



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

Case Reference : **LON/00AG/HMK/2017/0003**

Property : **Flat 14, 87 Abbey Road, London
NW8 0AG**

Applicant : **Ms Gaja Cetnar**

Representative : **In person**

Respondent : **Rent Rooms & Management
Limited**

Representative : **none**

Type of Application : **Application for a Rent Repayment
Order under sections 73 and 74
Housing Act 2004**

Tribunal Members : **Tribunal Judge Dutton
Mr W R Shaw FRICS**

**Date and venue of
Hearing** : **25th October 2017 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **26th October 2017**

DECISION

DECISION

The Tribunal determines that the Respondent, having been convicted of an offence under sections 61(1), 72(1) and s234(3) of the Housing Act 2004, is required to repay to the Applicant the sum of £1,572 in respect of the periodical payments from the 31st August 2016 to 26th October 2016 inclusive.

BACKGROUND

1. On 17th July 2017 the Applicant applied to the Tribunal for a Rent repayment Order (RRO) in respect of the room she occupied at 87 Abbey Road, London NW8 0AG (flat 14).
2. Directions were given 31st July 2017 and the matter came before us for hearing on 25th October 2017. The Applicant attended. The Respondent was not present and had not engaged in the process
3. Before the hearing we received a bundle of papers which included the application, a letter from Camden Private Sector Housing dated 11th May 2017 (the Letter) and details of the payments made by the Applicant to the Respondent.
4. The Letter confirmed that
 - As at 21st October 2016 the property 87 Abbey Road, London NW8 0AG was an HMO, which had not been licensed
 - That the Respondent was the 'person' having control of managing the HMO was found guilty of offences under sections 61(1), 72(1) and 243(3) of the Housing Act 2004 on 4th May 2017 at Highbury Corner Magistrates Court
 - That the Respondent had been ordered to pay a total of £8,135 for these offences
 - That on 23rd November 2016 the Respondent applied for an HMO licence
5. Ms Cetnar attended the hearing. She told us that the Council had indeed inspected the property in October 2016 and that the Respondent had applied for a licence for the HMO but she did not know the outcome of such application. It appears that the Respondent undertook some alterations which resulted in Ms Cetnar being relocated to another room in the house but that she finally vacated the property on 21st April 2017. She confirmed the payments shown on a schedule attached to her application. She told us that the payments made were funded from her own resources or with help of her family. No Housing Benefit was involved.
6. The payments are recorded as follows;
 - (a) £332 on 30.8.16
 - (b) £310 on 14.9.16

- (c) £310 on 28.9.16
- (d) £310 on 12.10.16
- (e) £310 on 26.10.16

THE LAW

7. The law relating to this application is set out below

FINDINGS

8. The Respondent has played no part in these proceedings. Consequently we have nothing before us in respect of the conduct of the Respondent, or the Applicant, relevant to the application before us, or any evidence of the financial circumstances of the Respondent. The evidence relied upon by Ms Cetnar is contained in her schedule of payments and the Letter.
9. We accept that the Letter indicates evidence of a conviction which meets the requirements of s73(8) of the Act. Further that s73 (8) (b) and (c) have been complied with.
10. However, we note that the Letter states that the Respondent had made an application for an HMO on 23rd November 2016. It does not say whether the application has resulted in a licence being granted or whether the provisions of s72 (8) and (9) apply and Ms Cetnar could not help us with this.
11. In the light of this evidence it seems to us that the provisions of s73(1)(b) and 73(2)(b) will apply. We are not helped by the Respondent's failure to engage but neither does the Letter, or the evidence of Ms Cetnar assist.
12. Doing the best we can on the evidence before us we find as follows
 - The Respondent was convicted of an offence for which an RRO is a remedy open to the Applicant
 - That the Applicant has paid to the Respondent for the period 31st August 2016 to 26th October 2016 the sum of £1,572 as periodical payments for the occupation of Flat 14 at the property, which was an unlicensed HMO during that period.
 - That an application for a licence for the property was made on 23rd November 2016.
 - That the Applicant, Ms Cetnar is entitled to repayment of the sum of £1,572, such payment to be made within 14 days.

Andrew Dutton

Tribunal Judge Dutton

26th October 2017

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).

Relevant Law

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.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine .

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or

(b) that an appeal has been brought against the authority’s decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority’s decision (with or without variation).

73 Other consequences of operating unlicensed HMOs: rent repayment orders

(1) For the purposes of this section an HMO is an “unlicensed HMO” if—

(a) it is required to be licensed under this Part but is not so licensed, and

(b) neither of the conditions in subsection (2) is satisfied.

(2) The conditions are—

(a) that a notification has been duly given in respect of the HMO under section 62(1) and that notification is still effective (as defined by section 72(8));

(b) that an application for a licence has been duly made in respect of the HMO under section 63 and that application is still effective (as so defined).

(3) No rule of law relating to the validity or enforceability of contracts in circumstances involving illegality is to affect the validity or enforceability of—

(a) any provision requiring the payment of rent or the making of any other periodical payment in connection with any tenancy or licence of a part of an unlicensed HMO, or

(b) any other provision of such a tenancy or licence.

(4) But amounts paid in respect of rent or other periodical payments payable in connection with such a tenancy or licence may be recovered in accordance with subsection (5) and section 74 (in the case of an HMO in Wales) or in accordance with Chapter 4 of Part 2 of the Housing and Planning Act 2016 (in the case of an HMO in England) .

(5) If—

(a) an application in respect of an HMO is made to the appropriate tribunal by the local housing authority or an occupier of a part of the HMO in Wales, and

(b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the relevant award or awards of universal credit or the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters—

(a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),

(b) that—

(i) one or more relevant awards of universal credit have been paid (to any person); or

(ii) housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO,

during any period during which it appears to the tribunal that such an offence was being committed,

(c) that the requirements of subsection (7) have been complied with in relation to the application.

(6A) In subsection (6)(b)(i), “relevant award of universal credit” means an award of universal credit the calculation of which included an amount under section 11 of the Welfare Reform Act 2012, calculated in accordance with Schedule 4 to the Universal Credit Regulations 2013 (housing costs element for renters) ([S.I. 2013/376](#)) or any corresponding provision replacing that Schedule, in respect of periodical payments payable in connection with the occupation of a part or parts of the HMO.

(7) Those requirements are as follows—

(a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)—

(i) informing him that the authority are proposing to make an application under subsection (5),

(ii) setting out the reasons why they propose to do so,

(iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and

(iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;

(b) that period must have expired; and

(c) the authority must have considered any representations made to them within that period by the appropriate person.

(8) If the application is made by an occupier of a part of the HMO, the tribunal must be satisfied as to the following matters—

(a) that the appropriate person has been convicted of an offence under section 72(1) in relation to the HMO, or has been required by a rent repayment order to make a payment in respect of

(i) one or more relevant awards of universal credit, or

(ii) housing benefit paid in connection with occupation of a part or parts of the HMO,

(b) that the occupier paid, to a person having control of or managing the HMO, periodical payments in respect of occupation of part of the HMO during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO, and

(c) that the application is made within the period of 12 months beginning with—

(i) the date of the conviction or order, or

(ii) if such a conviction was followed by such an order (or vice versa), the date of the later of them.

(9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—

(a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and

(b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.

(10) In this section—

- “the appropriate person”, in relation to any payment of universal credit or housing benefit or periodical payment payable in connection with occupation of a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;
- “housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
- “occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “occupation” has a corresponding meaning);
- “periodical payments” means—

(a)

payments in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 (“relevant payments”) ([S.I. 2013/376](#)) or any corresponding provision replacing that paragraph; and

(b)

periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation;

(11) For the purposes of this section an amount which—

(a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and

(b) is not an amount of universal credit or housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.