



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

**Case Reference** : **MAN/00FF/HMF/2019/0052**

**Property** : **103 Hull Road  
York  
North Yorkshire  
YO10 3JT**

**Applicant** : **Katherine Rust**

**Representative** : **N/A**

**Respondent** : **Anthony James**

**Representative** : **N/A**

**Type of Application** : **Rent Repayment Order  
Housing and Planning Act 2016 – s41**

**Tribunal** : **Judge J Holbrook  
Deputy Regional Valuer N Walsh**

**Date and venue of  
Hearing** : **Determined without a hearing**

**Date of Decision** : **28 January 2020**

**DECISION**

## DECISION

**Anthony James is ordered to repay rent to Katherine Rust. The amount of rent which must be repaid is £1,993.64.**

## REASONS

### Background

1. On 15 July 2019, the Tribunal received an application from Katherine Rust under section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”) for a rent repayment order.
2. Miss Rust seeks repayment of rent which she has paid to the Respondent, Anthony James of Bar Farm, High Hutton, Malton YO60 7HZ in respect of her occupation of the Property, 103 Hull Road, York YO10 3JT. The Tribunal must determine whether it has jurisdiction to make a rent repayment order and, if so, the amount which Mr James must repay to Miss Rust.
3. On 14 August 2019, the Tribunal issued Directions to the parties stating that the matter would be dealt with by way of a determination on the basis of the written submissions and documentary evidence, without the need for an oral hearing unless either party requested one. Neither party did so and therefore the Tribunal convened on the date of this decision to consider the application on the basis of the written representations of Miss Rust. No representations (or communications of any kind) were received from the Respondent, Mr James, who has apparently declined to engage with these proceedings in any way.
4. The Tribunal did not inspect the Property, but we understand it to comprise a four-bedroom terraced house which the Respondent lets for occupation by students.

### Law

5. A rent repayment order is an order of the Tribunal requiring the landlord under a tenancy of housing in England to repay an amount of rent paid by a tenant. Such an order may only be made where the landlord has committed one of the offences specified in section 40(3) of the 2016 Act. A list of those offences was included in the Directions issued by the Tribunal on 14 August 2019. The list includes the offence (under section 30(1) of the Housing Act 2004 (“the 2004 Act”)) of failing to comply with an improvement notice which has become operative. The offence must have been committed by the landlord in relation to housing in England let by him. In addition, the improvement notice must have been given to the landlord in respect of a hazard on the premises let by him (as opposed, for example, to common parts).

6. Where the offence in question was committed on or after 6 April 2018, the relevant law concerning rent repayment orders is to be found in sections 40 – 52 of the 2016 Act. Section 41(2) provides that 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.
7. Section 43 of the 2016 Act provides that, if a tenant makes such an application, the Tribunal may make a rent repayment order if satisfied, beyond reasonable doubt, that the landlord has committed one of the offences specified in section 40(3) (whether or not the landlord has been convicted).
8. Where the Tribunal decides to make a rent repayment order in favour of a tenant, it must go on to determine the amount of that order in accordance with section 44 of the 2016 Act. If the order is made on the ground that the landlord has committed the offence of failing to comply with an improvement notice, the amount must relate to rent paid during a period, not exceeding 12 months, during which the landlord was committing that offence (section 44(2)). However, by virtue of section 44(3), the amount that the landlord may be required to repay must not exceed:
  - a) the rent paid in respect of the period in question, less
  - b) any relevant award of universal credit or housing benefit paid (to any person) in respect of rent under the tenancy during that period.
9. Where the landlord has actually been convicted of this offence, then any rent repayment order made by the Tribunal on this ground in favour of a tenant must require repayment of the maximum amount of rent possible unless, by reason of exceptional circumstances, the Tribunal considers it would be unreasonable to require the landlord to repay that amount (section 46).
10. In other circumstances (i.e., where the landlord has not been convicted of the offence), the Tribunal has a discretion as to the amount of the order. However, section 44(4) requires that the Tribunal must then take particular account of the following factors when exercising that discretion:
  - 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 any of the specified offences.

## **Facts**

11. In the absence of any contrary evidence submitted by Mr James, we find the following facts, as stated by Miss Rust and supported by the documentary evidence she provided.
12. On 6 March 2018, the Applicant, together with three other students, entered into an assured shorthold tenancy agreement in respect of the Property by which the Respondent granted them a fixed term of 12 months from 3 July 2018. The total rent payable under the tenancy was expressed to be £1,500 per month, payable monthly in advance.
13. It appears that each of the four tenants assumed responsibility for a share of the rent. Although a 25% contribution to the monthly rent would have been £375, Miss Rust's bank statements show that she actually paid rent of £379 every month from July 2018 to June 2019. Accordingly, the total rent paid by her during the tenancy was £4,548. The rent was exclusive of council tax and utilities charges.
14. The tenants had expected the landlord to carry out various repairs to the Property before the tenancy commenced. These included fitting a new external door, repairing the kitchen floor, and fitting an en-suite bathroom. These works were not carried out, however, and the tenants found the Property to be in a dirty and unsatisfactory condition when they moved in. They complained to Mr James, but ultimately escalated the matter to the York City Council's housing standards department.
15. Officers from the Council inspected the Property in September 2018 and, on 5 December 2018, an improvement notice was given to Mr James under section 12 of the 2004 Act. Mr James did not appeal against the improvement notice and it therefore became operative on or about 27 December 2018.
16. The improvement notice identified that several category 2 hazards existed at the Property. These included a decommissioned fire detection system; a lack of appropriate fire separation and fire doors; and other defects relating to fire safety. In addition, the notice identified that there was defective flooring in the front entrance porch.
17. The notice specified various remedial action which Mr James was required to take to address these hazards. Most of the necessary work had to be completed by 23 January 2019. Mr James failed to do so.
18. Mr James was subsequently prosecuted for failing to comply with the improvement notice as well as for various alleged breaches of the HMO Management Regulations in respect of the Property. On 21 August 2019, he pleaded guilty to four housing offences. However, it is unclear from the evidence now produced to us whether the offence under section 30(1)

of the 2004 Act was one of those to which Mr James pleaded guilty or, if not, whether he was nevertheless convicted of that offence. In respect of the offences of which Mr James was convicted in relation to the Property, however, the court imposed fines totaling £5,650 plus costs.

19. Mr James was also prosecuted at the same time for housing offences relating to another property, and York City Council has subsequently obtained a criminal behaviour order which requires Mr James to appoint a fit and proper person to be the licence holder and manager of any residential properties which he owns.

### **Jurisdiction to make a rent repayment order**

20. We are satisfied, beyond reasonable doubt, that Mr James has committed an offence under section 30(1) of the 2004 Act. This follows from the fact that the improvement notice dated 5 December 2018 required him to take specified remedial action by 23 January 2019 and he failed to do so. Because the improvement notice had been given to Mr James in respect of hazards on premises let by him to Miss Rust and others, the offence is one of those specified in section 40(3) of the 2016 Act.
21. The offence was not committed until 24 January 2019 (when the period for compliance with the operative improvement notice expired). Given the absence of any evidence to indicate that Mr James ever carried out the necessary works, however, we are satisfied that commission of the offence continued until after Miss Rust's tenancy ended on 2 July 2019. Given that Miss Rust applied for a rent repayment order within 12 months of the end of that period, the Tribunal does have jurisdiction to make such an order in this case.

### **Whether a rent repayment order should be made**

22. We are satisfied that it is appropriate to make a rent repayment order on the ground that Mr James has committed the offence of failing to comply with an improvement notice. In coming to this decision, we are mindful of the fact that the objectives of the statutory provisions concerning rent repayment orders are (i) to enable a penalty in the form of a civil sanction to be imposed in addition to any penalty payable for the criminal offence of failing to comply with such a notice; (ii) to help prevent a landlord from profiting from renting properties illegally; and (iii) to resolve the problems arising from the withholding of rent by tenants.

### **Amount of the order**

#### *Maximum possible amount*

23. The maximum amount for which a rent repayment order could be made in favour of Miss Rust in the present circumstances is £1,993.64. That is the apportioned amount of the annual rent which she paid in respect of the period of 160 days during which the offence was being committed by

Mr James. There is nothing to indicate that Miss Rust was in receipt of housing benefit or universal credit which would need to be deducted from that maximum amount.

#### *Principles guiding the Tribunal's determination*

24. Although it seems likely that, in August 2019, Mr James was convicted of the offence in question, we are not sure about this (see paragraph 18 above). We have therefore concluded that this case should be treated as one where the Tribunal is not *required* to make an order for the maximum amount, and that accordingly there is no presumption that the order should be for the maximum amount. Rather, the Tribunal should take an overall view of the circumstances in determining what amount to order the landlord to repay (taking particular account of the factors listed in paragraph 10 above). The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration, but the circumstances in which the offence is committed are always likely to be material. A deliberate flouting of the improvement notice would merit a larger amount than a case of inadvertence, and a landlord who is engaged professionally in letting is likely to be dealt with more harshly than a non-professional landlord.

#### *Whether the landlord has any relevant convictions*

25. As mentioned at paragraph 18 above, Mr James has been convicted of several housing offences in respect of the Property. He has also been prosecuted for housing offences in respect of at least one other property. Whilst precise details of Mr James' criminal record have not been provided, it seems very likely indeed that at least some of the offences for which Mr James has been convicted are offences specified in section 40(3) of the 2016 Act.

#### *The financial circumstances and conduct of the landlord*

26. It appears that Mr James is a professional landlord. However, he has not provided us with any information about his business or about his financial circumstances. Nor do we have any information about any outgoings which he may have incurred in respect of the Property during the relevant period. Given his lack of attention to the evident defects in the Property, those outgoings may well have been minimal anyway.
27. There is nothing to indicate that Mr James' failure to comply with the improvement notice was anything other than a deliberate omission. There is evidence that York City Council had endeavoured to engage with him about the condition of the Property over a substantial period before issuing the improvement notice, but that he had not taken positive steps to respond to concerns raised by the Council or, indeed, by his tenants. Moreover, we note that such was the Council's concern about Mr James' regulatory non-compliance as a landlord, it sought and obtained a criminal behaviour order against him.

*The conduct of the Applicant tenant*

28. There is no relevant evidence to be taken into account concerning the conduct of Miss Rust.

*The Tribunal's determination*

29. Taking all of the above factors into account, we consider it appropriate to make a rent repayment order in favour of Miss Rust for the maximum possible amount of £1,993.64. Not only did Mr James commit a serious housing offence, but he appears to have let the Property in a sub-standard condition and, by disregarding the requirements of the improvement notice, to have shown a reckless disregard for the safety and wellbeing of his tenants.