FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00MS/HMK/2019/0019
Property	:	Flat 6 Latimer Gate, Bernard Street, Southampton SO14 3ER
Applicants	:	Lauren Rhodes Rebecca Quilter
Representative	:	---
Respondent	:	Guy Mannering
Representative	:	---
Type of Application	:	Application for a rent repayment order by tenant - Sections 41(1) & 41(2) of the Housing and Planning Act 2016 Sections 40, 41, 43 & 44 of the Housing and Planning Act 2016 ("the 2016 Act")
Tribunal Member(s)	:	Judge P J Barber Mr N Robinson FRICS Mrs J Herrington
Date and venue of the Hearing	:	Court 3, Havant Justice Centre, Elmleigh Road, Havant PO9 2AL 8th November 2019
Date of Decision	:	11th November 2019

DECISION

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Summary of Decision

1. The Tribunal is not satisfied beyond reasonable doubt, that the Respondent has committed an offence as defined in Section 40 of the 2016 Act and consequently may not make a rent repayment order.

Background

2. Lauren Rhodes and Rebecca Quilter apply under section 41 of the Housing and Planning Act 2016 for a rent repayment order (RRO) in the sum of £7,500.00, for the period 1 September 2018 to 16 March 2019, on the basis of rent payments of £1400 per month during that period.

3. The Applicants rented Flat 6 Latimer Gate, Bernard Street, Southampton ("the Property") from the Respondent Mr Mannering, under the terms of separate "lodgings agreements"; in the case of Rebecca Quilter at a rent of £750.00 per month since 20 May 2017, and in the case of Lauren Rhodes at a rent of £650.00 since 1 April 2018. The total rent for the Property was £1,400.00 per month and had not increased since the agreements commenced.

4. The Applicants stated that the Property is a four-storey townhouse, although the agent's particulars in the Respondent's bundle appear to show a five-storey structure including basement and dormer rooms.

5. The Tribunal issued directions on 24 September 2019, requiring the parties to exchange their statements of case. The directions also contained an explanation of the Tribunal's jurisdiction to make a rent repayment order, and the issues for the Tribunal to consider. The bundle included copies of the application, correspondence and a witness statement from the Council, electronic messages, bank statements, the Respondent`s statement together with photographs, floorplan, bank statements and other documents.

6. The Applicants referred in the bundle to a letter dated 24 June 2019 from Mr Angus Young, Environmental Health Officer – HMO Enforcement, of the Council, advising that:

"...the property is located in the Bargate ward of the city and is, consequently, within one of two additional HMO licensing areas designated by Southampton City Council. These additional licensing areas include all HMOs with three or four tenants, living in two or more households that are not covered by Mandatory HMO licensing. At 2pm on Wednesday 13 March 2019 I visited the aforementioned property, with a work colleague, and established that the house had three tenants living in three households;

consequently, the property was operating as an unlicensed HMO and I was informed, had been since September 2018. No enforcement action was taken, however, since one of the three tenants vacated the property on Saturday 16 March 2019. Since this time the property has not met the criteria for an HMO and does not, therefore, require an HMO licence...."

The Applicants also included a 4-page statement from Mr Angus Young dated 8 October 2019 which expanded the position and referred to the Council officers having on 13 March 2019:

"...established that the property was occupied by three tenants living in three separate household; consequently, the property was operating as an unlicensed HMO, under the Additional Licensing scheme, and had been since September 2018 when John McDonald advised that he had moved in as the third tenant. The three tenants knew one another and each tenant paid their rent separately to Guy Mannering resulting in Flat 6 Latimer Gate being let on an individual tenancy basis..."

7. The Respondent broadly stated in his statement contained in the bundle, that he believed the Property was not classed as an HMO, and that at the time of the claim being September 2018 to mid-March 2019, his "brother-in-law" John McDonald, stayed in the Property, but that as a result of Paragraph 6(1)(b) of Schedule 14 of the Housing Act 2004, he submitted that the Property was being occupied by a member of the owner`s household and was therefore excluded from being an HMO. The Respondent further stated that the Property is his primary residence, and that he is employed full time as a captain of a private motor yacht, working abroad for up to 11 months of the year, as was the case he said, during the period September 2018 to mid-March 2019. The Respondent further stated that his brother-in-law was never asked to sign a lodgers agreement, and "never directly" paid any rent. The Respondent also referred to an email dated 1 October 2019 from Chris McGeehan an HMO Licensing Surveyor at the Council, stating:

"*The information given to us at the time indicated that the property was in use as an HMO as indeed the third tenant was described as a friend which would make them not part of your household. My interpretation is that were that person your brother-in-law (or equivalent at the time) then indeed the property would not have been an HMO according to Schedule 14 Paragraph 6(1)(b) of the Housing Act 2004 and referring to The Licensing and Management of Houses in Multiple Occupation and Other Houses (Miscellaneous Provisions) (England) Regulations 2006 paragraph 6(2)..."*

8. The Applicants provided a statement in reply with their letter to the Tribunal Office dated 28 October 2019 in which they broadly submitted that at the relevant dates, when the Property was being

occupied by three individual unrelated tenants, Mr McDonald could not have been considered to be a member of the household during the period September 2018 to March 2019, given that the Respondent had only become married to Mr McDonald`s sister on 7 September 2019. The Applicants disputed how the Property could be the Respondent`s primary residence, given that they said there are only three bedrooms and also that payment or not, of any rent is not an essential condition of the existence of a tenancy. The Applicants claimed some of the Respondent`s statements to be contradictory and refuted the suggestion that they had failed to look after the Property, citing an email dated 24 October 2019 sent by the Respondent to the Applicants stating *"...I'll unfortunately have to serve you guys a month's notice. It`s a shame because you've both kept the place in (the) such great condition....*"

9. The Tribunal heard the application on 8 November 2019. Ms Rhodes attended for the Applicants; however, the Respondent Mr Mannering failed to arrive at 10.30am and the case clerk upon enquiry by telephone, ascertained that he was in London, not having realised that he should attend today; accordingly the hearing was adjourned until 12.30pm. Mr Mannering arrived at about 12.15pm when it became clear that he had not received the Applicants' statement in reply. Accordingly, a copy was provided for Mr Mannering to read prior to commence of the hearing. When the hearing commenced Ms Rhodes and Mr Mannering attended; Ms Rhodes explained that Ms Quilter hoped to attend later on if possible. Mr Mannering did not have any papers with him; however, the lay member of the Tribunal assisted by reading out any relevant passages from the bundle as the hearing progressed. There were two official observers in attendance for the early part of the hearing, but who took no part in the decision making. The Tribunal did not inspect the property.

Consideration

10. The Housing Act 2004 introduced Rent Repayment Orders (RROs) as an additional measure to penalise landlords managing or letting unlicensed properties. Under the Housing and Planning Act 2016 ("the 2016 Act") Parliament extended the powers to make RROs to a wider range of "housing offences". The rationale for the expansion was that Government wished to support good landlords who provide decent well maintained homes but to crack down on a small number of rogue or criminal landlords who knowingly rent out unsafe and substandard accommodation.

11. Sections 40 to 47 of the 2016 Act sets out the matters that the Tribunal is required to consider before making a RRO.

12. The Tribunal made it clear at the outset of the hearing that the requirements for making an application under section 41 of the Act, had to be satisfied; it was explained to the parties that the Tribunal

may make a rent repayment order if satisfied beyond reasonable doubt that the landlord has committed the offence of control or management of an unlicensed property under section 95(1) of the Housing Act 2004 whilst the property was let to them. An offence under section 95(1) falls within the description of offences for which a RRO can be made under section 40 of the 2016 Act. The Tribunal further explained that if satisfied beyond a reasonable doubt that an offence has been committed, then the amount which may be ordered for repayment must relate to the rent paid by the tenants during the relevant period. The Tribunal further explained that any Universal Credit payments must be deducted; the parties confirmed that no Universal Credit had been so paid. The Tribunal also explained that in determining the amount of any repayment, the Tribunal must take into account the conduct of both the landlord and the tenant, the financial circumstances of the landlord and whether the landlord has been convicted of any of the offences listed under Section 40.

13. The Tribunal indicated that in broad terms, where a property is let to multiple occupants in an area designated by the local authority as requiring such property to be licensed as an HMO, but no licence has been issued, then the tenants may seek an order for repayment of rent. However, the first issue was whether or not at the time for which rent repayment is being claimed, the Property was an HMO. Whilst the Council had said in its letter dated 24th June 2019, that there were 3 tenants and that the Property was an unlicensed HMO, Mr Mannering`s position was that the 3rd occupier had been his then fiancé`s brother and a "member of the household" under paragraph 6(1)(b) of Schedule 14 of the Housing Act 2004, with reference to the email from Mr McGeehan of the Council dated 1st October 2019, apparently accepting that in such circumstances the Property had not been an HMO at the relevant times.

14. The Tribunal accordingly invited the parties firstly to make their submissions in regard to whether Section 43(1) was satisfied and, then to make their submissions as to the amount of any repayment.

15. At the outset Ms Rhodes clarified the position regarding the claim for £7,500.00 saying that it related to the period 1 September 2018 to 16 March 2019; however the Tribunal pointed out that on Page 2 of his witness statement, Mr Young of the Council had said that the original HMO designation scheme including Bargate ward, had commenced on 1st July 2013 but had expired on 30th June 2018, before a new scheme was introduced on 1st October 2018. Ms Rhodes accepted that the correct period of claim would be 1st October 2018 to 16th March 2019.

16. The Tribunal turns now to those issues that it must be satisfied about before making a RRO.

Has Mr Mannering (the Landlord) committed a specified offence?

17. The Tribunal must first be satisfied beyond reasonable doubt that the landlord has committed one or more of the seven specified offences. The relevant offence in this case is under section 95(1) of the Housing Act 2004, “control or management of an unlicensed house”.

18. Ms Rhodes opened by referring to the legislation for Bargate ward involving stringent licensing for large numbers of students living there, necessitating fire alarms and safety standards; she said that she and Ms Quilter had questioned the position when the Respondent`s younger brother moved in, during September 2018 and in respect of which they had been given no choice. Ms Rhodes said that Mr McDonald was 22 years old and acted more like the Applicants were his older sisters, expecting them to tidy up and inviting his girlfriend in frequently and leaving dirty washing about. Ms Rhodes complained of the Respondent`s threats to terminate the lodgings agreements and fill the Property again from scratch; she said this made them feel uncomfortable and they wanted to establish their rights. Ms Rhodes said they spoke to the CAB and looked on the internet and considered that the Property had become an HMO as a result of a third tenant arriving. Ms Rhodes said that the licensing schemes had been well publicised.

19. Mr Mannering said that his then fiancé`s younger brother had needed a place to stay whilst he was doing a university master’s degree and that he had checked the Council`s website which he said, confirmed that up to two lodgers were allowed without the need for an HMO licence. Mr Mannering noted Mr Young`s view that there should have been a licence, but added that he had contacted an HMO Licensing Surveyor at the Council to clarify, and that Mr McGeehan of the Council said that in the circumstances as explained by the Respondent, the Property was not an HMO. Mr Mannering said he had made no financial gain, since Mr McDonald had never paid any rent and had never signed any tenancy agreement. Mr Mannering said he had never been other than a good landlord and referred to a letter from Ms Rhodes thanking him for her time there. Mr Mannering said he had spared no expense in maintaining the Property, but in retrospect felt he should have had an agent to represent him, as he was frequently absent at sea in his work as a sea captain on private yachts. Mr Mannering said he still feels unsure as to the rules about HMOs, given two differing statements from Council officers, each with responsibilities for HMOs. Mr Mannering said he had known Emma McDonald and John McDonald for about 6 years before he agreed to allow John McDonald to stay at the Property; he said that he often saw Mr McDonald at family gatherings as a result of one of which, it had been suggested that Mr McDonald might stay; he said that as Mr McDonald was his fiancé`s brother, he allowed him to stay rent free, on the basis that he would look after the Property for Mr Mannering. Mr Mannering said that there are three bedrooms in the Property, one each occupied by the Applicants and the other

was Mr Mannering`s bedroom and in which Mr McDonald was allowed to stay; he added that he did not keep any of his property or clothing in that bedroom. Mr Mannering said he does not own any other properties and when he had purchased the flat in April 2017, he had spent a short time living there decorating and cleaning; he said he knew as a result of his job, that he would not spend much time there and that it seemed prudent to have two lodgers rather than leaving it empty. Mr Mannering said that he and Emma had married in September 2019; his wife works as a stewardess on yachts; he said that last year they were working away for longer periods at sea, than now, but that he pays National Insurance and Income Tax in the UK.

20. Ms Rhodes suggested that Mr McDonald had not really been a family member at the time he moved in. Mr Mannering said that his fiancé at the time, had spent a period living at the Property when he bought it, although she also now owns a property in Richmond. Mr Mannering said that all his bank statements were delivered to the Property and visited every so often to collect them. Ms Rhodes referred to an extract from the Electoral Roll showing 5 persons, adding that they could not all have lived at the Property legally; she said that there should have been proper tenancy agreement rather than lodgers' agreements. Mr Mannering said that he and his wife are now registered to vote in Richmond. Ms Rhodes said that their safety as tenants had been compromised by the arrangement, that she had studied law at university and that landlords should carry out due diligence in order to comply with the law and deliver on their responsibilities.

21. The Tribunal noted that Ms Rhodes occupied the Property under a "Lodging Agreement" dated 1 April 2018, stated as beginning on 1 December 2017, and Ms Quilter occupied the Property under a similar "Lodgings Agreement" dated 20 May 2017, stated as beginning on 1 July 2017. The Tribunal notes that the Lodgings Agreements each referred to payment of monthly rent, a deposit, rental of a room and sharing of other accommodation and in the absence of other evidence to the contrary, is satisfied that they occupied as tenants. The rent payable by Miss Rhodes was £650.00 per month and £750 per month by Miss Quilter.

Decision

22. The evidence provided by the Council is directly contradictory; whilst Mr Young said in his formally made witness statement of 8 October 2019, that the Property was operating as an unlicensed HMO since September 2018 and until 16 March 2019 when Mr McDonald vacated, Mr McGeehan also of the Council, had said in an email dated 1 October 2019 that his interpretation was that if Mr McDonald was the Respondent`s brother-in-law (or equivalent at the time) then indeed the property would not have been an HMO. The Tribunal noted the statements which Mr Mannering had made

in his email to the Council of 30th September 2019 and which it found to be consistent with his evidence given at the hearing. Mr Mannering had referred to Mr Young's earlier visit to the Property and advice that Mr McDonald had to leave or he would face a large fine; he also described the fact that his then fiancé had a brother who he allowed to stay in their bedroom to keep an eye on the Property while they worked away, that he did not have a lodgers agreement and paid no rent and that it was a family agreement, adding that Mr Young had not had the full information at the time.

23. In circumstances where there have been directly conflicting views and advice provided by the Council, including the statement to Mr Mannering by an officer of the Council, being an HMO Licensing Surveyor of that Council, that the property would not in the circumstances described, have been an HMO, and without having the benefit of either Council officer being present to respond to questions, the Tribunal cannot be satisfied beyond a reasonable doubt that the Respondent as landlord has committed the offence of letting an HMO without a licence.

24. Accordingly, whilst the parties gave evidence at the hearing in regard to conduct, financial circumstances and the absence of convictions, it was not necessary for the Tribunal to consider further, since it may only make a rent repayment order where it is satisfied that a relevant offence has been committed.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.