



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

Case Reference : **BIR/00FY/HMK/2018/0006**

Property : **Flat 2, 42 Shakespeare Street, Nottingham,
NG1 4FQ**

Applicant (1) : **Miss Ngima Mwendo**

Applicant (2) : **Ms. Krishna Fatania**

Applicant (3) : **Ms. Whitney Olumese**

**Applicants’
Representative** : **Justice for Tenants**

Respondent : **Mr. Ramzan Ali**

Type of Application : **Application for a Rent Repayment Order
S41(2) Housing and Planning Act 2016**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member R. Chumley-Roberts JP**

Date of Hearing : **7 February 2019**

Date of Decision : **25 February 2019**

DECISION

The Tribunal makes a rent repayment order pursuant to s44 Housing and Planning Act 2016 to the Applicants in the following amounts:

<i>Applicant (1) Miss Ngima Mwendo</i>	<i>£5,253.33</i>
<i>Applicant (2) Ms. Krishna Fatania</i>	<i>£5,253.33</i>
<i>Applicant (3) Ms. Whitney Olumese</i>	<i>£5,253.33</i>

Introduction

1. This is an application by Miss Ngina Mwendo, Ms Krishna Fatania and Ms Whitney Olumese (“the Applicants”) for a Rent Repayment Order pursuant to s41(2) of the Housing and Planning Act 2016 (“the Act”). The period of claim is from 26 October 2017 to 1 August 2018 in the application but in their submissions the period is extended to 2 August 2018. The reason for the claim is the that the Applicants allege that throughout this period the Respondent was a proprietor or manager of an unlicensed house in multiple occupation. The sum claimed in the application is £16,380.00 for rent paid by all Applicants during the period between 26 October 2017 and 1 August 2018. In their submissions the claim is amended to £17220.00.
2. The Respondent is Mr Ramzan Ali of 42 Shakespeare Street Nottingham. Mr Ali is a director of Harvey Mansion Limited which was until October 2018 the manager of 42 Shakespeare Street Nottingham. In or about October 2018 the building known as 42 Shakespeare Street was sold to Nottingham Trent University.
3. By an assured shorthold tenancy agreement dated 16 August 2017 the Respondent let Flat 2 42 Shakespeare Street (“the Property”) to the Applicants for forty-eight weeks with effect from 1 September 2017 to 2 August 2018. The Applicants agreed to pay for the Property and the fixtures, furniture and effects at a rent of £5040.00 per quarter payable quarterly in advance on 24 August 2017, 24 October 2017, 24 January 2018 and 24 April 2018. There is no dispute that the Applicants paid all rent due on the appointed days.

Accordingly the total sum paid by the Applicants during the tenancy was £20160.00.

4. Further directions from the Tribunal required the parties to submit their respective statements of case in accordance with a timetable. The Applicants complied with the directions. The Respondent failed to do so notwithstanding that he was warned that failing to comply may result in being barred from taking further part in the proceedings. The Respondent made a request for further time to submit evidence. By Directions No.3 made on 21 January 2019 the Tribunal refused the request. It further directed that unless the Respondent complied with the Direction for service of a statement of case by 1 February 2019 he may be barred from taking further part in the proceedings. The Tribunal did not receive anything from the Respondent in response to the Direction and he took no further part in the proceedings.

The Property

5. The Tribunal attended 42 Shakespeare Street on 7 February 2019 but was unable to gain access to either the Property or any part of the building. Information regarding the present ownership and the number of units of accommodation in the building was derived from a telephone conversation between the Tribunal chair and an employee of the Nottingham Trent University Estates department Mr Marc Preiter.
6. 42 Shakespeare Street is in an area dominated by buildings associated with the Nottingham Trent University. The building is one of the few residences on the road. Other buildings are either commercial or retail premises or university buildings. 42 Shakespeare Street comprises two buildings converted into a block of residences. One of the two buildings was formerly the Young Women's Christian Association built in 1930, according to a foundation stone. It is of brick and tile construction on two stories. The second building appears to have been constructed in late 19th century as a terrace of three residences each with an entrance door and each of three stories. The external appearance of the terrace is poor. Cement rendering is missing in

places. From street observation the building is in need of repair and reconstruction.

7. It is understood that 42 Shakespeare Street contains thirty-eight bedsit style units of accommodation arranged with between four or six units sharing one entrance door. There is an entry phone at the front door with twelve buttons. The Tribunal further understands each button indicates one cluster of bedsit units.
8. The Tribunal observed leaflets displayed at one of the entrance doors. The leaflets offered accommodation to let. The picture indicated reasonably desirable accommodation but from information supplied by Mr Preiter the image was not consistent with the accommodation actually offered.
9. There is no dispute that the Applicants were assured shorthold tenants of the Property described as Flat 2. The Tribunal believes it reasonable to assume that the remaining units were let to tenants. According to Mr Preiter on transfer of ownership the University rehoused all occupiers of the building due to concerns over the condition of the entire building.

The Applicants' submissions

10. The Applicants' submissions were prepared by their representative Justice for Tenants.
11. The Applicants occupied the Property under an assured shorthold tenancy agreement made on 16 August 2017. The agreement names the Respondent as the landlord. Harvey Mansion Limited of 42 Shakespeare Street is described as the property manager. In the definition section of the agreement Harvey Mansion limited is described as the landlord. Evidence of a company search shows Mr Ali is the sole director of Harvey Mansion Limited.
12. The tenancy was from 1 September 2017 to 2 August 2018. The rent was expressed as £5040.00 payable quarterly. The Applicants were jointly and

severally liable for the rent. The agreement provided that gas, water, electricity, internet and tv license charges were included in the rent. There is no dispute that the Applicants paid the rent due. They left the Property on 1 August 2018.

13. The Applicants' representative searched records of licences of Houses in Multiple Occupation (HMOs) maintained by Nottingham City Council. 42 Shakespeare Street does not appear as being a licensed property. The Property is situated in an area designated as an additional licensing scheme by the Nottingham City Council. The additional licensing scheme requires all privately rented HMOs located in a designated area to be licensed with the same legal obligations and penalties for failing to comply with the requirements. Advice literature published by Nottingham City Council provides that landlords and managing agents will need to apply for a license to run a property if it is occupied by three or more people and the tenants form two or more households.
14. According to an email of 24 September 2018 between the Applicants' representative and Manasee Tripathy HMO Licensing Support Officer of Nottingham City Council, an application for an HMO license was submitted but it was declined on 13 March 2018. No reason for declining the application was given. No further application was made.
15. The Applicants assert that the Respondent was the landlord or person in control of 42 Shakespeare Street a property which was not licensed as a House in Multiple occupation and that consequently he is guilty of an offence under s40(3) of the Housing and Planning Act 2016 entitling them to a rent repayment order.
16. The Applicants' submission concludes with the claim for repayment of rent from 26 October 2017 to 2 August 2018 in the sum of £17,220.00 being £5740.00 each. The sum claimed is alleged to be the rent paid between those dates. The Applicants explain the higher sum than that claimed in the application and described in paragraph 1 of this decision by quantifying each

Applicants' claim on a daily basis from 26 October 2017 to 30 November 2017 and then each Applicant's share of the total quarterly rent.

17. The sum claimed for the first period is £700.00 being 35 days and a daily rate of £20.00. One third portion of the quarterly payment is £1680. The Applicants each claim repayment of three quarters being £5040.00. The total claim by each Applicant is £5740.00

The Statutory Framework

18. This is an application under the Housing and Planning Act 2016 (the 2016 Act) which provides at chapter 2 a scheme of arrangement for rent repayment orders. The introductory section 40 states

(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).....

(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.

The table described in s40(3) includes at row 5 an offence contrary to s72(1) of the Housing Act 2004 (“the 2004 Act”) “control of unlicensed house”

Section 72(1) provides in full

(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.

19. S41 of 2016 Act entitles a tenant to apply for a rent repayment order against a person who has committed an offence to which the Act applies provided they were a tenant of the house to which the offence related within twelve months of the date of the application for a repayment order.

20. S43 of the 2016 Act then gives the First-tier Tribunal the power to make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence (whether or not the landlord has been convicted).

The section specifically provides in relation to an application by a tenant
(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).

21. S44 of the 2016 Act directs the First-tier Tribunal when considering an application for such an order the amount payable is to be determined in accordance with this section and at subsection 2 that the amount must relate to rent paid during the period mentioned in the table set out in that subsection. The table prescribes that for an offence mentioned in row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of a period, not exceeding 12 months, during which the landlord was committing the offence.

22. S44(3) & (4) give directions regarding the issues to be considered by the Tribunal when deciding an application for a rent repayment order as follows:

(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.

Decision

23. Section 40 of the Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence to which Chapter 4 of the Act applies. By s40(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 let by that landlord. Paragraph 5 of the table specifies control or management of unlicensed HMO contrary to s72(1) of the 2004 Act one such offence.

24. Section 43 provides that the First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed an offence whether or not convicted.

25. In this case 42 Shakespeare Street is a house in multiple occupation. There are 38 bedsit units in the building. Although the Applicants were occupiers of a Property described as Flat 2 the text of the leaflet advertising flats for letting displayed at the front of the building described each room as 'en suite'. Mr Preiter described the rooms as bedsitting rooms. Although there were twelve buttons on the entry phone at the main entrance it is understood that the entry was to separate groups of bedsitting units. The Tribunal is satisfied that 42 Shakespeare Street comprises multiple households. There are at least twelve households and probably as many as thirty-eight.

26. The Applicants submitted a copy of a news article describing the overall condition of the building when the Nottingham Trent University took over the building in October 2018. The article describes a number of serious risks or hazards identified by inspection including incorrect installation of gas boilers, rooms constituting a fire risk, window security inadequate so that the accommodation was unsafe. The headline states that forty Trent students were asked to leave the building as it was deemed unsafe to live in.
27. An officer of the city council reported that an application for an HMO was received but not pursued. The register of properties with an HMO licence does not include the building.
28. The Tribunal is satisfied beyond doubt that the Respondent was responsible for 42 Shakespeare Street, that the building required an HMO licence and that no such licence existed so that the offence of being a person having control of or managing an HMO which is required to be licensed under s72(1) of the 2004 Act but was not so licensed was committed.
29. There is no dispute that the Applicants were tenants of the Property in the relevant period. Matters for consideration by the Tribunal in determining the amount must, in particular, take into account the conduct of the landlord and tenant; the financial circumstances of the landlord and whether the landlord has been convicted of an offence, (s44(4) (a)(b)&(c)).
30. The Respondent did not submit any evidence of his financial circumstances. Although he has not been convicted of an offence the Tribunal is satisfied had there been a prosecution a conviction was probable. There is no criticism of the Applicants conduct. They sought advice upon termination of the tenancy because their deposit had not been returned. After seeking advice they made this application.
31. The Tribunal proposes to make a rent repayment order in accordance with ss 41(2)(a) and 44 of the Act. The Applicants have applied for repayment of rent

paid between 26 October 2017 and 2 August 2018 being the total sum of £17,220.00.

32. The total rent expressed as a weekly sum was £420.00. The tenancy agreement provided that the cost of gas, electricity, water, tv licence and internet was included. The Tribunal has no information regarding the cost of those items but some allowance must be made for their consumption by the Applicants. The Tribunal has made an estimate based upon general knowledge in deciding an allowance of £26.00pw inclusive for the utilities.
33. After making an allowance for the utilities included in the tenancy agreement the weekly sum repayable is £394.00 or £131.33 for each of the Applicants. The total daily rate is £56.28 The repayment period is 40 weeks. The total sum repayable is £15,760.00. Each Applicant is entitled to one third that is £5,253.33.

Appeal

34. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Tribunal Judge PJ Ellis
Chair