



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

Case Reference : **LON/00BE/HMK/2019/0047**

Property : **22 Marcia Road, London SE1 5XF**

Applicant : **Mr Ghulam Sarwar**

Respondent : **Letshare London Limited**

Type of Application : **Rent Repayment Order**

Tribunal : **Judge Daley
Mr M Cairns MEIH**

Date and Venue of Hearing : **09 October 2019;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **14 October 2019**

DECISION

The Tribunal makes an order for a rent repayment order in the sum of £8400.00.

The relevant provisions in the Housing Act 2004 and Section 41 of the Housing and Planning Act 2016 relating to rent repayment orders are set out in an Appendix to this decision.

Background

1. On 23 May 2019 the Applicant applied for a rent repayment order in respect of the premises known as 22 Marcia Road, London SE1 5XF (“the premises”). The premises were described as a seven bedroom flat with one bathroom on the second floor, one toilet and shower on the first floor and a toilet and shared kitchen on the ground floor. In the course of the hearing, the Tribunal established that the premises were

in fact a terraced house. In his application Mr Sawar stated that the premises had 7 separate rooms that were let at the property and that between January 2018 and April 2019 the premises were occupied at different times by 14 different individuals who lived in separate households.

2. On 4 June 2019 the Tribunal made directions for the preparation of this case and the hearing of the application. In paragraph 4 of the Directions, the Tribunal set out a number of issues to be determined that is: - Whether the tribunal is satisfied beyond reasonable doubt that the landlord has committed one or more of the following offences including section 72(1) control or management of an unlicensed HMO; (2) whether the offence related to a house that was let to the tenant;(3) Whether the offence was committed by the landlord in the period of 12 months ending with the date the application was made.
3. The Directions required the landlord to provide a response to the application by 2 July 2019. On 3 October 2019, the Tribunal wrote to the Respondent Letshare Limited, noting that the Respondent had failed to comply with the directions and requiring them to write to the Tribunal and the Applicant setting out what their position was and how they intended to comply with the Directions. By an undated letter, a Mr Omar Patel indicated that he intended to attend the hearing and defend the application. No other correspondence was received.

The Hearing

4. The hearing was attended by Mr Sawar. There was no attendance from anyone on behalf of Letshare Limited. Neither was there a request for an adjournment on behalf of the landlord or anyone else who purported to have an interest in the premises,
5. Mr Sawar informed the Tribunal that he moved into the premises on 31 January 2018, He provided a copy of a license agreement between himself and Letshare Limited dated 31 January 2018. He explained that he occupied room 7 which was at the front of the second floor, and that at the time when he moved in, he was the first occupant, and that work was being undertaken to convert the ground floor living-room, into two units. He stated that he occupied a double bedroom and paid a rent of £750.00 per calendar month. This rent included all utility bills. He stated that as and when other license holders moved into the property, they were introduced to him and that in time, the occupants communicated via a WhatsApp group.
6. He stated that at the time of his occupation the premises were without heating until March 2018 and that although a British Gas engineer came to fix the premises there was an issue with missing parts and as a result of exposed electrical wiring, a safety warning notice was put on the boiler. He provided copies of the Safety Notice and the customer checklist from British Gas.

7. Mr Sarwar also stated that the premises had problems with mice infestation. He also provided a photograph of mice which had been caught by glue paper at the premises. He stated that there was a cleaner who came fortnightly, however he described the premises as being unclean due to the amount of occupants and lack of proper cleaning equipment.
8. Mr Sarwar stated that sometime in April Southwark Council had notified the residents that they wished to inspect the premises, and that he had become aware from Southwark Council that the premises were unlicensed. In May 2019 a Notice to Quit was served on Cityscape who was the landlord's of Letshare Limited. Mr Sarwar also provided an email from Southwark Council dated 13 May 2019 from Anne-Marie Cunningham from Southwark Council, which confirms that the premises as not licensed for occupation as a HMO.
9. The Tribunal was also provided with a draft license agreement dated 19 June 2019 in respect of the premises, together with a covering letter from Ms Cunningham an Enforcement Officer employed by Southwark Council.
10. Mr Sarwar also provided copies of his bank statements which confirmed that he had paid rent of £750.00 per calendar month throughout the period.
11. There was no representations sent to the Tribunal by the Respondent, the only information provided was the undated letter written by Omar Patel which stated “ ...We shall seek the attend the hearing (sic) on the 9th what we are position is such a rent order to be in appropriate remedy given the council has already taken criminal proceeding and the tenants has not suffered any harm...”

The Decision of the Tribunal

12. The Tribunal is satisfied beyond reasonable doubt that the premises were required to be licensed pursuant to section 72(1) of the Housing Act 2004. Mr Sawar provided detailed and cogent evidence both of the condition of the premises and of the history of occupation of the premises. The Tribunal accepted that from February 2018 the premises were occupied by more than 5 separate individuals who occupied as separate households.
13. The Tribunal is satisfied that there was a requirement for the premises to be licensed and that on 13 May 2019. Ms Cunningham confirmed that the property was unlicensed. The Tribunal is satisfied that for a 12 month period, prior to this email (from 13 May 2018) that the property was without a license.
14. The Tribunal also accept that the property was poorly managed, examples of this are the mice infestation, the lack of heating and poorly maintained electrical wiring in relation to the boiler. Accordingly the Tribunal has decided that Mr Sarwar should have an order for a Rent

Repayment Order for 12 months' rent. The Tribunal noted that the rent included all utilities. Accordingly, in the absence of evidence as to the exact sum paid for utilities, the Tribunal has decided that the sum of £50.00 per month should be deducted from the rent to reflect the cost of these utilities.

15. The Tribunal noted that Mr Sarwar complained that he had not received his full deposit, however the Tribunal has no jurisdiction concerning deposits and is not able to award any sum in respect of this element of his claim.
16. The Tribunal makes an order that the Applicant's application fee in the sum of £100.00 and the hearing fee of £200.00 be reimbursed by the Respondent.

Name: Judge Daley

Date:14.10.2019

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).

Appendix of relevant legislation

Housing Act 2004

Section 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.

- (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 (8) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Section 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 house 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.

(5) If–

- (a) an application in respect of an HMO is made to the appropriate tribunal by the local housing authority or an occupier of the whole or part of the house, and
- (b) the tribunal is satisfied as to the matters mentioned in subsection (6) or (8),

the tribunal may make an order (a “rent repayment order”) requiring the appropriate person to pay to the applicant such amount in respect of the relevant award or awards of universal credit or the housing benefit paid as mentioned in subsection (6)(b), or (as the case may be) the periodical payments paid as mentioned in subsection (8)(b), as is specified in the order (see section 74(2) to (8)).

(6) If the application is made by the local housing authority, the tribunal must be satisfied as to the following matters–

- (a) that, at any time within the period of 12 months ending with the date of the notice of intended proceedings required by subsection (7), the appropriate person has committed an offence under section 72(1) in relation to the HMO (whether or not he has been charged or convicted),

(b) that–

- (i) one or more relevant awards of universal credit have been paid (to any person); or
- (ii) housing benefit has been paid (to any person) in respect of periodical payments payable in connection with the occupation of the whole or any part or parts of the house,

during any period during which it appears to the tribunal that such an offence was being committed,

- (c) that the requirements of subsection (7) have been complied with in relation to the application.

(6A) ...

(7) Those requirements are as follows–

- (a) the authority must have served on the appropriate person a notice (a “notice of intended proceedings”)–
 - (i) informing him that the authority are proposing to make an application under subsection (5),
 - (ii) setting out the reasons why they propose to do so,
 - (iii) stating the amount that they will seek to recover under that subsection and how that amount is calculated, and

- (iv) inviting him to make representations to them within a period specified in the notice of not less than 28 days;
 - (b) that period must have expired; and
 - (c) the authority must have considered any representations made to them within that period by the appropriate person.
- (8) ...
- (9) Where a local housing authority serve a notice of intended proceedings on any person under this section, they must ensure—
- (a) that a copy of the notice is received by the department of the authority responsible for administering the housing benefit to which the proceedings would relate; and
 - (b) that that department is subsequently kept informed of any matters relating to the proceedings that are likely to be of interest to it in connection with the administration of housing benefit.
- (10) In this section—
- “the appropriate person”, in relation to any payment of universal credit or housing benefit or periodical payment payable in connection with occupation of the whole or a part of an HMO, means the person who at the time of the payment was entitled to receive on his own account periodical payments payable in connection with such occupation;
- “housing benefit” means housing benefit provided by virtue of a scheme under section 123 of the Social Security Contributions and Benefits Act 1992 (c. 4);
- “occupier”, in relation to any periodical payment, means a person who was an occupier at the time of the payment, whether under a tenancy or licence or otherwise (and “occupation” has a corresponding meaning);
- “periodical payments” means—
- (a) payments in respect of which an amount under section 11 of the Welfare Reform Act 2012 may be included in the calculation of an award of universal credit, as referred to in paragraph 3 of Schedule 4 to the Universal Credit Regulations 2013 (“relevant payments”) (S.I. 2013/376) or any corresponding provision replacing that paragraph; and
 - (b) periodical payments in respect of which housing benefit may be paid by virtue of regulation 12 of the Housing Benefit Regulations 2006 or any corresponding provision replacing that regulation;
- (11) For the purposes of this section an amount which—
- (a) is not actually paid by an occupier but is used by him to discharge the whole or part of his liability in respect of a periodical payment (for example, by offsetting the amount against any such liability), and
 - (b) is not an amount of universal credit or housing benefit,

is to be regarded as an amount paid by the occupier in respect of that periodical payment.

Section 74 Further provisions about rent repayment orders

- (1) This section applies in relation to rent repayment orders made by residential property tribunals under section 73(5).
- (2) Where, on an application by the local housing authority, the tribunal is satisfied—
 - (a) that a person has been convicted of an offence under section 72(1) in relation to the HMO, and
 - (b) that—
 - (i) one or more relevant awards of universal credit (as defined in section 73(6A)) were paid (whether or not to the appropriate person), or
 - (ii) housing benefit was paid (whether or not to the appropriate person) in respect of periodical payments payable in connection with occupation of the whole or any part or parts of the HMO,

during any period during which it appears to the tribunal that such an offence was being committed in relation to the HMO in question,

the tribunal must make a rent repayment order requiring the appropriate person to pay to the authority the amount mentioned in subsection (2A).

This is subject to subsections (3), (4) and (8).

(2A) The amount referred to in subsection (2) is—

- (a) ...
 - (b) an amount equal to the total amount of housing benefit paid as mentioned in subsection (2)(b)(ii), ...
- (3) If the total of the amounts received by the appropriate person in respect of periodical payments payable as mentioned in paragraph (b) of subsection (2) ("the rent total") is less than the amount mentioned in subsection (2A), the amount required to be paid by virtue of a rent repayment order made in accordance with that subsection is limited to the rent total.
 - (4) A rent repayment order made in accordance with subsection (2) may not require the payment of any amount which the tribunal is satisfied that, by reason of any exceptional circumstances, it would be unreasonable for that person to be required to pay.
 - (5) In a case where subsection (2) does not apply, the amount required to be paid by virtue of a rent repayment order under section 73(5) is to be such amount as the tribunal considers reasonable in the circumstances.

This is subject to subsections (6) to (8).

(6) In such a case the tribunal must, in particular, take into account the following matters–

(a) the total amount of relevant payments paid in connection with occupation of the house during any period during which it appears to the tribunal that an offence was being committed by the appropriate person in relation to the HMO under section 72(1);

(b) the extent to which that total amount–

(i) consisted of, or derived from, payments of relevant awards of universal credit or housing benefit, and

(ii) was actually received by the appropriate person;

(c) whether the appropriate person has at any time been convicted of an offence under section 72(1) in relation to the HMO;

(d) the conduct and financial circumstances of the appropriate person; and

(e) where the application is made by an occupier, the conduct of the occupier.

(7) In subsection (6) “relevant payments” means–

(a) in relation to an application by a local housing authority, payments of relevant awards of universal credit, housing benefit or periodical payments payable by occupiers;

(b) ...

(8) A rent repayment order may not require the payment of any amount which–

(a) (where the application is made by a local housing authority) is in respect of any time falling outside the period of 12 months mentioned in section 73(6)(a); or

(b) ...

and the period to be taken into account under subsection (6)(a) above is restricted accordingly.

(9) Any amount payable to a local housing authority under a rent repayment order–

(a) does not, when recovered by the authority, constitute an amount of universal credit or housing benefit recovered by them, and

(b) is, until recovered by them, a legal charge on the HMO which is a local land charge.

(10) For the purpose of enforcing that charge the authority have the same powers and remedies under the Law of Property Act 1925 (c. 20) and

otherwise as if they were mortgagees by deed having powers of sale and lease, and of accepting surrenders of leases and of appointing a receiver.

(11) The power of appointing a receiver is exercisable at any time after the end of the period of one month beginning with the date on which the charge takes effect.

(12) If the authority subsequently grant a licence under this Part or Part 3 in respect of the HMO to the appropriate person or any person acting on his behalf, the conditions contained in the licence may include a condition requiring the licence holder-

(a) to pay to the authority any amount payable to them under the rent repayment order and not so far recovered by them; and

(b) to do so in such instalments as are specified in the licence.

(13) If the authority subsequently make a management order under Chapter 1 of Part 4 in respect of the HMO, the order may contain such provisions as the authority consider appropriate for the recovery of any amount payable to them under the rent repayment order and not so far recovered by them.

(14) ...

(15) ...

(16) Section 73(10) and (11) apply for the purposes of this section as they apply for the purposes of section 73.