



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

Case Reference : **MAN/00BY/HMK/2018/0015**

Property : **46, Minster Court, Orphan Street, Liverpool
L7 3QD**

Applicant : **Emma Newport**

Respondent : **Sean Flanagan**

**Type of
Application** : **Application for a rent repayment order by
tenant (no conviction)
Sections 40-44 Housing and Planning Act
2016**

Tribunal Member : **Mr J R Rimmer
Mrs S Hopkins**

**Date of
Determination** : **17th May 2019**

Date of Decision : **13 June 2019**

Order : **The application for a Rent Repayment Order
is granted in an amount of £1,575.00**

A Application

- 1 The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicant for a rent repayment order (RRO). The amount originally requested for the order is £6,300.00.
- 2 The Tribunal has sent a copy of the application to the Respondent.
- 3 Directions were given by the Deputy Regional Valuer of the Tribunal for the further conduct of this matter.
- 4 Those directions have been complied with sufficiently for the Tribunal to be able to determine the application.

B Background

- 5 The Applicant is one of two former tenants of 46, Minster Court, Orphan Street, Liverpool. The local housing authority has designated the whole City as being an area of selective licensing under the Act and a licence is therefore necessary in relation to the property.
- 6 In order to have a prospect of success in relation to the application, it is necessary for the Applicant to show that the property is unlicensed and that the Respondent has thereby committed an offence in relation to that omission. It is not necessary for that to have been established by way of a conviction in a court exercising a criminal jurisdiction, but this Tribunal must satisfy itself, to the criminal burden of proof, that an offence has been committed.
- 7 There appears to be no disagreement between the parties as to the fundamental facts that the property was let to the Applicant, and a fellow student, by the Respondent and that throughout the relevant time of that letting no relevant licence was in place.
- 8 A number of issues are also apparent within the documentation provided to the Tribunal as to the relationship between the parties during the period of the tenancy and between the Respondent and the local housing authority in relation to the licensing process.

C The Law

- 9 It is therefore useful to set out the law as it applies to the making of a RRO such as is contemplated within this application.

Section 40 of the Act

- (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
- (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenant
 - (b) ...

Subsection 3 then sets out a table of 7 offences to which the Tribunal's powers apply:

- 1 using violence to secure entry to residential premises
- 2 eviction of harassment of occupier
- 3 failure to comply with an improvement notice
- 4 failure to comply with a prohibition notice
- 5 and
- 6 offences in relation to houses required to be licenced
- 7 breach of banning orders in relation to the provision of housing

10 Section 41 of the Act 2016 provides

- (1) A tenant... may apply to the First-tier Tribunal for a (RRO) against person who has committed an offence to which this Chapter applies
- (2) A tenant may apply for an order only if-
 - (a) The offence relates to housing that, at the time of the offence, was let to the tenant, and
 - (3) The offence was committed in the period of 12 months ending with the day on which the application is made.

11 Section 43 provides

- (1) The First-tier tribunal may make a (RRO) 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) And the amount of the order is determined by section 44 in the case of an application by a tenant.

12 Section 44 provides that

- (1) Where the First-tier tribunal decides to make a (RRO) under Section 43
- (2) the amount that may be recovered depends upon a table provided in the section and must relate to the rent paid during the period mentioned in the table (in this current case it is a period, not exceeding 12 months, during which the landlord was committing the offence).
- (3) The amount the landlord may be required to repay in respect of the period must not exceed
 - (a) The rent paid in respect of that period, less
 - (b) Any relevant award of universal credit, or housing benefit, 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
 - (b) The financial circumstances of the landlord
 - (c) Whether the landlord has at any time been convicted of a (relevant) offence
- 13 Section 77 of the Housing Act 2004 sets out the licensing requirement:
- (1) This Part (of the Act) provides for houses to be licensed by local housing authorities where
 - (a) They are houses to which this Part applies...and
 - (b) They are required to be licensed under this part
 - (2) This part applies to a house if-
 - (a) It is in an area that has been for the time being designated under Section 80 as subject to selective licensing, and
 - (b) The while of it is occupied either-
 - (i) Under a single tenancy or licence that is not an exempt tenancy or licence under subsection (3) or (4), or
 - (ii) Under two or more tenancies or licences in respect of different dwellings contained in it, none of which is an exempt tenancy or licence under subsection (3) or (4).
 - (3) And (4) provide exemptions for social housing providers and for other specific types of tenancies designated by central government as being outside the regime (none of which apply to the situation before this Tribunal.
- 14 Section 87 of the Act sets out the requirements to be met in any application, those being that it is:
- (1) ...made to a local housing authority
 - (2) ...made in accordance with such requirements as the authority may specify
 - (3) ...be accompanied by any fee required by the authority
 - (4) ... comply with any requirements specified by the authority subject to any regulations made under subsection (5)
 - (5) The appropriate national authority may by regulations make provision about the making of applications under this section
 - (6) Such regulations may, in particular, specify the information, or evidence, which is to be supplied in connection with applications.
- 15 Section 95 of the Act provides:
- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced
 - (2) ...
 - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
 - (a)...

- (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
- (4) 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 or managing the house in the circumstances mentioned in subsection (1)
- (7) For the purposes of subsection (3) an...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 or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
 - (b) if a licence is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful.

16 Once again, it is important to note that the Act clearly acknowledges that committing an offence is not synonymous with being convicted of an offence in a court exercising a criminal jurisdiction, but is regarded requiring any decision as to such an offence being determined, where there is a need to do so, according to the criminal burden of proof.

D Submissions

17 The Tribunal was provided with submissions by both the parties setting out their respective positions in relation to the making of an order and which formed the basis upon which the Tribunal has made its decision.

18 The Applicant provides a detailed history of the tenancy and points out a number of issues that eventually give rise to a decision to seek some redress for the difficulties she says she has faced. They appear particularly to relate to:

- Defects arising within the premises (particularly in relation to the hot water supply).
- A rent increase sought after 6 months of a twelve-month agreement.
- An uncooperative and unsympathetic landlord.

19 For his part, the Respondent provides an explanation as to the matter of the rent increase (his agent being responsible for creating a twelve month tenancy, rather than the 6 months preferred by the Respondent) and acknowledging a number of problems that arose within the property, but which he believes did not detract greatly from its use and enjoyment

20 His particular concern, however, was with the licensing process and the difficulty he experienced in trying to make an application that was incompatible with the use of his home address in the Republic of Ireland. Whilst accepting that there was no relevant licence in place, he indicates that it was not for the want of trying and he was attempting to comply with the requirements.

21 The Applicant appears to have experienced a number of difficulties in obtaining from Liverpool City Council sufficient information to clearly indicate that a licence was not in place for the period of the tenancy. The Tribunal notes that this may well back up the suggestion from the Respondent that he found the processes of the council to be not particularly user friendly. It is within the experience of the Tribunal that such complaints are by no means rare.

E Determination

22 In order to establish any claim for a rent repayment order the Applicant must first establish that an offence has been committed. That which is relevant here is the offence under section 95(1) set out at paragraph 15, above.

23 It is clear that the Respondent accepts that there is no licence in place for the period of the tenancy. On that basis the offence is established unless he can show that he can rely on the defences available within Section 95(3) and (4), or any of the general defences available to avoid criminal liability. He, of course, need only establish those on the balance of probabilities, but it is the Tribunal's view that he does not do so.

24 The Tribunal appreciates the difficulties experienced during the process, particularly in relation to an appropriate address. It notes, however, that the Applicant appears to be a professional landlord. He also appears to have used an agent, Bluerow Lettings, when it has suited him to do so. An obligation to comply with licensing requirements is precisely that: the Respondent should, in the Tribunal's mind, have taken more care and adopted a more proactive approach than has been evidenced in dealing with the process.

25 The Tribunal is so satisfied that it is sure that an offence has been committed.

26 It is then necessary to determine whether an order should be made. The application for an order is clearly made within the time limit set by section 41(3), the latest day on which the offence occurs is the last date of the tenancy, that being 1st June 2018 and the application being received by the Tribunal on or about 1st November 2018.

27 The Tribunal appears to have a number of options open to it within the terms of the Act, firstly as to whether or not to make any order, and then if it does so an amount ranging from a very minimum amount, up to the rent paid in the relevant period.

28 It is assisted in the making of its decision by Section 44(4) (see paragraph 12 above). The Tribunal has therefore taken into account all that has read in the representations made to it and has noted:

- (1) The Respondent has not been convicted of any offence in any court exercising a criminal jurisdiction
- (2) He has endeavoured, but without success at the relevant time, to engage with the licensing regime, but he appears to be a landlord with a significant portfolio.
- (3) There are issues with his conduct within the landlord and tenant relationship. Whilst the Tribunal is not over concerned in relation to the condition of the premises, particularly in the light of the protestations by the Applicant that she was happy to remain, it does feel the matter of the mid tenancy “rent increase” does not reflect well upon the Respondent.
- (4) There does not, however, appear to be any suggestion of previous misconduct, either generally, or with particular reference to housing matters, on his part.

29 The Tribunal also takes the view that the Respondent should not be seen to profit from his unlicensed activities, but notes, also, that the Applicant has had the benefit of the accommodation at 46, Minster Court, convenient for her place of study, for a period of 12 months.

30. In taking all relevant matters into account the Tribunal takes a view that an order is appropriate. It assesses that an order in respect of the full amount would be for a sum of £3150.00, being a one-half of the total rent paid by the Applicant and her joint tenant. The Tribunal is of the opinion that Applicant should be entitled to recover a one-half of that amount and therefore makes a rent repayment order in the Applicant’s favour for £1575.00

J R RIMMER (Judge)