



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

Case Reference : **MAN/00BN/HMF/2019/0071-74**

Property : **84, Heyscroft Road, Withington,
Manchester M20 4UZ**

Applicants : **Alexander Walpole
Benjamin Coleman
Daniel Dixon
Philip Hepplestone**

Respondent : **Mary Norah McKenna
Kevin McKenna**

Type of Application : **Application for a rent repayment order by
tenant (no conviction)
Sections 40-44 Housing and Planning Act 2016**

Tribunal Member : **Mr J R Rimmer
Mr J Faulkner**

Date of Determination : **20th November 2019**

Date of Decision : **4th December 2019**

DECISION

Order: The application for a Rent Repayment Order is granted in respect of each Applicant in an amount of £520.00 and their application fees for the reasons set out in paragraphs 20-27 herein

A. Application

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicants for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
4. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application

B Background

5. The Applicants were, from 1st July 2018, the tenants of the property at 84, Heyscroft Road, Withington, Manchester. They were tenants under an assured shorthold tenancy agreement dated 29th May 2019, a copy of which has been provided to the Tribunal by the parties. It was contained in their respective bundle of documents supplied to assist the Tribunal and it would express its appreciation for the clarity of both bundles and the indexing and pagination thereof.
6. The Respondents are the owners of the property, which appears from the information provided in their statement to be one of a number that they own and in respect of which day to day management is conducted by managing agents.
7. The property is a house which has been adapted with the specific intention of supplying the demand for student accommodation associated with the nearby academic institutions.
8. There appears to be general agreement between the parties that the application for a rent repayment order is founded upon the fact that on 1st October 2018 the property fell within the extension made to the scheme for the licensing of rented property operated by Manchester City Council. The property is not itself a house in multiple occupation hitherto falling within the scheme.
9. It was not until late May 2019 that a licence application was made to the Council. The property was deemed from that point to be licenced as one was eventually granted within that application process.

- 10 For that period from 1st October 2018 to May 2019 the Respondents were operating an unlicensed dwelling house contrary to the requirements of the Housing Act 2004.

The Law

In relation to the requirements for a licence:

- 11 Section 95 of the Act provides:
- (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced
 - (2) ...
 - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
 - (a)...
 - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
 - (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse-
 - (a) For having control or managing the house in the circumstances mentioned in subsection (1)
 - (7) For the purposes of subsection (3) an...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 or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
 - (b) (if a license is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful)
- 12 Section 87 of the Act sets out the requirements to be met in any application, those being-
- (1) ...made to a local housing authority
 - (2) ...made in accordance with such requirements as the authority may specify
 - (3) ...be accompanied by any fee required by the authority
 - (4) ... comply with any requirements specified by the authority subject to any regulations made under subsection (5)
 - (5) The appropriate national authority may by regulations make provision about the making of applications under this section
 - (6) Such regulations may, in particular, specify the information, or evidence, which is to be supplied in connection with applications.

- 13 Regulation 7 and Schedule 2 of the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 (“the 2006 Regulations”) provide a whole raft of requirements that it is not proposed to set out at length, but where relevant they are considered in the text below.

In relation to a rent repayment order:

- 14 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
- (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
 - (2) A tenant may apply for an 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
- 15 Section 40 of the H&PA
- (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
 - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
 - (a) Repay an amount of rent paid by a tenantSubsection 3 then sets out a table of 7 offences to which the Tribunal’s powers apply:
 - 1 using violence to secure entry to residential premises
 - 2 eviction of harassment of occupier
 - 3 failure to comply with an improvement notice
 - 4 failure to comply with a prohibition notice
 - 5 and 6 offences in relation to houses required to be licenced
 - 6 breach of banning orders in relation to the provision of housing

- 16 Section 43 H&PA then provides that
- (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence...(whether or not the landlord has been convicted)
 - (2) A RRO under this section may only be made on an application under section 41
 - (3) The amount of a RRO ... is to be determined in accordance with
 - (a) Section 44 (where it is made by a tenant)
- 17 Section 44 provides a table (Sub-section 2) whereby the amount of the order must relate to rent paid by the tenant in respect of a period not exceeding 12 months during which the landlord was committing the offence and, (Sub-sections 3 and 4)
- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
 - In determining the amount the tribunal must, in particular take into account the conduct of the landlord and tenant the financial circumstances, the financial circumstances of the landlord, and whether or not the landlord has at anytime been convicted of a (relevant) offence.

Submissions

- 18 The Tribunal received very limited witness statements from the Applicants and the Respondents which limited themselves to the very narrow factual situation which had occurred and although it is not entirely clear from the way that they have expressed themselves, it would appear that the Respondents accept liability for failing to licence, but outline extenuating circumstances surrounding that failure.
- 19 There also appear to be no issues raised about either the amount of rent paid by each of the Applicants, or that the application is made within the time limits provided by Section 41 (The licence application was effective in May 2019, to bring any offence to an end and the Application made in September.

Decision

- 20 The Tribunal considers that it is appropriate to consider whether an appropriate offence has been committed. The Application for an order rests upon such a finding and the Respondents do raise certain issues that might affect the issue of liability.

- 21 The most relevant of these offences to the matter now before the Tribunal is that of an offence under items 5/6 in paragraph 15, above, being the offence under Section 95(1) Housing Act 2004 of having control of or managing a house required to be licenced... but is not so licenced.
- 22 It is important to note that committing an offence is not synonymous with being convicted of an offence in a court exercising a criminal jurisdiction, but is regarded as requiring any decision as to such an offence being determined, where there is a need to do so, on the criminal burden of proof.
- 23 The Respondents raise difficulties that they had with the licensing process.

The Tribunal accepts these at face value. It does however note that the Applicants appear to have an extensive property portfolio and are assisted by managing agents. The Tribunal asks itself, in all those circumstances, whether the Respondents had a reasonable excuse, within Section 95(4) (above) for a failure to licence the property for what was a period of nearly 8 months, up to the point where a proper application for a licence was made.

- 24 The Tribunal is so satisfied that it is sure that at some point in that 8 months period, without needing to ascertain a precise date, any relevant excuse ceased to be reasonable and an offence was then being committed. The tribunal acknowledges that any culpability on their part is correspondingly limited.
- 25 The Tribunal then moves on to consider whether an order should be made. It has taken into account all matters raised by the parties and considers these to be the most pertinent:
- (1) If an offence relevant offence has been found the Applicants are entitled to make application for an order
 - (2) The Tribunal has a very wide discretion as to whether it should make an order, and if so for what amount.
 - (3) The property was required to be licensed only from 1st October 2019. There is no question of the Applicants taking up occupancy of a property that needed to be licensed, but was not.
 - (4) The culpability, noted above, on the part of the Respondents was limited
 - (5) There appears to be no issue raised in relation to the standard of accommodation provided and which the Applicants enjoyed, licensed, or not, for the whole of the tenancy
 - (6) That would appear to be borne out by the very limited requirements imposed upon the Respondents to secure a licence following the licensing application.

- (7) The Applicants are entitled to expect the respondents to comply with statutory requirements within as reasonable a timescale as possible.
- (8) Neither party should be entitled to an unmeritorious financial benefit from a failure to comply with the requirements, either by an automatic return of all rent, or retention of undeserved rental payments.
- 26 The Tribunal has sought a way all the relevant factors into account in order to reach what it considers to be a just and equitable determination for all parties. **It takes the view that it is appropriate to make a repayment order in favour of each of the Applicants in an amount of £520.00, being 1/6th of the rental payments made by each of them for the period for which the property was unlicensed.**
- 27 **The Applicants should also recover from the Respondents their Application fees in respect of this application.**

	Application Fee paid to Tribunal
Alexander Walpole	£100
Benjamin Coleman	£100
Daniel Dixon	£100
Philip Hepplestone	N/A

J R Rimmer
Tribunal Judge
4th December 2019