



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

Case Reference : **BIR/00FY/HMJ/2019/0002**

Subject Property : **385 Haydn Road
Nottingham
NG5 1DZ**

Applicants : **(1) Mr N Williams
(2) Ms A M Larkin**

Representative : **None**

Respondent : **Mr D Blackstock**

Representative : **Cartwright King Solicitors**

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

Date of Hearing : **4th March 2020. The matter was dealt with
by a paper determination**

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

Date of Decision : **2 April 2020**

DECISION

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, 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 385 Haydn Road, Nottingham NG5 1 DZ ('the subject property'), is located.
3. 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.
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 73 of the 2004 Act, where a person who controls or manages an unlicensed property which should have been the subject of a Selective Licence has been convicted, the (former) occupiers of the unlicensed property may apply to the First-tier Tribunal for rent repayment orders.
5. 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

6. The Applicants, Mr N Williams and Ms A M Larkin, are former tenants of 385 Haydn Road, Nottingham, NG5 1DZ ('the subject property'). The Respondent is the owner of the subject property.
7. By Application dated 20th November 2019 and received by the Tribunal on 25th November 2019 the Applicants referred to above applied for a rent repayment order 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.
8. It is apparent from the documentation received from the Applicants that the property was occupied by them on an Assured Shorthold Tenancy dated 1st April 2017 for a period of 24 months commencing on the same date at a rental of £500.00 per calendar Month.
9. The Applicants confirm that they are requesting a rent repayment for the period 1st August 2018 (when Selective Licensing was introduced) until 8th February 2019 as confirmed to them by Nottingham City Council. The Tribunal assumes the later date is the date the Respondent either applied for the Selective Licence or the Applicants vacated the property.

THE LAW

10. 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.

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43 Making of rent repayment order

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- (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);

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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

- 11. The Tribunal inspected the subject property on 4th March 2020 and found it to be a mid-terraced, three storey Villa Style house situated in an established mixed-use area of Nottingham.
- 12. The house is built of traditional brickwork with a pitched tiled roof.
- 13. Unfortunately, the Tribunal was unable to carry out an internal inspection as the Respondent no longer owned the property.
- 14. The Tribunal noted that the property had a front forecourt with steps up to the front door. The front door and windows were upvc double glazed fittings. The general condition of the property appeared satisfactory.

THE APPLICANTS SUBMISSIONS

- 15. The Applicants submitted that they were seeking a rent repayment order as their landlord (the Respondent) had failed to apply for a Selective Licence.
- 16. The Applicants further submitted that they were seeking a rent repayment order for the period 1st August 2018 until 8th February 2019 which they quantified as being £3125.00. The Applicants had calculated this as follows:

6 Months x £500.00 per month	3000.00
<u>1 Week x £125.00</u>	<u>125.00</u>
Total	£3,125.00

- 17. In support of their application the Applicants submitted a copy of a letter from the Environmental Health and Community Protection Department of Nottingham City Council addressed to the second Applicant confirming that the local authority had completed their investigation and established that the Respondent committed the offence of failing to apply for a selective licence between the period 1st August 2018 and 8th February 2019. The letter also confirmed that the Respondent had been prosecuted and that as such the Applicants were entitled to make an application for a Rent Repayment Order.

THE RESPONDENT'S SUBMISSIONS

18. The Respondent submitted that he did not dispute that he was convicted of owning the property without the appropriate licence and that therefore some rent received should be repaid pursuant to a Rent Repayment Order. However, he submitted that this should not be for the full amount.
19. The Respondent further submitted that he owned eight properties in Nottingham and that at all material times the subject property was managed by Mr Paul James of Harvey James properties as his agent. The Respondent had very little to do with the property himself. In evidence of this the Respondent submitted as part of his witness statement the transcript of Mr James' interview with Nottingham City Council. This is accepted by the Tribunal.
20. The Respondent acknowledged that from 1st August 2018 until 8th February 2019 he should have obtained a Selective Licence pursuant to part 3 of the Housing Act 2004. He submitted that he was not advised by Mr James to do so and it appears that this occurred due to a misunderstanding on the part of Mr James as to what the requirements for a selective licence were.
21. The Respondent submitted that he had intended to sell the property and was advised by Mr James not to apply for a licence or, at the very least, was not advised that a licence was required.
22. The Respondent confirmed that he was prosecuted for his failure to licence the property between the period of 1st August 2018 and 8th February 2019 by Nottingham City Council, alongside 11 other similar offences of failing to obtain Selective or HMO licences under Parts 2 and 3 of the Housing Act 2004. The Respondent confirmed that he had pleaded guilty to all the offences at the 1st available opportunity and was sentenced to pay a fine of £10,800.00 to cover all the offences.
23. In addition to the written submissions the Respondent submitted a witness statement confirming that he had already been prosecuted in the Magistrates Court for not having the correct selective licence for the subject property. It was as a result of this that the local authority had contacted his previous tenants and told them that they could apply for rent repayment orders.
24. The Respondent confirmed that he was a former professional footballer who had enjoyed a reasonably successful career although as a footballer his career was obviously short compared to most workers and he was encouraged to invest in property which he did although he acknowledged that he knew little about property investment and the complexities involved.
25. The Respondent submitted that he was introduced to Mr James in or around August 2017. Mr James was a property managing agent and he had informed the Respondent that he could take care of all the properties which the Respondent had purchased, mainly in the Nottingham area. For this service Mr James would be paid and the Respondent therefore totally relied on Mr James and left him to manage the properties.
26. The Respondent confirmed in his witness statement that he had been shown a copy of the transcript of Mr James' interview with Rebecca Brooker, an Environmental Health Officer with Nottingham City Council which occurred during the criminal proceedings. It was confirmed that this was provided by

the prosecution in the criminal proceedings. The Respondent confirmed that he was not involved in the management of the property.

27. The Respondent submitted in his witness statement that he had not been able to contact Mr James. It was also submitted that prior to January 2019 the Respondent did not recall Mr James ever informing him that he needed to obtain a Selective Licence for the property and that if he had been told that a Licence was required, he would have applied for one.
28. The Respondent confirmed in his witness statement that he was not informed of any problems with the property by either Mr James or Nottingham City Council until January 2019 when Nottingham City Council contacted him and informed him that he did not have the correct licences in place for his properties. At that point the Respondent contacted Mr James to enquire what was happening and was informed that Mr James would take care of it but he did not.
29. Following the contact from Nottingham City Council the respondent confirmed that he was summonsed to appear at Nottingham Magistrates Court where he was fined £10,800.00 for not having the correct licences although he was not fined for not keeping the properties in good order.
30. The Respondent further submitted that he now understood that Mr James' company Harvey James Ltd had been dissolved and the Respondent could not contact Mr James.
31. The Respondent fully accepted that as landlord of the property it was his responsibility to ensure that the law was complied with although he thought he had delegated matters to a responsible agent.
32. The Respondent submitted that although he owned 8 properties, they were all mortgaged and he was responsible for looking after four children of school age. He had now retired from football so no longer received any income from playing and relied entirely on the rental income from his properties to live. The Respondent confirmed that his income was approximately £2000.00 per month and that his outgoings had not changed since the accounts he produced for the Magistrates Court Hearing which left him with a disposable income of approximately £1000.00 per month from which he had to look after his family. As such a rent repayment order to pay some £3,125.00 would cause him and his family difficulties.
33. In summary the Respondent submitted:
 - 1) That he had no prior convictions or penalties for any similar offences
 - 2) That he was not aware of any issues with the property during the period.
 - 3) That he was entirely reliant on and misled by Mr James. This was not a case where he decided to deliberately flout the rules to save money or avoid regulation.
 - 4) That he had taken responsibility for his actions pleading guilty at the first opportunity.
 - 5) That he was only in breach of the legal requirements for just over six months and this is not a case where he had made a long-term business of flouting regulations.

- 6) That his disposable income was only £1000.00 per month.
- 7) That this was not a conscious choice of the Respondent and as such the chances of such behaviour being repeated were exceptionally small. When combined with the Financial Penalty already paid in criminal sanctions, there was no need for the RRO to have a deterrent effect.
- 8) That the mitigating circumstances were recognised by the sentencing Magistrate in the criminal proceedings who imposed a light sentence on the Respondent. Although he could have been fined up to £60,000.00 for all the 12 offences the fine of £10,800.00 was 18% of what could have been awarded.

DETERMINATION OF THE TRIBUNAL

34. 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 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

35. 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 1st August 2018 until 8th February 2019 the subject property was a house subject to selective licencing.

- (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

36. 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 1st August 2018 to 8th February 2019.

Discretion to make rent repayment orders

37. 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

38. 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. The Applicants claim for the period 1st August 2018 – 8th February 2019 as confirmed to them by Nottingham City Council.

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.

39. 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.

40. 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.

41. 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 51.
42. 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 no evidence of conduct on the part of the Tenants (Applicants) which would affect its decision.
43. However, the Tribunal is mindful to take into account the conduct of the Landlord (Respondent). In particular the Tribunal notes:
 - 1) That he had no prior convictions or penalties for any similar offences.
 - 2) That he had taken full responsibility for his actions and pleaded guilty at the first opportunity.
 - 3) The Tribunal accepts that there is little likelihood of the Respondent re-offending.
44. The Tribunal reduces the Rent Repayment Order by 25% to reflect this.
45. The Tribunal is also conscious of the Financial Penalty paid by the Respondent. Based on the Respondent's submission that this amounted to £10,800.00 which referred to twelve properties this equates to £900.00 per property. The Tribunal determines to allow 50% of this against any rent repayment order.
46. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal considered the financial circumstances of the Respondent. Unfortunately, although the Respondent has provided details of his disposable income, he has not given any indication of any mortgage payments on the subject property. The Tribunal notes that his annual Accounts show finance costs of £62,897.00 which the Tribunal assumes covers all his properties.
47. However, having regard to his disposable income (accepted by the Court) the Tribunal has taken a general view on the Respondent's financial position and reduces the rent repayment orders by 50% to reflect this. This gives a total deduction of 75%.
48. With regard to the length of time the Tribunal can consider making the Rent Repayment Order this commences on 1st August 2018 until 8th February 2019. The Tribunal notes that the Applicants have requested a rent repayment order to cover this period in the sum of £3,125.00.

49. However, the Tribunal calculates the maximum amount of any rent repayment order as follows:

6 months x £500.00 per month	3000.00
Daily rate £6000.00 per annum ÷ 365 = £16.44 per day	
8 days x £16.44 per day =	<u>131.52</u>
Total Maximum amount of order	£3,131.52

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

Maximum Amount	3131.52
Less: 50% of Financial Penalty	<u>450.00</u>
	2681.52
Less: 75% Allowance for conduct and Financial Circumstances	<u>2011.14</u>
Amount of Rent Repayment Order	£670.38

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

51. The Tribunal therefore confirms the total amount of the Rent Repayment Order in the sum of £670.38 (Six Hundred and Seventy Pounds Thirty-Eight Pence).

APPLICATION UNDER RULE 13(2)

52. 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 paid, this is a matter which the Tribunal can consider on its own initiative.

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

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

APPEAL

54. 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 April 2020

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



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26. The Respondent confirmed in his witness statement that he had been shown a copy of the transcript of Mr James' interview with Rebecca Brooker, an Environmental Health Officer with Nottingham City Council which occurred during the criminal proceedings. It was confirmed that this was provided by

the prosecution in the criminal proceedings. The Respondent confirmed that he was not involved in the management of the property.

27. The Respondent submitted in his witness statement that he had not been able to contact Mr James. It was also submitted that prior to January 2019 the Respondent did not recall Mr James ever informing him that he needed to obtain a Selective Licence for the property and that if he had been told that a Licence was required, he would have applied for one.
28. The Respondent confirmed in his witness statement that he was not informed of any problems with the property by either Mr James or Nottingham City Council until January 2019 when Nottingham City Council contacted him and informed him that he did not have the correct licences in place for his properties. At that point the Respondent contacted Mr James to enquire what was happening and was informed that Mr James would take care of it but he did not.
29. Following the contact from Nottingham City Council the respondent confirmed that he was summonsed to appear at Nottingham Magistrates Court where he was fined £10,800.00 for not having the correct licences although he was not fined for not keeping the properties in good order.
30. The Respondent further submitted that he now understood that Mr James' company Harvey James Ltd had been dissolved and the Respondent could not contact Mr James.
31. The Respondent fully accepted that as landlord of the property it was his responsibility to ensure that the law was complied with although he thought he had delegated matters to a responsible agent.
32. The Respondent submitted that although he owned 8 properties, they were all mortgaged and he was responsible for looking after four children of school age. He had now retired from football so no longer received any income from playing and relied entirely on the rental income from his properties to live. The Respondent confirmed that his income was approximately £2000.00 per month and that his outgoings had not changed since the accounts he produced for the Magistrates Court Hearing which left him with a disposable income of approximately £1000.00 per month from which he had to look after his family. As such a rent repayment order to pay some £3,125.00 would cause him and his family difficulties.
33. In summary the Respondent submitted:
 - 1) That he had no prior convictions or penalties for any similar offences
 - 2) That he was not aware of any issues with the property during the period.
 - 3) That he was entirely reliant on and misled by Mr James. This was not a case where he decided to deliberately flout the rules to save money or avoid regulation.
 - 4) That he had taken responsibility for his actions pleading guilty at the first opportunity.
 - 5) That he was only in breach of the legal requirements for just over six months and this is not a case where he had made a long-term business of flouting regulations.

- 6) That his disposable income was only £1000.00 per month.
- 7) That this was not a conscious choice of the Respondent and as such the chances of such behaviour being repeated were exceptionally small. When combined with the Financial Penalty already paid in criminal sanctions, there was no need for the RRO to have a deterrent effect.
- 8) That the mitigating circumstances were recognised by the sentencing Magistrate in the criminal proceedings who imposed a light sentence on the Respondent. Although he could have been fined up to £60,000.00 for all the 12 offences the fine of £10,800.00 was 18% of what could have been awarded.

DETERMINATION OF THE TRIBUNAL

34. 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 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

35. 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 1st August 2018 until 8th February 2019 the subject property was a house subject to selective licencing.

- (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

36. 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 1st August 2018 to 8th February 2019.

Discretion to make rent repayment orders

37. 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

38. 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. The Applicants claim for the period 1st August 2018 – 8th February 2019 as confirmed to them by Nottingham City Council.

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.

39. 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.

40. 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.

41. 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 51.
42. 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 no evidence of conduct on the part of the Tenants (Applicants) which would affect its decision.
43. However, the Tribunal is mindful to take into account the conduct of the Landlord (Respondent). In particular the Tribunal notes:
 - 1) That he had no prior convictions or penalties for any similar offences.
 - 2) That he had taken full responsibility for his actions and pleaded guilty at the first opportunity.
 - 3) The Tribunal accepts that there is little likelihood of the Respondent re-offending.
44. The Tribunal reduces the Rent Repayment Order by 25% to reflect this.
45. The Tribunal is also conscious of the Financial Penalty paid by the Respondent. Based on the Respondent's submission that this amounted to £10,800.00 which referred to twelve properties this equates to £900.00 per property. The Tribunal determines to allow 50% of this against any rent repayment order.
46. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal considered the financial circumstances of the Respondent. Unfortunately, although the Respondent has provided details of his disposable income, he has not given any indication of any mortgage payments on the subject property. The Tribunal notes that his annual Accounts show finance costs of £62,897.00 which the Tribunal assumes covers all his properties.
47. However, having regard to his disposable income (accepted by the Court) the Tribunal has taken a general view on the Respondent's financial position and reduces the rent repayment orders by 50% to reflect this. This gives a total deduction of 75%.
48. With regard to the length of time the Tribunal can consider making the Rent Repayment Order this commences on 1st August 2018 until 8th February 2019. The Tribunal notes that the Applicants have requested a rent repayment order to cover this period in the sum of £3,125.00.

49. However, the Tribunal calculates the maximum amount of any rent repayment order as follows:

6 months x £500.00 per month	3000.00
Daily rate £6000.00 per annum ÷ 365 = £16.44 per day	
8 days x £16.44 per day =	<u>131.52</u>
Total Maximum amount of order	£3,131.52

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

Maximum Amount	3131.52
Less: 50% of Financial Penalty	<u>450.00</u>
	2681.52
Less: 75% Allowance for conduct and Financial Circumstances	<u>2011.14</u>
Amount of Rent Repayment Order	£670.38

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

51. The Tribunal therefore confirms the total amount of the Rent Repayment Order in the sum of £670.38 (Six Hundred and Seventy Pounds Thirty-Eight Pence).

APPLICATION UNDER RULE 13(2)

52. 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 paid, this is a matter which the Tribunal can consider on its own initiative.

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

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

APPEAL

54. 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 April 2020

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



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

Case Reference : **BIR/00FY/HMJ/2019/0002**

Subject Property : **385 Haydn Road
Nottingham
NG5 1DZ**

Applicants : **(1) Mr N Williams
(2) Ms A M Larkin**

Representative : **None**

Respondent : **Mr D Blackstock**

Representative : **Cartwright King Solicitors**

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

Date of Hearing : **4th March 2020. The matter was dealt with
by a paper determination**

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

Date of Decision : **2 April 2020**

DECISION

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, 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 385 Haydn Road, Nottingham NG5 1 DZ ('the subject property'), is located.
3. 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.
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 73 of the 2004 Act, where a person who controls or manages an unlicensed property which should have been the subject of a Selective Licence has been convicted, the (former) occupiers of the unlicensed property may apply to the First-tier Tribunal for rent repayment orders.
5. 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

6. The Applicants, Mr N Williams and Ms A M Larkin, are former tenants of 385 Haydn Road, Nottingham, NG5 1DZ ('the subject property'). The Respondent is the owner of the subject property.
7. By Application dated 20th November 2019 and received by the Tribunal on 25th November 2019 the Applicants referred to above applied for a rent repayment order 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.
8. It is apparent from the documentation received from the Applicants that the property was occupied by them on an Assured Shorthold Tenancy dated 1st April 2017 for a period of 24 months commencing on the same date at a rental of £500.00 per calendar Month.
9. The Applicants confirm that they are requesting a rent repayment for the period 1st August 2018 (when Selective Licensing was introduced) until 8th February 2019 as confirmed to them by Nottingham City Council. The Tribunal assumes the later date is the date the Respondent either applied for the Selective Licence or the Applicants vacated the property.

THE LAW

10. 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

- 11. The Tribunal inspected the subject property on 4th March 2020 and found it to be a mid-terraced, three storey Villa Style house situated in an established mixed-use area of Nottingham.
- 12. The house is built of traditional brickwork with a pitched tiled roof.
- 13. Unfortunately, the Tribunal was unable to carry out an internal inspection as the Respondent no longer owned the property.
- 14. The Tribunal noted that the property had a front forecourt with steps up to the front door. The front door and windows were upvc double glazed fittings. The general condition of the property appeared satisfactory.

THE APPLICANTS SUBMISSIONS

- 15. The Applicants submitted that they were seeking a rent repayment order as their landlord (the Respondent) had failed to apply for a Selective Licence.
- 16. The Applicants further submitted that they were seeking a rent repayment order for the period 1st August 2018 until 8th February 2019 which they quantified as being £3125.00. The Applicants had calculated this as follows:

6 Months x £500.00 per month	3000.00
<u>1 Week x £125.00</u>	<u>125.00</u>
Total	£3,125.00

- 17. In support of their application the Applicants submitted a copy of a letter from the Environmental Health and Community Protection Department of Nottingham City Council addressed to the second Applicant confirming that the local authority had completed their investigation and established that the Respondent committed the offence of failing to apply for a selective licence between the period 1st August 2018 and 8th February 2019. The letter also confirmed that the Respondent had been prosecuted and that as such the Applicants were entitled to make an application for a Rent Repayment Order.

THE RESPONDENT'S SUBMISSIONS

18. The Respondent submitted that he did not dispute that he was convicted of owning the property without the appropriate licence and that therefore some rent received should be repaid pursuant to a Rent Repayment Order. However, he submitted that this should not be for the full amount.
19. The Respondent further submitted that he owned eight properties in Nottingham and that at all material times the subject property was managed by Mr Paul James of Harvey James properties as his agent. The Respondent had very little to do with the property himself. In evidence of this the Respondent submitted as part of his witness statement the transcript of Mr James' interview with Nottingham City Council. This is accepted by the Tribunal.
20. The Respondent acknowledged that from 1st August 2018 until 8th February 2019 he should have obtained a Selective Licence pursuant to part 3 of the Housing Act 2004. He submitted that he was not advised by Mr James to do so and it appears that this occurred due to a misunderstanding on the part of Mr James as to what the requirements for a selective licence were.
21. The Respondent submitted that he had intended to sell the property and was advised by Mr James not to apply for a licence or, at the very least, was not advised that a licence was required.
22. The Respondent confirmed that he was prosecuted for his failure to licence the property between the period of 1st August 2018 and 8th February 2019 by Nottingham City Council, alongside 11 other similar offences of failing to obtain Selective or HMO licences under Parts 2 and 3 of the Housing Act 2004. The Respondent confirmed that he had pleaded guilty to all the offences at the 1st available opportunity and was sentenced to pay a fine of £10,800.00 to cover all the offences.
23. In addition to the written submissions the Respondent submitted a witness statement confirming that he had already been prosecuted in the Magistrates Court for not having the correct selective licence for the subject property. It was as a result of this that the local authority had contacted his previous tenants and told them that they could apply for rent repayment orders.
24. The Respondent confirmed that he was a former professional footballer who had enjoyed a reasonably successful career although as a footballer his career was obviously short compared to most workers and he was encouraged to invest in property which he did although he acknowledged that he knew little about property investment and the complexities involved.
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(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.

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46. In accordance with section 44(4)(b) of the 2016 Act, the Tribunal considered the financial circumstances of the Respondent. Unfortunately, although the Respondent has provided details of his disposable income, he has not given any indication of any mortgage payments on the subject property. The Tribunal notes that his annual Accounts show finance costs of £62,897.00 which the Tribunal assumes covers all his properties.
47. However, having regard to his disposable income (accepted by the Court) the Tribunal has taken a general view on the Respondent's financial position and reduces the rent repayment orders by 50% to reflect this. This gives a total deduction of 75%.
48. With regard to the length of time the Tribunal can consider making the Rent Repayment Order this commences on 1st August 2018 until 8th February 2019. The Tribunal notes that the Applicants have requested a rent repayment order to cover this period in the sum of £3,125.00.

49. However, the Tribunal calculates the maximum amount of any rent repayment order as follows:

6 months x £500.00 per month	3000.00
Daily rate £6000.00 per annum ÷ 365 = £16.44 per day	
8 days x £16.44 per day =	<u>131.52</u>
Total Maximum amount of order	£3,131.52

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

Maximum Amount	3131.52
Less: 50% of Financial Penalty	<u>450.00</u>
	2681.52
Less: 75% Allowance for conduct and Financial Circumstances	<u>2011.14</u>
Amount of Rent Repayment Order	£670.38

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

51. The Tribunal therefore confirms the total amount of the Rent Repayment Order in the sum of £670.38 (Six Hundred and Seventy Pounds Thirty-Eight Pence).

APPLICATION UNDER RULE 13(2)

52. 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 paid, this is a matter which the Tribunal can consider on its own initiative.

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

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

APPEAL

54. 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 April 2020

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