



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

Case Reference : **BIR/OOFK/HMK/2019/0055
BIR/OOFK/HMK/2019/0056**

Subject Property : **33 Beeston Road
Nottingham
NG7 2JS**

Applicants : **(1) Ms M A V Castillo
(2) Ms K Jesien**

Representative : **None**

Respondent : **Mr D Munir**

Representative : **None**

Type of Application : **Application under section 41(1) of the
Housing and Planning Act 2016 for
rent repayment orders**

Date of Hearing : **13th February 2020**

Tribunal Members : **Graham Freckelton FRICS (Chairman)
Robert Chumley-Roberts MCIEH, J.P**

Date of Decision : **18th February 2020**

DECISION

INTRODUCTION

1. This is a decision on an application for rent repayment orders under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. The Housing Act 2004 ('the 2004 Act') introduced licensing for houses in multiple occupation (HMOs). Originally, licensing was mandatory for all HMOs which have three or more storeys and are occupied by five or more persons forming two or more households. Since 1st October 2018 all HMOs which are occupied by five or more persons forming two or more households, are subject to mandatory licensing. Under additional licensing, a local housing authority can require licensing for other categories of HMO in its area which are not subject to mandatory licensing. The local housing authority can do this if it considers that a significant proportion of these HMOs are being managed sufficiently ineffectively so as to give rise to one or more particular problems, either for the occupants of the HMOs or for members of the public.
3. Under section 80 of the 2004 Act, Local Housing Authorities can, subject to Central Government approval, introduce a Selective Licensing Scheme covering some or all of its area, whereby any rented dwelling will need to be licenced. Nottingham City Council introduced such a scheme on 1st August 2018 in respect of the area in which 33 Beeston Rd, Nottingham NG7 2JS ('the subject property'), is located.
4. Under section 72 of the 2004 Act a person who controls or manages an HMO (or other property) that is required to be licensed (pursuant to mandatory, additional or selective licensing) but is not so licensed commits an offence and is liable on summary conviction to a fine.
5. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 73 of the 2004 Act, where a person who controls or manages an unlicensed HMO (or other property which should have been the subject of a Selective Licence) has been convicted, the (former) occupiers of the unlicensed HMO may apply to the First-tier Tribunal for rent repayment orders.
6. However, from 6th April 2017, subject to transitional provisions, the 2016 Act has amended the provisions relating to rent repayment orders in England. Under section 43 of the 2016 Act the First-tier Tribunal may make a rent repayment order in favour of the (former) occupiers if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 72 of the 2004 Act, *whether or not the landlord has been convicted*.

BACKGROUND

7. The Applicants are two former tenants of 33 Beeston Road, Nottingham, NG7 2JS ('the subject property'). The Respondent is the owner of the subject property.
8. By applications dated 19th September 2019 (Ms M A V Castillo) and 27th September 2019 (Ms K Jesien) and received by the Tribunal on 14th October 2019 the Applicants referred to above applied for rent repayment orders under section 41 of the 2016 Act. They alleged that the Respondent was controlling or managing the subject property which was required to be licensed under Selective Licensing and subsequently as a House in Multiple Occupation under Additional Licencing.

9. Directions were issued on 16th October 2019 following which submissions were made by the Applicants and copied to the Respondent.
10. The Respondent did not comply with the Directions in that he did not make any submissions. The Respondent was directed to make submissions by 29th November 2019 which was subsequently extended by a Procedural Judge to 6th December 2019.
11. As no submissions were received, on 10th December 2019 the Tribunal wrote to the Respondent on that date requesting a statement of case within 7 days. This was not received and therefore on 18th December 2019 the Tribunal wrote to the Respondent advising that if his statement of case was not received by 3rd January 2020, the Tribunal would bar him from taking any further part in the proceedings under Rule 9 (7)(a) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.
12. The Tribunal did not receive a statement of case from the Respondent and on 10th January issued a Decision to Bar the Respondent from taking any further part in these proceedings.
13. It is apparent from the documentation received from the Applicants that the property was occupied by them on Assured Shorthold Tenancies commencing 8th October 2018 and expiring on 16th August 2019 at a rent of £447.15 per month (Ms Jesien) and commencing 21st September 2018 and expiring on 16th August 2019 (Ms Castillo) at a rental of £470.00 per month. Both tenancy agreements specify that this rent includes a payment of £9.00 per week in respect of services.
14. The Applications both confirm that the Applicants are requesting rent repayments from the commencement of their tenancies until 9th May 2019 being the date the Respondent applied for an HMO Licence.

THE LAW

15. The relevant provisions of the 2016 Act, so far as relevant, are as follows –

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
5	Housing Act 2004	Section 72(1)	Control or management of unlicensed HMO

41 Application for rent repayment order

- (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.

...

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.
- (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);

...

44 Amount of order: tenants

- (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 an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)</i>	<i>the amount 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</i>
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- (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 PROPERTY INSPECTION

16. The Tribunal inspected the subject property as arranged on 13th February 2020 but although the Respondents' Agents had informed the Tribunal that they would be in attendance to facilitate access they did not attend. The Tribunal was therefore only able to carry out an external inspection. The Tribunal considers this to be disrespectful.
17. The property comprises of a three storey end terraced house of traditional brick construction surmounted by a pitched re-slatted roof. There was a single storey rear addition with a tiled roof.
18. The property is built up to the pavement and to the rear is a small yard and garden.
19. The Tribunal found the property to be double glazed and to be in fair condition externally although the chimney stacks were both noted to be in poor condition with the rear stack leaning considerably. The Tribunal considers this will probably require rebuilding.

THE APPLICANTS SUBMISSIONS

20. Both Applicants submitted that the Applications for Rent Repayments Orders against the Respondent had been made due to him running an unlicensed house in multiple occupation at the subject property.
21. The Applicants submit that in total £13,871.50 was paid by the various tenants living at the property including £4,700.00 by Ms Vega and £4,471.50 by Ms Jesien.
22. In addition, the applicants list a number of problems encountered during their occupation. Briefly these can be summarised as follows:
 - 1) On 26th October 2018 an email was sent regarding a missing lightbulb on the stairs as well as the issue of utility bills in spite of the tenancy agreement being inclusive of services.
 - 2) On 29th October 2018 an email was sent regarding disrepair at the property. The respondent's agents claimed to have spoken to the respondent earlier but he did not agree to the cost of repairs and insisted on employing a firm from London himself.
 - 3) On 31st December 2018 an email was sent reporting a problem with the washer/dryer and at the same time reminding the respondent that the bathroom was still in need of repair. The bathroom was subsequently repaired on 4th January 2019 but the landlord did not agree to replace or repair the washer/dryer. It was however replaced on 11th January 2019 with a second hand washing machine in a very dirty condition and without dryer.
 - 4) On 30th January 2019 the Applicants contacted the Student Union for advice and on 18th February 2019 an email was sent to the Respondent regarding repairs which were required and requesting clarification regarding the tenancy agreement and utility bills.
 - 5) On 28th of March 2019 Nottingham City Council confirmed that the house was unlicensed and that they needed to carry out an inspection. This inspection was carried out on 30th April and witness statements were given.

DETERMINATION OF THE TRIBUNAL

23. The Tribunal considered the application in four stages –

- (i) Whether the Tribunal was satisfied beyond reasonable doubt that the Respondent had committed an offence under section 72(1) of the 2004 Act in that at the relevant time he was a person who controlled or managed an HMO that was required to be licensed under Parts 2 and 3 of the 2004 Act but was not so licensed.
- (ii) Whether the Applicants were entitled to apply to the Tribunal for rent repayment orders.
- (iii) Whether the Tribunal should exercise its discretion to make rent repayment orders.
- (iv) Determination of the amounts of any orders.

Offence under section 72(1) of the 2004 Act

24. In accordance with sections 43(1) of the 2016 Act, the Tribunal was satisfied beyond reasonable doubt that the Respondent, as landlord of the subject property, had committed an offence listed in section 40 of the 2016 Act, namely an offence under section 72(1) of the 2004 Act.

Throughout the period from the commencement of the tenancies to 10th May 2019 the subject property was a house in multiple occupation subject initially to selective licencing and subsequently to additional licensing as an HMO.

- (i) The subject property was not licensed.
- (ii) The Respondent was the person having control and/or managing the subject property.

Entitlement of the Applicants to apply for rent repayment orders

25. The Tribunal determined that the Applicants were entitled to apply for rent repayment orders pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence throughout the period when the subject property was let to the Applicants; and the offence was committed in the period of 12 months ending with the day on which the application was made to the Tribunal (14th October 2019).

Discretion to make rent repayment orders

26. The Tribunal was satisfied that there was no ground on which it could be argued that it was not appropriate to make rent repayment orders in the circumstances of the present case.

Amounts of Rent Repayment Orders

27. In accordance with section 44 of the 2016 Act, first, the amount of an order must relate to rent paid in a period, not exceeding 12 months during which the landlord was committing an offence under section 72(1) of the 2004 Act. The Applicants' claims satisfy that condition.

Second, the amount that the landlord is required to pay in respect of a period must not exceed the rent paid in respect of that period. Both Applicants claim for the period from the commencement of their tenancies

until 9th May 2019. However, the submissions include a letter from Nottingham City Council confirming that the licence application was actually made on 10th May 2019. The Tribunal therefore substitutes this date for the date on the Application.

Third, in determining the amount of any rent repayment order, the Tribunal must, in particular, take into account the conduct of the parties, the financial circumstances of the landlord and (not applicable in the present case) whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

28. The discretion afforded to the Tribunal at the final stage of the determination of the amount of any rent repayment order was considered by the Upper Tribunal (Lands Chamber) in *Parker v Waller* [2012] UKUT 301 (LC); and the observations of the President in that case have received express approval in subsequent decisions of the Upper Tribunal. Although those observations were made in the context of the rent repayment order regime contained in the 2004 Act, in the view of the Tribunal many of them remain relevant in the context of the 2016 Act regime.

29. The following observations, contained in paragraph 26 of the decision in *Parker v Waller*, would appear to be relevant in the present case –

(iii) There is no presumption that the Rent Repayment Order (RRO) should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be. The Residential Property Tribunal (RPT) [now the First-tier Tribunal (Property Chamber)] must take an overall view of the circumstances in determining what amount would be reasonable.

(iv) [The 2004 Act] requires the RPT to take into account the total amount of rent received during any period during which it appears to it that the offence was being committed. It needs to do that because the RRO can only be made in respect of rent received during that period. It is limited to the period of 12 months ending with the date of the occupier's application. But the RPT ought also to have regard to the total length of time during which the offence was being committed, because this bears upon the seriousness of the offence.

(v) The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not, in my judgment a material consideration or, if it is material, one to which any significant weight should be attached. This is because it is of the essence of an occupier's RRO that the rent should be repaid in respect of a period of his occupation. While the tenant might be viewed as the fortunate beneficiary of the sanction that is imposed on the landlord, it is only misconduct on his part that would in my view justify the reduction of a repayment amount that was otherwise reasonable.

(vi) Payments made as part of the rent for utility services count as part of the periodical payments in respect of which an RRO may be made. But since the landlord will not himself have benefited from these, it would only be in the most serious case that they should be included in the RRO.

(vii) [The Act] requires the RPT to take account of the conduct and financial circumstances of the landlord. The circumstances in which the

offence was committed are always likely to be material. A deliberate flouting of the requirement to register will obviously merit a larger RRO than instances of inadvertence – although all HMO landlords ought to know the law. A landlord who is engaged professionally in letting is likely to be more harshly dealt with than the non-professional.

30. Distilling the substance of those observations and applying them to the facts of the present case, the Tribunal determines that various deductions should be made from the maximum amounts as set out in paragraph 37.
31. The rent paid by the Applicants included gas and electricity charges, water and sewerage charges, internet and television licence. The cost of these items is noted at £9.00 per week and is included in the rent. The Tribunal finds that the benefit of those items accrued to the tenants (and not to the Respondent) and that the costs should not be included in the rent repayment orders. However, as the Respondent has not taken any part in these proceedings the Tribunal cannot ascertain any additional expenses that might have been incurred so has no alternative but to disregard them.
32. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of the landlord and tenant. The Tribunal finds that there is evidence of conduct on the part of the Respondent landlord which would affect its decision. In particular the Respondent has not, despite being given every opportunity to do so taken any part in these proceedings and as previously noted did not arrange for the Tribunal to inspect the property which the Tribunal finds disrespectful.
33. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal could have considered the financial circumstances of the landlord. Unfortunately, as previously noted the Respondent has taken no part in these proceedings and the Tribunal is therefore unable to consider this matter any further.
34. With regard to the length of time the Tribunal can consider making the Rent Repayment Order this commences on the dates the tenancies commenced and expires on 10th May 2019 (being the date the application for a licence was made to the local authority (S41(2)(b) of the Act)).
35. For Ms Castillo this amounts to 231 days and for Ms Jesien 214 days.
36. The daily rate in respect of the rent is calculated as follows:
Ms Castillo - £470.00 x 12 = £5640.00 per annum ÷ 365 = £15.45 per day.
Ms Jesien - £447.15 x 12 = £5365.80 per annum ÷ 365 = £14.70 per day.
37. With regard to the amount of services included in the rent the Tribunal calculates these as follows:
Ms Castillo – 231 days ÷ 7 = 33 weeks x £9.00 per week = £297.00.
Ms Jesien – 214 days ÷ 7 = 30.57 weeks x £9.00 per week = £275.13.

38. The Tribunal therefore confirms the total amount of the Rent Repayment Orders as follows:

Ms Castillo

Allowable rent: 231 days x £15.45	3568.95
Less: Amount attributable to services:	<u>297.00</u>
Total Rent Repayment Order	<u>£3,271.95</u>

Ms Jesien

Allowable rent: 214 days x ££14.70	3145.80
Less: Amount attributable to services	<u>275.13</u>
Total Rent Repayment Order	<u>£2,870.67</u>

39. The Tribunal therefore confirms the total amount of both the Rent Repayment Orders of £6,142.62.

40. The Tribunal therefore determines that the Rent Repayment due to each of the Applicants is as follows:

Ms Castillo - £3,271.95
Ms Jesien - £2,870.67

Payment should be made in full within 28 days of the date of this decision.

APPLICATION UNDER RULE 13(2)

41. In their written submissions the Applicants submitted to the Tribunal an Application under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requesting reimbursement of £100.00 each, being the Application Fee paid.

42. After careful consideration the Tribunal determined that it would be just and equitable that the Application Fee of £100.00 should be reimbursed to each of the Applicants in this case.

Payment should be made in full within 14 days of the date of this decision.

APPEAL

43. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal an aggrieved party must apply in writing to the First-tier Tribunal for permission to appeal within 28 days of the date specified below stating the grounds on which that party intends to rely in the appeal.

Date: 18th February 2020

Graham Freckelton FRICS
Chairman
First-tier Tribunal (Property Chamber)