



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

Case reference : **CAM/38UC/HMK/2022/0002
CAM/38UC/HMF/2022/0023**

Property : **Student Castle Oxford, Osney Lane,
Oxford OX1 1TE**

Applicants : **1.Lodovico Scarpa
2.Axelle Tir**

Representative : **Justice for Tenants**

Respondent : **SC Osney Lane Management
Limited**

Representative : **Bryan Cave Leighton Paisner LLP**

Type of application : **Application for a Rent Repayment
Order - Section 40 Housing and
Planning Act 2016**

Tribunal : **Regional Judge Wayte**

Date : **7 December 2022**

**ORDER STRIKING OUT PART OF THE APPLICATION
Rule 9 Tribunal Procedure Rules 2013**

The tribunal's decision is that part of the applications which relates to rent paid before 25 January 2021 (the first period) be struck out pursuant to rule 9(2)(a) and/or (3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules").

BACKGROUND

1. The applicants each seek a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 (“the 2016 Act”). The applicants rely on the respondent having committed an offence under section 72(1) of the Housing Act 2004 (“the 2004 Act”), namely being the landlord of a house in multiple occupation (HMO) without the necessary licence. The “house” in question is student accommodation in a large purpose-built development in Oxford, known as Student Castle and the applicants both occupied “cluster flats” within that property, being self-contained accommodation occupied by 5 or 6 students sharing a communal kitchen.
2. On 11 August 2022, following a hearing on 20 and 21 July 2022, the tribunal made a RRO in respect of some 42 other former residents of cluster flats in Student Castle, Oxford case reference CAM/38UC/HMK/2021/0002 and others. The RRO was for 35% of the rent paid during the periods the offence was being committed, less an allowance of £60 for utilities plus the application fee of £100.
3. Mr Scarpa’s application was received by the tribunal on 15 June 2022 and Ms Tir’s on 18 August 2022. Mr Scarpa was not joined to the earlier proceedings and Ms Tir did not make her application until after the decision was issued. That said, the earlier decision is relevant in terms of the factual background and the findings by the tribunal in respect of the arguments made before it.
4. The respondent accepts that an offence had been committed by them while the flats were occupied during two separate periods when Oxford City Council had introduced an additional licensing scheme. The first scheme came into force on 31 January 2017 and expired on 24 January 2021 (“the first period”). The second came into force on 10 June 2021 and is due to expire on 9 June 2026, although the period of offending came to an end on 15 September 2021 when the respondent applied for the requisite licence.
5. Mr Scarpa seeks a RRO for the period between 12 September 2020 and 23 July 2021 (when an offence was being committed), with the total rent paid during that period being £5, 960.88. Ms Tir occupied her room from the same start date until 3 September 2021 and therefore her total rent is slightly higher, £6,588.45.

Application to strike out part of the claim

6. The respondent has made an application to strike out the parts of both claims which relate to the first period on the basis that the claim in respect of that period is out of time. In particular, they rely on section 41(2)(b) of the 2016 Act which states that: “*A tenant may apply for a rent repayment order only if the offence was committed in the period of 12 months ending with the day on which the application is made.*” They say that each scheme led to two separate offences and therefore the deadline to apply for a RRO in respect of rent paid during the first period expired on 25 January

2022. They accept the claims in relation to rent paid during the second period are validly made and in time.

7. Justice for Tenants argued on behalf of their clients that the respondent committed a singular offence under section 72(1) of the 2004 Act, albeit one that gave rise to a non-continuous period of claim. In particular they relied on the reference to “the offence” in section 41(2) of the 2016 Act as supporting their claim that there must be a singular limitation period for the entire application as the offence was the same, despite the fact that there were two separate schemes and a period between where no offence was committed. They drew an analogy with claims for HMOs where the number of occupants falls below the threshold required for the property to satisfy the conditions for mandatory or additional licensing, where it is standard practice to allow the recovery of up to 12 months’ rent even though some had been paid more than 12 months before the application, to take account of any periods where the offence was not committed. Such a practice was acknowledged by the Upper Tribunal in *Irving v Metcalfe & others* [2021] UKUT 0060 (LC).
8. In response, Bryan Cave Leighton Paisner on behalf of the respondent emphasised that here there were two different designations which gave rise to two different offences. That fact meant that *Irving* was of no relevance here.

The tribunal’s decision

9. The tribunal’s power to strike out an application is set out in Rule 9 of the 2013 Rules. Of particular relevance in this case are the following:

Rule 9(2)(a) The tribunal must strike out the whole or part of the proceedings if the Tribunal does not have jurisdiction in relation to the proceedings or case or that part of them; and

Rule 9(3)(e) The Tribunal may strike out the whole or part of the proceedings or case if the Tribunal considers there is no reasonable prospect of the applicant’s proceedings or case, or part of it, succeeding.

10. I agree with the respondent that the two separate designations by Oxford City Council, with a significant gap between the two while the new scheme was consulted on and came into force, gave rise to two separate offences in this case. Those circumstances distinguish the case from *Irving*, which suggested the possibility of a discontinuous 12-month period under s.44 when occupancy may have dropped below the licensing threshold for “a couple of weeks” [26] and is in any event is not a clear authority for the argument made on behalf of the applicants. In the circumstances, both applications are too late in respect of rent paid during the first period as it expired more than 12 months before the applications were made to the tribunal. In the circumstances, that part of the applications that relates to rent paid during the first period is struck out under rule 9(2)(a) and/or 9(3)(e).

11. Given the other findings in the earlier decision, I hope that the parties can now reach an agreement as to the amount of the RRO in respect of rent paid during the second period. If they are unable to do so, they should apply for directions by 9 January 2023.

Judge Wayte

8 December 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).