



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

Case Reference : **MAN/OOEJ/HMK/2018/0010**

Property : **24 Nevilledale Terrace, Durham, County Durham, DH1 4QG**

Applicant : **Mr James Brader
Mr Sam Clague
Mr Luke Rose
Mr Magnus Burgess-Smith
Mr Thomas Oliver
Mr Zak Baydur**

C/o Richard Brader

Respondent : **Mrs Gabrielle Moore**

Type of Application : **Housing Act 2016 – Sections 41(1)**

Tribunal Judge : **Judge J Holbrook**

Date of Directions : **30 August 2018**

DIRECTIONS

BACKGROUND

- (1) The tribunal has received an application under section 41 of the Housing and Planning Act 2016 (the Act) from the applicant tenant for a rent repayment order (RRO).
- (2) The tribunal has sent the respondent (landlord) copies of the application with supporting documents.
- (3) The tribunal will decide (a) whether to make a rent repayment order and, if so, (b) for what amount.
- (4) The **issues** for the tribunal to consider include:
 - (i) Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences:

| | <i>Act</i> | <i>Section</i> | <i>General description of offence</i> |
|---|-----------------------------------|---------------------|---|
| 1 | Criminal Law Act 1977 | s.6(1) | violence for securing entry |
| 2 | Protection from Eviction Act 1977 | s.1(2), (3) or (3A) | unlawful eviction or harassment of occupiers |
| 3 | Housing Act 2004 | s.30(1) | failure to comply with improvement notice |
| 4 | Housing Act 2004 | s.32(1) | failure to comply with prohibition order etc. |
| 5 | Housing Act 2004 | s.72(1) | control or management of unlicensed HMO |
| 6 | Housing Act 2004 | s.95(1) | control or management of unlicensed house |
| 7 | Housing and Planning Act 2016 | s.21 | breach of banning order |

- (ii) Did the offence relate to housing that, at the time of the offence, was let to the tenant?
- (iii) Was an offence committed by the landlord in the period of 12 months ending with the date the application was made?

- (iv) What is the applicable 12-month period?¹
- (v) What is the maximum amount that can be ordered under section 44(3) of the Act?
- (vi) What account must be taken (under section 44(4) of the Act) of:
 - (a) The conduct of the landlord?
 - (b) The financial circumstances of the landlord?
 - (c) Whether the landlord has at any time been convicted of an offence shown above?
 - (d) The conduct of the tenant?
 - (e) Any other factors?
- (5) The parties are referred to the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for guidance on how the application will be dealt with.

IMPORTANT NOTE: TRIBUNAL CASES AND CRIMINAL PROCEEDINGS

- (6) If an allegation is being made that a person has committed a criminal offence, that person should understand that any admission or finding by the tribunal may be used in a subsequent prosecution. For this reason, he or she may wish to seek legal advice before making any comment within these proceedings.

DIRECTIONS

How the Applicant (Tenant) should prepare for the hearing

1. By **27 September 2018** the tenant must send **three** copies of a bundle of relevant documents for use at the hearing to the tribunal and **one** copy to the respondent.
2. The bundle must be in a file, indexed and numbered page-by-page, and it must include:
 - (i) Full details of the alleged offence, with supporting documentation from the Local Housing Authority, if available (Note: the tribunal will need to be satisfied **beyond reasonable doubt** that an offence has been committed)
 - (ii) A copy of the tenancy agreement(s)

¹ s.44(2): for offences 1 or 2, this is the period of 12 months ending with the date of the offence; or for offences 3, 4, 5, 6 or 7, this is a period, not exceeding 12 months, during which the landlord was committing the offence.

- (iii) A calculation on a weekly/monthly basis of the amount of rent paid in the applicable period (see above), excluding any universal credit/ housing benefit
- (iv) Any expanded statement of the reasons for the application, with a response to the respondent's case
- (v) The name(s) of any witnesses who will give evidence at any hearing, with a signed and dated statement/ summary of their evidence, stating that it is true (and see Notes below)
- (vi) Any other documents to be relied upon at the hearing

How the Respondent should prepare for the hearing

3. The respondent is urged to seek independent legal advice.
4. By **25th October 2018** the respondent must send **three** copies of a bundle of documents for use at the hearing to the tribunal and **one** copy to the applicants.
5. The bundle must be in a file, indexed and numbered page-by-page, and it must include:
 - (i) A full statement of reasons for opposing the application, including any defence to the alleged offence and response to any grounds advanced by the applicant, and dealing with the issues identified above
 - (ii) A copy of the tenancy agreement(s)
 - (iii) 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
 - (iv) A copy of all correspondence relating to any application for a licence and any licence that has now been granted.
 - (v) The name(s) of any witnesses who will give evidence at any hearing, with a signed and dated statement/ summary of their evidence, stating that it is true (and see Notes below)
 - (vi) A statement as to any circumstances that could justify a reduction in the maximum amount of any rent repayment order (see above)
 - (vii) Evidence of any outgoings, such as utility bills, paid by the landlord for the let property
 - (viii) Any other documents to be relied upon at the hearing.

Hearing/inspection arrangements

1. The Tribunal considers it appropriate for the matter to be determined by way of a paper determination. **However, if you require an opportunity to make oral representations before the Tribunal please indicate in writing within 21 days from the date of these directions. (This is without prejudice to the right of any party to seek an oral hearing at any time before the Tribunal makes a determination).**

2. The Tribunal will use the bundles sent by the parties and also its own copies of the application with accompanying documents, these directions and any subsequent directions.

Name: Judge J Holbrook

Date: 30 August 2018

NOTES

- (a) **Whenever you send a letter or email to the tribunal you must also send a copy to the other parties and note this on the letter or email.**
- (b) **If the applicant fails to comply with these directions the tribunal may strike out all or part of their case pursuant to rule 9(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”).**
- (c) **If the respondent fails to comply with these directions the tribunal may bar them from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.**
- (d) **Witness statements** should identify the name and reference number of the case, have numbered paragraphs and end with a statement of truth and the signature of the witness. Original witness statements should be brought to the hearing. In addition, witnesses are expected to attend the hearing to be questioned about their evidence, unless their statement has been agreed by the other party. The tribunal may decline to hear evidence from any witness who has not provided a statement in accordance with the above directions.