



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

**Case Reference** : **BIR/37UE/HMK/2019/0085**

**Subject Property** : **8 Shepherd House  
Arnold Road  
Nottingham  
NG5 5XA**

**Applicants** : **Ms C B A Zamora**

**Representative** : **Mr J McGregor (Interpreter)**

**Respondent** : **Mr A Gandhi**

**Representative** : **None**

**Type of Application** : **Application under sections 40, 41, 43 and  
44 of the Housing and Planning Act 2016  
for a rent repayment order**

**Date of Hearing** : **19<sup>th</sup> March 2020 at The Justice Centre,  
Carrington Street, Nottingham, NG2 1EE**

**Tribunal Members** : **Mr G S Freckelton FRICS (Chairman)  
Mr P Wilson BSC (Hons) LLB MRICS MCEIH  
CEnvH**

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**DECISION**

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## **INTRODUCTION**

1. This is a decision on an application for a rent repayment order under section 41 of the Housing and Planning Act 2016 ('the 2016 Act').
2. Under section 80 of the Housing Act 2004 ('the 2004 Act'), Local Housing Authorities can introduce a Selective Licensing Scheme covering some or all of its area, whereby any rented dwelling will need to be licenced. Originally local housing authorities were permitted to designate areas within their district as subject to selective licensing for up to 5 years where the area suffered with problems of low demand or high levels of antisocial behaviour. In 2015, the conditions which could permit designation if the local authority considered they existed was extended to include poor property conditions, high levels of inward migration, high levels of deprivation and high levels of crime. Nottingham City Council introduced such a scheme on 1<sup>st</sup> August 2018 in respect of the area in which 8 Shepherd House, Arnold Road, Nottingham NG5 5XA ('the subject property'), is located.
3. Section 95(1) of the Act provides that a person having control of or managing a house which is required to be licensed under this part (see Section 85(1) but is not so licensed.
4. The criminal sanction for failing to obtain a licence is supplemented by the scheme of civil penalties known as rent repayment orders. Under section 96 of the 2004 Act, where a person who controls or manages an unlicensed property in an area designated for selective licensing has been convicted, the occupiers (or former occupiers) of the unlicensed property may apply to the First-tier Tribunal for rent repayment orders.
5. However, from 6<sup>th</sup> 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 occupiers (or former occupiers) if it is satisfied beyond reasonable doubt that the landlord has committed an offence under section 95(1) of the 2004 Act, *whether or not the landlord has been convicted*.

## **BACKGROUND**

6. The Applicant, Ms C B A Zamora, is the tenant of 8 Shepherd House, Arnold Road, Nottingham, NG5 5XA. The Respondent is the owner of the subject property.
7. By Application dated 16<sup>th</sup> November 2019 and received by the Tribunal on 25<sup>th</sup> November 2019 the Applicant referred to above applied for a rent repayment order under section 41 of the 2016 Act. The Applicant alleged that the Respondent was controlling or managing the subject property which was required to be licensed under Selective Licensing.
8. It is apparent from the documentation received from the Applicant that the property is occupied by her on an Assured Shorthold Tenancy dated 15<sup>th</sup> April 2019 for a period of 6 months commencing on 1st May 2019 and expiring on 31<sup>st</sup> October 2019 at a rental of £550.00 per calendar Month. The Tribunal understands that the Applicant is still occupying the property.

This followed an earlier tenancy commencing 1<sup>st</sup> October 2016 and expiring on 1<sup>st</sup> November 2017 at a rental of £495.00 per calendar month.

9. The Applicant confirms that she is requesting a rent repayment for the period 1<sup>st</sup> November 2018 until 31<sup>st</sup> October 2019 being a period of 12 months. The Applicant requests a rent repayment order in the sum of £6,317.00. The Applicant confirms that in February 2019 a reduced rent in the sum of £487.00 was paid as the cost of a key cut at the request of the Respondent was deducted from the full rent.
10. Notwithstanding the submission of the Applicant the Tribunal does not accept that a reduced rental paid by the Applicant in lieu of an expense incurred on behalf of the Respondent should be taken into account in assessing the maximum amount of any repayment order.
11. Based on the documentation provided to the Tribunal and confirmed at the Hearing, the Tribunal understands that the rent for the period 1<sup>st</sup> November 2018 until 30<sup>th</sup> April 2019 (six months) was paid at the rate of £495.00 per calendar month and for the period 1<sup>st</sup> May 2019 until 31<sup>st</sup> October 2019 (six months) was paid at the rate of £550.00 per calendar month.
12. The Tribunal therefore calculates the maximum amount of any repayment order as follows:

6 months @ £495.00 =	2,970.00
<u>6 months @ £550.00 =</u>	<u>3,300.00</u>
Total	£6,270.00

## **THE LAW**

13. 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**

14. Due to the Coronavirus Pandemic the Tribunal was unable to carry out an internal inspection but did carry out an external inspection of the property on 19<sup>th</sup> March 2020 prior to the Hearing and found it to be a flat in a modern block of six similar flats built around 2004 over three floors.
15. The property is traditionally built with external facing brickwork and rendered panels surmounted by a pitched tiled roof.

16. At the Hearing it was confirmed to the Tribunal by both parties that the flat was approached by a communal hallway having access to both the front and to the rear car parking area. The Tribunal was informed that the accommodation of the flat comprises of a lounge/kitchen area, two bedrooms and bathroom. The Tribunal understands that there are electric night storage heaters fitted.
17. The Tribunal noted that the garden areas were well maintained and that the car parking area to the rear was secure with electric entrance gates. A car parking space is included with the accommodation.

### **THE APPLICANT'S SUBMISSIONS**

18. In her written submissions and at the hearing the Applicant submitted that she was seeking a rent repayment order as the landlord (Respondent) had failed to apply for a Selective Licence.
19. The Applicant further submitted that when she commenced renting the flat through an agent, Paul James, in November 2016 she paid a deposit of £595.00 which she subsequently discovered was not protected by a tenancy deposit scheme until December 2019.
20. The Applicant submitted that when she initially rented the property the cooker in the kitchen and the heater in the bedroom did not work. She contacted the agent on 6<sup>th</sup> November 2016 and the cooker was replaced. At the same time the Applicant was informed that the bedroom heater needed to be replaced but initially she was issued with an electric heater which cost more to run. This was also placed next to the old storage heater which took up more space.
21. It was further submitted that a fire alarm was subsequently installed indicating to the Applicant that the flat was not up to the necessary standard when she moved in.
22. In support of her application the Applicant submitted a copy of a letter from the Environmental Health and Community Protection Department of Nottingham City Council dated 18<sup>th</sup> November 2019 addressed to her confirming that at that date the Local Authority had not received a 'Duly Made' Selective Licence application for the property.
23. The Applicant also submitted a copy of her bank statement confirming the rent payments made.
24. The Applicant further submitted that in January 2017 the fridge was not working properly but that it took too long to repair it. Following that, in January 2018 the cooker broke again and despite sending multiple emails to the agent starting on 4<sup>th</sup> January 2018 she did not hear back from him until 20<sup>th</sup> January 2018 when he confirmed that he was no longer managing the property and that she should therefore contact the landlord directly. This she did but the new cooker was not delivered until 11<sup>th</sup> February 2018 and was finally fitted on 16<sup>th</sup> February 2018.
25. In addition to the above the Applicant submitted that the pipes in the kitchen were blocked and the washing machine did not rinse properly. In October 2018 the oven failed again. The oven was repaired on 16<sup>th</sup> October 2018 but to date the washing machine had not been repaired or replaced.

26. On 25<sup>th</sup> February 2019 the Applicant submitted that she informed the Respondent that there was a leak from the bath in the bathroom but this was not repaired until 17<sup>th</sup> March 2019.
27. Following these problems, the Applicant submitted that the Respondent decided to increase the rent by £55.00 per month from £495.00 per month to £550.00 per month but without making any improvement to the property.
28. At the end of July 2019, the Applicant submitted that the boiler stopped heating the water so she and her daughter had to shower with cold water. The Respondent was informed of this on 31<sup>st</sup> July 2019 but it was not repaired until 28<sup>th</sup> September 2019, so some two months were spent without hot water. Despite all the problems in the property and the fact that she had been ill and unable to work for part of her tenancy, the Applicant did not withhold any rent payments. At the Hearing the Respondent confirmed that there were no arrears of rental.
29. The Applicant further submitted that since she applied for the rent repayment order the Respondent had been trying to secure possession without following correct procedures. The Applicant submitted that the Respondent had tried to arrange for agents to attend at the property and take pictures and advertise it to rent. He had informed the Applicant that he was making a loss with her staying there and claimed that he could be asking between £625.00 and £650.00 per month. In the opinion of the Applicant this showed how much the Respondent cared about money and how little he cared about his tenants. As such, the Applicant had been psychologically affected and no longer felt safe in the property. She also felt that she was being forced to look for somewhere new to live.

### **THE RESPONDENT'S SUBMISSIONS**

30. The Respondent submitted in writing and at the hearing that he was served with an application by the tenant (Respondent) for a rent repayment order on the basis that he did not have a Selective Licence under the Housing and Planning Act 2016. The Respondent accepted that he did not have a Selective Licence although he believed that he did not require an HMO Licence under the Housing Act 2004.
31. The Respondent further submitted that he had been a good landlord providing high quality, safe, modern accommodation with a dedicated secure parking space and a quick response to any problems. However, it appeared to him that the Applicant felt that she could claim back up to 12 months of rent purely on a technical basis.
32. At the Hearing the Respondent did concede that at times, due to circumstances beyond his control, repairs had taken longer to be attended to than they should have.
33. The Respondent submitted that he accepted ignorance was no excuse but he was not aware that a Selective Licence was required until it was subsequently brought to his attention.
34. The Respondent further submitted that one of his tenants had caused him a considerable loss of approximately six months' rent although he was being considerate and assisting them in their time of need. After the tenants left the property was found to be in a very bad state and he had spent several

thousand pounds bringing it up to a satisfactory standard so it could be re-let.

35. The Respondent submitted that as a landlord it was not a profitable business letting residential properties with service charges, ground rents and insurance not to mention the new licence fees. As such, the Respondent was not surprised that many landlords were not letting their properties any more although in his opinion this would in turn lead to an increase in the rents payable which will make them unaffordable for many.
36. With regard to his personal circumstances the Respondent confirmed that it was 'not very healthy as I am still in arrears for mortgages'. At the Hearing the Respondent confirmed that his annual ground rent for the flat was £110.00 and that he paid a monthly service charge of £110.00. In addition to this his monthly mortgage payment on an interest only mortgage amounted to £228.98. Evidence of the latter was seen by the Tribunal.
37. In support of his submission, the Respondent attached a copy of the deposit paid to the Deposit Protection Scheme (although the receipt notes that the DPS is still awaiting the deposit payment). The Respondent also attached a copy of a receipt from Nottingham City Council dated 3<sup>rd</sup> December 2019 confirming receipt of the licence application fee in the sum of £360.00. At the Hearing the Respondent confirmed that he received an email from Nottingham City Council on 5<sup>th</sup> December 2019 confirming that his application had been accepted.
38. In summary the Respondent submitted that the Applicant was taking advantage of a legal loophole in applying for a rent repayment order and that he had received no notification from Nottingham City Council regarding the requirement for him to apply for a Selective Licence.

#### **DETERMINATION OF THE TRIBUNAL**

39. 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 a property 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 a rent repayment order.
  - (iii) Whether the Tribunal should exercise its discretion to make a rent repayment order.
  - (iv) Determination of the amount of any order.

#### *Offence under section 95(1) of the 2004 Act*

40. 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 95(1) of the 2004 Act.

Throughout the period from 1<sup>st</sup> November 2018 until 31<sup>st</sup> October 2019 the subject property was a property subject to Selective Licensing.

- (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*

41. The Tribunal determined that the Applicants were entitled to apply for a rent repayment order pursuant to section 41(1) of the 2016 Act. In accordance with section 41(2), the Respondent was committing the relevant offence from 1<sup>st</sup> November 2018 to 31<sup>st</sup> October 2019.

*Discretion to make rent repayment orders*

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

*Amounts of Rent Repayment Orders*

43. 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 95(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. The Applicants claim for the period 1<sup>st</sup> November 2018 - 31<sup>st</sup> October 2019.

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 whether the landlord has been convicted of any of the offences listed in section 40 of the 2016 Act.

44. 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.

45. 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 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.*

46. 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 amount as set out in paragraph 50.
47. The Tribunal disregards any amount which the Respondent may have had to pay out in respect of his other properties as they have no bearing on this case. At the same time the Tribunal similarly disregards the comments of the Respondent regarding the letting of his properties for the same reason.
48. In accordance with section 44(4)(a) of the 2016 Act, the Tribunal considered the conduct of both parties. The Tribunal finds that there is no evidence of conduct on the part of the Tenant (Applicant) which would affect its decision.
49. Although not strictly relevant to this application as the matters referred to were not carried out after the application was made, the Tribunal noted the general conduct of the Landlord (Respondent). In particular the Tribunal notes:
  - a) That he was slow in attending to repairs.
  - b) That the Applicant's Deposit was not initially protected.
  - c) That he has been trying to unlawfully obtain possession.

50. The Tribunal also took into consideration the following matters which are relevant to this determination:

- a) That he had no prior convictions or penalties.
- b) That he had accepted that he should have applied for a Selective Licence.

51. The Tribunal determined that:

- 1) The annual ground rent of £110.00 should be deducted in assessing the amount of any rent repayment order.
- 2) The annual service charge of £1320.00 should be deducted in assessing the amount of any rent repayment order.
- 3) That the monthly interest only mortgage payments of £228.98 (£2,747.76 per annum) should be deducted in assessing the amount of any rent repayment order.

52. Having regard to the above the Tribunal therefore determines as follows:

Maximum Amount of rent repayment order	6270.00
Less: Ground Rent	110.00
Service Charge	1320.00
<u>Mortgage payments</u>	<u>2747.76</u>
Total	<u>4177.76</u>
Amount of Rent Repayment Order	<u>£2,092.24</u>

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

53. The Tribunal therefore confirms the total amount of the Rent Repayment Order in the sum of £2,092.24 (Two thousand and ninety-two pounds and twenty-four Pence).

54. Although not strictly relevant to this decision the Tribunal is not surprised that the Respondent submits that he was not aware that the area was to be included in the City Council's Selective Licensing Scheme. In order to make a designation that an area is subject to selective licensing, a local housing authority has to consider that at least one of six conditions exist as described in paragraph 2. The properties are modern (Valuation Office Agency records indicate they were completed in 2004) and little evidence of the conditions required for designation as a selective licensing area and typically associated with such areas was immediately apparent during the site inspection.

#### **APPLICATION UNDER RULE 13(2)**

55. Although the Applicants, in their Application to the Tribunal did not submit an Application under Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 requesting reimbursement of the Application Fee and Hearing Fee paid, this is a matter which the Tribunal can consider on its own initiative.

56. After careful consideration the Tribunal determined that it would be just and equitable that the Application Fee of £100.00 and Hearing Fee of £200.00 should be reimbursed to the Applicants in this case.
57. Payment of £300.00 should be made by the Respondent to the Applicant in full within 28 days of the date of this decision.

**APPEAL**

58. 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: 2<sup>nd</sup> April 2020

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