



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

**Case reference** : **CAM/00KA/HSD/2019/0001**

**Property** : **533 Dallow Road, Luton, LU1 1UW**

**Applicant** : **Luton Borough Council**

**Representative** : **Brian McCrossan**

**Respondent** : **Changhaiz Ishaq**

**Type of application** : **Application for a Rent Repayment  
Order – section 40 of the Housing  
and Planning Act 2016**

**Tribunal member(s)** : **Judge Wayte**

**Date of decision** : **10 October 2019**

---

**DECISION**

---

**Decision of the tribunal**

**The tribunal makes a rent repayment order of £3,506.26, to be paid within 28 days.**

## **The application**

1. The Applicant seeks a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 (“the 2016 Act”). They rely on the Respondent having committed an offence under section 72 (1) of the Housing Act 2004, namely being the landlord of a house in multiple occupation (HMO) without the necessary licence during the period of 6 May 2017 to 18 May 2018. During that period they made payments in respect of housing benefit to the Respondent totalling £4,035.70.
2. The application was received by the tribunal on 8 August 2019. Directions were given on 12 August 2019 for the matter to be determined on the papers on or after 23 September 2019. The application form and supporting documents stood as the applicant’s case, the respondent was directed to file his evidence by 9 September 2019. Those directions were subsequently varied at the request of the Applicant to push the dates back by 7 days. Nothing was heard from the Respondent, despite a reminder sent on 23 September 2019 and therefore the matter has been determined on the basis of the applicant’s case alone.

## **The law**

3. Sections 40-46 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a local housing authority where a landlord has committed a relevant offence – in this instance the offence set out in section 72(1) of the Housing Act 2004, the control or management of an unlicensed HMO. Section 41 stipulates that a local housing authority may apply for an RRO only if the offence relates to housing in the authority’s area and the authority has complied with section 42, by serving a notice of intended proceedings in accordance with that section and considering any representations, before applying for a RRO.
4. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. The amount of the order is set out in section 45 as a period not exceeding 12 months during which the landlord was committing offence (for an offence under section 72(1) of the 2004 Act). Where there has been a conviction section 46 states that an order in favour of a local housing authority is the maximum that the tribunal has the power to order, subject to any exceptional circumstances which the tribunal considers would make it unreasonable to require the landlord to pay that amount.

## **The Evidence**

5. The Applicant relied on statements by Brian McCrossan, a Private Sector Housing Office and Anne Keogh, Housing Benefit and Council Tax Reduction Manager. Mr McCrossan provided a Memorandum of Conviction showing that the Respondent had pleaded guilty to the offence under section 72(1) of the 2004 Act on 20 November 2018. The period of the offence was said to be from 6 May 2017 to 18 May 2018. The Respondent was fined £440, ordered to pay a surcharge of £250 to fund victim services and costs of £250. He was ordered to pay the fine by monthly instalments of £100 commencing 1 December 2018.
6. The Notice of Intended Proceedings was served on 29 March 2019. It informed the Respondent of the intention to apply for an RRO for £4,035.70 following the conviction and invited him to make representations within 28 days. The Applicant included a copy of an email from the Respondent dated 24 April 2019 which said: *“I have no intention of going to court for the repayment order. I would like to settle out of court. Please advice (sic) me what deal you can offer me.”* Mr McCrossan replied on 23 May 2019 stating that the council had no leeway in the matter but would ask the tribunal to deal with the case administratively to avoid the need for a hearing.
7. Ms Keogh’s statement attached confirmation of payments made to the Respondent by way of Housing Benefit for both the property and 533A Dallow Road. The schedule for the property runs from 8 May 2017 through to 27 August 2018, producing a total of £4,535.22.

## **The issues**

8. Given the evidence of the Respondent’s guilty plea and conviction, there is clearly no doubt that the relevant offence has been committed. The property is in Luton and therefore the remaining issues are whether the Applicant has complied with section 42, whether the tribunal should make an RRO and if so, in what amount.
9. The Notice of Intended Proceedings as set out above, clearly complied with the provisions of section 42(2). The application for an RRO was not made until August 2019, well after expiry of the period for representations. The final requirement of section 42 is that the notice may not be given after the end of the period of 12 months beginning with the day on which the landlord committed the offence to which it relates. As stated above, the offence was committed from 6 May 2017 to 18 May 2018. That means that the last day a notice could have been given would be 17 May 2019. The notice in this case was served in April 2019 and was therefore in time.
10. Given the evidence provided by the Applicant and in the absence of any representations from the Respondent, the tribunal does consider it is

appropriate for an RRO to be made. As there has been a conviction and in the absence of any exceptional circumstances, the amount is the maximum the tribunal has the power to make, in this case a period not exceeding 12 months during which the landlord was committing the offence. Taking the payments made from 8 May 2017 to 7 May 2018 as listed in the statement of Anne Keogh this amounts to slightly less than the total sought, or £3,506.26.

**Name:** Judge Wayte

**Date:** 10 October 2019

### **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).