



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

Case Reference : **MAN/30UK/HMF/2019/0053/0056
0057 & 0059**

Property : **68, Brackenbury Road, Preston
PR1 7UQ**

Applicants : **(1) James Hargreaves
(2) Marcus Lopez
(3) Jordan Wright
(4) Jamie Walsh**

Respondent : **Michael Gibbons**

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 sum of £4326.76.

Background

- 2.1 By applications of various dates in July and August 2019, (“the Applications”), each of the Applicants applied to the Tribunal for a rent repayment order pursuant to section 41 of the Act.
- 2.2 The directions dated 14 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. No such request was received.
- 2.3 Written statements were received from each of Messrs Hargreaves, Wright and Walsh. Mr. Lopez confirmed in writing his agreement to the facts set out in Mr Hargreaves’ statement.
- 2.4 No response has been received from the Respondent to the issue of the Applications and to the Directions.

The Law

- 3.1 The relevant provisions of the 2016 Act, so far as relevant, 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
3	Housing Act 2004	Section 30(1)	Failure to comply with improvement notice
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

Act 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 two relevant offences claimed to have been committed by the Respondent, namely, the failure to comply with an improvement notice and the control or management of an unlicensed house in multiple occupation, (“HMO”).
- 4.2 Annexed to each of the witness statements submitted by three of the Applicants is a witness statement of Leslie Crosbie dated 27 August 2019. Mr Crosbie states that he is employed as the Housing Standards Team of the Development Directorate of Preston City Council.
- 4.3 In his statement Mr Crosbie records the events between March and June 2019 which ultimately led to the issue of an improvement notice on 19 June 2019 (with a deadline for completion of the works of 11 September 2019), the issue of an HMO declaration in respect of the Property on 5 June 2019 and the Council’s issue of a Notice of refusal to grant an HMO licence on 2 August 2019. He also refers to an e-mail dated 3 April 2019 to the Respondent confirming that an HMO licence was required for the Property with effect from 1 October 2018.

Tribunal’s Determinations

5. There is no evidence before the Tribunal of the Respondent’s compliance with the improvement notice on or before 11 September 2019 or at all. In the absence of such evidence, the Tribunal was not satisfied beyond reasonable doubt that the Respondent had committed an offence under section 30(1) of the Housing Act 2004 as required under section 43(1) of the Act.
6. Having regard to the evidence and, in particular, to Mr Crosbie’s statement, the Tribunal was satisfied that the Property required an HMO licence with effect from 1 October 2018 but that no such licence had been obtained during the relevant period or at all. The Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the Housing Act 2004 by reason of the Respondent’s failure to obtain an HMO licence in respect of the Property.
7. 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:

- 7.1 In their statements, the Applicants confirm that the dates of their tenancy was 1 September 2018 – 31 July 2019. The period during which the Respondent was committing the offence was from 1 October 2018 and was continuing as at the date of Mr Crosbie’s statement of 27 August 2019. The relevant period for determination of the amount of the rent repayment order is therefore 1 October 2018 – 31 July 2019;
- 7.2 each of the Applicants has provided evidence of their payment of 4 payments, a retainer paid in July 2018 of £199, and 3 payments of £1586.48, a total of £4958.44. From this total, the Tribunal has deducted payments made prior to 1 October 2018, namely, the retainer of £199 and the rent for the period from 1 – 30 September 2018 of £396.62 in order to ascertain the amount of rent paid during the period from 1 October 2018 – 31 July 2019;
- 7.3 in accordance with section 44(4), the Tribunal noted:
- 7.3.1 the evidence of Mr Crosbie regarding the Respondent’s conduct in relation to the issue of an HMO licence for the Property and the Council’s decision to confirm its refusal to grant an HMO licence for the Property, and the Respondent’s failure to engage with these proceedings before the Tribunal;
- 7.3.2 there was no evidence presented to the Tribunal regarding any relevant conduct on the part of the Applicants, the Respondent’s financial circumstances or whether the Respondent has been at any time convicted of an offence to which Chapter 4 of the Act relates.
8. Having regard to the evidence, the Tribunal determined that the amount of the rent repayment order in respect of each of the Applicants is £4326.76.

Tribunal Judge C Wood

27 November 2019