



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

Case Reference:	CHI/18UC/HMK/2019/0023
Property:	Flat 5 Bartholomew House, Bartholomew Street West, Exeter EX4 3AJ
Applicants:	Pierre de Broses Alexandra Camaly Harriet Lawes Lewis Day Hannah Carney
Representative:	Pierre de Broses
Respondent:	John Bullock
Representative:	Self
Type of Application:	For Rent Repayment Order Housing and Planning Act 2016 (“the Act”)
Tribunal Members:	Judge A Cresswell (Chairman) Regional Surveyor Mr W H Gater MCI Arb FRICS
Venue of Hearing:	On the Papers
Date of Decision:	26 March 2020

DECISION

The Application

1. The Respondent is the owner of the Property, which was let to multiple tenants. He was required to have an HMO licence for the Property. The Applicants have applied for a rent repayment order (“RRO”) under section 41 of the Housing and Planning Act 2016 (“the Act”).

Summary Decision

2. The Tribunal orders the Respondent to repay to the Applicants housing benefit payments in the sum of £12,000.
3. The Respondent is ordered to repay to the Applicants the following amounts:-

To Pierre de Brosses	£2,400
To Alexandra Camaly	£2,400
To Harriet Lawes	£2,400
To Lewis Day	£2,400
To Hannah Carney	£2,400

Directions

4. Directions were issued on 14 November 2019.
5. The directions provided for the matter to be heard on the basis of an oral hearing, and for any statements and documents upon which the parties intended to rely to be provided to the Tribunal. The parties have agreed, however, to a Paper determination.
6. This Decision is made in the light of the documentation submitted in response to the directions.

The Law

7. Section 41 of the Housing and Planning Act 2016 provides that a tenant may apply to the First-tier Tribunal ("FtT") for a RRO against a landlord who has committed an offence to which the 2016 Act applies. The 2016 Act applies to an offence committed under section 72(1) of the Housing Act 2004 (section 40(3) of the 2016 Act).
8. Section 43 provides that the FtT may make a RRO if satisfied, beyond reasonable doubt, that the landlord has committed an offence to which the 2016 Act applies.
9. Section 44 of the 2016 Act provides for how the RRO is to be calculated. In relation to an offence under section 72(1) of the 2004 Act the period to which a RRO relates is a period, not exceeding 12 months, during which the landlord was committing the offence.
10. By section 44(4) in determining the amount, the Tribunal had 'in particular' to take account of the following factors: (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 use of the words 'in particular' suggests that these are not the only considerations the Tribunal is to take into account.

Agreed History

11. The Tribunal first records the relevant history specifically agreed by the parties or where there is no challenge made to the case stated by the parties.
12. The Respondent is owner of the property.
13. The property was occupied under a tenancy by five adults for the period 3 September 2018 to 2 August 2019, the Respondent being the landlord.
14. An HMO licence was required from 1 October 2018 by reason of The Licensing of Houses in Multiple Occupation (Prescribed Description) (England) Order 2018.
15. There was no licence for the property during the period 1 October 2018 to 19 July 2019 inclusive, during which period all five tenants were in

- occupation. The Respondent accepts that he had no HMO licence during the period of rental.
16. It appears that the Council informed both the Applicants and the Respondent's local agent of the requirement for an HMO licence on 26 April 2019 but did not inform the Respondent.
 17. The Applicants have restricted their applications for RRO to the period 3 November 2018 to 2 August 2019.
 18. £18,657 in rent was paid during that period in equal shares by the five Applicants.
 19. Both parties have acted in a decent and professional manner to the other, but both have been let down by the actions, inactions and lack of communication on the part of the Respondent's agent. (Whilst this raised very real issues for the parties, it does not influence the specific questions to be resolved by the Tribunal.)

The Issues Before the Tribunal

The Applicants

20. The Applicants point to a poor tenancy experience. There was a poor inventory; communal areas were in a poor state; the performance of the Respondent's local agent was generally poor; there was a problem with water leakage.

The Respondent

21. The Respondent submits that he had made an enquiry of Exeter City Council of 4 April 2016 about HMO licensing at the building and had received a response of 5 April 2016 to the effect that none of the flats in the building required an HMO licence due to the fact that the block had been converted in accordance with Building Regulations post 1991.
22. In June 2016, after purchasing the property, he made enquiries of the Council as to planning permission for renting the flat to university students. He was informed that no planning permission was required.
23. He visited the flat a number of times during the Applicants' tenancy to carry out maintenance works and enjoyed a cordial relationship with them.
24. He received notice of these proceedings on 10 December 2019. It was then that he found that the HMO Rules had changed in October 2018 and that his flat was no longer exempt. He has since found that the Applicants and his local agent were informed by the Council on 26 April 2019 that his flat required an HMO licence. Neither of those parties passed that information on to him. Had they done so, he could have obtained a licence much sooner.
25. Once he realised he needed to get an HMO licence, he set about the process and sent his application for an HMO licence on 19 December 2019. He now has an HMO licence.
26. He produces references from the current tenants of the property and his other properties to show that he is a good and decent landlord.
27. It was never his intention to evade or ignore the HMO regulations. He has now joined the National Landlords Association so as to ensure that he is kept up to date.

The Tribunal's Findings and Decision

28. The Tribunal is satisfied beyond a reasonable doubt that the Respondent was committing an offence under section 72(1) of the Act from 1 October 2018, up to 19 December 2019 when he applied for an HMO licence.

29. The Respondent does not argue that either of the exemptions in Sections 62 or 86 are applicable.
30. In accordance with Section 44(4), the Tribunal has taken account of the conduct of the landlord and the tenant, the financial circumstances of the landlord, and whether the landlord has at any time been convicted of an offence to which this Chapter applies.
31. There is no information to suggest any improper behaviour by the tenants.
32. The Respondent landlord appears to have, for the most part, managed the property from a distance via a local agent. Whilst the Council informed the local agent of the new requirement for an HMO licence in relation to the property and that local agent appears not to have communicated that information to the Respondent, it is the Respondent's responsibility as a professional landlord to keep abreast of legal requirements. The Tribunal accepts that the Respondent's liability here is mitigated to some extent by his own initial enquiries and by his reliance upon a professional local agent.
33. There is information available for the Tribunal to consider relating to the Respondent's financial circumstances. The Respondent details, with supporting documentation, expenditure in the total sum of £2,828.52 for management fees, plumbing and heating services, electrical contractors and cleaning. Total relevant outgoings, therefore, are in the sum of £2,828.52.
34. There is no evidence of any other convictions.
35. There is persuasive authority in two cases dealing with the RRO provisions under the earlier 2004 Act, being **Parker v Waller and others** (2012) UKUT 301 (LC) and **Fallon v Wilson and Others** (2014) UKUT 300 (LC). The RRO provisions have a number of objectives: (i) to enable a penalty in the form of a civil sanction to be imposed in addition to the penalty payable for the criminal offence of operating an unlicensed HMO; (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. There is no presumption that the RRO should be for the total amount received by the landlord during the relevant period. Although the period for which a RRO can be made is limited to 12 months, a Tribunal should have regard to the total length during which the offence was committed. The Tribunal should take an overall view of the circumstances in determining what amount would be reasonable. The fact that the tenant will have had the benefit of occupying the premises during the relevant period is not a material consideration. The circumstances in which the offence is committed is always likely to be material. A deliberate flouting of the requirement to register would merit a larger RRO than instances of inadvertence. Account should be taken of payment for outgoings, such as utilities. A landlord who is engaged professionally in letting is likely to be dealt with more harshly than the non-professional landlord.
36. The Tribunal has weighed all of the relevant factors and concluded that the Respondent should make a partial repayment of the monies paid in Housing Benefit for the relevant period.
37. Using the figures supplied by the Respondent, which appear to be reasonable in sum, he has paid out a total of £2,828.52.
38. The offence here was of a relatively short duration and caused by ignorance; the Applicant is, however, a professional landlord, albeit on a small scale.
39. There is evidence that the Respondent did make enquiries to establish his responsibilities but was later let down by a lack of communication from his local agent.

40. Taking a rounded view of all of the circumstances, the Tribunal orders the sum of £12,000 is to be repaid to the Applicants in equal measure. This sum should be divided between the Applicants in the proportion of the rents that they paid in respect of their occupation during the nine months claimed preceding their application. The calculation results in the order of the Tribunal being for the Respondent to repay to each Applicant the sum of £2,400.

A Cresswell (Judge)

APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Schedule

Housing and Planning Act 2016

Section 40

- (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 (b).....
- (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.

The table described in s40(3) includes at row 5 an offence contrary to s72(1) of the Housing Act 2004 “control or management of unlicensed HMO” Section 72(1) provides: (1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

Section 41

(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.

Section 43

(1) The First-tier Tribunal may make a rent repayment order if it is satisfied beyond reasonable doubt, that a landlord has committed an offence to which this Chapter applied (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);

Section 44

Tenant

(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</i>	<i>the amount must relate to rent paid by the tenant in respect of</i>
an offence mentioned in row 1 or 2 of the table in section 40(3)	the period of 12 months ending with the date of the offence
an offence mentioned in row 3, 4, 5, 6 or 7 of the table in section 40(3)	a period, not exceeding 12 months, during which the landlord was committing the offence

(The table provides that for an offence at row 5 of the table in section 40(3) the amount must relate to rent paid by the tenant in respect of the period not exceeding 12 months during which the landlord was committing the offence.)

(3) The amount that the landlord may be required to pay 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.

	<i>Act</i>	<i>Section</i>	<i>general description of offence</i>

1	Criminal Law Act 1977	Section 6(1)	violence for securing entry
2	Protection from Eviction Act 1977	Section 1(2), (3) or (3A)	eviction or harassment of occupiers
3	Housing Act 2004	Section 30(1)	failure to comply with improvement notice
4		Section 32(1)	failure to comply with prohibition order etc
5		Section 72(1)	control or management of unlicensed HMO
6		Section 95(1)	control or management of unlicensed house
7	This Act	Section 21	breach of banning order

72 Offences in relation to licensing of HMOs

(1) A person commits an offence if he is a person having control of or managing an HMO which is required to be licensed under this Part (see section 61(1)) but is not so licensed.

(2) A person commits an offence if—

(a) he is a person having control of or managing an HMO which is licensed under this Part,

(b) he knowingly permits another person to occupy the house, and

(c) the other person's occupation results in the house being occupied by more households or persons than is authorised by the licence.

(3) A person commits an offence if—

(a) he is a licence holder or a person on whom restrictions or obligations under a licence are imposed in accordance with section 67(5), and

(b) he fails to comply with any condition of the licence.

(4) In proceedings against a person for an offence under subsection (1) it is a defence that, at the material time—

(a) a notification had been duly given in respect of the house under section 62(1), or

(b) an application for a licence had been duly made in respect of the house under section 63,

and that notification or application was still effective (see subsection (8)).

(5) In proceedings against a person for an offence under subsection (1), (2) or (3) it is a defence that he had a reasonable excuse—

(a) for having control of or managing the house in the circumstances mentioned in subsection (1), or

(b) for permitting the person to occupy the house, or

(c) for failing to comply with the condition,

as the case may be.

(6) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to [a fine].

(7) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[(7A) See also section 249A (financial penalties as alternative to prosecution for certain housing offences in England).

(7B) If a local housing authority has imposed a financial penalty on a person under section 249A in respect of conduct amounting to an offence under this section the person may not be convicted of an offence under this section in respect of the conduct.]

(8) For the purposes of subsection (4) a notification or application is “effective” at a particular time if at that time it has not been withdrawn, and either—

(a) the authority have not decided whether to serve a temporary exemption notice, or (as the case may be) grant a licence, in pursuance of the notification or application, or

(b) if they have decided not to do so, one of the conditions set out in subsection (9) is met.

(9) The conditions are—

(a) that the period for appealing against the decision of the authority not to serve or grant such a notice or licence (or against any relevant decision of [the appropriate tribunal]) has not expired, or

(b) that an appeal has been brought against the authority's decision (or against any relevant decision of such a tribunal) and the appeal has not been determined or withdrawn.

(10) In subsection (9) “relevant decision” means a decision which is given on an appeal to the tribunal and confirms the authority's decision (with or without variation).