



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

Case reference : **LON/OOAZ/HMK/2019/0041**

Property : **95 Arica Road Brockley London
SE4 2PS**

Applicant : **Mr Efstathios Portaritis**

Representative : **In person**

Respondent : **Mr Ashley Malcolm**

Representative : **In person**

Interested person : **-**

Type of application : **Application by Tenant for a rent
repayment order under the
Housing and Planning Act 2016**

Tribunal members : **Judge Professor Robert M Abbey
Ms Sue Coughlin MCIEH**

**Venue and date of
hearing** : **10 Alfred Place, London WC1E 7LR;
26 July 2019**

Date of decision : **1 August 2019**

DECISION

Decision of the tribunal

- (1) The tribunal finds that a rent repayment order be made in the sum of **£1622.19**, the tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.72 of the Housing Act 2004, namely that a person commits an offence if he is a

person having control of or managing a house which is required to be licensed as a house in multiple occupation (HMO) under Part two of the 2004 Act but is not so licensed. Under section 99 of the 2004 Act “house” means a building or part of a building consisting of one or more dwellings, (so, a house will comprise one or more dwellings and include any yard or garden).

Reasons for the tribunal’s decision

Introduction

1. The applicant made an application for a rent repayment order pursuant to the terms of s.41 of the Housing and Planning Act 2016 in respect of a property known as **95 Arica Road Brockley London SE4 2PS**. (This is a two storey property with bedrooms on the ground and first floors with an attic for storage above). A rent repayment order requires repayment, of rent paid in respect of a tenancy granted by a landlord/agent who has committed a particular offence as more particularly described below. It is not necessary that the landlord/agent has actually been convicted, but, in order to grant such an order, the Tribunal must be satisfied beyond reasonable doubt that one of these offences has occurred. A rent repayment order can require the repayment of a sum of up to a maximum of 12 months’ rent.
2. The tribunal did not inspect the property as it considered the documentation and information before it in the trial bundle enabled the tribunal to proceed with this determination.
3. The hearing of the application took place on Friday 26 July 2019. Both parties appeared in person without legal representation although it was apparent from the papers before the Tribunal that both had had the benefit of legal advice.

The law

4. Section 41 of the Housing and Planning Act 2016 allows tenants to apply to the tribunal for a rent repayment order. The Tribunal must be satisfied beyond reasonable doubt that the landlord has committed an offence described in Part two of the Act and in that regard section 72 of the 2004 Act states

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 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.*

5. Under section 41 (2) (a) and (b) of the 2016 Act 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. The applicant was able to show to the Tribunal a tenancy agreement of the subject property granted in favour of the applicant/tenant. Furthermore, from the evidence before it the Tribunal was satisfied that the alleged offence occurred in the period of 12 months ending with the day on which the application was made to the Tribunal.
6. The offence relates to the failure to obtain a licence of residential accommodation subject to a mandatory HMO licensing obligation.

Background

7. The licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018 became effective from 1 October 2018. This Order has the effect of extending the scope of s.55(2)(a) of the 2004 Act so that mandatory HMO Licensing also applies to HMO properties which are less than three stories high. Being a house subject to several lettings of part, the property would have required, at a point after the tenancy was granted, a license. This was because at the 12 November 2018, during the relevant tenancy there were five occupants in the house thus putting the property within the coverage of the mandatory licensing scheme. At the start of the tenancy there were only four occupants. Accordingly, it would appear that the property was unlicensed for several months from 12 November 2018 until 06 March 2019 which was the end date of the tenancy

The Offence

8. There being a house as defined by statute, then a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the Act but is not so licensed. The Respondent admitted to the Tribunal that the property had not

been licenced as he had not been aware of the licencing requirement. (Since becoming so aware he confirmed to the Tribunal that he now ensures that there are only 4 occupants in the property below the starting point for a property to become a licensable HMO).

9. The Tribunal took time to carefully consider the evidence regarding the absence of a licence but came to the inescapable conclusion that none had been issued by the Council, (the respondent having confirmed in evidence that he had not applied for such a licence). Therefore, the Tribunal concluded that this was an unlicensed house. Accordingly, the tribunal had no alternative other than to find that the respondent was guilty of the criminal offence contrary to s.72 of the Housing Act 2004.

The tribunal's determination

10. The amount of the rent repayment order was extracted from the amount of rent paid by the applicant during the period of the tenancy from 12 November 2018 until 06 March 2019 which was the end date of the tenancy and where the applicant was able to prove payment by reference to copy NatWest bank statements produced to the Tribunal. The tribunal was satisfied with the paper based evidence as to the rental payments
11. Furthermore, the tribunal was mindful of the guidance to be found in the case of *Parker v Waller and others* [2012] UKUT 301 (LC) as to what should the tribunal consider a reasonable order given the circumstances of the claim. Amongst other factors the tribunal should be mindful of the length of time that an offence was being committed and the culpability of the landlord is relevant; a professional landlord is expected to know better. Indeed, there is no presumption of a starting point of a 100% refund being made. (In that case an award at 75% was considered reasonable). In *Fallon v Wilson and Others* [2014] UKUT 300 (LC) it was confirmed that the tribunal must take an overall view of the circumstances in determining what amount should be reasonable.
12. Consequently, the Tribunal concluded that a rent repayment order be made in the sum of £1622.19 tribunal being satisfied beyond reasonable doubt that the landlord has committed an offence pursuant to s.72 of the Housing Act 2004, namely that a person commits an offence if he is a person having control of or managing a house which is required to be licensed under Part two of the 2004 Act but is not so licensed.
13. The Tribunal noted that the respondent was not a business/professional landlord in that he only let and lived in this one property. Furthermore, from photographic evidence provided the property seemed well presented with a pleasant and modern kitchen and bathroom. On the other hand the Tribunal also noted the absence of an electricity supply safety certificate as well as inadequate fire safety

equipment, (only one smoke alarm, no fire extinguishers and no fire blanket).

14. Taking into account all this guidance and the circumstances of the claim, the tribunal considered that for the above period a reasonable amount should be 60%, (£1622.19), of the amount involved in the sum of £2703.65. (The amount claimed was £2834.75.) The amount involved was arrived at by starting with the claimed sum but deducting inclusive utility costs. These were in fact agreed between the parties as appropriate deductions. However, on checking the calculations they were for one more day than the actual period. Therefore, the amount approved and deducted by the Tribunal came to a total of £131.10, (£89.70 for the gas and £41.40 for the electricity).
15. The respondent is also ordered to refund to the applicant the application fee of £100 and the hearing fee of £200 pursuant to Rule 13 (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The rent repayment and the fees refunds are to be paid by the respondent to the applicant within 28 days of the date of this decision.

Name: Judge Professor Robert M Abbey Date: 1 August 2019

Annex

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).

Appendix of relevant legislation

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.

[F2(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).

S 41 Housing and Planning Act 2016

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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 S.I. 2013 No. 1169 (L. 8)

Orders for costs, reimbursement of fees and interest on costs

13. (1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

- (4) A person making an application for an order for costs—
- (a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
 - (b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
- (5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
- (a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
 - (b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
- (6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.
- (7) The amount of costs to be paid under an order under this rule may be determined by—
- (a) summary assessment by the Tribunal;
 - (b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);
 - (c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.
- (8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.
- (9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.