FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MC/HMG/2019/0005**
Property	**:**	**72 Eastern Avenue, Reading, Berks RG1 5SF**
Applicants	**:**	**1. Samuel Hillman-Hill 2. James Miles 3. Tom Hennessy 4. Gurveer Chager 5. Arman Azaden**
Representative	**:**	**Miles & Co Charterered Surveyors**
Respondent	**:**	**Mr B Gill**
Representative	**:**	**Johnsons Solicitors**
Type of application	**:**	**Application for a Rent Repayment Order – section 40 of the Housing and Planning Act 2016**
Tribunal member(s)	**:**	**Judge Ruth Wayte**
Date of hearing	**:**	**23 March 2020 (by telephone)**
Date of decision	**:**	**27 March 2020**

DECISION

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1. **The tribunal makes a rent repayment order of £4,346.82 against the respondent, to be paid to Mr Miles within 28 days.**
2. **The tribunal also orders the respondent to pay £300 in respect of the application and hearing fees.**

The application

1. The applicants seek a rent repayment order (RRO) under section 40 of the Housing and Planning Act 2016 ("the 2016 Act"). The applicants relied on the respondent having committed an offence under section 72 (1) of the Housing Act 2004, namely being the landlord of a house in multiple occupation (HMO) without the necessary licence.

2. The applicants were all students. They were represented throughout and at the hearing by Mr Timothy Miles of Miles & Co. The respondent was represented by Mr Clift of Johnsons Solicitors. Those instructions appeared to be very much at the last minute. The application gave the respondent's address for service as Adam Estates Limited, who let the property to the applicants on behalf of the respondent. They notified the tribunal on 16 January 2020 that they had no authority to act on the landlord's behalf in respect of this application and provided a private address for Mr Gill. The tribunal heard nothing from Mr Gill until an email was sent the morning of the hearing by Johnsons Solicitors. Neither Mr Gill nor any of the applicants took part in the telephone hearing.

The law

3. Sections 40-41 and 43-44 of the 2016 Act contain the provisions in respect of RROs. In summary, section 40 provides that the tribunal may make an RRO in favour of a tenant where a landlord has committed a relevant offence – in this instance the offence set out in section 72(1) of the Housing Act 2004, the control or management of an unlicensed HMO. Section 41 stipulates that an application by a tenant is limited to circumstances where the offence relates to housing that, at the time of the offence, was let to the tenant and was committed in the period of 12 months ending with the day on which the application was made. At the start of the hearing it was accepted by Mr Clift that an offence had been committed until his client applied for a licence on 24 April 2019. There was a dispute as to from which date a licence was required, as set out below. The application for an RRO was received by the tribunal on 14 November 2019.

4. Section 43 states that the tribunal may make an RRO if satisfied, beyond reasonable doubt, that a landlord has committed the offence. Section 44 states that any RRO 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. Any RRO must not exceed the rent paid in that period and in determining the amount the tribunal must, in particular, take into account:

    - the conduct of the landlord and the tenant;

- the financial circumstances of the landlord and

- whether the landlord has at any time been convicted of an offence to which that part of the 2016 Act applies.

Background

5. The property was described in the application as a converted, semi-detached house with 5 bedrooms. On 11 November 2017 Adams Estates had let the property to the 5 applicants on an assured shorthold tenancy from 1 July 2018 to 30 June 2019. As stated above, there was no dispute that it was therefore being used as an HMO during that period or that a licence was required following the changes to the definition of those HMOs requiring a licence under the Housing Act 2004 (when the definition of an HMO was changed to include single and double storey properties). There was also no dispute that the respondent had applied for a licence on 24 April 2019, which would bring his period of offending to an end on that date.

6. Directions were given on 16 December 2019, requiring each party to provide a bundle of documents for the hearing. The applicants' bundle was received by the tribunal on 20 January 2020 in accordance with the directions but nothing was heard from the respondent and no bundle was received by the due date of 10 February 2020 or at all.

7. Following a request for "summary judgment" by the applicants dated 11 March 2020, the tribunal wrote to Mr Gill on 12 March 2020 confirming that it was too late for him to provide written evidence, subject to any application he may wish to make before or at the hearing but the hearing listed for 23 March 2020 would proceed.

8. In the light of urgent guidance received in respect of the current pandemic and on the request of Mr Miles to avoid the need for travel to the hearing, it was converted into a telephone hearing on 18 March 2020. A letter to both parties confirmed that the respondent may listen to the proceedings, subject to any application he wished to make to play a more active part.

9. As outlined above, on the morning of the hearing an email was sent by Johnsons Solicitors to the tribunal and Mr Miles confirming their recent instruction and attaching a document said to be a copy of an email from Reading Borough Council which appeared to confirm that the respondent had been given an extension to 31 January 2019 to apply for an HMO licence. Mr Miles was given 7 days to make representations on this letter and, in particular, the question as to the operative period of the offence and/or RRO: from 1 October 2018 or 1 February 2019.

10. On 26 March 2020 Mr Miles confirmed that Reading had indeed extended the deadline for Mr Gill and he therefore reduced the applicants' claim to 82 days at £70.68 a day, running from 1 February 2019 to 23 April 2019, making a total of £5,795.76.

The issues

11. In the application, Mr Miles had referred to the landlord having gained "violent entry" of the property on at least 6 occasions but he confirmed that he did not pursue that as an additional offence and in any event there was no evidence to support it. He first became involved following the retention of monies from the applicants' deposit by Adam Estates but after his "letter before claim" dated 22 October 2019 the monies were repaid. No other "aggravating factors" were raised by him in terms of conduct.

12. There was no dispute that the rent of £2,150 had been paid throughout the tenancy. The issue was whether the offence was committed from 1 October 2018 or the later date of 1 February 2019 as stated in the email produced by Mr Clift on the morning of the hearing, which has now also been resolved.

13. If the tribunal is satisfied beyond reasonable doubt that the respondents have committed the offence, it also needs to decide whether to make an RRO and in determining the amount, to take into account the factors spelt out in paragraph 4 above. Finally, the applicants had requested that the tribunal order the respondent to repay the application and hearing fees of £300.

The amount of any RRO

14. The tribunal considers that this is an appropriate case for an RRO. No explanation was provided for the delay by the respondent over and above the concession provided by Reading Borough Council. In their application, the applicants state that there were fire safety issues and a lack of a GasSafe certificate, raising concerns as to their safety during the period of their occupation. Again, this was not challenged by the respondent.

15. The maximum amount of the RRO is £5,795.76. However, when considering the amount of the RRO the tribunal must take into account in particular the issues set out in paragraph 4 above, namely the conduct of the landlord and tenant and the financial circumstances of the landlord. There is no conviction to take into account in this case.

16. In terms of the landlords' conduct, there was no evidence to support the claim of poor behaviour in terms of gaining entry to the property. The issue with the deposit appears to have been raised with and settled by Adam Estates. In the circumstances, the tribunal considers that there are no aggravating factors on the part of the landlord in addition to the

failure to obtain a licence within the extended period provided by the council. There is also nothing to take into account in respect of the tenants' conduct. No evidence was provided of the Respondents' financial circumstances, although the office copy entries for the property in the bundle indicate that there is a charge on the property in favour of Topaz Finance Limited but with no detail as to the amount outstanding.

17. Taking all the circumstances into account, the tribunal considers that an appropriate amount for the RRO in this case is 75% of the rent paid by the applicants during the period of the offence, or £4,346.82. This is to be paid to Mr Miles within 28 days.

18. Finally, the tribunal also orders the respondent to pay Mr Miles the application and hearing fees of £300 under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. This is in accordance with a general discretion which is usually given in favour of the successful party in tribunal proceedings. Mr Miles' email to the tribunal dated 26 March 2020 also requested his own costs of £1,296, presumably pursuant to Rule 13(1)(b) – unreasonable conduct in defending proceedings. This is a high bar and the tribunal is not clear that there is any unreasonable conduct by Mr Gill, he took no part in the proceedings and the late instruction of solicitors possibly assisted in a determination of the matter, in particular their admission of the offence. If the applicants wish to pursue this application they will need to write to the tribunal within 28 days after the date on which this decision is sent out. The tribunal will then give directions providing an opportunity for Mr Gill to respond to the application and a determination on the papers.

Name: Judge Ruth Wayte **Date:** 27 March 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).