



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

Case Reference : **MAN/00CJ/HMF/2019/0063 – 68**

Property : **29 Myrtle Grove, Newcastle upon Tyne, NE2 3HT**

Applicants : **(1) Mr James Watson
(2) Ms Megan Carr
(3) Mr Ryan Amos
(4) Mr Nathan Trott
(5) Mr Michael Tobbell
(6) Mr Ross Parkinson**

Representative : **Mrs Deborah Trott**

Respondent : **Mr Marcus Turner**

Representative : **Walter Robinson Limited**

Type of Application : **Housing and Planning Act 2016 –
Section 41(1)**

Tribunal Members : **Tribunal Judge C Wood
Ms S Latham**

Date of Decision : **6 February 2020**

DECISION

Decision

1. The Tribunal orders as follows:
 - 1.1 that, pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, (“the Rules”), Walter Robinson Limited is substituted as the Respondent, and Mr Marcus Turner is removed as a party to the proceedings.
 - 1.2 In accordance with sections 43 and 44 of the Housing and Planning Act 2016, (the 2016 Act”), the Tribunal makes a rent repayment order pursuant to which the Respondent is ordered to pay to each of the Applicants the sum of £1494.64.

Background

- 2.1 By applications of various dates in August and September 2019, (“the Applications”), each of the Applicants applied to the Tribunal for a rent repayment order pursuant to section 41 of the Act.
- 2.2 The directions dated 11 October 2019, (“the Directions”), stated that the Tribunal considered it appropriate for there to be a paper determination of the Applications in the absence of any request to the contrary from any of the parties. No such request was received.
- 2.3 The written submissions from the Applicants comprised the application, a copy of the tenancy agreement and evidence of payment of rent during the relevant period.
- 2.4 The Respondent’s submissions comprised a summary of events together with statements from Marcus Turner, Company Secretary of Damark Investment Limited, (“Damark”) and of Amy Gibson, General Manager of Walter Robinson Estate and Letting Agents, (“WR”), a copy of the Letting and Management Agreement dated 14 August 2005 and made between WR and Damark, (“the Management Agreement”), and copies of HMO licences granted in respect of the Property, including the licence dated 8 January 2019.

The Law

- 3.1 The relevant provisions of the 2016 Act, so far as relevant, are as follows –
 - 3.1.1 Section 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

3.1.2 Section 41 provides –

(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. ...

3.1.3 Section 43 provides -

(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); ...

3.1.4 Section 44 provides-

(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.

If the order is made on the ground that the landlord has committed	the amount must relate to rent paid by the tenant in respect of
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(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 Evidence

- 4.1 The Applications were of substantially identical content and each referenced the failure of the Respondent to obtain an HMO licence for the Property for the period 3 September 2018 – 8 February 2019, as advised to them by Mr T McFall of Newcastle City Council.
- 4.2 In response:
 - 4.2.1 in his statement, Mr Turner stated that the management of the Property had been delegated to WR under the terms of the Management Agreement since August 2005, and that he had been notified by WR that the failure to renew the HMO licence was the result of clerical error;
 - 4.2.2 in her statement, Ms Gibson confirms that WR had previously obtained HMO licences for the Property and that the failure to do so in September 2018 was the result of administrative error. Further, that on becoming aware of the error as a result of notification from the local authority, immediate action was taken to apply for a licence which was granted on 8 January 2019;
 - 4.2.3 both Mr Turner and Ms Gibson referred to their previously unblemished records as owners and managers of rented properties.

Tribunal's Determinations

5. The Tribunal noted that the licences dated 7 August 2008 and dated 25 February 2018 (which expired on 3 September 2018) in respect of the Property had been issued in WR's name. Further, having regard to the terms of the Management Agreement, it was satisfied that WR was properly to be considered as the person having control and/or management of the Property. It was therefore satisfied that the correct respondent to the Applications was WR, not Mr Turner or Damark), and that it was appropriate to exercise its power under Rule 10 of the Rules to substitute WR as the Respondent, in place of Mr Turner, and to remove Mr Turner as a party to these proceedings.
6. The Tribunal noted the following statements in the Respondent's Summary:
 - 6.1 that the Property was unlicensed contrary to s72(1) of the Housing Act 2004, (paragraph 3);
 - 6.2 that the unlicensed period is from 4 September 2018 – 8 January 2019, (paragraph 7);
 - 6.3 that the Property was unlicensed for a period of 125 days between 4 September 2018 – 7 January 2019, (paragraph 8);
 - 6.4 that the rent paid, expressed as a daily rate, is £13.2857 per day;
 - 6.5 that the maximum amount that can be awarded under s44(3) of the 2016 Act to each Applicant is £1660.71;
 - 6.6 the statements made regarding the culpability of Mr Turner, (paragraph 12), the probity of both Damark and Mr Turner, (paragraph

- 14), and of WR's past conduct and their conduct on becoming aware of the failure to renew the licence for the Property, (paragraphs 15(2),(3),(4));
- 6.7 that "[T]he Applicants, all students, were on holiday for much of the relevant period".
7. Having regard to the evidence, including the Respondent's admission that the Property was an unlicensed HMO, the Tribunal was satisfied, beyond reasonable doubt, that the Respondent had committed an offence under s72(1) of the 2004 Act.
8. The Tribunal determined that the period during which the Property was unlicensed was from 4 September 2018 – 7 January 2019, a period of 125 days. It agreed with the Respondent's calculation of the rent expressed as a daily rate and that the maximum amount payable by way of a rent repayment order under s44 of the 2016 Act is £1160.71.
9. In considering the factors which it must take into account under s44(4) of the 2016 Act, the Tribunal accepted that the cause of the Property being unlicensed was clerical error, and further noted the quick response by the Respondent to obtain a licence on becoming aware of the error. The Tribunal also noted that the Respondent was a professional managing agent.
10. There was no relevant evidence presented to the Tribunal regarding the conduct of the Applicants as tenants which the Tribunal was required to take into account. In particular, it disregarded the Respondent's claim in paragraph 15(5) of the Respondent's Summary.
11. Having regard to the evidence, the Tribunal determined that it should take account under s44(4) that the Respondent had previously ensured that the Property was licensed as required and that the failure to renew the licence in September 2018 was the result of an administrative error. It appears to the Tribunal that to fail to recognise this would be to run the risk of deterring responsible landlords/managing agents by treating them in the same way as the irresponsible. Nonetheless, the Respondent is a professional managing agent and must be held to a higher standard than an individual. On balance, the Tribunal therefore determined that the maximum amount payable by way of a rent repayment order in respect of each of the Applicants should be reduced by 10%. The amount payable to each Applicant is therefore £1494.64.

Tribunal Judge C Wood

6 February 2020