



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

Case reference : **LON/00BC/HMG/2019/0019**

Property : **Flat 28, 2-20 Hainault Street, 4th
Floor, Spectrum Towers, Ilford, IG1
4GZ.**

Applicant : **Vijaya Kumara Thippayikoppa
Krishnappa**

Representative : **Justice for Tenants**

Respondent : **Srividhya Dilliraj and Dilliraj
Dasarathan**

Representative : **In person**

Type of application : **Application for a rent repayment order by
the tenant Sections 40, 41, 43, & 44 of the
Housing and Planning Act 2016**

Tribunal member(s) : **Mr. Mullin, Mr. Jarero**

**Date and venue of
hearing** : **12th December 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **14 February 2020**

DECISION

Decision of the Tribunal

The Tribunal makes a rent repayment order in favour of the Applicant in the sum of £660 and in addition orders that Respondents should reimburse the Applicant the application and hearing fees totalling £300.

The Application

1. By an application dated 3rd September 2019, the Applicant tenant applied for a rent repayment order against the Respondent landlords.
2. On 11th September 2019, the Tribunal issued Directions leading up to a final hearing which took place on 12th December 2019.
3. The Applicant did not attend the hearing in person but he was represented by Mr McClenahan of 'Justice for Tenants'.
4. The Respondents attended in person.
5. Both parties submitted bundles of documents for use at the hearing in line with the Tribunal's directions.

The Tribunal's determinations

6. Section 40 of the Housing and Planning Act 2016 ("the 2016 Act") provides that a rent repayment order is an order requiring the landlord under a tenancy of housing in England to repay an amount of rent which has been paid by a tenant.

7. Section 41 of the 2016 Act provides:
- (1) *A tenant ... 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.”*
8. Section 43 of the 2016 Act provides:
- 43 Making of rent repayment order*
- (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.*
9. The relevant offences are set out at section 40 of the 2016 Act. They include the offence under section 95(1) of the Housing Act 2004 (“the 2004 Act”) of the control or management of an unlicensed house. It is the Applicant’s case that the Respondents are his landlord; that they committed this offence from 21st January 2019 until 20th July 2019; that the Applicant was a tenant of the property for a period of 6 months during which the property required a licence but was unlicensed.
10. The Applicant seeks a rent repayment order (“RRO”) in respect of rent which he states that he paid to the Respondents from 21st January 2019, until 20th July 2019 in the total sum of £6,600.
11. In respect of an offence under section 95(1) of the 2004 Act, the amount of any RRO must relate to rent paid by the tenant in respect of a period, not exceeding of 12 months, during which the offence was being committed (see section 44(2) of the 2016 Act).

12. By section 44(3) of the 2016 Act, 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 to any person in respect of rent under the tenancy during that period.
13. Having heard oral evidence from the Respondents and having considered the Applicant's written evidence and the documentary evidence which is relied upon in support of his application, the Tribunal makes the determinations which are set out below.

Whether the Tribunal is satisfied beyond reasonable doubt that the Respondents have committed a relevant offence?

14. The Respondent accepted that the property was let out to the Applicant as alleged and that the property required a licence as alleged. Given this admission and the evidence put forward by the Applicant the Tribunal is satisfied beyond a reasonable doubt that the offence was committed as alleged and that it was a relevant offence for the purposes of s.41 of the Act.

Did the offence relate to housing that, at the time of the offence, was let to the tenant?

15. As set out above, it is not disputed by the Respondents that the property was let to the Applicant as alleged in the application.

Was an offence committed by the landlord in respect of the period of 12 months ending with the date the application was made? What is the applicable period?

16. The application was made in 3rd September 2019. Accordingly, the offence was committed by the Respondents within the period of 12 months ending with the date on which the application was made.
17. The applicable period in accordance with section 44(2) of 2016 Act is 21st January 2019 to 20th July 2019. The Tribunal accepts the undisputed evidence put forward by the Applicant that he paid rent to the Respondents in the total sum of £6,600 during this period.

The exercise of the Tribunal's discretion

18. Subsection 43(1) of the 2016 Act gives the Tribunal a discretion as to whether or not to make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed a relevant offence.
19. In the present case, given the circumstances of the offence and the need to encourage compliance with licensing regimes of the sort relevant to this case, the Tribunal finds it is appropriate for the Tribunal to exercise its discretion to make an RRO.

The maximum amount of the rent repayment order

20. The Tribunal's Directions require the parties to provide details of any universal credit/housing benefit paid to the Applicant. No party asserts that the Applicant was in receipt of universal credit/housing benefit during the applicable period. The Tribunal is therefore satisfied that the maximum amount of the RRO is £6,600

The amount of the RRO in the present case

21. The Tribunal notes that the conditions set out in section 46 of the 2016 Act (which provides that, in certain circumstances, the amount of a rent repayment order is to be the maximum that the Tribunal has power to make) are not met.
22. Accordingly, in determining the amount of the rent repayment order in the present case, the Tribunal has had regard to subsection 44(4) of the 2016 Act which provides:

(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.

23. The Tribunal has proceeded on the basis that (i) there is no presumption that there will be a 100% refund of payments made, (ii) the benefit obtained by the tenant in having had the accommodation is not a material consideration (iii) the Tribunal

has a general discretion which must be exercised judicially and (iv) the net benefit received by the landlord from the letting is a material consideration.

24. The Respondents have not sought to engage with these proceedings and have provided no evidence. Accordingly, there is no evidence before the Tribunal to the effect that the Respondents incurred expenses in connection with the letting of the property to the Applicant.

25. In determining the amount of the RRO in this case, the Tribunal has had regard to the oral and written evidence which it has received and to all the circumstances of the case. The Tribunal has, in particular, placed significant weight upon the following findings of fact:
 - (i) The length of time during which the offence was committed is relatively short, i.e. six months.
 - (ii) The 1st Respondent is in fulltime employment and earns around £50,000 per year. From this income he pays rent on the family home of £1375 per month. The Respondent are husband and wife and have two young children aged 12 and 8.
 - (iii) The Respondents are inexperienced first-time landlords who failed to licence the property because they did not know of the need to do so. Once they became aware of the need for a licence, they applied to the council for one promptly.
 - (iv) The Respondents only own this one property. Their own home is privately rented accommodation.
 - (v) The subject property was purchased with a view to it being the family home but that because this would have meant changing their children's schools, after purchasing the property the Respondents decided to remain where they are and rent it instead.
 - (vi) The rent charged by the Respondents was insufficient to pay the mortgage repayments and the service charges payable each month in respect of the flat (see page 7 of the

Respondents' statement). The Respondent also spent further sums in excess of £400 on property maintenance during this period. The Respondents were therefore operating at a net loss in respect of their rent of the property.

(vii) The cost of the rent was reimbursed to the Applicant by his employer as a benefit of his employment.

(viii) The Tenancy was otherwise uneventful. There were no complaints regarding the condition of the property or indeed the behaviour of the Applicant.

26. In all the circumstances, the Tribunal determines that it is appropriate to make an RRO in favour of the Applicant in the sum of £660, representing 10% of the maximum possible amount.
27. The Tribunal takes the view that this offence is at the lower end of the scale in terms of seriousness and that it was committed for a relatively short period. It is not a case of cynically avoiding the licensing regime with a view to profit, it was a case of inexperienced landlords letting the property in a rush and the Respondents applied for a license promptly once aware of the requirement to do so.
28. Despite this mitigation, licensing regimes should be complied with and it is incumbent on any landlord to check, prior to letting their property, that they are in compliance with the various regulatory regimes (including property licensing) that now apply to landlords. It is not unreasonable to expect even first-time landlords to properly check what is required of them. Licensing regimes exist for good reasons and are there to ensure a properly regulated rental market exists. Simple non-knowledge of the need for a licence is not a defence.

Name: Judge Mullin

Date: 14 February 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).