



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

**Case Reference** : **MAN/30UK/HMF/2019/0070**

**Property** : **11 Regent Street, Preston, PR1 3LX**

**Applicant** : **Mr Joshua Breeze**

**Representative** : **In person**

**Respondent** : **Mr Michael Gibbons**

**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** : **27<sup>th</sup> February 2020**

**Date of Decision** : **18<sup>th</sup> March 2020**

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**DECISION**

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## **Decision**

1. Mr Gibbons is ordered to repay rent to Mr Breeze in the sum of £3144.63.

## **Background**

1. On 3<sup>rd</sup> September 2019 Joshua Breeze (“Mr Breeze”) 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 11 Regent Street, Preston, (“the Property”).
3. The Respondent to the application is the Landlord Michael Gibbons (“Mr Gibbons”).
4. The Applicant was the tenant of the Property from 31<sup>st</sup> August 2018 until 30<sup>th</sup> July 2019.
5. On 18<sup>th</sup> November 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 without the requirement for an inspection or hearing.
6. The application was listed for determination on 16<sup>th</sup> January 2020. On that date, the Tribunal issued directions for the filing of further evidence by the Applicant. The Tribunal received this on 10<sup>th</sup> February 2020.
7. On 27<sup>th</sup> February 2020 the Tribunal re-convened to make a determination.

## **The Law**

8. 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.
9. 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.
10. 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.
11. 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).
12. 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.
13. 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.
  14. 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.
  15. Prior to 1<sup>st</sup> October 2018, a property was only a mandatory HMO if it fulfilled the conditions referred to in paragraph 15 and it was a property of three floors or more. This latter requirement was removed from 1<sup>st</sup> October 2018.
  16. 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**

### **Mr Breeze**

17. Mr Breeze entered into an assured hold tenancy agreement with Mr Gibbons from 31<sup>st</sup> August 2018 to 30<sup>th</sup> July 2019. The tenancy agreement, for five tenants, provided for rent to be paid at the rate of £425.95 per week. This was to be paid 3 termly arrears/advance payments on 17<sup>th</sup> September 2018, 7<sup>th</sup> January and 29<sup>th</sup> April 2019 by

- post-dated cheques, all to be submitted prior to the commencement of the tenancy.
18. The tenancy agreement confirmed the rent included the payment of gas, electricity, water rates, internet and TV licence, to a maximum of £2000.
  19. Mr Breeze stated that the tenancy agreement, signed in January 2018, was with five tenants, Thomas Daniels, Lauren Cummings, Shannon Huxtable, Jodie Priddle and Mr Breeze.
  20. The number of tenants during the tenancy is a matter of dispute between the parties.
  21. Mr Breeze stated Jodie Priddle never occupied the Property. Reece Hewitson replaced Jodie Priddle and lived there throughout the period of the tenancy.
  22. It is said the occupation of the Property was beset with problems. Mr Breeze provided copies of e-mails between the tenants and Mr Gibbons, or his lettings agency, setting out their concerns regarding the condition of the Property. These included the Property not being ready for occupation on the expected date, issues with a TV licence not being provided, water leaks, problems with the shower, the fire alarm malfunctioning and difficulties with the locks.
  23. In April 2019 a complaint was made to Preston City Council (“the Council”) that the Property was an unlicensed HMO. Mr Breeze provided a statement given by Mr Leslie Crosbie, a Housing Standards Team Leader employed by the Council, outlining the steps taken by the Council in respect of the Property.
  24. Mr Crosbie advised the Council undertook an inspection of the Property on 7<sup>th</sup> May 2019. Mr Gibbons did not attend. Here, Mr Crosbie said:

*“During our inspection, it was noted that the property contained 5 unrelated occupiers; Shannon Huxtable, Joshua Breeze, Lauren Cummings, Thomas Daniels and Reece Hewitson. The tenants individually confirmed that they were completely unrelated to one another.”*
  25. On 5<sup>th</sup> June the Council served an HMO declaration under Section 255 of the 2004 Act. It is said Mr Gibbons did not dispute this.
  26. Mr Crosbie confirmed Mr Gibbons applied for a licence on 18<sup>th</sup> June 2019. A Notice of Intention to Refuse to Grant an HMO Licence was issued on 28<sup>th</sup> June 2019 upon the basis:

*“Our decision was based on our consideration that the license applicant had failed to meet the Fit and Proper Person test described in the Housing Act”.*
  27. The Council subsequently received further representations from Mr Gibbons relating to the Council’s refusal to grant an HMO licence, but their original decision was confirmed on 2<sup>nd</sup> August 2019. The refusal to grant a licence is said to be the subject of an appeal to the First-tier Tribunal that has not yet been determined.

28. In addition to the HMO declaration, the Council served an Improvement Notice, dated 13<sup>th</sup> May 2019, requiring remedial works to be completed at the Property by 5<sup>th</sup> August 2019.
29. Mr Breeze agreed the Property did not require an HMO licence before 1<sup>st</sup> October 2018, it being a two-storey house. The tenancy was from 31<sup>st</sup> August 2018 to 30<sup>th</sup> July 2019. His claim for a rent repayment order is therefore for the period 1<sup>st</sup> October 2019 until 30<sup>th</sup> July 2019. This is said to be a period of 303 days, equivalent to 43 weeks and 2 days, which, if rounded to 43 weeks gives a repayment due of £3654.57.
30. Mr Breeze stated the rent included utilities to a maximum of £400 per tenant, although the tenants did not know whether that amount was fully spent, or exceeded.

### **Mr Gibbons**

31. Mr Gibbons stated the Property was not an HMO since there were only four tenants living there. Whilst five people had signed the original tenancy agreement, Jodie Priddle had never occupied the Property. He had only received rent from four tenants, each paying him the sum of £84.99 per week. He had no knowledge of Reece Hewitson who has been named within the application as a tenant and no rent has been received from him. Mr Gibbon had not given his permission for Mr Hewitson to live in the Property.
32. Mr Gibbons further submitted it must be proved the Property was an HMO. It was said:

*“In relation to the standard HMO test, the Applicants need to prove beyond reasonable doubt that the living accommodation was occupied by those persons as their only or main residence or they are to be treated as so occupying it and that their occupation of the living accommodation constitutes the only use of that accommodation. No such evidence has been produced”*

33. Mr Gibbons referred to Mr Crosbie’s statement and his comments regarding the tenants living at the Property at the time of his inspection. He submitted such hearsay evidence should be treated with caution.
34. It was confirmed Mr Gibbons had applied for a licence on 18<sup>th</sup> June 2019. Section 72(4)(b) of the Act provides such an application is a defence to the offence of having control of an unlicensed property pursuant to section 72(2) of the Act. Thus, no offence was committed after 18<sup>th</sup> June 2019.
35. Mr Gibbons submitted that, in determining the amount awarded under a rent repayment order, it should be considered he had never been convicted of any relevant offence, he had maintained the Property in a “safe and decent” condition. The Tribunal was provided with copy gas and electrical certificates. Further, the Property was subject to a mortgage of £101,723.04 (as at 15<sup>th</sup> March 2019), the repayments being £233.09 per month. Mr Gibbons also produced a schedule of outgoings for the Property, which, including the mortgage totalled £8181.23. No

documentary evidence was provided in relation to the outgoings, other than the mortgage.

36. Mr Gibbons has stated he has tried to ensure the Property was maintained in a safe and decent condition “*at all times*”. The Tribunal was provided with a copy of a gas certificate dated 21<sup>st</sup> May 2020, an electrical condition report dated 18<sup>th</sup> May 2018 and a fire alarm certificate dated 9<sup>th</sup> June 2019.

### **Mr Hewitson**

37. In his further statement to the Tribunal, Mr Breeze provided signed statements by two other tenants, Shannon Huxtable and Lauren Cummings. Both stated Mr Breeze lived at the Property from 31<sup>st</sup> August 2018 to 30<sup>th</sup> July 2019 and paid his share of the rent, by post dated cheques, as did the other tenants. A copy of Mr Hewitson’s bank statements were copied showing cheque payments were cleared on 19<sup>th</sup> September 2018, 14<sup>th</sup> January and 30<sup>th</sup> April 2019, each in the sum of £1359.84.
38. Mr Breeze also produced copies of e-mail sent by Mr Hewitson to studentletpreston@gmail.com, the company responsible for letting the Property, complaining about the condition of the Property. There were also copies of text messages sent regarding the release of the keys at the start of the tenancy. The replies confirm the release of keys to Reece Hewitson on 31<sup>st</sup> August 2018. A copy of a takeaway receipt and a parking fine, both addressed to Reece Hewitson at the Property, were also included.

### **Determination**

39. In order for the Tribunal to make a rent repayment order, it must first be satisfied, beyond reasonable doubt, Mr Gibbons has committed an offence as set out in section 40(3) of the 2016 Act. Mr Gibbons stated he had not been convicted of any offence. Mr Breeze maintained Mr Gibbons was in control of an unlicensed HMO as set out in Section 72(1) of the 2004 Act.
40. Mr Breeze agreed the Property was not an HMO that required a licence before 1<sup>st</sup> October 2018. It is also relevant that an application was made for a licence on 18<sup>th</sup> June 2019. Thus, the period for which a rent repayment order can be made is 1<sup>st</sup> October 2018 to 17<sup>th</sup> June 2019 only.
41. One point of issue is whether four or five tenants occupied the Property during this period. If it was the former, then the Property did not require a licence and no offence was committed.
42. In his statement, Mr Breeze provided a copy of the original tenancy agreement that named the five original tenants, including Jodie Priddle. No mention is made of Reece Hewitson, nor has any tenancy agreement been produced for him.
43. The Tribunal has considered the additional statement provided by Mr Breeze and the statement given by Mr Crosbie. Whilst Mr Gibbons has argued the latter to be hearsay evidence and should be treated with

caution, the Tribunal is not bound by the strict rules of evidence. His evidence is relevant to the application.

44. In determining whether the Property was occupied by four of five tenants, the Tribunal considered the evidence provided by Mr Breeze to be sufficient for it to determine the Property was occupied by five tenants during the period from 31<sup>st</sup> August 2018 to 30<sup>th</sup> July 2019. Whilst Mr Hewitson was not included in the original tenancy agreement, it is clear he lived at the Property. The exchange of e-mails and text messages between Mr Hewitson and Mr Gibbons or his lettings agency shows keys were to be released to Mr Hewitson at the outset of the tenancy. There is also evidence of complaints made by him about the condition of the Property. Mr Crosbie's statement and those of two other tenants supports this. Further, the Tribunal find it difficult to see why Mr Hewitson would be paying cheques for the exact amount of rent due under the tenancy if he was not residing at the Property.
45. The Tribunal therefore finds that for the period of the tenancy five tenants occupied the Property.
46. In respect of Mr Gibbons' submissions that the Property was not an HMO because the tenants did not satisfy the test it was their main residence, the Tribunal does not find this to be the case. The accommodation is student accommodation. As such, the tenants view it as their main residence whilst at university. Section 259(2) of the 2004 Act further states that occupation by students must be treated as their main residence whilst they are undertaking a full time course in further or higher education.
47. The Tribunal is therefore satisfied beyond reasonable doubt that Mr Gibbons has committed an offence under section 72(1) of the 2004 Act in respect of the Property for the period 1<sup>st</sup> October 2018 to 17<sup>th</sup> June 2019.
48. Mr Breeze made his application to the Tribunal on 3<sup>rd</sup> September 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**

49. The maximum amount of the rent repayment order is £3144.63. This is taking into account Mr Breeze's share of the rent at £84.99 per week for the period stated in paragraph 47 above. 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. The Tribunal does not agree that the period claimed should be "rounded up" as suggested by Mr Breeze.
50. Mr Breeze has confirmed his "allowance" towards the utilities was £400 for the tenancy.
51. 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.
52. Here, there is no evidence Mr Gibbons has been convicted of a relevant offence.

53. Mr Gibbons is a professional landlord. It is stated within the documentation provided from the Council, when Mr Gibbons applied for a licence for the Property, that he also applied for one in respect of four other properties. The reasons given by the Council for their refusal to grant the licence indicate Mr Gibbons is also involved in other properties. The penalty for a professional landlord, who should be fully aware of the requirements of letting properties, will be higher than for a non-professional landlord.
54. Mr Gibbons has provided details of his expenses relating to the Property which, including the mortgage repayments of £233.09 per month total £8181.23.
55. Mr Gibbons is to pay the sum of £3144.63 to Mr Breeze. In making this determination the Tribunal has taken into account the following:
- (1) Mr Gibbons is a professional landlord. The Tribunal finds it difficult to accept Mr Gibbons' evidence that he would not have been aware Mr Hewitson was residing at the Property as claimed.
  - (2) Whilst Mr Gibbons has submitted he tried to ensure the Property was in a decent condition, there is strong evidence to show he let a property that was beset with problems. The exchange of e-mails and texts between him, or his lettings agency and the tenants supports this. This is also confirmed by the service of an Improvement Notice issued by the Council that sets out a significant number of Category 2 hazards. It is said Mr Gibbons did not contest or appeal this Notice.
  - (3) There is no evidence to say Mr Breeze's conduct should be taken into account.
  - (4) The Tribunal does not make any reduction to the rent awarded to Mr Breeze because of the expenses incurred by Mr Gibbons. It considers the failure by Mr Gibbons to obtain a licence to be on the more serious end of the scale and, consequently, the award should be for the maximum amount.

Judge J Oliver  
27 February 2020