



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

Case Reference : **LON/00AB/HMK/2019/0052**

Property : **27 East Road, Chadwell Heath,
Romford, Essex RM6 6XP**

Applicant : **Claire Boddy**

Respondent : **John Meredew, acting by Sandra
Thomson under an enduring power
of attorney**

Type of Application : **Rent Repayment Order**

Tribunal : **Judge Nicol
Mrs E Flint DMS FRICS IRRV**

**Date and Venue of
Hearing** : **15th November 2019;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **15th November 2019**

DECISION

The Tribunal orders that there shall be a **Rent Repayment Order** in the sum of **£3,500**.

The relevant provisions in the Housing Act 2004 and the Housing and Planning Act 2016 are set out in an Appendix to this decision.

Reasons

1. On 1st August 2016 Ms Sandra Thomson, acting on behalf of the Respondent, her father, granted the Applicant a tenancy of the subject property at 27 East Road, Chadwell Heath, Romford, Essex RM6 6XP. The Applicant left on 6th April 2019. On 12th June 2019, with the assistance of Flat Justice, she applied to the Tribunal for a Rent Repayment Order (“RRO”) against the Respondent in accordance with section 41 of the Housing and Planning Act 2016.

2. The parties knew each other through work – they have both been teachers. Neither Ms Thomson nor the Respondent are professional landlords and Ms Thomson said she only let the property as a favour to the Applicant, at a relatively low rent, with the property mainly being kept to help fund the Respondent’s future care – he suffers from Alzheimer’s and has been living with Ms Thomson and her family.
3. Nevertheless, becoming a landlord is a serious undertaking and a significant responsibility. The way Ms Thomson tells it, she did her very best to be an attentive and conscientious landlord, but she was clearly unaware of her obligations in law and made no effort to acquaint herself with them.
4. In particular, in or around September 2014 the local authority, the London Borough of Barking & Dagenham, adopted a selective licensing scheme. On 3rd September 2019 the Tribunal decided as a preliminary issue that the Tribunal had jurisdiction to hear the application on the basis that the Respondent had arguably committed an offence under section 95(1) of the Housing Act 2004 of having control of or managing a house which is required to be licensed but is not so licensed.
5. In fact, Ms Thomson admits that she let out the property without a licence. The nearest she comes to a defence is that she says she did not intend to become a landlord and was ignorant of any legal requirements. There is a defence under section 95(4) of having a reasonable excuse but Ms Thomson’s explanation does not come close to being one. In the circumstances, the Tribunal is satisfied beyond any reasonable doubt that the Respondent committed the offence under section 95 of the Housing Act 2004 of controlling or managing an unlicensed house for the period of the Applicant’s tenancy.
6. The RRO provisions were considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301. Amongst other matters, it was held that an RRO is a penal sum, not compensation, and that the Tribunal should take an overall view of the circumstances, including whether the landlord has already been fined for the offence and whether the rent includes items the tenant has had the benefit of.
7. The Tribunal has a discretion not to make a rent repayment order but sees no reason why it should exercise that discretion. The Respondent’s ignorance is no defence. The Applicant and her sub-tenants were denied the important and substantial protections of the licensing system. The Respondent has not been prosecuted and so will be subject to no further sanction for failing to license the property.
8. The rent was £900 per month but, with Ms Thomson’s consent, the Applicant shared the property with her own sub-tenant. The Applicant’s share of the rent was £450 per month. The rent did not include council tax or utility charges. The maximum RRO which may be ordered is an amount equivalent to 12 months’ rent, namely £5,400.

9. In determining the amount of the rent repayment order, the Tribunal must, under section 44(4) of the Housing and Planning Act 2016, take into account the conduct of both parties, the landlord's financial circumstances and whether the landlord has been convicted of any offence to which the rent repayment order provisions apply. The Respondent has no previous relevant convictions and no evidence was provided ahead of the hearing of his financial circumstances.
10. Unfortunately, the Applicant felt unable to attend any hearing due to suffering from depression which she evidenced with Statements of Fitness to Work from her GP. At the hearing on 15th November 2019, Ms Thomson attended. She was assisted by a family member, Ms Amy Rowe, but there were no other witnesses.
11. Ms Thomson feels that the Applicant has let her down, not least by making this application, when she feels she has sought to do her friend a favour and did her best to accommodate her. Ms Thomson made various allegations against the Applicant:
 - (a) The Tribunal's correspondence had been sent to the subject property despite the Applicant knowing the Respondent and Ms Thomson's correct address.
 - (b) The Applicant withheld her sub-tenant's last contribution to the rent and utilities of £600. The Applicant denied this.
 - (c) The Applicant did nothing to maintain the garden or the house, with Ms Thomson instead paying for gardeners and a handy man to do any required work.
 - (d) The Applicant bothered Ms Thomson with trivial repair requests, such as to tighten the toilet roll holder, while Ms Thomson had to deal with her own family's requirements – they had to move to a larger house, further away, to accommodate the Respondent's needs.
 - (e) The Applicant left the property in a poor state, with carpets needing replacement, a glass shower screen having broken, the garden being left overgrown and weeds left in the drive. The Applicant has denied these allegations and provided written witness statements in support of her denials. There is no evidence that the broken shower screen was the Applicant's responsibility – the Applicant alleged that Ms Thomson's own handyman tightened the screws holding the screen too much but that she did offer to replace it.
 - (f) Ms Thomson complains that her "biggest problem" was that the Applicant had mental health problems, which included attempted suicide. The Tribunal struggles to understand how Ms Thomson can label someone else's mental illness as her problem although, to her credit, she did not follow on her intention to ask the Applicant to leave when she understood her to have recently attempted suicide. She has clearly been ignorant of a landlord's obligations under sections 15 and 35 of the Equality Act 2010 to do everything possible make allowances for such a disability.

- (g) The Applicant fitted a water meter with no consultation and then complained of a water leak. Ms Thomson's handyman, Dal, spent some time fruitlessly looking for it when, in fact, it was simply that the metered bills were higher than expected.
12. The Applicant, as well as her defence in relation to the above matters, had her own complaints:
- (a) By letter dated 7th August 2019 Ms Thomson made "distressing false allegations". The letter contained some of the allegations already set out in paragraph 11 above and claimed that the Applicant owed the Respondent £6,475 in missed rent and compensation. Ms Thomson did not provide evidence to the Tribunal to support the Applicant's alleged liability on any of the matters in this letter or in paragraph 11 above.
 - (b) The Applicant alleged that Ms Thomson has harassed her family, friends and work colleagues via text message and social media but was only able to produce one text in which Ms Thomson asked in distressed tones why the Applicant was seeking money from her father.
 - (c) The Applicant alleged that Ms Thomson has attempted "to seek information and disrupt this allegation" but there was no evidence of anything untoward in this regard.
 - (d) Ms Thomson did not provide a written tenancy agreement, despite repeated requests from the Applicant.
 - (e) Ms Thomson failed to replace locks after a distressing burglary. Ms Thomson said that this burglary was in fact the result of the Applicant herself leaving the front door open and, anyway, the police recovered what was stolen.
 - (f) There was disrepair, namely a poorly-fitting back door which allowed in draughts and left the house cold, resulting in higher heating bills. Ms Thomson claimed that this had been repaired, albeit after some weeks.
 - (g) The boiler was inspected only once in the Applicant's residence of 2 years and 7 months and Ms Thomson ignored service reminder letters about this.
13. While the Tribunal can understand why a landlord or tenant would make these sorts of complaints, many of them do not seem to be beyond the normal incidents of the landlord and tenant relationship. That is not to say that all landlords or tenants have to put up with these kinds of things happening but rather that this is not the kind of misconduct contemplated by the statute.
14. Ms Thomson is an accidental landlord but she fell seriously short in her responsibilities in not making at least some effort to find out what obligations came with that position. The lack of a written agreement and possible non-compliance with gas safety regulations are examples of the matters she consequently missed despite her best intentions. The Applicant may well have been a difficult tenant in some respects but Ms Thomson appears to have made no allowances for her disability until it reached the extreme of attempted suicide.

15. The circumstances of this case are not the worst. The penalty would be excessive if the Tribunal were to award the maximum for a rent repayment order. Therefore, the Tribunal has determined that £3,500 is an appropriate amount.

Name: NK Nicol

Date: 15th November 2019

Appendix of relevant legislation

Housing Act 2004

Section 95 Offences in relation to licensing of houses under this Part

- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed under this Part (see section 85(1)) but is not so licensed.
- (2) 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 90(6), and
 - (b) he fails to comply with any condition of the licence.
- (3) 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 86(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 87,and that notification or application was still effective (see subsection (7)).
- (4) In proceedings against a person for an offence under subsection (1) or (2) 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 failing to comply with the condition,as the case may be.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to a fine.
- (6) A person who commits an offence under subsection (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (6B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (7) For the purposes of subsection (3) 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 (8) is met.

(8) 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.

(9) 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).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

Section 40 Introduction and key definitions

(1) This Chapter 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) pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.

(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.

	Act	section	general description of offence
1	Criminal Law Act 1977	section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	section 30(1)	failure to comply with improvement notice

4		section 32(1)	failure to comply with prohibition order etc
5		section 72(1)	control or management of unlicensed HMO
6		section 95(1)	control or management of unlicensed house
7	This Act	section 21	breach of banning order

(4) For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).

Section 41 Application for rent repayment order

(1) A tenant or a local housing authority may apply to the First-tier Tribunal for a rent repayment order against a person who has committed an offence to which this Chapter applies.

(2) A tenant may apply for a rent repayment order only if —

- (a) the offence relates to housing that, at the time of the offence, was let to the tenant, and
- (b) the offence was committed in the period of 12 months ending with the day on which the application is made.

(3) A local housing authority may apply for a rent repayment order only if—

- (a) the offence relates to housing in the authority's area, and
- (b) the authority has complied with section 42.

(4) In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.

Section 43 Making of rent repayment order

(1) The First-tier Tribunal may make a rent repayment order 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).

(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);
- (b) section 45 (where the application is made by a local housing authority);

(c) section 46 (in certain cases where the landlord has been convicted etc).

Section 44 Amount of order: tenants

(1) Where the First-tier Tribunal decides to make a rent repayment order under section 43 in favour of a tenant, the amount is to be determined in accordance with this section.

(2) The amount must relate to rent paid during the period mentioned in the table.

<i>If the order is made on the ground that the landlord has committed</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(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) whether the landlord has at any time been convicted of an offence to which this Chapter applies.

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