



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

Case Reference : **MAN/00BN/HMF/2019/0044/0046
& 0049**

Property : **90, Wellington Road, Fallowfield,
Manchester M14 6BL**

Applicants : **(1) Oliver Roe
(2) Louis Jones
(3) Leigh Purrington**

Respondent : **Sarah Aspinall**

Represented by : **Knights Professional Services Limited**

Type of Application : **Housing and Planning Act 2016 –
Section 41(1)**

Tribunal Members : **Tribunal Judge C Wood
Ms S Latham**

Date of Decision : **27 November 2019**

Date of Determination : **11 December 2019**

DECISION

Decision

1. In accordance with sections 43 and 44 of the Housing and Planning Act 2016, (“the 2016 Act”), the Tribunal makes a rent repayment order pursuant to which the Respondent is ordered to pay to each of the Applicants the relevant sum as set out in paragraph 10 of this Decision (subject to compliance with the Tribunal’s direction under paragraph 11).

Background

- 2.1 By applications of various dates in June and July 2019, (“the Applications”), each of the Applicants applied to the Tribunal for a rent repayment order pursuant to section 41 of the 2016 Act.
- 2.2 The directions dated 6 August 2019, (“the Directions”), stated that the Tribunal considered it appropriate for there to be a paper determination of the Applications in the absence of any request to the contrary from any of the parties.
- 2.3 A bundle of documents was received from the Applicants including, without limitation, a copy of the tenancy agreement, details of rent payments made by each of the Applicants and a signed statement of Mr David Allwood, a Neighbourhood Compliance and Enforcement Officer for Manchester City Council, (“Mr Allwood’s Statement”).
- 2.4 A bundle of documents was also received from the Respondent, including a defence statement dated 8 October 2019 and signed by the Respondent, (“the Defence”).
- 2.5 The Tribunal refers the parties to paragraph 6 of the Directions. No request for a hearing was received from any party pursuant to the Directions.
- 2.6 The parties were advised by letters dated 16 August 2019 that the Tribunal would make a determination on the papers on 25 October 2019.
- 2.7 It is noted that in paragraph 28 of the Defence, the Respondent states, “The Respondent contends that it is appropriate for there to be a hearing to deal with this, if it is not struck out by the Tribunal on the papers”.
- 2.8 The Tribunal has given no indication of any circumstances which would have required or led the Tribunal to give consideration to striking out the Applications in accordance with Rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

2.9 A request for a hearing should be made clearly and unconditionally.

The Law

3.1 The relevant provisions of the 2016 Act are as follows –

3.1.1 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 ...

(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
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO
6	Housing Act 2004	Section 95(1)	Control or management of unlicensed house

Section General description of offence

3.1.2 Section 41 provides –

(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. ...

3.1.3 Section 43 provides =

(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); ...

3.1.4 Section 44 provides-

(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.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
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.

The Evidence

4.1 In each of the Applications, the Applicants made reference to the relevant offence claimed to have been committed by the Respondent as the control or management of an unlicensed house in multiple occupation, (“HMO”).

4.2 In Mr Allwood’s Statement, reference is made to the commission of two offences by the Respondent, namely, control or management of an unlicensed house under section 95(1) of the Housing Act 2004, (“the 2004 Act”), and control or management of an unlicensed HMO under section 72 of the 2004 Act.

4.3 In his statement Mr Allwood states as follows:

4.3.1 with effect from 23 April 2018 the Old Moat Ward of Manchester (in which the Property is situated) was designated as a selective licensing area;

4.3.2 by letter dated 14 September 2018, the Respondent was advised of the statutory requirement to obtain a licence for the Property;

4.3.3 no response was received from the Respondent;

- 4.3.4 with effect from 1 October 2018, the extension to mandatory HMO licensing required the Respondent to obtain an HMO licence for the Property;
- 4.3.5 following further reminders to the Respondent, an HMO licence application for the Property was made on 11 June 2019 and granted on 12 August 2019.
- 4.4 In the Defence, the Respondent states as follows:
 - 4.4.1 as at 1 July 2018 (the date of commencement of the tenancy), an HMO licence was not required for the Property;
 - 4.4.2 it is admitted that, from 1 October 2018, the Property came within the statutory definition of an HMO;
 - 4.4.3 it is denied that an offence has been committed under section 95(1) of the 2004 Act;
 - 4.4.4 reliance is placed upon the statutory defences in section 95(3)(b) and 95(4)(b) [sic] of the 2004 Act which refers to the making of an application for a licence under section 87 of the 2004 Act which is still “effective” (as defined in section 95(7)) and where there is a reasonable excuse for having control of or managing the house which is unlicensed where it is required to be;
 - 4.4.5 details are provided of a series of unsuccessful attempts by the Respondent to apply for an HMO licence online between October 2018 and March 2019 which, it is submitted, provide such a reasonable excuse, specifically, that the application was not made because of technical errors in the online application process;
 - 4.4.6 information is provided regarding the Respondent’s conduct as landlord, her financial circumstances and the conduct of the tenants which it is submitted should be taken into consideration when determining the amount of any rent repayment order, if made.

Tribunal’s Determinations

- 5. The Tribunal noted that, in the Defence, there appeared to be a misunderstanding on the Respondent’s behalf of the distinction between the licensing requirements for properties within a selective licensing area under section 85(1) of the 2004 Act, and under section 61 of the 2004 Act for an HMO licence.

6. Having regard to the evidence and, in particular, to Mr Allwood's statement, the Tribunal was satisfied that as the Property was located within a selective licensing area, it was required to be licensed under section 85(1) of the 2004 Act from, at least, the commencement of the tenancy on 1 July 2018.
7. By reason of the Respondent's failure to licence the Property with effect from 1 July 2018, the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 95(1) of the 2004 Act.
8. The Tribunal was satisfied that the Respondent could not rely on the defences in sections 95(3)(b) or 95(4)(a) as (1) the application referred to in the Defence related to the application for an HMO licence under section 61 and not under section 85 of the 2004 Act; (2) even if the Tribunal were to accept the Respondent's evidence regarding technical errors in the online application process, again this relates to an application for an HMO licence; and (3) the existence of such "technical errors" does not limit the Respondent's liability for ensuring that the Property is duly licensed.
9. In determining the amount to be repaid by the Respondent to each of the Applicants in accordance with section 44 of the Act, the Tribunal noted the following:
 - 9.1 the maximum relevant period for determination of the amount of the rent repayment order is 1 July 2018 – 30 June 2019. Whilst the Respondent has not at any time during this period obtained a licence under section 85, the Tribunal accepts that an HMO licence was applied for on 11 June 2019 and granted on 12 August 2019. The Tribunal has not had sight of the licence and is therefore unable to confirm the date when it came into force although it is anticipated that is 11 June rather than 12 August 2019. If the effective date is 11 June 2019, then the relevant period of non-compliance is adjusted to 1 July 2018 – 11 June 2019; otherwise, it remains as 1 July 2018 – 30 June 2019;
 - 9.2 each of the Applicants has provided evidence of rental payments totalling £4680 in each case;
 - 9.3 in accordance with section 44(4), the Tribunal noted:
 - 9.3.1 the evidence of Mr Allwood regarding the Respondent's failure to respond to the letter dated 14 September 2018 advising of the requirement for the Property to be licensed, and of the delays in the obtaining of an HMO licence;

- 9.3.2 the Respondent's evidence of her conduct as landlord which the Tribunal considered to be no more than what should be expected of any responsible landlord. Further, it is clear in section 43(1) of the 2016 Act that the absence of a conviction is not relevant in this context;
- 9.3.2 the Respondent's evidence of her financial circumstances confirming that she received a profit of £1160 per month from renting the Property to the tenants including the Applicants;
- 9.3.3 the Respondent's evidence of the Applicant's conduct which contained, in the main, unsubstantiated allegations of breaches of the tenancy agreement. The Respondent has provided no evidence that she sought to take any enforcement action at the time in respect of such alleged breaches. Further the Tribunal was unpersuaded that the photographic evidence relating to the condition of the Property at the end of tenancy demonstrated anything other than could reasonably be expected at the end of a student letting.
10. Having regard to the evidence, the Tribunal determined that the amount of the rent repayment order in respect of each of the Applicants is £4680 where the relevant period is 1 July 2018 – 30 June 2019, or £4436.38 where the relevant period is 1 July 2018 – 11 June 2019.
11. The Applicants and/or the Respondent are directed to send to the Tribunal within 14 days of the date of this Decision a certified copy of the licence and/or such other evidence as is necessary for the Tribunal to confirm the date when the licence came into force, the period of non-compliance and the amount of the rent repayment order.

Tribunal Judge C Wood.
27 November 2019