



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

Case Reference : **LON/00AN/HMF/2019/0024**

Property : **46a Broughton Road, London SW6
2LA**

Applicants : **Charlotte Bradley, Nicholas Walker
and Matthew Smith**

Representative : **Alasdair McClenahan of Justice for
Tenants**

Respondent : **Belle McKnight**

Representative : **Not present and not represented at
hearing**

Type of Application : **Application for Rent Repayment
Order under the Housing and
Planning Act 2016**

Tribunal Members : **Judge P Korn
Mr T Sennett MA FCIEH**

**Date and venue of
Hearing** : **9th December 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **9th December 2019**

DECISION

Decision of the tribunal

- (1) The tribunal orders the Respondent to repay to the Applicants the sum of £19,656.00.
- (2) Pursuant to paragraph 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“**the Tribunal Rules**”), the tribunal orders the Respondent to reimburse to the Applicants the application fee of £100.00 and the hearing fee of £200.00.

Introduction

1. The Applicants have applied for a rent repayment order against the Respondent under sections 40-44 of the Housing and Planning Act 2016 (“**the 2016 Act**”).
2. Mr Walker, together with Ms Stephanie Papps and Mr Jordan Gill, entered into an assured shorthold tenancy agreement in relation to the Property with the Respondent (as their landlord) in June 2016. A copy of the tenancy agreement is in the hearing bundle. Mr Smith replaced Ms Papps as one of the tenants on 9th October 2017 and Ms Bradley replaced Mr Gill as one of the tenants on 4th June 2017. Mr Walker, Mr Smith and Ms Bradley are between them the Applicants.
3. The basis for the application is that, according to the Applicants, the Respondent was controlling or managing an unlicensed house in multiple occupation which was required to be licensed at a time when the Property was let to the Applicants but was not so licensed.
4. The claim is for repayment of rent paid by the Applicants jointly between 9th December 2017 and 8th December 2018 totalling £28,080.00 in aggregate.

Respondent’s engagement with this process

5. Initially, correspondence being sent by the tribunal to the Respondent at 20 Portmore Park Road, Weybridge, Surrey KT13 8ES was being returned to sender on the basis that she was not known at that address. This is despite the fact that clause 28.1 of the assured shorthold tenancy agreement states this to be the address at which notices or other written requests may be sent or served.
6. Following concerns having been expressed by the tribunal as to whether the Respondent had notice of the application, the Applicants’ representatives emailed the Respondent on more than one occasion using the email address that they had for her. In one of those emails they attached a copy of the application and of the tribunal’s directions and referred the Respondent to previous emails from which she could

access other documentation. The Respondent responded to this email on 13th August 2019 by complaining about the Applicants' conduct but not otherwise engaging with the details or the merits of the application itself.

Applicants' case

7. The tenancy agreement shows that the Property was being shared by three co-tenants. There was a change of tenants such that Ms Bradley replaced Mr Gill on 4th June 2017 and then Mr Smith replaced Ms Papps on 9th October 2017. The three Applicants then remained the tenants throughout the period 9th December 2017 and 8th December 2018, this being the period of the rent repayment claim.
8. The hearing bundle contains a copy of a public notice designating the whole of the district of the London Borough of Hammersmith & Fulham as an area for additional licensing of houses in multiple occupation (HMOs) as from 5th June 2017. The designation applies (broadly speaking) to all HMOs that are occupied by 3 or more persons comprising 2 or more households. Properties in this area falling within this definition would therefore have been required to have an HMO licence as from 5th June 2017.
9. On 15th March 2019, Daniele Franz of Justice for Tenants emailed Hammersmith & Fulham Council on behalf of the Applicants to ask whether the Property had a licence. On that same day the Council emailed back stating that no valid licence application had been received for the Property. The Council added that if the Property was occupied by 3 or more people and more than 1 household an HMO licence would be required.
10. The rent was paid to the Respondent's agents, but there was no evidence that it was not passed on to the Respondent, and in any event the Respondent was named as landlord in the tenancy agreement.
11. Mr McClenahan took the tribunal through the amounts paid by way of rent and the bank statements in support.
12. The Applicants accepted that the Respondent had probably not been convicted of this offence, i.e. the failure to obtain an HMO licence, and they did not have any relevant information regarding her financial circumstances.
13. As regards the parties' conduct, Mr McClenahan said that the Applicants' conduct had been very good. The Respondent had complained that they had damaged the Property, but that complaint was unfounded, as evidenced by the fact that her complaint was not upheld by an independent adjudicator when there was a dispute about

the return of the deposit. The Respondent’s conduct had been poor. She had not engaged with these proceedings, the rent deposit was not properly protected (it was only protected in one tenant’s name), there were no fire safety doors or smoke alarms and there was no gas safety certificate or bathroom extractor. Mr Smith added that the Property was generally fairly run down and there were problems with heating, gaps in windows and mould.

14. The Applicants were not aware of the Respondent having paid any outgoings apart from presumably the agents’ rent collection fee.

Respondent’s case

15. The only submissions made by the Respondent, to the extent that these can even be treated as submissions, are contained in her email to Mr McClenahan. In that email she essentially asserts that the Applicants destroyed her house, broke the contract and did not clean the Property. She was neither present nor represented at the hearing, but based on that email we are satisfied that she has received details of the application and of the tribunal’s directions and that it was open to her to engage properly with these proceedings.

Relevant statutory provisions

16. Housing and Planning Act 2016

Section 40

- (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 ...
- (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.

	<i>Act</i>	<i>section</i>	<i>general description of offence</i>
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

Section 41

- (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.

Section 43

- (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 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) ...

Section 44

- (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.

Housing Act 2004

Section 72

- (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 ... but is not so licensed.

Tribunal's analysis

17. The Applicants have provided evidence that the Property required a licence from the date of their occupation and that it was not so licensed, and the Respondent has made no submissions to counter the Applicants' evidence. We are satisfied beyond reasonable doubt that a licence was required but was not in place for the whole of the period of the claim.
18. Although the rent was paid to the agents we are satisfied that it was paid to them as agents for the Respondent. This point has not been disputed and therefore we are satisfied that the Respondent had control of and/or managed the Property for the purposes of section 72(1) of the 2004 Act.
19. In addition, the Respondent has not disputed the fact that the Applicants jointly had a tenancy agreement in relation to the Property and that they paid to her by way of rent the sums now claimed by the Applicants by way of rent repayment. We note that the rent was only paid by Ms Bradley and that there is no written evidence that the Respondent agreed to two of the original tenants being substituted by Ms Bradley and Mr Smith, but in the absence of any challenge on this point by the Respondent we are satisfied that the Applicants were the tenants of the Property throughout the period of the claim.
20. Therefore we are satisfied that the Respondent was committing an offence under section 72(1) of the 2004 Act throughout the period of the claim.
21. Section 40 of the 2016 Act confers power on the First-tier Tribunal to make a rent repayment order where a landlord has committed an offence listed in the table in sub-section 40(3). The offence of having control of or managing an unlicensed HMO under section 72(1) of the 2004 Act is one of the offences listed in that table.
22. Under section 43 of the 2016 Act, the First-tier Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that a landlord has committed an offence listed in the table in sub-section 40(3), and for the reasons given above we are so satisfied.

23. Based on the above findings, we have the power to make a rent repayment order against the Respondent and we consider on the facts of this case that it would be appropriate to do so.
24. The amount of rent to be ordered to be repaid is governed by section 44 of the 2016 Act. Under sub-section 44(2), the amount must relate to rent paid by the tenant(s) in respect of a period, not exceeding 12 months, during which the landlord was committing the offence. Under sub-section 44(3), the amount that the landlord may be required to repay in respect of a period must not exceed the rent paid in respect of that period less any relevant award of universal credit paid in respect of rent under the tenancy during that period.
25. In this case, the claim is for the period 9th December 2017 to 8th December 2018, and we accept that this is a period, not exceeding 12 months, during which the landlord was committing the offence. There is no evidence of any universal credit having been paid, and therefore the maximum amount repayable is the whole of the amount claimed, i.e. £28,080.00.
26. Under sub-section 44(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 the relevant part of the 2016 Act applies.
27. The Upper Tribunal decision in *Parker v Waller and others (2012) UKUT 301 (LC)* is a leading authority on how a tribunal should approach the question of the amount that it should order to be repaid under a rent repayment order if satisfied that an order should be made. The case was decided before the coming into force of the 2016 Act but in our view the basic principles that it lays down apply equally to rent repayment orders under the 2016 Act, subject obviously to any relevant differences in the statutory wording.
28. In his analysis, based in that case on section 74 of the 2004 Act, the then President of the Upper Tribunal, George Bartlett QC, discussed the purpose of rent repayment orders in favour of occupiers. Under section 74 the amount payable is “such amount as the tribunal considers reasonable in the circumstances” and section 74 goes on to specify five matters in particular that should be taken into account, including the conduct of the parties and the financial circumstances of the landlord. This contrasts with rent repayment orders in favour of a local authority in respect of housing benefit under the 2004 Act, where an order for the full amount of housing benefit must be made unless by reason of exceptional circumstances this would be unreasonable. There are therefore different policy considerations under the 2004 Act depending on whether the order is in favour of an occupier or in favour of a local authority.

29. The President of the Upper Tribunal went on to state that in the case of a rent repayment order in favour of occupier there is no presumption that the order should be for the total amount of rent received by the landlord. The tribunal must take an overall view of the circumstances. Section 44 of the 2016 Act does not state that the amount repayable to an occupier should be such amount as the tribunal considers reasonable in the circumstances, but neither does it contain a presumption that the full amount will be repayable.
30. Starting with the specific matters listed in section 44, the tribunal is particularly required to take into account (a) the conduct of the parties, (b) the financial circumstances of the landlord, and (c) whether the landlord has at any time been convicted of a relevant offence.
31. Based on the evidence before us, we consider the Applicants' conduct to have been good. Whilst the Respondent has claimed that the Applicants have behaved badly, there is no credible evidence to support her allegations.
32. As for the Respondent's conduct, this has been poor. She has not engaged with the tribunal process at all, neither complying with the tribunal's directions nor making any written submissions (aside from a brief email sent to Mr McClenahan), nor attending or being represented at the hearing.
33. The Applicants' representative at the hearing, and Mr Smith himself, have both spoken about various other alleged failings on the Respondent's part. However, none of the Applicants has given a witness statement, this being something specifically referred to in the directions. In addition, most of the concerns expressed at the hearing were not referable to written submissions included in the hearing bundle, and therefore the Respondent was not in a position to challenge the accuracy of the concerns expressed.
34. We have not been provided with any information as to the Respondent's financial circumstances. As regards convictions, we have no evidence that the Respondent has been convicted of this offence or of any other relevant offences.
35. It is clear from the wording of sub-section 44(4) itself that the specific matters listed in sub-section 44(4) are not intended to be exhaustive, as sub-section 44(4) states that the tribunal "must, **in particular**, take into account" the specified factors. However, in this case we do not consider that there are any other relevant circumstances to be considered. If there had been evidence that the Respondent had incurred expenditure on outgoings then this could have been taken into consideration, but the Respondent has offered no such evidence.

36. We note that the Respondent has failed to engage with this process, save for her sending to Mr McClenahan an aggressive and unsubstantiated complaint which in our view has harmed rather than supported her case. The Respondent has not offered, and we see no evidence of, any mitigating factors, such as (but not limited to) an attempt to obtain a licence, remorse for failing to obtain a licence, or difficult personal circumstances. In addition, a large part of the purpose of the legislation in our view is to act as a deterrent to landlords to discourage them from committing criminal offences. On the other hand, whilst the Applicants have made various complaints about the Property they have not substantiated these in the proper way and have not given witness statements. Furthermore, there is no evidence that the Respondent has harassed the Applicants, and indeed they seem to have been content (or content enough) to stay in the Property for a long period of time.
37. Taking all of the circumstances into consideration, we consider that an appropriate amount to be ordered to be repaid is 70% of the total amount of rent paid during the period of claim. The tribunal has discretion as to the amount payable, and we consider that this is a suitable amount in the circumstances.
38. The amount of rent to be repaid is therefore £19,656.00.

Cost applications

39. The Applicants have applied for an order that the Respondent reimburse their application fee of £100.00 and the hearing fee of £200.00 pursuant to paragraph 13(2) of the Tribunal Rules. The main application has been successful and the Respondent has not engaged with this process at all. In the circumstances we consider it entirely appropriate that the Respondent should reimburse these costs.

Name: Judge P Korn

Date: 9th December 2019

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.

- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

- D. 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.