



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

**Case Reference** : **LON/00AJ/HMF/2018/0053**

**Property** : **34 Sarsfield Road, Perivale, Greenford,  
Middx UB6 7AE**

**Applicants** : **Amita Deviram Sharma  
Ramanathan Subramani**

**Representative** : **Flat Justice**

**Respondent** : **Chun Kwok Lau**

**Type of Application** : **Rent Repayment Order**

**Tribunal** : **Judge Nicol  
Mr PS Roberts DipArch RIBA**

**Date of Review** : **15<sup>th</sup> May 2019**

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**DECISION ON REVIEW**

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- 1) Following receipt of the Applicants' application dated 2<sup>nd</sup> April 2019 for permission to appeal the Tribunal's decision of 8<sup>th</sup> March 2019, the Tribunal has decided to review its decision because it is satisfied that one ground of appeal is likely to be successful.
- 2) Having carried out its review, the Tribunal has decided that the **Rent Repayment Order** shall be in the revised sum of **£6,720**.

The relevant provisions in the Housing Act 2004 and the Housing and Planning Act 2016 are again set out in an Appendix to this decision.

## **Background**

1. On 8<sup>th</sup> March 2019 the Tribunal ordered that there should be a Rent Repayment Order in the sum of £3,360. By letter dated 2<sup>nd</sup> April 2019, the Applicants' representative sought permission to appeal on two grounds:
  - (a) The amount of an RRO is not limited to 12 months prior to the application to the Tribunal, as the Tribunal had decided, but to a maximum 12-month period during which the landlord is committing the relevant offence, in accordance with section 44(2) of the Housing and Planning Act 2016.
  - (b) The Tribunal's deductions from the RRO to take account of expenses such as utilities were based on case law, namely *Parker v Waller* [2012] UKUT 301, which was decided under the old provisions of the Housing Act 2004. The reasoning for doing this should not apply under the new applicable provisions of the Housing and Planning Act 2016.
2. Under rule 53 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, on receiving an application for permission to appeal the Tribunal must first consider, taking into account the overriding objective in rule 3, whether to review the decision. Under rule 55(1)(b), the Tribunal may only undertake a review if it is satisfied that a ground of appeal is likely to be successful.
3. On 4<sup>th</sup> April 2019 the Tribunal notified the parties that it was minded to take the view that both grounds of appeal are likely to be successful so that it should review its decision of 8<sup>th</sup> March 2019. Directions were issued giving the Respondent an opportunity to make representations because the points made in the grounds of appeal had not previously been raised in these proceedings.
4. In accordance with the Tribunal's directions, the Respondent made written representations on 1<sup>st</sup> May 2019 and the Tribunal proceeded to determine the Applicants' further application of 2<sup>nd</sup> April 2019.

## **Period of RRO**

5. At paragraph 8 of its decision dated 8<sup>th</sup> March 2019, the Tribunal stated, "the Tribunal has the power to make a rent repayment order in respect of the period dating back to 12 months prior to the application, namely 7<sup>th</sup> December 2017 (see section 41(2)(b) of the Housing and Planning Act 2016)." In their submissions, Flat Justice correctly point out that the 12-month time limit is the one within which a tenant must apply to the Tribunal for an RRO. The amount of the RRO is instead governed by section 44.
6. Both parties appear to have been misled by the Tribunal in its written guidance and possibly at an earlier hearing. However, these matters cannot override what the statute says. It is necessary to look at the provisions of the Housing and Planning Act 2016 to find the correct position.
7. For the offence with which this case is concerned, namely under section 72 of the Housing Act 2004 controlling or managing an unlicensed HMO, section 44(2) of the Housing and Planning Act 2016 provides that the amount must

relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing the offence.

8. In paragraph 6 of its decision dated 8<sup>th</sup> March 2019, the Tribunal found that the “Respondent was committing the offence from January 2017 but had a defence from the date of his application on 2<sup>nd</sup> June 2018.” This means that, for the purposes of calculating the amount of the RRO, the Tribunal was not limited to 7<sup>th</sup> December 2017 but could go back a full 12 months from 2<sup>nd</sup> June 2018 to 2<sup>nd</sup> June 2017.
9. The wording of section 44(2) implies that the Tribunal may choose a period of less than 12 months but, based on the Tribunal’s reasoning in its decision dated 8<sup>th</sup> March 2019, there is no reason to choose any lesser period. In the Tribunal’s opinion, on review, the RRO should have been calculated on the basis of a period of 12 months.

### **Utility costs**

10. In relation to utility costs, in their submissions of 2<sup>nd</sup> April 2019, Flat Justice point out that the decision in *Parker v Waller* [2012] UKUT 301 relied in part on the requirement in section 74(5) of the Housing Act 2004 that the amount of an RRO should be “reasonable in the circumstances”. This phrase is not repeated in the new provisions in the Housing and Planning Act 2016. In the light of the statutory intention that the new provisions should constitute a robust deterrence to rogue landlords, it is argued that there should no longer be any presumption of deducting utility costs from the calculation of the RRO.
11. The Tribunal agrees that there should not be a presumption that utility costs be deducted. However, neither is there a presumption that they should not be. The deduction of utility costs is not based on some idea that to do otherwise would be unreasonable. The RRO “must relate to rent paid”, not to utility costs, and the Tribunal retains the power to deduct such costs in the absence of any reason not to do so. In all their complaints about the Respondent’s conduct of the tenancy, none related to the provision of utilities. Therefore, the Tribunal has decided not to change its decision that the RRO amount should be calculated on the basis of the utility costs being excluded.

### **Conclusion**

12. Therefore, the rent repayment order is calculated as  $(£650 - £90) \times 12 = £6,720$ .

**Name:** Judge Nicol

**Date:** 15<sup>th</sup> May 2019

## **Appendix of relevant legislation**

### **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.
- (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).

## **Housing and Planning Act 2016**

### **Chapter 4 RENT REPAYMENT ORDERS**

#### **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.

	<b>Act</b>	<b>section</b>	<b>general description of offence</b>
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.

<b><i>If the order is made on the ground that the landlord has committed</i></b>	<b><i>the amount must relate to rent paid by the tenant in respect of</i></b>
an offence mentioned in <a href="#">row 1 or 2 of the table in section 40(3)</a>	the period of 12 months ending with the date of the offence
an offence mentioned in <a href="#">row 3, 4, 5, 6 or 7 of the table in section 40(3)</a>	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.

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