



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

Case Reference : **BIR/00FY/HMK/2019/0049-52**

Property : **37 Nazareth Road, Lenton
Nottingham NG7 2TP**

Applicant : **Hannah Leigh (nee Walkden) (0049)
Charlotte Savage (0050)
Hannah Gordon (0051)
Lauren Jones (0052)**

Representative : **Hannah Leigh**

Respondent : **Sangeeta Dhawan**

Type of Application : **Applications for Rent Repayment Orders by
Tenants
Sections 40, 41, 43 & 44 of the Housing and
Planning Act 2016**

Tribunal Members : **A J Rawlence MRICS
P Wilson BSc (Hons) LLB MRICS MCIEH
CEnvH**

Date of Decision : **27 January 2020**

DECISION

Introduction

1. This is an application by four former tenants of a house in Nottingham for Rent Repayment Orders under section 41 of the Housing & Planning Act 2016 as the house they occupied had been not been registered under the selective and additional licensing schemes operated by Nottingham City Council. The tenants vacated the property on 24 June 2019 and applied to the First-tier Tribunal ('FTT') for Rent Repayment Orders on 6 September 2019.
2. Former tenant and Applicant Ms Hannah Gordon requested an Order for the period 25 August 2018 to 24 June 2019. The other Applicants requested Orders for the period 24 June 2018 to 24 June 2019.
3. The Tribunal issued Directions on 11 September 2019, consolidating the Applications to enable them to be considered together under The Tribunal Procedure (First-tier) Tribunal (Property Chamber) Rules 2013, Rule 6.(3)(b).
4. Further Directions were issued on 19 November 2019 seeking additional information. This was sent to the Applicants and to the Respondent and her letting agent.
5. Mrs Hannah Leigh made a Submission on 23 October 2019 on behalf of all four tenants and further information on 2 December 2019, which was duly copied to the Respondent.
6. Ms Sangeeta Dhawan made a submission on 23 October 2019 but no additional information was received after the issue of the second set of Directions.

Facts Found

7. The Tribunal inspected the property on 15 November 2019. The agent Alex McCausland for Saint Property Services was present, but the former tenants had vacated and were neither present nor represented.
8. The following was noted:

The property is an end terrace modern three storey house (built 11 or 10 years ago) in a pleasant cul de sac, in the grounds of a detached large house. There is a mixture of flats and house of similar construction with dedicated parking for each property.

The property is brick and tile with double glazed windows. There is access round the side to a small fenced garden.

On the ground floor is Hall with the consumer unit – inspected October 2019 – not able to see the date of any previous inspection.

Fire detection system carried out in 2016. Hard wired detectors appear to be functioning and no evidence of any decorative issues to indicate that they had been wrenched off the walls during the tenancy.

Living Room off with access to Kitchen – full fitted and Utility Room off with WC. Gas boiler but no certificate or date on it.

At first floor two Bedrooms with family Bathroom, full white suite with shower over bath.

Access to second floor with two Bedrooms, one en-suite with a shower room.

The property in good decorative order and the gardeners were present during the inspection.

Relevant Law

9. Section 41(1) of the Housing and Planning Act 2016 provides:
‘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.’
10. Section 40(3) of the Act lists 7 categories of offence and offence no.6 referring to section 95(1) of the Housing Act 2004 identifies the offence as:
‘control or management of unlicensed house.’
11. Section 95(1) of the Housing Act 2004 provides:
‘A person commits an offence if he is a person having control of or managing a house which is required to under this Part... but is not licensed.’
12. The house is required to be licensed as the area in which the property is located was originally designated by Nottingham City Council as subject to additional licensing on the 1 January 2014 with the designation being renewed for a further five years on the 1 August 2019. In addition, the area was further designated as subject to selective licensing with effect from the 1 August 2018. In an email dated the 27 November 2019, Nottingham City Council confirmed that the property was in the additional licencing area during the entire period mentioned and in the selective area from 1 August 2018. They further confirmed that no licence was in existence during either of these periods and that their records show that no application for an HMO licence has ever been made.

Contract

13. Mrs Leigh provided a copy document for Lauren Jones, Hannah Walkden(now Leigh) and Charlotte Savage signed but undated that is clearly a tenancy agreement between S Dhawan c/o Saint Property Services landlord, and the three tenants who have made this application for a period of 12 months from 25 August 2017 to 24 August 2018 at a rent of £1200.00 per calendar month.
14. Mrs Leigh also provided a copy document for Lauren Jones, Hannah Walkden(now Leigh), Charlotte Savage and Hannah Gordon signed by all parties except Charlotte Savage but undated that is clearly a tenancy agreement between S Dhawan c/o Saint Property Services landlord, and the four tenants who have made this application for a period of 10 months from 25 August 2018 to 24 June 2019 at a rent of £1200.00 per calendar month.

Submissions

15. Mrs Leigh said in a statement dated 23 October 2019 that three of the Applicants had rented the house from 25 June 2018 to 24 June 2019 when it was required to be licensed and had not been. Accordingly, she requested a Rent Repayment Order for the full period of their occupation. Lauren Jones, Hannah Walkden (now Leigh) and Charlotte Savage provided bank statements showing monthly payments of £300 each for the period 25 June 2018 to 24 June 2019 – a total of £3,600 each.
16. Furthermore, Hannah Gordon had occupied the property from 25 August to 24 June 2019 and thus requested a Rent Repayment Order for the full period of her occupation. Hannah Gordon provided bank statements showing monthly payment of £300 for the period 25 August 2018 to 24 June 2019 – a total of £3,000.
17. Mrs Leigh stated that there had been maintenance issues with the property including fire alarm not working; faulty smoke detectors; boiler problems; black mould and other minor maintenance issues.
18. Mrs Leigh provided details that the deposit made by all four Applicants was not registered with the Deposit Protection Scheme.
19. Nottingham City Council confirmed in an e-mail dated 27 November 2019 that there was no existing licence for the property.
20. Ms Sangeeta Dhawan wrote in a letter dated 23 October 2019 that she was aware that a licence had not been granted on the property but had in fact made an application in August 2018 and gave an application number. She added that she also knew that the property required an HMO licence which she had started in October 2019.
21. She provided a statement detailing maintenance works carried out to the property from 15 September 2016 to 23 April 2019. During the period 25 June 2018 to 24 June 2019 this covered the provision of an energy performance certificate, landlord testing of all gas appliances and replacement of a fault on the cooker hood.

Tribunal Decision

The Tribunal considered the points and finds as follows:

22. Lauren Jones, Hannah Walkden (now Leigh) and Charlotte Savage had been tenants from 25 June 2018 to 24 June 2019 during which time they paid a total rent of £3,600 each.
23. Hannah Gordon had been a tenant from 25 August 2018 to 24 June 2019 during which time she had paid a total rent of £3,000.
24. The landlady was required to have a valid licence under the additional licensing scheme for the property and by not having a licence she committed an offence.

Furthermore, the property was located in a selective licensing area for the property from 1 August 2018. Although she had started the application process in August 2018, this application had not been completed and Nottingham City Council could find no record of the property being licensed. (See paragraph 19). Accordingly, the Tribunal finds beyond reasonable doubt that an offence was committed from 25 June 2018 to 24 June 2019 under section 95(1) of the 2004 Act in relation to the Property. Given that each of the Applicants applied for a rent repayment order within 12 months of the end of that period, the Tribunal does have jurisdiction to make such an order in their favour.

25. In considering its decision as to the amount of the rent repayment orders, the Tribunal is mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of operating an unlicensed property; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants – not applicable in this case.
26. It is important to note that the Tribunal is not *required* to make an order for the maximum amount in the circumstances of this case, and that there is no presumption that the order should be for the maximum amount. Rather, the Tribunal should take an overall view of the circumstances in determining what amount to order the landlord to repay. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration.
27. The Tribunal are required to take account of the conduct of the both the landlord and the tenants, the landlord's financial circumstances and any previous convictions under section 44 of the Housing and Planning Act 2016.
28. There is no evidence before the Tribunal that the landlady has at any time been convicted of an offence to which the relevant chapter of the 2016 Act applied.
29. The Tribunal notes that during the period in question little maintenance was carried out at the property despite requests from the tenants (see paragraph 17). However, during its inspection it did note that the fire detection system was working satisfactorily and there was no evidence of mould in the property.
30. The landlady did not respond to a further direction and has provided no evidence of her financial circumstances.
31. The tenants had all paid their rent at the proper time and notified the agent of maintenance issues.
32. The Tribunal did note that the tenants provided evidence that their deposits had not been protected in accordance with statutory requirements.
33. Taking in account the conduct of both the Applicants and the Respondent the Tribunal makes a Rent Repayment Order requiring Ms Sangeeta Dhawan to pay twelve months' rent of £300.00 per month, i.e. £3,600 (Three Thousand Six Hundred Pounds), to Lauren Jones, Hannah Walkden(now Leigh) and Charlotte

Savage with immediate effect and ten months' rent of £300 per month i.e. £3,000 (Three Thousand Pounds) to Hannah Gordon with immediate effect.

34. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
35. 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.
36. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
37. 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.

Anthea J Rawlence

Chair