



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

Case Reference : CHI/00HY/HMF/2019/0015

Property : 70 Shears Drive, Amesbury, Wiltshire, SP4 7YA

Applicants : 1) Louis Thompson 2) Andrew Lloyd 3) Louis Parisi 4) Joseph Badham

Representative : Not represented

Respondent : David Hughes

Representative : Not represented

Type of Application : Application for Rent Repayment Orders sections 40, 41, 42, 43 and 45 of the Housing & Planning Act 2016

Tribunal Members : Judge N Jutton, Mr J Reichel BSc MRICS

Date and Venue of Hearing : 28 January 2020
The Law Courts, Wilton Road, Salisbury, SP2 7EP

Date of Decision : 30 January 2020

DECISION

1 **Background**

2 The Applicants apply for Rent Repayment Orders (RROs) in respect of tenancies previously enjoyed by them at 70 Shears Drive, Amesbury, Wiltshire, SP4 7YA (the Property). The Respondent, Mr David Hughes, is the owner of the Property. He purchased the Property on 31 October 2018. The Property has 3 floors. It has 6 bedrooms, 5 bath/shower rooms, a shared kitchen/diner, a sitting room and a drying room.

3 Each of the Applicants occupied the Property under a form of Agreement headed 'Lodger Licence Agreement'. They each occupied a room and had shared use of common areas including sitting room, kitchen and utility areas. Mr Thompson's Agreement which is dated 12 March 2019 provided for monthly rental payments of £420. Mr Thompson vacated the Property and ended his Agreement on 15 November 2019. Mr Lloyd's Agreement is dated 8 November 2018 and provides for monthly rental payments of £500. Mr Lloyd vacated the Property and ended his Agreement on 29 November 2019. Mr Badham's Agreement is dated 8 November 2018 and provides for monthly rental payments of £535. Mr Badham vacated the Property and ended his Agreement on 15 November 2019. Mr Parisi's Agreement is dated 9 September 2015 and provided for a monthly rent of £390 but the Tribunal was told that that was increased with effect from February 2019 to £430 per month. Mr Parisi vacated the Property and ended his Agreement at the end of July 2019.

4 Under the terms of the said agreements the Landlord retained responsibility for the payment of services including council tax, water and sewerage rates, gas and electricity supplies.

5 There was before the Tribunal a bundle of documents which included the Applicants' application, the Applicants' respective 'Lodger Licence Agreements' each with copy bank statements showing debits in respect of payments of rent, Directions made by the Tribunal, a Witness Statement made by the Respondent with supporting documents including evidence of outgoings paid by the Respondent, an application submitted by the Respondent to Wiltshire Council to licence the house as a house in multiple occupation (HMO) dated 12 November 2019, and the Applicants' response to the Respondent's Witness Statement dated 10 January 2020.

6 **The Law**

7 The relevant statutory provisions are to be found in sections 40, 41, 43 and 44 of the Housing & Planning Act 2016 (the 2016 Act). They provide as follows:

- (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*
 - (b) *pay a local housing authority an amount in respect of a relevant award of universal credit paid (to any person) in respect of rent under the tenancy.*
- (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
1	<i>Criminal Law Act 1977</i>	<i>Section 6(1)</i>	<i>Violence for securing entry</i>
2	<i>Protection from Eviction Act 1977</i>	<i>Section 1(2), (3) or (3A)</i>	<i>Eviction or harassment of occupiers</i>
3	<i>Housing Act 2004</i>	<i>Section 30(1)</i>	<i>Failure to comply with improvement notice</i>
4		<i>Section 32(1)</i>	<i>Failure to comply with prohibition order etc</i>
5		<i>Section 72(1)</i>	<i>Control or management of unlicensed HMO</i>
6		<i>Section 95(1)</i>	<i>Control or management of unlicensed house</i>
7	<i>This Act</i>	<i>Section 21</i>	<i>Breach of banning order</i>

- (4) *For the purposes of subsection (3), an offence under section 30(1) or 32(1) of the Housing Act 2004 is committed in relation to housing in England let by a landlord only if the improvement notice or prohibition order mentioned in that section was given in respect of a hazard on the premises let by the landlord (as opposed, for example, to common parts).*

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.*
- (3) *A local housing authority may apply for a rent repayment order only if –*
- (a) *the offence relates to housing in the authority’s area, and*
 - (b) *the authority has complied with section 42.*
- (4) *In deciding whether to apply for a rent repayment order a local housing authority must have regard to any guidance given by the Secretary of State.*

42

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 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);*
 - (b) *section 45 (where the application is made by a local housing authority);*
 - (c) *section 46 (in certain cases where the landlord has been convicted etc).*

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>
<i>An offence mentioned in row 1 or 2 of the table in section 40(3)</i>	<i>The period of 12 months ending with the date of the offence</i>
<i>An offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>A period, not exceeding 12 months, during which the landlord was committing the offence</i>

- (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.*

8 **The Hearing**

- 9 None of the parties were represented at the hearing. Present were the four Applicants, Louis Thompson, Andrew Lloyd, Louis Parisi and Joseph Badham, the Respondent David Hughes together with Mr Hughes' father John Hughes and a family friend Liz Wharton.

10 **The Applicants' Case**

- 11 The Applicants say that throughout their occupation of the Property it was required to be licensed as a house in multiple occupation pursuant to the provisions of the Housing Act 2004. That it was not licensed and that accordingly the Respondent has committed an offence pursuant to section 72(1) of that Act. The Applicants seek RROs in respect of rent paid by them in each case from and including November 2018 (following the Respondent's purchase of the Property on 31 October 2018) until the date upon which they each respectively left the Property. Details of the repayments sought are as follows:

- i. Mr Thompson: 8 months x £420 = £3,360.
- ii. Mr Lloyd: 12 months x £500 = £6,000.
- iii. Mr Badham: 11 months x £535 = £5,885.
- iv. Mr Parisi: 3 months x £390 and 6 months x £430 = £3,750.

The combined total amount of rent repayment sought is therefore £18,995.

- 12 Mr Thompson says that he initially made contact with Wiltshire Council following damage allegedly caused to his bathroom at the Property following works of repair carried out by the Respondent's father Mr John Hughes. At the time he was not aware of the need for the Property to be subject to an HMO

licence. That he was told by Wiltshire Council that it was likely that the Property should have an HMO licence and he was advised as to his potential right to apply for a Rent Repayment Order. In his written Statement to the Tribunal, Mr Thompson on his own behalf and on behalf of the other Applicants expressed concern that during his occupancy he was not provided with a Gas Safety Certificate, an Energy Performance Certificate or that the deposit paid by him was placed into a recognised Tenancy Deposit Scheme. He believes that subsequent work carried out at the Property by the Respondent in relation to matters such as the obtaining of a Gas Safety Certificate, the fitting of smoke alarms and other matters were only carried out because the Respondent was notified by Wiltshire Council that they were required for the purposes of obtaining an HMO licence. Mr Thompson complains that during his occupancy there were times when the Respondent's father entered his bedroom in Mr Thompson's absence without consent.

13 Mr Lloyd says that he felt he was treated so badly by the Respondent and the Respondent's family when he raised the issue of the need for an HMO licence at the time that Mr Thompson and Mr Badham were moving out, that he felt obliged to leave the Property as well.

14 **The Respondent's Case**

15 Mr David Hughes quite properly told the Tribunal that he accepted that throughout his ownership of the Property it should have had an HMO licence. As he puts it at paragraph 2 of his Witness Statement, he does not dispute the Applicants' ground for making the application. Mr Hughes has made an application to Wiltshire Council for the grant of an HMO licence and as a consequence he has been obliged to carry out certain works at the Property and which he described as an "*educating*" process. It is hoped that the licence will be granted in the near future.

16 The Respondent says that when he purchased the Property, his plan had been to allow his brother, who was returning from abroad, to take up residence. It had not been his intention to continue to let the Property to lodgers indefinitely. However, in the event his brother did not take up residence.

17 The Respondent told the Tribunal that he accepted and agreed that the rent had been paid by the Applicants throughout their occupation and accepted that a Rent Repayment Order would be made, it was simply a question as to quantum.

18 The Respondent told the Tribunal that he personally owns 7 other residential properties which were all let on assured shorthold tenancies. He also has an interest in a limited company which owns and runs a guest house. He said his main occupation was managing the properties and the guest house.

- 19 The Respondent says that in respect of the other properties that he owns which are subject to assured shorthold tenancies, he is familiar with and complies with all relevant Regulations. He accepts that he was not aware at the time he purchased the Property of the need for an HMO licence nor what an application for a licence would involve. That once he was made aware that the Property should have a licence, he submitted his application. There is a copy of his application form with the papers before the Tribunal which is dated 19 November 2019, just over a year after Mr Hughes acquired the Property. He says it has taken time to investigate the ramifications of applying for an HMO licence and to comply with the requirements needed to obtain a licence. That he has since making his application liaised closely and conscientiously with Wiltshire Council in order to meet their requirements for a licence to be issued.
- 20 The Respondent says that he considers himself to be a conscientious landlord. He says that he deals with ongoing maintenance issues in a timely manner. He gave two examples at the hearing of unblocking a drain and on another occasion fitting a new shower-head both within 24 hours of being notified of the need for the work to be carried out. The Respondent says that he has decorated and re-carpeted the common areas at the Property. That he has now obtained, (copies are annexed to his Statement), an Electrical Installation Certificate, a Gas Safety Record, and an Energy Performance Certificate. That for electrical work he engages the services of a professional electrical company. That works of redecoration, maintenance and general upkeep are carried out by the Respondent or his family. That regular 'operational checks' are carried out to the smoke alarm system and the emergency lighting system in addition to annual gas safety and electrical installation checks.
- 21 The Respondent sets out in his Statement details of outgoings incurred at the Property including utility bills, council tax, and broadband internet provision. Upon being questioned by the Tribunal, the Respondent confirmed that in broad terms the total outgoings at the Property came to approximately £6,000 per annum. Those were what the Respondent described at the hearing as "*running costs*". That is consistent with the documents exhibited to the Respondent's Statement. The Respondent says that those costs were kept down not least because his father Mr John Hughes does a lot of the general maintenance work at the Property. At the hearing, Mr John Hughes confirmed that he did not charge the Respondent for his time and work.
- 22 In his Statement and at the hearing before the Tribunal, the Respondent apologised for not having obtained an HMO licence for the Property. That the historic failure to apply for an HMO licence was due to his lack of knowledge and change in family circumstances. He is, the Respondent says, a good landlord and has never previously received a complaint from any of his tenants let alone been subject to an intervention by the Council or been subject to

proceedings before a Court or Tribunal. There was, says the Respondent, no financial motivation or financial gain of any kind by reason of the fact that the Property was not subject to an HMO licence.

- 23 The Respondent says that he has in the past year incurred significant losses in relation to other properties that he owns through tenants defaulting in paying rent. He has lost in the region of £19,000. That the Respondent says has caused him to question whether moving forward, being a landlord of residential property is a sustainable business.
- 24 Included in the outgoings set out in the Respondent's Witness Statement, there is a figure of £10,011 which is described as costs incurred by the Respondent when he purchased the Property. The Tribunal asked the Respondent to explain why that should be considered an outgoing or running cost in relation to the Property which would affect the profit that he makes. The Respondent said that he had been advised by his Solicitor to include that figure in his Witness Statement because they were costs that he had incurred in the last 12 months.
- 25 Mr John Hughes explained to the Tribunal that the Property was a relatively new building. That it had a linked smoke detection system. It had fire doors. That smoke detectors had now been fitted where they were not previously to comply with HMO licence requirements. That they had been installed professionally. He described the Property as being in very good condition and said that there were no issues in relation to maintenance or health and safety.
- 26 The Respondent makes the point that Wiltshire Council did not deem it appropriate to prosecute him for a failure to have an HMO licence. That his only real fault has been ignorance of the law. He says that there has been no detriment to the Applicants as a consequence of his failure to obtain an HMO licence. That a RRO would not only act as a punishment as a consequence of no more than his ignorance, but would represent a windfall to the Applicants who had suffered no loss. The Respondent volunteers that the purpose of the legislation is to deter rogue landlords. To deter them from seeking to maximise financial gain at the expense of their tenants by providing sub-standard and unsafe accommodation. The Respondent does not consider himself to be a rogue landlord. That he is not the type of landlord which the legislation was seeking to address. The Respondent says that he has been a landlord for over 10 years. He asks the Tribunal not to make an Order that he be responsible for reimbursing the Applicants the application and hearing fees before the Tribunal on the basis that had they approached him prior to making an application, that he may have been able to reach a resolution with them and thus avoid these proceedings.

27 The Tribunal's Decision

- 28 The Tribunal is satisfied that properly the Property should have been subject to an HMO licence during the periods for which the Applicants seek RROs. The Respondent quite properly accepts that is the case. The Respondent a year after buying the Property has made an application for an HMO licence and the Tribunal accepts that he is doing all he reasonably can to comply with the requirements for a licence to be granted. In all the circumstances, the Tribunal is satisfied beyond reasonable doubt that the Respondent committed an offence pursuant to section 72(1) of the Housing Act 2004.
- 29 The parties agree that the rent which the Applicants say they paid in each case from the time that the Respondent purchased the Property until each of the respective Applicants vacated the Property, was paid in full. It is not disputed that this is in all the circumstances an appropriate case in which to make a RRO.
- 30 In determining the amount to be repaid, the Tribunal takes into account the conduct of the parties. There has been, in the view of the Tribunal, clearly a degree of falling out between the Applicants and the Respondent which may have led (in respect of Mr Lloyd in particular), to the Applicants leaving the Property. The Respondent appears to be an experienced landlord. Directly and indirectly, he owns a number of properties. He is in the view of the Tribunal a professional landlord. It is surprising in those circumstances that he says he was not aware having purchased the Property on 31 October 2018 of the need to obtain an HMO licence. The Respondent's application form for an HMO licence is dated 19 November 2019. It provides that the Property is occupied at that date by 6 residents. Two of those residents are stated to have commenced occupation only 2 days previously on 17 November 2019, that notwithstanding the fact that by that date, the Respondent was undoubtedly aware (or should have been not least by reason of the letter dated 19 September 2019 annexed to the Applicant's Reply addressed to him from Wiltshire Council) of the need for the Property to have an HMO licence. At the hearing the Respondent said that subsequently 2 lodgers had left the Property leaving just 4 and he was not seeking to re-let the vacant rooms until a licence had been granted.
- 31 There was no evidence put to the Tribunal by the Respondent as to his financial circumstances save for a loss of rental income in the last year of £19,000. The Respondent also told the Tribunal that he drove an Aston Martin motor car, albeit one that was 5 years old. There was no evidence put to the Tribunal that the making of a RRO would cause the Respondent significant financial hardship.

- 32 The outgoings which the Respondent has incurred in relation to the Property during a 12 month period he confirmed at the hearing could fairly be put at a figure of approximately £6,000. That is consistent with the documents produced by the Respondent. The Tribunal takes the view that those outgoings should be brought into account in determining the amount of the RRO to be made. That it would not be appropriate to impose upon the Respondent an RRO that exceeded his profit in the relevant period. The Tribunal does not think it appropriate to include a figure for the costs that the Respondent incurred in purchasing the Property. They are costs incurred solely in the purchase of the Property not an outgoing or as the Respondent put it a 'running cost' relevant to calculating the Respondent's profit element. They are a cost incurred to purchase an asset irrespective of whether or not following his purchase the Respondent decided to let out the Property.
- 33 The Tribunal has regard to the fact that the offence was committed by the Respondent from the time that he purchased the Property throughout the following 12 months (the maximum amount of time for which an RRO can be made). The fact that the Applicants during that period occupied the Property and had the benefit of it, is not a material consideration. Nor is the fact that an RRO may be seen as a form of windfall for the Applicants.
- 34 Set out below is a table which shows the relevant periods in the case of each Applicant for which an RRO is sought, the amount of rent paid by each of them during those periods and the total amount paid by each expressed as a percentage of the total rents paid over those periods.

Applicant	Period Start	Period End	Rent per month	Total rent paid during period	Percentage of total rent
Mr Thompson	12.03.2019	15.11.2019	£420	£3,360	17.69
Mr Lloyd	08.11.2019	29.11.2019	£500	£6,000	31.58
Mr Badham	08.11.2018	15.11.2019	£535	£5,885	30.99
Mr Parisi	01.11.2018	31.07.2019	£390/430	£3,750	19.74
Total				£18,995	

- 35 The best that the Tribunal can do in relation to outgoings/running costs is to apply the figure of £6,000 per annum as a reasonable sum as agreed by the Respondent at the hearing and to apply 4/6^{ths} of that, so that in effect each Applicant bears 1/6th of the outgoings on the basis that there are 6 rooms available to let at the Property. The Tribunal appreciates that during part of the period in question, not all of the rooms were let all of the time but there was insufficient evidence before the Tribunal for it to make a more exact

calculation. The figure therefore deducted for outgoings is £4,000 leaving a balance of £14,995.

- 36 In the view of the Tribunal, bearing in mind the Respondent is an experienced landlord of residential properties, it is reasonable that the amount that he should have to pay to the Applicants by way of an RRO is 60% of his net profit. 60% of £14,995 is £8,997 which apportioned between the Applicants in the percentages set out above is as follows:

Mr Thompson	£1,592
Mr Lloyd	£2,841
Mr Badham	£2,788
Mr Parisi	£1,776

- 37 Having regard to the submissions made to the Tribunal both in writing and orally at the hearing and taking all relevant matters into account, the Tribunal therefore determines that it would be appropriate to make a Rent Repayment Order in favour of each of the Applicants in the above sums. Payment to be made to each of the Applicants within 28 days of the receipt of this Decision.
- 38 The application made by the Applicants was properly and reasonably made. The Tribunal does not accept that the Respondent's contention that the application may not have been necessary had the Applicants spoken to him before making the application. The Tribunal therefore further orders the Respondent to reimburse the Tribunal application and hearing fees paid by the Applicants of £300, also within 28 days of the receipt of this Decision.

Dated this 30 day of January 2020

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.