



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

Case Reference : **MAN/OOCG/HMF/2019/0062**

Property : **77 Glencoe Road, Sheffield, S2 2SG**

Applicant : **Mr Edward Harford**

Representative : **In person**

Respondent : **Mr William McLean**

Representative : **In person**

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

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

Date of Determination : **13th March 2020**

Date of Decision : **7th April 2020**

DECISION

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Decision

1. Mr McLean is ordered to repay rent to Mr Harford in the sum of £3711.

Background

1. On 28th August 2019 Mr Edward Harford (“Mr Harford”) applied to the First-tier Tribunal for a rent repayment order pursuant to Section 41 (1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The application relates to 77 Glencoe Road, Sheffield (“the Property”).
3. The Respondent to the application is the Landlord William McLean (“Mr McLean”).
4. The Applicant was the tenant of the Property from 11th June 2017 until 31st January 2020.
5. On 8th October 2019 the Tribunal issued directions to the parties providing for the filing of statements, outlining how the Tribunal must approach the application and thereafter for the matter to be listed for a determination with a hearing. The hearing was later fixed to take place on 13th March 2020.

The Law

6. A rent repayment order is an order that the Tribunal may make requiring a Landlord to repay rent paid by a tenant. In order for such an order to be made the Landlord must have committed one of the offences set out in Section 40(3) of the 2016 Act. Those offences were set out in the Tribunal’s directions referred to in paragraph 4 above.
7. One of those offences, as set out in Section 72(1) of the Housing Act 2004, (“the 2004 Act”) is controlling or managing an unlicensed property in multiple-occupation.
8. Section 41(2) of the 2016 Act provides a tenant may apply for a rent repayment order only if:
 - (a) the offence related to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period 12 months ending with the day on which the application is made.
9. Section 43 of the 2016 Act provides that, in order to make a rent repayment order, the Tribunal must be satisfied beyond reasonable doubt the Landlord has committed one of the offences specified in section 40(3) (whether or not the Landlord has been convicted).
10. Section 44 of the 2016 Act thereafter provides that if the Tribunal determines a rent repayment order should be made then it must calculate the amount as prescribed. If the Landlord has committed the offence of controlling or managing an unlicensed HMO, then the amount must relate to the rent paid by the tenant during a period, not exceeding 12 months, during which the Landlord was committing the offence. However, the amount to be repaid must not exceed the rent paid in that period, less any relevant awards of universal credit or housing benefit.
11. Section 44(4) of the 2016 Act requires the Tribunal to take into account the conduct of both the Landlord and tenant, the financial

- circumstances of the Landlord and whether the Landlord has been convicted of any of the specified offences.
12. Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) Order 2018 sets out those properties that must be licensed as follows:
 - (a) the property is occupied by five or more persons;
 - (b) it is occupied by persons living in two or more separate households;
 - (c) it meets the “standard” test for an HMO under section 254(2) of the 2004 Act.
 13. Prior to 1st October 2018, a property was only a mandatory HMO if it fulfilled the conditions referred to in paragraph 14 and it was a property of three floors or more. This latter requirement was removed from 1st October 2018.
 14. A property meets the standard test if it fulfils the following requirements:
 - (a) it consists of one or more units of living accommodation not consisting of a self contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household;
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are treated as so occupying;
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable in respect of at least one of those persons’ occupation of the living accommodation;
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities.

Submissions/Hearing

15. Mr Harford attending the hearing, together with his witness, Benjamin Rae. Mr McLean attended with Professor Gray.
16. At the outset of the hearing, Mr McLean admitted the offence of managing or controlling an unlicensed property. He confirmed Sheffield Council had imposed a financial penalty for the offence that had originally been in the sum of £7500, but had been reduced to £5000.
17. He further confirmed that following the inspection by Sheffield Council, he had applied for a licence in August 2019. One was granted on 23rd October 2019, excluding the room occupied by Mr Harford. The

- licence was conditional upon certain remedial work being done by either 31st October or 23rd November 2019.
18. He confirmed Mr Harford had vacated the Property and now only 2 tenants remain in occupation. He is therefore now taking steps to have the licence revoked since the Property is no longer an HMO.
 19. Mr Harford's tenancy of the Property began on 11th June 2017 and ended on 31st January 2020. He confirmed throughout his tenancy, 5 unrelated people continuously occupied the Property.
 20. The tenancy agreement, dated 11th June 2017, was initially for a period of 6 months. Throughout the tenancy Mr Harford paid rent in the sum of £380 per month, the first rent payment being apportioned in the sum of £240 plus a deposit of £50. The rent included the payment of gas, electricity, council tax and broadband.
 21. Mr Harford advised he had not been aware of the licensing requirements of a property in multiple occupation, but when he did so, reported his concerns to Private Housing Standards at Sheffield City Council ("Sheffield Council"). It undertook an inspection on 11th June 2019 and determined the Property was an HMO and required a licence. On 17th June 2019, this was notified to Mr Harford by e-mail.
 22. In support of his application dated 28th August 2019, Mr Harford stated the offence of controlling or managing an unlicensed property existed for the previous period of 12 months and sought repayment of rent in the sum of £4560.
 23. Both parties referred the Tribunal to matters they felt should be considered when determining the amount of any rent repayment order.

Mr Harford

24. In considering the matter of Mr McLean's conduct, Mr Harford asked the Tribunal to take the following matters into consideration:

- (a) Smoke Detectors

Mr Harford stated that throughout his tenancy there were no working smoke alarms at the Property; this is confirmed in statements filed by other tenants of the Property, Benjamin Rae and Joe Hensey. Sheffield Council confirmed this after their inspection on 11th June 2019.

- (b) Washing Machine

Mr McLean was advised the washing machine at the Property was broken and required replacement. It was replaced, but Mr McLean had suggested the tenants moved the old one to the basement. The tenants were unable to do this due to its size and weight. The broken machine remained in the middle of the kitchen for 11 months.

(c) Garden Waste

Mr Harford stated that in May 2019 Mr McLean had come to the Property and had cut down the hedges, leaving a substantial amount of debris in the front garden that had remained there until at least December 2019.

(d) Failure to comply with Section 48 of the Landlord & Tenant Act 1987

Mr Harford advised he had never been provided with an address for Mr McLean. It had not been included within the tenancy agreement and subsequent requested for this information had gone unanswered. Mr McLean did provide an address, but not until 55 days after a formal request had been made. This had caused a delay in Mr Harford being in a position to make the application for a rent repayment order.

(e) Advertising the Property as having a “live-in” Landlord

Mr Harford noted Mr McLean had admitted advertising the Property as having a “live in” Landlord. This was not the case, but illustrated Mr Harford’s attitude towards his tenants, since he understood such an arrangement would give any tenants less rights. He also complained that during his tenancy, Mr McLean and other friends had stayed at the Property, sleeping in the communal areas, a matter that was unacceptable. Adam Linguard, another tenant confirmed this in his statement to the Tribunal.

(f) Breaches of GDPR

Mr Harford stated Mr McLean had disclosed his personal and employment details with estate agents and contractors employed to carry out work on the Property. This was in breach of the GDPR legislation.

25. Mr Harford advised that he had suggested that he and Mr McLean endeavour to resolve matters through mediation, but this offer had not been accepted. Mr McLean confirmed he did not feel able to attend, given Mr Harford’s attitude towards him.
26. In response to the matters raised by Mr McLean in respect of his conduct, Mr Harford confirmed there had been an issue with the smoke detectors. When he had bought the house they were in working order, the house having been refurbished prior to him buying it. He accepted there were constant problems with the alarms and he endeavoured to repair them on a number of occasions. When attending the Property, he frequently found the tenants had removed the batteries. After further investigation, he had found an issue with a circuit breaker that had been repaired and had resolved the problem. He confirmed he had not sought professional help with the issue but had tried to remedy it himself over a period of many months.

27. Mr McLean accepted the issues of both the washing machine and garden waste. He had wanted to repair the washing machine but accepted that leaving it in the Property for 11 months was inappropriate. He had gone to the Property to deal with items that had been left by former tenants and the overgrown garden. He had not been able to remove all the garden debris and it had remained at the Property until approximately 4 weeks prior to the hearing.
28. Mr McLean confirmed he had been reluctant to provide his address to Mr Harford. When the tenancy had begun, he had had a good relationship with Mr Harford and the other tenants. However, due to personal circumstances, he decided to sell the Property and had hoped to do so in a way that would leave the tenants in occupation. He had visited the Property in May 2019 and had informed the tenants of his decision. After that time, his relationship with Mr Harford had changed and became extremely difficult. He had contacted Sheffield Council for advice when his address had been requested since he had been reluctant to provide due to Mr Harford's attitude and behaviour. Sheffield Council had suggested using a PO Box address. This had not resolved the matter and he had therefore provided his address some 55 days after the original request. His only reason for failing to respond within the required period was Mr Harford's attitude towards him.
29. In response to the allegation he had advertised the Property with a "live in" Landlord, he confirmed that when first letting the Property, he had retained a room for his own use. The advertisement was therefore accurate. He confirmed he had subsequently stayed at the Property and slept in the communal areas. This was when visiting for maintenance purposes.
30. Mr McLean confirmed he had given the tenant's details to the estate agents when putting the Property on the market for sale. He had not given them to the workmen when they were working on the Property, as alleged.

Mr McLean

31. Mr McLean submitted Mr Harford's conduct should be taken into account and referred the Tribunal to the work required at the Property.
32. When Sheffield City Council advised Mr McLean of their inspection and the work required to the HMO, he co-operated and employed workmen to do the necessary work. This included installing an interlinked smoke detector in each bedroom and privacy locks to each bedroom door. Other works were also required elsewhere in the Property. Mr Harford would not allow access to his bedroom and refused to provide a key when out at work. The consequence of this was that an HMO licence could not be granted for the Property, although Sheffield Council did eventually grant one to exclude Mr Harford's room. His attitude towards the workmen was such that they eventually refused to carry out any further work. He has now had to pay an additional £650 for the workmen to return and complete the work at the Property, although it was confirmed this did not relate to the work in Mr Harford's room. Mr McLean stated the workmen were only now

- returning to the Property because Mr Harford had left. His attitude had caused Mr McLean considerable stress and anxiety.
33. Mr Harford confirmed he had not allowed the workmen to enter his bedroom, nor had he provided a key. He submitted he was entitled to retain his privacy as a tenant and had done nothing wrong. At the time the work was being carried out, he was very busy at work and had been unable to take any leave of absence, even with 2 weeks notice. He had arranged with the workmen for them to carry out the necessary work on a Saturday, but had then been informed by Mr McLean the workmen were not prepared to work on that day.
 34. Professor Gray confirmed she had overheard a conversation between Mr McLean and the workmen trying to persuade them to work on a Saturday, but this had been unsuccessful.
 35. Mr McLean asked the Tribunal to take his personal circumstances into account. In May 2019, his fixed term contract as an IT consultant ended and he made the decision to sell the Property. Thereafter, he worked on other contracts but these had been either at 25% or 10% less than his previous one. He was due to commence a new contract in the week following the hearing that would be at the same rate as the one that ended in May 2019. He had been financially distressed in May 2019.
 36. He confirmed one tenant vacated the Property in October 2019 and therefore it was no longer an HMO. Nevertheless he was still completing the work required by the Council.

Determination

37. In order for the Tribunal to make a rent repayment order, it must first be satisfied, beyond reasonable doubt, Mr McLean has committed an offence as set out in section 40(3) of the 2016 Act. Mr McLean admitted he had committed the offence of managing or being in control of an unlicensed HMO. Sheffield Council had imposed a financial penalty of £5000 for the offence, although he had not been convicted of an offence
38. The Tribunal is therefore satisfied, beyond reasonable doubt, that Mr McLean has committed an offence under section 72(1) of the 2004 Act in respect of the Property for the period 11th June 2017, being the commencement date of Mr Harford's tenancy to 23rd October 2019, being the date of the licence. The Property is a Property on 3 floors and the period of liability is therefore not limited by the changes made to the Regulations on 1st October 2018.
39. Mr Harford made his application to the Tribunal on 28th August 2019. This is within 12 months of the end of the relevant period and the Tribunal can therefore make a rent repayment order, as asked.

Rent Repayment Order

40. The maximum amount of the rent repayment order is £4560. This is Mr Harford's rent for a period of 12 months at a rate of £380 per

- month. The Tribunal must take into account any housing benefit or universal credit received during the same period, but there is no evidence any such payments have been made.
41. Section 44(4) of the 2016 Act provides that when making an order the Tribunal must take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence.
 42. Mr McLean has not been convicted of a relevant offence.
 43. The Tribunal accepts Mr McLean has found himself in a very difficult position in his dispute with Mr Harford. He gave evidence to the fact he found it difficult to cope with Mr Harford's attitude towards both him and his workmen. He was bewildered at Mr Harford's change in attitude towards him in May 2019; hitherto they had had a good relationship without any difficulties and he could only explain it in his decision to sell the Property.
 44. The Tribunal noted Mr Harford was entitled to raise all the issues he had before the Tribunal; he was entitled to refuse access to his room for the purpose of the necessary works required by Sheffield Council. It did however consider his position to be somewhat disingenuous when considering his actions delayed Mr McLean carrying out the work required by Sheffield Council arising from his original complaint. It further found it difficult to understand his explanation for being unable to absent himself from work, in order to allow access to his room, even on 2 weeks notice.
 45. The Tribunal noted Mr McLean had stated Mr Harford's actions had caused the workmen to leave the Property. He stated it had cost him a further £650 for them to return and complete the work. However, the Tribunal established the additional cost was for work in other parts of the Property and did not relate to Mr Harford's actions. Therefore, the delay caused by Mr Harford's action did not cause Mr McLean any additional costs.
 46. Mr McLean provided details of expenses paid by him that formed part of the rent. The Tribunal did not consider it was appropriate for Mr Harford to have any amount repaid that related to his tenancy; there was no justification for him living there rent free. Mr McLean gave details of payments made for gas/electricity, TV Licence, Council Tax and broadband. The Tribunal determined the amount relevant to those expenses for the 12 month period amounted to £849 for each of the tenants and that amount would be deducted from Mr Harford's claim of £4560.
 47. The Tribunal further considered whether either party's conduct should further affect the amount to be paid under the rent repayment order and determined it would not. Mr McLean had found himself in financial difficulties in May 2019. He had, however, continued to receive an income from his self-employment, together with rental income from the property. He had attempted to resolve issues at the Property personally and that had resulted in matters not being dealt with promptly. The matters complained of by the tenants in relation to the washing machine and garden debris should not have occurred. This is more so in the case of the failure of the smoke alarm. Whilst Mr McLean complained the failure of the system was largely due to the

tenants removing the batteries, he admitted the system was faulty and it had taken some time for him to resolve it. In that period of time, the tenants were vulnerable should there have been a fire at the Property. Mr McLean lived in Scotland and therefore tried to manage the Property from a distance.

48. The Tribunal therefore finds, on balance, there should be no further deductions from the amount sought and determines Mr McLean is to repay rent to Mr Harford in the sum of £3711.

Judge J Oliver
13 March 2020