated in such a way that an offence under section 72(1) of the Housing Act 2004 has been committed. As such it is not necessary for the Tribunal to consider whether or not the property was also being operated as a licensable HMO, without a licence, as a result of the area being designated in a selective licensing designation.
35. The Tribunal is sure that the First Respondent, being the registered freehold owner of the property is the landlord of the property, having control of the property and has therefore committed the offence (section 72(1) of the Housing act 2004).
36. The Tribunal is sure that the Second Respondent, being described as the landlord of the property on the tenancy agreements and having day to day management and control of the property is also the landlord of the property and has therefore committed this offence (section 72(1) of the Housing act 2004).
37. The Tribunal is also sure that the Third Respondent, was at the material time a Director of the First and Second Respondent. The evidence from Companies House establishing that on 17 January 2020 he was an active Director of both companies, having been appointed as such on 14 January 2014 (First Respondent) and 26 January 2012 (Second Respondent) (Applicants' bundle page 94).
38. The Tribunal is also sure that the Third Respondent was personally involved in the grant of both tenancy agreements referred to in this case. The name Sean Broadhurst being in the 'Signable' section of both tenancy agreements as the person 'generating the envelope' on the date that the tenant concerned signed the agreement. Sean Broadhurst is therefore also guilty of committing this offence contrary to section 72(1) of the Housing Act 2004, he being a Director conniving in the offence (section 251 of the Housing Act 2004).
39. The Tribunal is also sure that the Fourth Respondent, was at the material time a Director of the First and Second Respondent. The evidence from Companies House establishing that on 17 January 2020 he was an active Director of both companies, having been appointed as such on 14 January 2014 (First Respondent) and 21 April 1992 (Second Respondent) (Applicants' bundle page 90 to 92).
40. The Tribunal is sure that this offence was committed, attributable to the Fourth Respondents' neglect (section 251 of the Housing Act 2004). As such Robert Broadhurst is also guilty of committing the offence contrary to section 72(1) of the Housing Act 2004.

41. The First Applicant was moved to a different address on 1 July 2019 and the Second Applicants' tenancy terminated on 30 June 2019. As such any rent repayment order made could only include rent paid from 1 September 2018 to 30 June 2019.
42. The Applicants' have made an application for rent repayment orders, received by the Tribunal on 24 March 2020. The offence contrary to section 72(1) of the Housing Act 2004 was being committed up to 30 June 2019, so the application has been made within 12 months of the offence being committed, section 41(1)(b) of the Housing and Planning Act 2016 "the 2016 Act" is therefore satisfied and the Applicants' may make an application for a rent repayment order.
43. The Tribunal is sure that all four Respondents have committed the offence contrary to section 72(1) of the Housing Act 2004 and the application is made by tenants, therefore pursuant to section 43 of the 2016 Act the rent repayment orders will be calculated in accordance with section 44 of the 2016 Act.
44. Section 44 of the 2016 Act permits a rent repayment order for the full period being claimed by the Applicants', but the tenancy agreements provide for some of the rent payments to be designated as compensation to the landlords for the fact that the landlord has paid for the utilities that otherwise would have been paid for by the Applicants'. The Tribunal determines that there must be a deduction of £360 from each rent repayment order (clause B1 of each tenancy agreement).
45. The First Applicant claims a rent repayment order of £4, 576, but this is for a 52 week rental period. The Tribunal notes that the First Applicants' tenancy of the property was brought to an early end, due to the Applicant being moved out of the property so that it could be refurbished on 1 July 2019. The Tribunal calculates the number of weeks that can be included in the rent repayment order. This is 43 weeks (rounding down to full weeks, as this is a tenancy agreement with a rent to be paid in weeks), at £88 per week, being £3,784. The Tribunal then deducts £360 in relation to the cost of utilities. The rent repayment order on behalf of the First Applicant will be £3,424.
46. The Second Applicant claims a rent repayment order of £4,240, having stayed in occupation for the whole of the period of the tenancy. The Tribunal notes that although the tenancy is for 43 weeks, clause 4.2 of this Applicants' tenancy agreement (not being the same as that for the First Applicant) requires rent to be paid for 44 weeks plus a summer retainer, the value of which is not specified. The Tribunal is sure that this Applicant paid £4,240 in rent and will deduct £360 in relation to the cost of utilities.

The rent repayment order on behalf of the Second Applicant will be £3,880.

47. During the hearing mention was made of evidence that the Applicants' had in their possession, which the Tribunal thought might be admissible. On further reflection, the Tribunal determines that for the material to become evidence in the case, in circumstances where the Respondents' are not in attendance at the hearing, such material would have to be served by the Applicants' on the Respondent' before the hearing took place. This had not happened and the material is therefore inadmissible. In any event, without consideration of the material referred to, the Applicants' have proven their respective cases.

Decision

48. The Tribunal Decides that all four Respondents' are jointly responsible for payment of the rent repayment orders that the Tribunal makes. This responsibility is severable and as such only one payment has to be made by a Respondent to satisfy each rent repayment order.
49. The Tribunal makes a rent repayment on behalf of the First Applicant in the sum of £3,424, which is payable to the First Applicant. Payment to be made in full within 28 days of the date that this Decision is sent to the Parties.
50. The Tribunal makes a rent repayment on behalf of the Second Applicant in the sum of £3,880, which is payable to the Second Applicant. Payment to be made in full within 28 days of the date that this Decision is sent to the Parties.
51. This case has been conducted during the Covid-19 Pandemic. As a result, the procedure of the Tribunal has been modified so that the final hearing has been conducted via a video platform, rather than being held in a Tribunal room. The Tribunal is satisfied that this has not caused any injustice to any of the Parties involved.
52. Appeal against this Decision is to the Upper Tribunal. If either Party wishes to appeal against this decision, that Party has 28 days from the date that this decision is sent to the Parties to ask this First-tier Tribunal for permission to appeal to the Upper Tribunal. That must be done by delivering to this Tribunal an application for permission to appeal, stating the grounds of the appeal, the particulars of the appeal and the outcome that the party seeks to achieve by making the application.

Judge C. P. Tonge

Date that this Decision was sent to the parties 15 November 2021