



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

Case Reference : CHI/00HB/HMF/2022/0008

Property : 3 St Marks Grove, Easton, Bristol, BS5 0LJ

Applicant : Lily Hammond
Emily Moxley
Albert Rowett

Representative : Lily Hammond

Respondent : Mr Lawrence Hoo

Representative : Mr H MacBean, counsel

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 Members : Judge D Whitney
Mr C Davies FRICS
Ms T Wong

Date of Hearing : 17 November 2022

Date of Decision : 22 November 2022

DECISION

Decision

The Respondent shall repay rent in the sum of £1080 to each of the Applicants within 28 days and refund to the Applicants the sum of £300, such sum to be paid to Ms Hammond as the lead Applicant within 28 days.

Reasons

Background

1. On 13 April 2022 the Tribunal received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the Applicant tenants for a rent repayment order (RRO) against the Respondent landlord. The amount claimed is £450.00 per month, per tenant for the period April 2020 to May 2021.
2. Directions were issued on 19 July 2022, 13 September 2022 and 8 November 2022 setting a timetable leading to this hearing. An electronic bundle was supplied by the Applicants and references in [] are to the pdf pages of that bundle.
3. The hearing was recorded.

Law

4. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal and is at the end of this decision.
5. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
6. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).

7. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of controlling or managing an unlicensed HMO, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:

a) the rent paid in respect of the period in question, less

b) any relevant award of universal credit paid (to any person) in respect of rent under the tenancy during that period.

8. In certain circumstances (which do not apply in this case) the amount of the rent repayment order must be the maximum amount found by applying the above principles. The Tribunal otherwise has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must take particular account of the following factors when exercising that discretion:

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 any of the specified offences.

Hearing

9. All parties attended the Tribunal remotely by video. Ms Hammond represented the Applicants and she was joined by Mr Rowett and Ms Moxley. Mr MacBean, counsel, represented the Respondent who was also in attendance.

10. Mr MacBean confirmed on behalf of his client that he admitted that he had failed to renew his HMO Licence for the Property and accepted he had committed an offence pursuant to Section 72(1) of the Housing Act 2004. Mr Hoo had made a statement as to the same within the bundle [140]. Further the Respondent accepted that the Applicants had paid their rent of £450 per tenant during the period claimed and had produced evidence within the bundle [19-99].

11. The Applicants sought to raise issues as to disrepair. They agreed they had not raised this in their evidence before today. Ms Hammond suggested she was referring to this to put the application in context. Mr MacBean objected to the same. The Tribunal agreed it would take no

account of this given no prior notification had been given to the Tribunal or the Respondent.

12. Mr MacBean submitted that the Respondent accepted he had not renewed his licence. As soon as he was alerted he applied and the licence was renewed without any additional conditions being attached. The Council renewed the licence promptly and have taken no further action against the Respondent. His client had not disputed matters as could be shown by his statement. Mr MacBean reminded the Tribunal that the licence expired just as the Covid pandemic began.
13. Mr MacBean suggested that this was a case where the amount awarded should be 0% but if we were not with him the amount should be not more than 15/20%.
14. In response Mr Rowett accepted that an order for a minimal Rent Repayment Order would be appropriate but he reminded the Tribunal for a period of 12 months no licence had been in place.

Has an offence been committed?

15. The Respondent admits the offence.
16. We find that the Respondent's additional HMO Licence expired on 15th May 2020. The Respondent applied for a renewal of his licence on 10th March 2022. Between May 2020 and March 2022 we are satisfied that the Respondent did not hold the appropriate licence and so the offence was committed.

Has the application been made in time?

17. The Application was received on 13th April 2022. The application was made within 12 months of the offence ending and so the application was made within the statutory time of 12 months.

Should we exercise our discretion to make an order?

18. We are satisfied that we should exercise our discretion and make an award of a Rent Repayment Order. We do so given the offence has been committed and no extra ordinary reason has been given as to why we should not.

What order should we make?

19. The Applicants each paid £450 per month. The Applicants commenced occupation in February 2020 and vacated in May 2022. Each is entitled to look to recover up to 12 months rent totalling £5,400 each.
20. The Respondent accepts each paid £5,400. Mr MacBean referred us to the Upper Tribunal decision in Hallett v Parker [2022] UKUT 165 (LC).

21. We are required to consider various factors. The offence committed is a serious offence but it is not the most serious of offences for which a Rent Repayment Order may be made. We do however acknowledge that the need for proper enforcement is a matter we should take account of.
22. We are satisfied that there are no aggravating factors in respect of the offence. Mr Hoo had previously held a Licence and upon renewal it was renewed promptly by the Council without any significant new conditions attached and certainly without any works being required. Further we note the licence did expire shortly after the country was affected by the Covid pandemic which significantly affected all of our daily lives throughout 2020.
23. Neither party suggested the Respondent has any prior convictions and we record that the Council choose to take no action against Mr Hoo for failing to renew his earlier licence.
24. Equally we are satisfied that the Applicants conduct cannot be questioned. Certainly, the Respondent did not suggest it could be.
25. The Respondent did not make any submissions as to his financial circumstances and we assume he could pay any award made.
26. Taking all matters into account we find that a Rent Repayment Order should be made in the sum of 20% of the total rent paid being a sum of £1,080 for each of the Applicants.
27. We have considered whether or not we should exercise our discretion to order the Respondent to reimburse the Applicant for the fees paid to the Tribunal. We are satisfied that given the Applicants have been successful they should recover the fees paid totalling £300.

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 by email to rpsouthern@justice.gov.uk
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.

Explanation of the Tribunal's jurisdiction to make a Rent Repayment Order

1. The **issues** for the Tribunal to consider include:

Whether the Tribunal is satisfied beyond a reasonable doubt that the landlord has committed one or more of the following offences:

	<i>Act</i>	<i>Section</i>	<i>General description of offence</i>
1	Criminal Law Act 1977	s.6(1)	violence for securing entry
2	Protection from Eviction Act 1977	s.1(2), (3) or (3A)	unlawful eviction or harassment of occupiers
3	Housing Act 2004	s.30(1)	failure to comply with improvement notice
4	Housing Act 2004	s.32(1)	failure to comply with prohibition order etc.
5	Housing Act 2004	s.72(1)	control or management of unlicensed HMO
6	Housing Act 2004	s.95(1)	control or management of unlicensed house
7	Housing and Planning Act 2016	s.21	breach of banning order

Or has a financial penalty¹ been imposed in respect of the offence?

- (i) What was the date of the offence/financial penalty?
- (ii) Was the offence committed in the period of 12 months ending with the day on which the application made?
- (iii) What is the applicable twelve-month period?²
- (iv) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (v) Should the tribunal reduce the maximum amount it could order, in particular because of:

¹ s.46 (2) (b): for which there is no prospect of appeal.

² s.45(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- (a) The conduct of the landlord?
 - (b) The conduct of the tenant?
 - (c) The financial circumstances of the landlord?
 - (d) Whether the landlord has been convicted of an offence listed above at any time?
 - (e) Any other factors?
2. The parties are referred to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

Important Note: Tribunal cases and criminal proceedings

If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the Tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.