



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

Case Reference : **BIR/00FY/HMF/2019/0002**

Property : **Flat 3, 16 Hope Drive, Nottingham, NG7 1DL**

Applicant : **Nabila Benkherif**

Respondent : **Harp Investments Limited**

Type of Application : **Application for a Rent Repayment Order
S41(2) Housing and Planning Act 2016**

Tribunal : **Tribunal Judge P. J. Ellis
Tribunal Member R. Chumley-Roberts
MCIEH. JP.**

Date of Hearing : **21 October 2019**

Date of Decision : **25 October 2019**

DECISION

***The Tribunal makes a rent repayment order pursuant to s44
Housing and Planning Act 2016 to the Applicant in the sum of
£4050.00***

Introduction

1. In this case the Applicant Nabila Benkherif seeks a rent repayment order under sections 41(1) and 41(2) of the Housing and Planning Act 2016. The Respondent is Harp Investments Limited of 25 Norman Way Wellingborough Northamptonshire.
2. The subject property is flat 3 16 Hope Road Nottingham NG 7 1DL (the Property). The Applicant occupied the Property pursuant to an assured shorthold tenancy agreement made between the parties on the 5th of June 2015. The Applicant ceased occupancy of the subject Property on the 5th May 2019 and now resides at 1 Minster Court Mansfield Road Nottingham.
3. The grounds of the application are that the Respondent has committed an offence under s95(1) The Housing Act 2004 because the Respondent had control of or management of a house which is required to be licensed under s85(1) the Act (the property being within an area subject to the Local Housing Authorities “Selective Licencing” scheme) but was not so licensed between 1 August, 2018 and 5 May, 2019. The Respondent denies it is liable for such an order on the grounds that it is not in control of the subject Property.
4. The application was issued on 31 July 2019. The Tribunal gave directions for determination of the application after an inspection but without a hearing, neither side having asked for an oral hearing.
5. Each side made written submissions. The Tribunal inspected the Property on 21 October 2019 and made its decision on the same day.

The Property

6. 16 Hope Road is a terraced house constructed with brick and tile comprising three stories. The Property (flat 3) is self-contained, being on the third floor, access to it is by its own door on the staircase at the first floor. The Property comprises a single bedroom, living room, kitchen and bathroom. As the subject Property is on the third floor partially in the roof space some of the rooms are of reduced height. The kitchen and bathroom form part of an extension constructed some years before commencement of the tenancy. It has gas central heating. Some of the windows are double glazed

7. The ground floor of 16 hope road was occupied by flat one and the first floor was occupied by flat at two. The building was constructed in the late 19th century. Hope Road is in the Park Estate which is a desirable residential area close to the city centre.

8. The Tribunal was accompanied at inspection by Mrs.Stephanie Kamaitis of Spencer Birch LLP the Respondents agent. The Property is no longer occupied by the Applicant but Mrs. Kamaitis informed the Tribunal that she had notified the current occupier of the appointment for inspection prior to the Tribunal's attendance.

9. There was a dispute between the parties regarding the adequacy of maintenance and repair of the Property but in view of the nature of this application the Tribunal has not made any determination of those issues.

10. The Property falls within the Nottingham City Council designated selective licensing area.

The Tenancy Agreement

11. The Applicant produced a tenancy agreement which provided for the letting of the Property to the Applicant for a term of six months and 26 days from 5 June, 2015.

12. The Respondent is described as the landlord but the address of the Respondent in the tenancy agreement is given as care of Spencer Birch of 8 Clarendon Street Nottingham.
13. Clause 2.1 provides that the Applicant will pay an initial sum of £918.02 “*and a sum of £495.00 is payable in advance on the first day of each subsequent month commencing on 1 August, 2015*”
14. Clause 2.2 provides that the Applicant will pay “*additional rent in respect of the water and any other rates now levied or which may in future be levied on the premises including council tax*”.
15. Clause 3.1 is the Applicant’s promise to pay “*the rent at times and in the manner specified and the water and other rates (referred to at sub-clauses 2.1 and 2.2) levied in respect of the premises including council tax.*”
16. Clause 3.2 further provides
“*to pay as and when they fall due:*
3.2.1 all charges for gas and electric light and power which shall be consumed or supplied on or to the premises during the tenancy.
3.2.2 the telephone rental and charges in respect of all telephone calls made during the tenancy”

The Parties’ Submissions

17. The Applicant’s claim for a rent repayment order arose when the Nottingham City Council wrote to her in response to her complaint about the condition of the Property. Its letter of 24 April 2019 advised that there would be an inspection in response to her disrepair complaint then it informed her that the Property was operating as an unlicensed Property.
18. By a further letter of 26 July 2019 the Nottingham City Council informed the Applicant that selective licensing came into operation in Nottingham City on 1 August 2018, that the Property falls within the designated selective licensing

area and that during the period 1 August 2018 to 5 May 2019 no selective license was in place for Flat 3 16 Hope Road.

19. On receiving the information regarding the lack of a licence and her potential consequential entitlement to a rent repayment order the Applicant issued this application on 31 July 2019. The Applicant supplied proof of her payment of rent in the form of a schedule of payments supplied by First Direct her bank. The schedule showed monthly payments of £450.00 from her account to Spencer Birch on the first of each month from August 2018 to April 2019. There was no evidence of a payment in May 2019.
20. It was common ground between the parties that the rent had been reduced from £495.00 to £450.00 per month in response to her complaints about the condition of the Property.
21. The Respondent's submission was made by Anil Pandit and Harsha Pandit. By their statement of case they admit their ownership of the Property since 15 March 2015. However, as they reside in Wellingborough they appointed Spencer Birch LLP as their agents to fully manage the Property including tenant location, rent collection and conduct of any necessary maintenance and repair. They authorised the agents to recover their commission from the monthly rent.
22. Messrs Pandit assert they were unaware of the introduction of the selective licensing scheme affecting the Property. They relied entirely on their agents to undertake all duties associated with being a landlord of the Property. Consequently they submit they were not in control of the Property and so are not liable personally for a rent repayment order.

The Statutory Framework

23. Section 263 of Housing Act 2004 defines a person having control of premises as being "*the person who receives the rack-rent of the premises (whether on his own account or as agent or trustee of another person), or who would so receive it if the premises were let at a rack-rent.*) and by subsection 2 "*rack-*

rent” means a rent which is not less than two-thirds of the full net annual value of the premises.”

24. This is an application under Part 3 of the Housing Act 2004 (the 2004 Act) as amended by the Housing and Planning Act 2016 (the 2016 Act) which provides at chapter 2 a scheme of arrangement for rent repayment orders.

25. S79(2) of the 2004 Act provides “this Part applies to a house if—

(a) it is in an area that is for the time being designated under section 80 as subject to selective licensing,”

S80 empowers a local housing authority to designate an area in their district as subject to selective licensing, and

S85 provides that every Part 3 house must be licensed unless it is an HMO subject to Part 2 or other exemptions not applicable in this case.

26. S95(1) of the 2004 Act makes it an offence if a person having control of or managing a house which is required to be licensed under Part 3 but is not so licensed and s96(4) provides that 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 Chapter 4 of Part 2 of the Housing and Planning Act 2016.

27. By the introductory section 40 of the 2016 Act Chapter 4 Part 2

(1).... 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).....

(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.

The table described in s40(3) includes at row 6 an offence contrary to s95(1) of the Housing Act 2004 (“the 2004 Act”) “control of unlicensed house”

28. S41 of 2016 Act entitles a tenant to apply for a rent repayment order against a person who has committed an offence to which the Act applies provided they were a tenant of the house to which the offence related within twelve months of the date of the application for a repayment order.
29. S43 of the 2016 Act then gives the First-tier Tribunal the power to make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence (whether or not the landlord has been convicted).
- The section specifically provides in relation to an application by a tenant
- (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).*
30. S44 of the 2016 Act directs the First-tier Tribunal when considering an application for such an order the amount payable is to be determined in accordance with this section and at subsection 2 that the amount must relate to rent paid during the period mentioned in the table set out in that subsection. The table prescribes that for an offence mentioned in row 6 of the table in section 40(3) the amount 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.
31. S44(3) & (4) give directions regarding the issues to be considered by the Tribunal when deciding an application for a rent repayment order as follows:
- (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).....

The Decision

32. Although the Respondent by the evidence of Anil and Harsha Pandit denies being the person in control of the Property it was entitled to receive the rent after deduction of agents commission. Accordingly the Tribunal is satisfied it is the correct Respondent and liable to any rent repayment order which the Tribunal makes.
33. The Tribunal has seen the correspondence from Nottingham City Council confirming the Property is in an area of selective licensing and that it was not licenced in accordance with the obligations set out above.
34. The Respondent gave only limited information about the agreement it made with Spencer Birch. The Tribunal was told the arrangement was that Spencer Birch would fully manage the Property and by implication advise on statutory duties relating to licencing. However, taking on properties for letting purposes carries responsibilities that cannot be fully laid off in the way suggested. The Tribunal is satisfied the Respondent was the person in control of the Property in an area subject to selective licensing. It follows that it is beyond doubt the Respondent was in control of an unlicensed Property and that it has committed a housing offence entitling the Applicant to a rent repayment order.
35. The Tribunal has had regard to the matters set out in s44(3) & (4) of the 2016 Act. Anil and Harsha Pandit assert they are trying to be good landlords and expect their agent to deal with tenant's complaints. The Tribunal was told the rent was reduced by agreement because of tenant's complaints about the condition of the Property and that any matters requiring attention were dealt with. They annexed a schedule of expenditure to their statement but the Tribunal noted the items were properly their responsibility as maintenance in any event. There was no criticism of the Applicant's conduct justifying a reduction in the amount of any award.

36. The Respondent gave no information regarding its financial situation. Although not for this Tribunal the Respondent may have its own remedies consequent upon this decision.
37. The tenancy agreement distinguished between payments of rent and other outgoings. The monthly payment of £450.00 was in respect of rent alone.
38. The Tribunal is satisfied the Applicant is entitled to a rent repayment order from 1 August 2018 to 1 April 2019. The claim included payment of rent for five days in May but no evidence was adduced that there was payment for those days. Accordingly it finds the Applicant is entitled to repayment of the total sum of £4050.00

Appeal

39. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them Rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

Tribunal Judge PJ Ellis
Chair