



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

Case Reference : **LON/00BG/HMF/2019/0098**

Property : **13 Vawdrey Close, London E1 4UA**

Applicant : **Georgina Eve Griffin**

Respondent : **Room Conexion Ltd**

Type of Application : **Rent Repayment Order**

Tribunal : **Judge Nicol
Mr I Holdsworth FRICS**

Date and Venue of Hearing : **19th March 2020;
10 Alfred Place, London WC1E 7LR**

Date of Decision : **20th March 2020**

DECISION

The Respondent shall pay to the Applicant:

- 1) **A Rent Repayment Order in the amount of £7,925; and**
- 2) **Costs of £3,699.**

The relevant legislative provisions are set out in an Appendix to this decision.

Reasons

1. The Respondent let out rooms at the subject property, a terraced house with 6 bedrooms, a small living room, a kitchen, one bathroom and a separate WC. The Applicant was a tenant of one of the rooms from 1st December 2018 until her premature departure in mid-October 2019, although her tenancy and rent payments went to 31st October 2019.

During her time there, all rooms were occupied by tenants, although there was a fairly frequent turnover.

2. Like many tenants, the Applicant did not question what she had, not least because the property was conveniently located for her work. The tenants worked around the severe lack of bathroom facilities by using their gym memberships. The Respondent was slow to respond to complaints, if they responded at all. For example, the tenants gave up complaining about mould in a corner of the bathroom and just put up with it.
3. Eventually, the Applicant's mother, a landlord herself, intervened and identified the Respondent's failings, which is partly why the Applicant left. The Respondent never protected the Applicant's deposit and default judgment was obtained on 22nd January 2020 for the sum of £4,377, made up of two penalty sums and the return of the deposit, plus costs. The Respondent has since satisfied this judgment.
4. On 29th November 2019, the Applicant applied to the Tribunal for a Rent Repayment Order. Apart from one email dated 16th March 2020 from a woman called Sonia, the same person the Applicant dealt with during the tenancy, the Respondent has taken no part in these proceedings, including at the hearing on 19th March 2020 – the Applicant attended with counsel, Mr Sinclair. Both the Tribunal and the Applicant's solicitors have written to the Respondent on a number of occasions during the proceedings.
5. It would be obvious to anyone working in the rental market that the subject property was a house in multiple occupation which needed to be licensed. According to its Spanish-language website and Facebook page, the Respondent purports to be a professional letting agent and so would have no excuse. The Applicant contacted the local authority, the London Borough of Tower Hamlets, both when her tenancy ended and in January – the authority confirmed on both occasions that no HMO licence application had been made for the subject property.
6. The Tribunal is satisfied beyond a reasonable doubt that the Respondent committed the offence under section 72(1) of the Housing Act 2004 of having control of or managing an HMO which was required to be licensed but was not so licensed and that the commission of the offence continued throughout the 11 months that the Applicant had a tenancy at the subject property.
7. The Applicant paid £7,925 in rent to the Respondent, as evidenced by the tenancy agreement and her bank statements. The Respondent clearly has a cavalier and reckless attitude both to its responsibilities as a property manager and to the legal process, amply demonstrated by its complete failure to carry out its basic management responsibilities of protecting the deposit and responding to complaints or to participate in these proceedings.

8. The Tribunal is satisfied that it is appropriate to make a Rent Repayment Order for the full amount in the circumstances. The Tribunal considered whether any deductions should be made but the Respondent provided no evidence of the costs of the utilities or Council Tax included within the rent. The Respondent appears to have paid promptly the aforementioned judgment sum for the deposit penalty and so there is no reason to think their financial circumstances mitigate against a sum of any particular amount. They are not subject to any other proceedings in relation to the offence under section 72(1) so this is the only penalty they will pay in relation to it.
9. The Applicant also sought her costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 state:
 - (1)The Tribunal may make an order in respect of costs only—
 - (a) ...
 - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
 - (iii)a residential property case; ...
10. The Upper Tribunal considered rule 13(1)(b) in *Willow Court Management Co (1985) Ltd v Alexander* [2016] UKUT 0290 (LC). They quoted with approval the following definition from *Ridehalgh v Horsefield* [1994] Ch 205 given by Sir Thomas Bingham MR at 232E-G:

"Unreasonable" ... means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner's judgment, but it is not unreasonable.
11. The Upper Tribunal in *Willow Court* went on to say:

24.... An assessment of whether behaviour is unreasonable requires a value judgment on which views might differ but the standard of behaviour expected of parties in tribunal proceedings ought not to be set at an unrealistic level. We see no reason to depart from the guidance given in *Ridehalgh* at 232E, despite the slightly different context. "Unreasonable" conduct includes conduct which is vexatious, and designed to harass the other side rather than advance the resolution of the case. It is not enough that the conduct leads in the event to an unsuccessful outcome. The test may be expressed in different ways. Would a reasonable person in the position of the party have conducted themselves in the manner complained of? Or

Sir Thomas Bingham’s “acid test”: is there a reasonable explanation for the conduct complained of?

26. We ... consider that tribunals ought not to be over-zealous in detecting unreasonable conduct after the event and should not lose sight of their own powers and responsibilities in the preparatory stages of proceedings. As the three appeals illustrate, these cases are often fraught and emotional; typically those who find themselves before the FTT are inexperienced in formal dispute resolution; professional assistance is often available only at disproportionate expense. ...

12. There is no reasonable explanation or, indeed, any explanation at all for the Respondent’s aforementioned failures. It is difficult to see their lack of effort as anything other than vexatious. The Tribunal has no hesitation in concluding that the Respondent has acted unreasonably within the meaning of rule 13 and that it is appropriate to make an order for costs.
13. The Applicant’s solicitors provided a schedule of costs which they had also sent to the Respondent in advance of the hearing. The total sum was £3,699, inclusive of Tribunal fees, counsel’s attendance fee and VAT. The Tribunal is satisfied that this sum is modest and proportionate to the claim so that the entire sum should be allowed.

Name: NK Nicol

Date: 20th March 2020

Appendix of relevant legislation

Housing Act 2004

Section 72 Offences in relation to licensing of HMOs

- (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.
- (2) A person commits an offence if—
 - (a) he is a person having control of or managing an HMO which is licensed under this Part,
 - (b) he knowingly permits another person to occupy the house, and
 - (c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.
- (3) A person commits an offence if—
 - (a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and
 - (b) he fails to comply with any condition of the licence.
- (4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—
 - (a) a notification had been duly given in respect of the house under section 62(1), or
 - (b) an application for a licence had been duly made in respect of the house under section 63,and that notification or application was still effective (see subsection (8)).
- (5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—
 - (a) for having control of or managing the house in the circumstances mentioned in subsection (1), or
 - (b) for permitting the person to occupy the house, or
 - (c) for failing to comply with the condition,as the case may be.
- (6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine.
- (7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).
- (7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.
- (8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

- (a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or
 - (b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.
- (9) The conditions are–
- (a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of the appropriate tribunal) has not expired, or
 - (b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.
- (10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).

Housing and Planning Act 2016

Chapter 4 RENT REPAYMENT ORDERS

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
 - (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 Criminal Law Act 1977 | section 6(1) | violence for securing entry |
| 2 Protection from Eviction Act 1977 | section 1(2), (3) or (3A) | eviction or harassment of occupiers |
| 3 Housing Act 2004 | section 30(1) | failure to comply with improvement notice |
| 4 | section 32(1) | failure to comply with prohibition order etc |
| 5 | section 72(1) | control or management of unlicensed HMO |
| 6 | section 95(1) | control or management of unlicensed house |

- (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).

Section 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.
- (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.

Section 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);
 - (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).

Section 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.

| | |
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| <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> |
|--|---|

| | |
|--|---|
| an offence mentioned in row 1 or 2 of the table in section 40(3) | the period of 12 months ending with the date of the offence |
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| 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.