



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

Case Reference : LON/ooAH/HMF/2019/0014

Property : 179 Norbury Crescent, Streatham,
London SW16 4JX

Applicant : Troy Blackwood

Respondent : Jeanne Marie Aerts

Type of Application : Rent Repayment Order

Tribunal : Judge Nicol
Mr PS Roberts DipArch RIBA

Date and Venue of Hearing : 10th July 2019;
10 Alfred Place, London WC1E 7LR

Date of Decision : 10th July 2019

DECISION

The Tribunal orders that there shall be a **Rent Repayment Order** requiring the Respondent to pay to the Applicant the sum of **£5,400**.

The relevant statutory provisions are set out in an Appendix to this decision.

Reasons

1. On 25th March 2019 the Tribunal received the Applicant's application for a rent repayment order in accordance with section 41 of the Housing and Planning Act 2016. On 10th April 2019 the Tribunal issued directions explaining to the parties how to prepare for the final hearing. Both parties produced bundles of evidence, although the Respondent's was not collated, paginated or indexed. The hearing was held on 10th July 2019. Both parties attended on their own behalves. The Respondent was accompanied by her daughter, Ms Ellen Aerts.

2. The Respondent is the owner of the subject property. In November 2011 she allowed the Applicant into occupation of one room in return for his paying a sum of money. By the time of his departure in August 2018, that sum was £450 per month. The Applicant shared facilities with various other occupants of the property from time to time, including the Respondent's daughter and grandchild. For about the last 4 or 5 years, the other occupants included Mr Patrick Neal. Mr Teddy Corbett was also an occupant during the last 12 months the Applicant was there, although the Respondent claimed he was not there much. The other occupants other than the Respondent's daughter, paid for their occupation – the Applicant thought they paid rent but the Respondent claimed they paid varying amounts as contributions to the household.
3. Between December 2017 and February 2018 there was a problem with the gas-fired boiler, disrupting the provision of heating and hot water. The Applicant asked the Respondent for some kind of compensation, perhaps a reduction in the rent, for having to put up with this. The Respondent's response was to increase the rent, to include the cost of repairing the boiler. When the Applicant further objected, the Respondent texted him,

If it no longer feels right or good value for you, you are welcome to find somewhere that suits you better or feels like better value. I/we won't be offended in anyway.

In a further text, she told him,

As I previously said (June 5th) we need the room back. I'm happy for you to stay until the end of the month which is another 3 weeks.

4. The Respondent knew that he should not be given less than two months' notice of his being required to leave and so phoned the local authority, the London Borough of Croydon, for advice. He was put through to Ms Sarah Anandarajah in Croydon's department dealing with houses in multiple occupation ("HMOs"). Amongst other matters, she informed him that the property was not licensed.
5. It is an offence under section 72 of the Housing Act 2004 to control or manage an unlicensed HMO. By letter dated 23rd July 2018 Ms Anandarajah invited the Respondent to apply for a licence.
6. At the hearing, the Tribunal asked the Respondent whether she had applied yet for a licence. She said she had not, nor had she taken any advice. She and her daughter told the Tribunal that the house was not regarded by them as an HMO but just a place where friends could stay for a contribution to the household. She was entirely unaware of any HMO obligations or the procedure for evicting a tenant.
7. The definition of a tenancy is exclusive possession of a property for a term at a rent. The Tribunal is satisfied that the Applicant was, from

November 2011 to August 2018, a tenant of the Respondent. He left because he did not feel wanted or safe after the Respondent's firm indication that he had to leave. He had been entitled to proper notice but a couple of texts, even if they eventually added up to two months' notice, did not come close to meeting any relevant statutory requirements. The Tribunal is satisfied that the Respondent committed an offence under section 1 of the Protection from Eviction Act 1977.

8. Further, while the Tribunal could not be satisfied that every other occupant of the property was also a tenant, it was satisfied that the property was at all material times an HMO which was required to be licensed. The Tribunal is satisfied that the Respondent also committed an offence under section 72 as mentioned above.
9. The earlier RRO provisions in the Housing Act 2004 were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301. Amongst other matters, it was held that an RRO is a penal sum, not compensation, and that the Tribunal should take an overall view of the circumstances, including whether the landlord has already been fined for the offence and whether the rent includes items the tenant has had the benefit of.
10. The Tribunal has a discretion not to make a rent repayment order but sees no reason why it should exercise that discretion. The Respondent's ignorance or naivety is no defence. When she decided to allow a number of people to occupy her property, she took on a degree of responsibility for their health and safety. When she decided to charge at least one of them substantial sums of money for their occupation, she took on the responsibilities of a landlord. The Applicant was denied the important and substantial protections of the licensing system. The Respondent has not been prosecuted and so will be subject to no further sanction for failing to license her property.
11. The Applicant paid £450 per month for at least the 12 months prior to the Respondent's texts requiring him to leave and up to the date of his departure.
12. In determining the amount of the rent repayment order, the Tribunal must, under section 44(4) of the Housing and Planning Act 2016, take into account the conduct of both parties, the landlord's financial circumstances and whether the landlord has been convicted of any offence to which the rent repayment order provisions apply. The Respondent has no previous relevant convictions.
13. The Applicant was unhappy with the Respondent's conduct of the tenancy. He complained of a lack of fire safety measures, a poor repairs service, the aforementioned boiler problem, a mice problem and a dead cat being left for some time.
14. The Respondent responded with some complaints of her own, including that the Applicant smoked cannabis on the premises, a particular concern given that her daughter had recently completed her

training as a police officer at Hendon. The problem for the Respondent here is that, since she did not provide a written tenancy agreement, there was no evidence that it would have been a breach of the tenancy at the time.

15. The rent included provision for council tax, gas, electricity and water services but the Respondent had no evidence as to what these might be. On being prompted by the Tribunal, she gave some rough guesstimates but the Tribunal was not satisfied that they were in any way accurate.
16. The Respondent appeared to be genuinely non-plussed that what she had intended as an informal arrangement should have any legal consequences. However, the best that could be said about this is that she is not one of those landlords who knows their obligations and seeks deliberately to avoid them. Even after being invited by the local authority to seek a licence and being subject to Tribunal proceedings, the Respondent has made no attempt to find out what her obligations might be. At best, she was naïve. At worst, she has displayed a wilful blindness to the law.
17. In these circumstances, the Tribunal is satisfied that there should be a rent repayment order and it should be for the fullest possible amount. Therefore, the rent repayment order is calculated as £450 x 12 = £5,400.

Name: NK Nicol

Date: 10th July 2019

Appendix of relevant legislation

Protection from Eviction Act 1977

Section 1 Unlawful eviction and harassment of occupier

- (1) In this section “residential occupier”, in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.
- (2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and had reasonable cause to believe, that the residential occupier had ceased to reside in the premises.
- (3) If any person with intent to cause the residential occupier of any premises—
 - (a) to give up the occupation of the premises or any part thereof; or
 - (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

Housing Act 1988

Section 21 Recovery of possession on expiry or termination of assured shorthold tenancy

- (1) Without prejudice to any right of the landlord under an assured shorthold tenancy to recover possession of the dwelling-house let on the tenancy in accordance with Chapter I above, on or after the coming to an end of an assured shorthold tenancy which was a fixed term tenancy, a court shall make an order for possession of the dwelling-house if it is satisfied—
 - (a) that the assured shorthold tenancy has come to an end and no further assured tenancy (whether shorthold or not) is for the time being in existence, other than [an assured shorthold periodic tenancy (whether statutory or not); and
 - (b) the landlord or, in the case of joint landlords, at least one of them has given to the tenant not less than two months' notice in writing stating that he requires possession of the dwelling-house.

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.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry

2	Protection from Eviction Act 1977	section 1(2), (3) eviction or harassment of occupiers or (3A)
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.

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