FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HA/HMK/2019/0004
Type of Application	:	For a rent repayment order under section 41 of the Housing and Planning Act 2016
Premises	:	47 Saffron Court, Snow Hill, Bath BA1 6DF
Applicants	:	Jordan Stansfield Max Bartholomew Jonathan Chitiyat
Represented by	:	Mr Horne of LPC Solicitors
Respondent	:	Richard Hindle
Tribunal	:	Judge M Davey Mrs. J Coupe Mrs J Playfair
Date and venue of hearing	:	05 August 2019 at Bath Law Courts
Date of decision with reasons		27 August 2019

Order

1. **The Tribunal orders, by way of a rent repayment order under section 43 of the Housing and Planning Act 2016, that the Respondent, Mr Richard Hindle, pay to the Applicants the sum of £3,807.12.**

2. **The Tribunal further orders, under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, that Mr Hindle reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00 paid by them in respect of this Application.**

Reasons for decision

The Application

1. These are the reasons for the decision of the First Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") on an Application made to the Tribunal, by Messrs Jordan Stansfield, Max Bartholomew and Jonathan Chitiyat ("the Applicants"), under section 41 of the Housing and Planning Act 2016 ("the 2016 Act"). The Tribunal received the Application on 29 March 2019.

2. The Applicants seek a Rent Repayment Order ("RRO") under section 43 of the 2016 Act in respect of the premises at 47 Saffron Court, Snow Hill, Bath BA1 6DF ("the subject property") which they occupied as joint tenants under an assured shorthold tenancy granted to them by the landlord, Mr Richard Hindle, for a term commencing on 23 July 2018 and ending on 22 July 2019. Mr Hindle is the Respondent to the Application although he told us that he and his wife, Mrs Sue Hindle, are joint owners of the property.

3. In their Application of 29 March 2019 the Applicants asked the Tribunal to order Mr Hindle, to repay to the Applicants, by way of a rent repayment order, rent of £4,500 paid by them in January, February and March 2019. (The rent payable under the tenancy was £1,500 per month). By the time of the Tribunal hearing on 5 August 2019 the Applicants now sought recovery of the rent paid by them in respect of the period from 1 January 2019 to 22 July 2019, which they calculated as amounting to £10,084.93.

Directions

4. A Tribunal Chairman, Judge E Morrison, issued Directions to the Applicants and Respondent on 15 May 2019.

Inspection

5. The Tribunal inspected the property at 10.00 a.m. on 5 August 2019 in the presence of Mr and Mrs Hindle, Mr Jordan Stansfield and Mr Max Bartholomew. The property is a deck accessed two-storey top floor maisonette in a 1960s purpose built block of similar dwellings. It comprises, on the lower floor, an entrance hall, fitted kitchen, pantry and sitting room and, on the upper floor, three bedrooms and a bathroom. The flat was let with somewhat minimal furnishings. Space heating is by electric wall mounted heaters.

The Hearing

6. A hearing was held at Bath Law Courts at 11.00 a.m. on 5 August 2019 following the inspection of the property by the Tribunal. All the attendees at the inspection were present at the hearing, where Mr Horne, of LPC Law, presented the case for the Applicants.

The Law: A summary

7. On 6 April 2006, Part 2 of the Housing Act 2004 ("the 2004 Act") introduced a new regime for the licensing of certain houses in multiple occupation ("HMOs") as defined in the Act. The Act made some HMOs subject to a mandatory licensing scheme. That is to say a property with three storeys or more, which was occupied by five or more people who formed two or more households and who shared an amenity such as a kitchen or bathroom. From 30 September 2018 the "three or more storeys" requirement was removed from this definition.

8. In addition, sections 56-60 of the 2004 Act permit a local housing authority to designate the area of their district, or an area in their district, as subject to *additional* licensing in relation to a description of HMO specified in the designation, provided the requirements of section 56 have been satisfied. In such a case an HMO that satisfies the relevant specification will be licensable despite the fact that the mandatory licensing provisions referred to in paragraph 7 above are not satisfied.

9. The 2004 Act contains criminal and civil sanctions for non-compliance. A person who controls or manages a licensable HMO, which is not licensed commits an offence and is liable on summary conviction to an unlimited fine (section 72(1) of the 2004 Act). Since 10 March 2017 the local authority may impose a civil penalty of up to £30,000 as an alternative to prosecution. (Section 249A of the 2004 Act added by the 2016 Act). It is a defence to proceedings under section 72(1) that (a) the person in question had given a temporary exemption notification (under section 62 of the 2004 Act) or had made an application for a licence (under section 63 of the 2004 Act) and the notification or

application was still effective or (b) that he had a reasonable excuse for not having a licence (section 72(4)(5) of the 2004 Act).

10. Furthermore, a local housing authority ("LHA"), or an occupier of part of an unlicensed HMO, who has paid universal credit or periodical payments respectively, in respect of such occupation, during a period whilst an offence under section 72(1) of the 2004 Act was being committed, may seek to recover those payments by way of a RRO (Section 73 of the 2004 Act and Chapter 4 of Part 2 of the 2016 Act).

11. For this purpose, section 73(1) of the 2004 Act provides that "an unlicensed HMO" is a licensable HMO which is not licensed and where the landlord (a) has not given a temporary exemption notification under section 62(1) of the Act, which is still effective, or (b) has not made an application for a licence under section 63 of the Act, which is still effective.

12. Section 41(2) of the 2016 Act provides that a tenant may apply to the Tribunal for a RRO 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.

13. Section 43(1) of the 2016 Act provides that the Tribunal may make a RRO if satisfied beyond reasonable doubt that a landlord has committed one of the specified offences whether or not the landlord has been convicted. Where the landlord is found to have committed an offence under section 72(1) of the 2004 Act and the Tribunal decides to make an order in favour of a tenant the amount payable 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. (Section 44(2) of the 2016 Act).

14. The amount that the landlord may be required to repay must not exceed the rent paid in respect of the period less any universal credit paid to any person in respect of rent under the tenancy during that period. (Section 44(3) of the 2016 Act).

15. 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 one of the specified offences (section 44(4) of the 2016 Act).

The Applicants' case

16. Mr Horne said that the first issue was whether the Tribunal was satisfied beyond reasonable doubt that the Landlord has committed one of the offences identified in the table set out in section 40(3) of the 2016 Act.

17. Mr Horne submitted that the relevant offence in that table is that provided for by section 72(1) of the 2004 Act, which states that

> "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)) that is not so licensed."

18. Section 61(1) provides that "Every HMO to which this Part applies must be licensed under this Part unless (a) a temporary exemption notice is in force in relation to it under section 62, or (b) an interim or final management order is in force in relation to it under Chapter 1 of Part 4." (The reference to "this Part" is to Part 2 of the Act, which deals with licensing of HMOs).

19. Bath and North East Somerset Council ("the Council") introduced an additional licensing scheme under sections 56 to 60 of the Act from 1 January 2014. On 5 September 2018, the scheme was subsequently extended, as from 1 January 2019, to the whole City of Bath, including the area in which the subject property is located. It covers any property in the designated area, which is occupied by three or more people who form two or more households and who share amenities such as a kitchen, bathroom or toilet.

20. Mr Horne said (and this is not disputed) that the subject property falls within that description and thus by virtue of section 61(1) of the 2004 Act became licensable as from 1 January 2019, neither of the exceptions in that section being applicable in this case. Mr Horne said that he understood it to be the case that the Landlord had not made a valid application for a licence at the time of the Application to the Tribunal.

21. Mr Horne accordingly submitted that because the property was licensable from 1 January 2019 and was not licensed it followed that Mr. Hindle must have committed an offence under section 72(1) of the 2004 Act. Indeed he says that Mr Hindle admitted as much in his written submission of 27 June 2019 where he states "We were indeed aware of the need to apply for additional licensing but had failed to grasp the need to do this by January."

22. Mr Horne said that neither of the defences set out in section 72(4) and (5) of the 2004 Act were satisfied in this case. There had not been any temporary exemption notification nor did Mr Hindle have a reasonable excuse for the property not being licensed.

23. The second issue is did the offence relate to housing that at the time of the offence was let to the Applicants (as required by section 41(2)(a) of the 2016 Act). Mr Horne says that it is not disputed that the offence did so relate.

24. The third issue is whether (as required by section 41((2)(b) of the 2016 Act) the offence was committed by the Landlord in the 12 month period ending with the day on which the application was made. Mr Horne

submitted that it was, because the offence was committed from 1 January 2019 and the application was made on 27 March 2019.

25. The fourth issue is what is the applicable period for the purposes of section 44(2) of the 2016 Act? Section 44(1) says that where the Tribunal decides to make a RRO the amount is to be determined in accordance with section 44. Section 44(2) says that the amount must relate to rent paid during one of two periods (specified in the table set out in section 44(2)) depending on the offence in question. Mr Horne submitted that, because the offence was that in section 72(1) of the 2004 Act, the appropriate period, as provided for by the table in section 44(2) of the 2016 Act, was a period not exceeding 12 months, during which the Landlord was committing the offence. Mr Horne said that because the offence was being committed from 1 January 2019 to the end of the tenancy on 22 July 2019 that period of 6 months and 22 days was the appropriate period.

26. The fifth issue is what is the maximum amount that can be awarded under section 44(3) of the 2016 Act. Mr Horne says it is provided by that section that the maximum amount is the rent paid in the period (not exceeding 12 months) during which the landlord was committing the offence. Mr Horne said that this was £10,084.93 being the rent attributable to the period 1 January 2019 to 22 July 2019. Statements from the Applicants' banks confirmed that these payments had been made and this supported the Applicants' claim that this was the amount paid in rent. The amount stated to have been paid was agreed by the Landlord.

27. The sixth issue was what account must be taken under section 44(4) of the 2016 Act of (a) the conduct of the landlord (b) the financial circumstances the landlord (c) whether the landlord has at any time been convicted of any of the offences set out in the table contained in section 40(3) of the 2016 Act (d) the conduct of the tenants and (e) any other factors?

28. Mr Horne alleged numerous shortcomings with regard to (a), the landlord's conduct. First, that Mr Hindle had been invited, but failed, to attend an HHSRS (Housing Health and Safety) inspection of the property to be carried out on 6 March 2019 by Tomos Jenkins, an Environmental Health Officer at Bath & North East Somerset Council, who, following a complaint by the Applicants as to alleged hazards at the property, stated that he believed the house to be a licensable but unlicensed HMO.

29. Second, that the hazards identified in Mr Jenkins' subsequent Report, which were to be addressed by Mr Hindle within the next three months had not been addressed by the time the tenancy ended on 22 July 2019. Some of these hazards related to fire safety and Mr Horne submitted that Mr Hindle's failure to address them in a timely fashion had exposed the tenants to foreseeable risks. Mr Horne says that more to the point, Mr Hindle should have addressed these matters and obtained

a licence before 1 January 2019. He says that Mr Hindle could have done this personally, or by engaging his managing agents to do so on his behalf.

30. Third that Mr Hindle had failed to comply with paragraph 12 of the Tribunal's Directions in so far as it required him to send to the Applicants

- A full statement of reasons for opposing the application including any defence to the alleged offence in response to any grounds advanced by the applicants and dealing with the issues identified above.
- Evidence of the amount of rent received in the period (less any universal credit/housing benefit paid to any person) with details of the occupancy by the tenant on a weekly monthly basis.
- A copy of all correspondence relating to any application for a licence and any licence that has now been granted.
- Evidence of any outgoings such as utility bills paid by the landlord for the let property.
- Any other documents to be relied upon at the hearing.

31. With regard to (b), the landlord's financial circumstances, Mr Horne said that no information had been provided by the Landlord.

32. As to (c) Mr Horne considered that it was unlikely that the Landlord been convicted of any of the offences set out in the table contained in section 44 of the 2016.

33. With regard to (d), the conduct of the tenants, Mr Horne made reference to the evidence provided in the Applicants' written submission. This explained the background to the Application. The Applicants state that from early in the tenancy they had an issue with damp in one of the bedrooms to the property, which had not been adequately dealt with by 3 December 2018 as alleged by the Landlord. The other issue that was of considerable concern to the tenants was the presence of bed bugs in the property from early January 2019. The Applicants allege that the Landlord repeatedly refused to take responsibility for dealing with this matter leaving it to the tenants. Indeed the Landlord had suggested that the bugs must have been introduced by one of the tenants after a trip to Tel Aviv (which had in fact been subsequent to the appearance of bugs). The Applicants produced copies of emails between themselves and the Landlord's agent (Andrews Letting and Management, Bath) between 6 and 28 February 2019, which they state confirmed their assertions with regard to the Landlord's failure to deal with the matter.

34. The Applicants then took the matter to the Students Union who put them in touch with a legal advice organisation. This led to a complaint to the Council and Mr Jenkins' inspection of the property on 6 March 2019 when he concluded that the bugs were most likely present before

the tenancy began. The Applicants state that the prolonged matter of the bed bugs and their eradication led to bites, anxiety and periods of tenants sleeping on a mattress in the living room, all at a time when final examinations were approaching. They also produced photographs of bite marks on Max Bartholomew.

35. Mr Horne stated that, despite all the difficulties with regard to the condition of the property and its licensing, the tenants, who were all students at the time, had paid all the rent due under the tenancy in a timely manner. He said that the documentary evidence provided in their written submissions supported his contention that the Applicants had behaved properly throughout notwithstanding unresolved complaints with regard to the condition of the property which had led them to seek advice from the students union, solicitors, the Environmental Health Department of the Council and finally to make this Application to the Tribunal. They were final year students during the tenancy and had no alternative but to remain in the property preparing for their final examinations.

The Respondent's case

36. In his written response to the Applicants' case, dated 7 June 2019, Mr Hindle first describes the property and then deals with a number of matters raised by the Application. Mr Hindle explained that he and his wife had inherited the property from his father a few years ago. They then fitted a modern kitchen and bathroom and redecorated and updated throughout. The wooden floors were stripped and polished and the heating was upgraded. Mr Hindle said that between every tenancy the property is deep cleaned, repainted and inspected and updated where necessary. Before the Applicants moved in Mr Hindle had recently fitted an upgraded power shower in the bathroom.

37. With regard to the issues raised by the Application, Mr Hindle states first, that the matter of damp in the bedroom was reported on 16 November 2018 following which a problem with the shower in the bathroom was identified. Mr Hindle says that this was subsequently dealt with by appropriate remedial work in the next few weeks and he received a photograph of the completed works on 3 December 2018. He said that a subsequent claim of continued damp in the bedroom was diagnosed as condensation due to inadequate ventilation of the room by the tenant who was advised to open the window, air the room regularly and not dry clothes in the room without heating and adequate ventilation. He says that the Environmental Health Officer, Mr Jenkins, confirmed the Landlord's diagnosis following his inspection of the property.

38. The second matter was that of the bedbug infestation. Mr Hindle said that there had been no evidence of such until it was reported and this led him to suspect that one of the tenants must have unwittingly introduced the bugs following a trip to Tel Aviv. He suggested that the

tenant clean the room and advised him of a pest controller in Bath whom he should contact. On receipt of a further complaint with regard to bed bugs, Mr Hindle suggested to the tenants again that they arrange for a pest control inspection. He says that he offered to pay 50% of the cost if bedbugs were found. Mr Hindle said that, following Mr Jenkins' report as to evidence of bugs, he provided a new bed and mattress and following further reported sightings he had engaged a commercial cleaner who fumigated the premises.

39. Mr Hindle admitted that he was aware of the need to apply for a licence and indeed he had begun the online process on 19 December 2018. However, the application had lapsed because he had failed to supply the results of DBS checks. He said that this was because his wife, who had been treated for cancer throughout 2018, was in hospital for a further operation immediately after Christmas. Mr Hindle said that he had been caring for his wife throughout 2018, during which she had received prolonged hospital treatment. At the same time they had been caring for two octogenarian mothers. Mr Hindle said that whilst he conceded that although "not an excuse for not keeping on top of the paperwork" these circumstances had taken a heavy physical and emotional toll on both he and his wife and he asked this to be taken into account.

40. Mr Hindle stated that having received Mr Jenkins' report and the works agreement he has now completed the required works. That is to say (1) provision of a new fire door in the kitchen where one was not required before (2) lining the underside of the stairs cupboard in the kitchen to create extra time for evacuation in the event of fire (3) fitting an upgraded Grade D LD2 Fire alarm system (4) fitting of emergency lighting (5) provision of a new fire risk assessment and new electrical installation report. Mr Jenkins has inspected the building and was satisfied with the safety and condition of the building.

41. At the hearing Mr & Mrs Hindle stated that they could not afford legal representation. Mr Hindle admitted that his letting agent had told him in September 2018 that additional licensing that would affect the property would be coming into force in January 2019. He said that following the lapsed application made in December 2018 they had begun the process again in March 2019. Mr Hindle said that because he was dyslexic his wife handled the paperwork associated with the letting. When asked whether they had any other rented properties Mrs Hindle said that they had a lodger in their house. She confirmed that they were not 'professional landlords' and although they had no income at present, save the rental payments received, they were hoping to resume their other business activities, which had been in abeyance because of her illness, in 2020. She also suggested that they had been let down by their letting agents from whom they had sought advice about obtaining a HMO licence.

The Applicants' response

42. Mr Horne asked Mr Hindle whether he had any receipts for works done to the property. Mr Hindle said he did but did not have them with him today. He confirmed that there was a tenancy in place for the coming academic year. Mr Horne also drew the attention of Mr Hindle and the Tribunal to email evidence in the bundle of Tribunal hearing documents, which demonstrated that Mr Hindle had not offered to pay 50% of any necessary treatment as he had submitted. Indeed he had only taken action after Mr Jenkins had identified the need for action on 19 March 2019. Mr Horne said that the offer to pay 50% had come from Jonathan Chityiat and been rejected by Mr Hindle. Mr Hindle said that there must have been a failure of communication.

43. Finally, Max Bartholomew stated that he felt that a RRO would go some way to redressing the physical discomfort, distress and anxiety and interruption to his studies that he had suffered because of the landlord's failure to address the issue of the bed bug infestation. He strongly disagreed with Mrs Hindle's suggestion that this should play no part in the matter of reasonableness as to whether and if so for how much a RRO should be made.

Post-hearing submissions

44. On 6 August 2019, the day after the hearing, Mrs Hindle forwarded to the Tribunal an email of that date from Mr Jenkins to Mr & Mrs Hindle confirming that they had submitted a partial application for a licence on 26 March 2019. The missing information was a completed Fit and Proper Person Declaration and full details of the property plan. Mr Jenkins states in his email that these details were provided on 8 May 2019 thereby validating the Application. Mr Jenkins also states that all required works with regard "to fire safety and the suspicion that there had been bed bug infestation" had been completed promptly well within the time scales that he had stipulated. Mr & Mrs Hindle further explained in the same email of 6 August 2019 that they also owned two small rental properties in South Shields (which were not HMOs) let on assured shorthold tenancies.

45. In response, the Applicants' representative, Justice for Tenants, concedes that the offence would appear to have ceased to be committed on 4 May 2019 when a valid licence application was made. However, it asks the Tribunal to have regard to (a) that in their letter of 6 August 2019 to the Tribunal, Mr & Mrs Hindle falsely stated that their application for a licence was made on 26 March 2018 (it is assumed that the year was meant to be 2019) whereas the Council has confirmed that the Application although begun on 26 March 2019 was only completed on 8 May 2019 (b) that the landlord would have been aware of the 8 May 2019 licence application date when submitting his evidence bundle to the Tribunal and at the hearing (c) failure to disclose this evidence was in contravention of the Directions of 15 May

2019 (d) the Landlord's disclosure of 6 August 2019 that he owned 3 rental properties (including the subject property) pointed to him being a professional landlord in the absence of any other income.

The Tribunal's determination

46. The right of a tenant or a local housing authority to apply for a RRO, in the case (amongst others) of an offence under section 72(1) of the 2004 Act, of being a person in control of or managing an HMO that is licensable under that Act but not licensed, is now contained in section 41 of the 2016 Act, where the offence in question is committed wholly on or after 6 April 2017.

47. By section 41(2) of the 2016 Act the offence must (a) relate to housing that at the time of the offence was let to the tenant and (b) have been committed in the period of 12 months ending with the date of the Application to the Tribunal. The date of the Application in the present case was 27 March 2019. The Applicants' tenancy ran from 23 July 2018 to 22 July 2019.

48. Section 43 of that Act provides that the Tribunal may make an order if satisfied beyond reasonable doubt that the landlord has committed the offence. Section 72(4)(b) of the 2004 Act provides that it is a defence if at the material time an application for a licence had been made under section 63 of the 2004 Act and was still effective.

49. It has been established that at all material times Mr Hindle did not have a HMO licence in respect of the property, thereby committing an offence under section 72(1) of the 2004 Act. The offence ceased to be committed as from 8 May 2019 when Mr Hindle submitted a valid licence application (section 72(4)). At that point therefore the flat ceased to be an unlicensed HMO for the purposes of a rent repayment order (section 73(1)). Mr Hindle did not argue that he had a reasonable excuse for not having obtained or applied for a licence between 1 January 2019 and 8 May 2019 and therefore that defence (in section 72(5)) did not apply.

50. The Tribunal is, in these circumstances, satisfied beyond reasonable doubt that Mr Hindle committed an offence under section 72(1) of the 2004 Act between 1 January 2019 and 8 May 2019.

51. It follows that the conditions in section 41(2) and 43(1) of the 2016 Act are satisfied and therefore the Tribunal *may* make an order. Although the Tribunal has discretion whether or not to make an order, it will be a very rare case in which a tribunal would not make an order where the conditions in sections 41 and 43 have been satisfied. The Tribunal does not consider the present case to be such that no order should be made.

52. This leads on to the issue of what amount should be awarded. The amount must not exceed the rent paid in a period not exceeding 12 months during which the offence was being committed (less any universal credit paid in respect of the tenancy during that period) (section 45 of the 2004 Act)). In the present case that means the period between 1 January 2019 and 8 May 2019. (No universal credit was paid to anyone in respect of that period). The Tribunal calculates the rent paid in respect of that period (i.e. 1 January 2019 to 7 May 2019 inclusive) to be £6,345.20.

53. Where the landlord has been convicted following criminal proceedings, section 46 of the 2016 Act provides that the Tribunal *must* award the maximum amount that the Tribunal has power to order. In the absence of a conviction, as in the present case, the Tribunal has discretion as to the sum to be awarded. Section 74(4) of the 2004 Act (which no longer applies in England) provided that where there had not been a conviction the Tribunal was required to order such amount as it considered reasonable in the circumstances. While sections 44 and 45 of the 2016 Act do not include the word "reasonable", given the similarities between these provisions and the relevant provisions of the 2004 Act, the Tribunal considers that a test of reasonableness is appropriate. We now turn to the factors to be taken into account when determining what should be ordered by way of repayment.

54. Section 44(3) of the 2016 Act provides that in determining the amount to be paid 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 covered by section 40. This leaves the Tribunal free to also take into account any other relevant matters.

55. The Tribunal does not believe that factor (c) is applicable in this case. There is no suggestion or evidence of any conviction. With regard to factor (b) the landlord did not make any submission to the Tribunal as to his financial circumstances save that he and his wife relied on their rental income, having had to suspend their normal business activities in the last year. As we now know this includes the, unspecified, income from the two rented properties in South Shields. Much of the evidence provided by the parties in this case related to factor (a) and other circumstances.

56. The Tribunal finds that Mr Hindle was clearly at fault in failing to obtain a licence by 1 January 2019. Having left it until 19 December 2018 to start the process, and only completing it on 8 May 2019 is a serious failure on his part. The Council had offered to help landlords in completing the Application process but Mr Hindle did not appear to have availed himself of that offer. The missing documentation from his renewed application of 28 March 2019 related to a Fit and Proper Person Declaration, full details of the property plan and an electrical installation report. The Council requested this information within 7 days on 2 April 2019. It was finally provided on 8 May 2019.

57. It is also notable that the incomplete Application of 28 March 2019 was clearly triggered by action on the part of the Council's Environmental Health Officer, Mr Jenkins. What is more Mr Jenkins' report revealed necessary works relating to fire and safety matters, although Mr Jenkins confirms that the works have been carried out in the 3 month time frame that he had specified.

58. Mr Hindle says that whilst not an excuse, he was very distracted from the licence application process by his wife's state of health and this is why he had been remiss in dealing with the matter in a timely manner.

59. The Tribunal finds that Mr Hindle has not shown willful disregard for the process. He made some effort between 20 December 2018 and 08 May 2019 to obtain a licence albeit late and inadequate, until the latter date and mostly as a reaction to being prompted by the Council.

60. It is understandable that Mr Hindle's primary concern was the welfare of his seriously ill wife for whom he was the carer and it is surprising therefore that he did not delegate the paperwork to his letting agent. However, the matter of Mrs Hindle's health is certainly a factor to which the Tribunal has had regard and taken into account by way of mitigation when determining the amount of the Order.

61. The Applicants also state that Mr Hindle did not comply fully with the Tribunal's Directions. Indeed material relevant to his case was not even produced until the day after the hearing. This is of course most lamentable. It put the Applicants to unnecessary work in preparing their case and meant that the hearing was conducted without all the relevant information to hand. The impression gained by the Tribunal was that notwithstanding the serious matter of Mrs Hindle's state of health and its effect on her husband the landlord's preparation for the hearing was far below what was required and reflects a complete absence of professional advice and assistance despite the suggestion in the Directions that this be obtained.

62. The other main complaint made by the Applicants with regard to Mr Hindle's conduct related to the problems of damp and bed bug infestation. Mr Hindle did eventually attend to the bathroom repair, although there was clearly an unresolved complaint about continued damp in a bedroom, which Mr Hindle attributed to condensation. The bed bug infestation was not surprisingly of great concern to the tenants who did all that they could to deal with the matter. Mr Hindle and his agent were adamant that the bugs were not there when the tenancy had begun and must have been brought in by the tenants. Mr Hindle therefore refused to pay for or contribute towards fumigation. Although he eventually replaced a suspect bed and mattress this was only after intervention by the Council at the end of March 2019 and fumigation was only done several weeks later. The Applicants thus suffered much stress and anxiety and the Tribunal agrees that had Mr Hindle acted promptly this could have been avoided.

63. The Tenants have behaved properly throughout. They sought to resolve matters by discussion with the letting agent and through them Mr Hindle. They also did all they could to identify and mitigate the bed bug problem. It was only when they were unable to resolve outstanding issues that they sought help and advice from the Students Union, Legal advisers and the Environmental Health Officer whose intervention led to the safety works being carried out and the infestation to be addressed by Mr Hindle.

64. The Tribunal finds that Mr Hindle's conduct fell short of what was required of a competent landlord and that this should be taken into account in favour of the Applicants.

65. Finally, the Applicants submit that Mr Hindle is a professional landlord because his sole income appears to be from three rented properties. Mr Hindle says that this is temporary because he and his wife have suspended their business during Mrs Hindle's illness and they hope to resume that business next year. He says that they have also been relying on savings during this time. The significance of the reference to the term "professional landlord" is that in an Upper Tribunal decision under the pre-2016 Act law the President of that Tribunal stated that in so far as the [First-tier] Tribunal was required to have regard to the conduct of the parties

> "The circumstances in which the offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional" (*Parker v Waller and others* [2012] UKUT 301 (LC)).

66. The Tribunal finds that although the present case is not a case of a "one off" letting it cannot be said that Mr Hindle is "engaged professionally in letting", which would require more evidence of him being engaged in a lettings business, such as a property company or letting agency. As indicated above, the present case is neither one of inadvertence nor a deliberate flouting of the requirement to register. It is one of negligent delay coupled with the mitigating factor of Mrs Hindle's illness.

67. The Applicants submit that the Tribunal should order repayment of 100% of the rent paid during the period that the offence was being committed. However, having taken into account all relevant circumstances the Tribunal determines that a rent repayment order be made in the sum of £3,807.12, being 60% of the rent paid during the period that the offence was being committed.

Fees application

68. The Applicant has applied for an order under paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that the Respondent be required to reimburse to the Applicant the application fee of £100.00 and the hearing fee of £200.00 paid by him in respect of this Application.

69. The Applicants have succeeded in establishing that Mr Hindle was guilty of an offence and that they should be awarded a rent repayment order. In the circumstances therefore, we consider it appropriate that the Respondent should be required to reimburse the application and hearing fees as well as making a rent repayment for the sum ordered.

Martin Davey
Chairman

RIGHT OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Annex: The Law

Housing Act 2004

56 Designation of areas a subject to additional licensing

(1) A local housing authority may designate either –

(a) the authority of their district, or
(b) an area of their district

as subject to additional licensing in relation to a description of HMO specified in the designation, if the requirements of this section are met.

(2) The authority must consider that a significant proportion of the HMOs of that description in the area are being managed sufficiently ineffectively as to give rise, or to be likely to give rise, to one or more particular probleMs. either for those occupying the HMOs or for members of the public.

(3) Before making a designation the authority must –

(a) take reasonable steps to consult persons who are likely to be affected by the designation; and

(b) consider any representations made in accordance with the consultation and not withdrawn.

(4) The power to make a designation under this section may be exercised in such a way that this Part applies to all HMOs in the area in question.

.....

61 Requirement for HMOs to be licensed

(1) Every HMO to which this Part applies must be licensed under this Part unless: -

(a) a temporary exemption notice is in force in relation to it under section 62, or

(b) an interim or final management order is in force relating to it under Chapter 1 of Part 4

(2) A licence under this part is a licence authorising occupation of the house concerned by not more than a maximum number of households or persons specified in the licence.

.....

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 which is not so licensed

.....

(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 has 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) 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).... ...

.....

(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 licences (or against any relevant decision of a residential property 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 othe Housing and Planning Act 2016 (in the case of an HMO in England).

Housing and Planning Act 2016

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) 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).

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.

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).

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.

If the order is made on the ground that the landlord has committed	*the amount must relate to rent paid by the tenant in respect of*
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.

49 Helping tenants apply for rent repayment orders

(1) A local housing authority in England may help a tenant to apply for a rent repayment order.

(2) A local housing authority may, for example, help the tenant to apply by conducting proceedings or by giving advice to the tenant.