



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

**Case Reference** : **MAN/00BN/HMK/2019/0094**

**Property** : **54, Lauderdale Crescent, Manchester M13  
9DP**

**Applicant** : **Anastasja Takvareli**

**Respondent** : **Chong Qian Tang**

**Type of  
Application** : **Application for a rent repayment order by  
tenant (no conviction)  
Sections 40-44 Housing and Planning Act  
2016**

**Tribunal Member** : **Mr J R Rimmer  
Mr J Faulkner**

**Date of Decision** : **27<sup>th</sup> April 2020**

**Date of  
Determination** : **14 May 2020**

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**DECISION**

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**Order: The application for a Rent Repayment Order is granted in an amount of £520.00 together with the application fee for the reasons set out in paragraphs 20-27 herein**

**A. Application**

1. The Tribunal has received an application under Section 41 Housing and Planning Act 2016 (the Act) from the Applicants for a rent repayment order (RRO).
2. The Tribunal has sent a copy of the application to the Respondents.
3. Directions were given by the Deputy Regional Judge of the Tribunal for the further conduct of this matter.
4. Those directions have been complied with sufficiently for the Tribunal to be able to determine the application

**B Background**

- 5 The Applicant was, from 1<sup>st</sup> September 2018, the occupier of one flat at 54, Lauderdale Crescent, Manchester. The agreement for occupation was described as a “Licence for the occupation or shared occupation of a room tenant agreement (fixed term)”. It has all the characteristics of a tenancy agreement and the rent of £380.00 per month is described as such. A copy of the agreement has been provided to the Tribunal by the parties. It was contained in the bundle of documents supplied to assist the Tribunal.
- 6 The Respondent is the owners of the property, which is divided into a number of residential units such that at the time of the letting it appeared to match the description of a house in multiple occupation (“HMO”) under the provisions of the Housing Act 2004.
- 7 The effect of this was that the building came to fall within the licensing provisions of that Act applicable to HMOs and operated by the local housing authority, Manchester City Council, with effect from 1<sup>st</sup> October 2018.
- 8 The Respondent was aware of this designation property as an HMO from 2013, but did not apply for a licence once it fell within the mandatory licensing requirement. She claims that she was unaware of the need for a licence. The Tribunal is inclined to believe her in the light of what then appears to happen.

- 9 Under powers granted to it by the Housing Act 2016 the Council determine that in the absence of a licence application it will impose a financial penalty authorised under that Act. The amount is eventually set at £5,000.00. Although the Council itself brings the attention of the Respondent to the fact the property is an HMO in correspondence in November 2014 in relation to council tax issues, it somewhat curiously appears not to bring the licensing requirements to the attention of the respondent in 2018. This is the only sensible construction that can be put upon the manner in which the fixed penalty decision is made and the tenor of the statement of a council officer, Grace Crompton, provided in support of the Application.
- 10 The Respondent remedies the licensing situation in due course by ensuring the property no longer matches the description of an HMO.
- 11 The Applicant therefore is in occupation of a room in an unlicensed HMO from 1<sup>st</sup> October 2018 until the end of her tenancy, which would appear to be when she leaves in July, before the expiry the agreement on 31<sup>st</sup> August 2019.

## **The Law**

### In relation to the requirements for a licence:

- 12 Section 95 of the Act provides:
  - (1) A person commits an offence if he is a person having control of or managing a house which is required to be licensed but is not so licenced
  - (2) ...
  - (3) In proceedings for an offence under subsection (1) it is a defence that at the material time
    - (a)...
    - (b) an application for a licence had been duly made in respect of the house under section 87 and that application was still effective
  - (4) In proceedings against a person for an offence under subsection (1) it is a defence that he had a reasonable excuse-
    - (a) For having control or managing the house in the circumstances mentioned in subsection (1)
  - (7) For the purposes of subsection (3) an...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 or not to serve a temporary exemption notice, or... grant a licence in pursuance of the application or
    - (b) (if a license is refused either the time to appeal that decision has expired, or an appeal has been unsuccessful)

- 13 Section 87 of the Act sets out the requirements to be met in any application, those being-
- (1) ...made to a local housing authority
  - (2) ...made in accordance with such requirements as the authority may specify
  - (3) ...be accompanied by any fee required by the authority
  - (4) ... comply with any requirements specified by the authority subject to any regulations made under subsection (5)
  - (5) The appropriate national authority may by regulations make provision about the making of applications under this section
  - (6) Such regulations may, in particular, specify the information, or evidence, which is to be supplied in connection with applications.
- 14 Regulation 7 and Schedule 2 of the Licensing and Management of Houses in Multiple Occupation and other Houses (Miscellaneous Provisions) (England) Regulations 2006 (“the 2006 Regulations”) provide a whole raft of requirements that it is not proposed to set out at length, but where relevant they are considered in the text below.

In relation to a rent repayment order:

- 15 Section 41 of the Housing and Planning Act 2016 (H&PA) provides
- (1) A tenant...may apply to the First-tier Tribunal for a (RRO) against a person who has committed an offence to which this Chapter applies
  - (2) A tenant may apply for an 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
- 16 Section 40 of the H&PA
- (1) confers power on the First-tier Tribunal to make a (RRO) where the landlord has committed an offence to which this Chapter applies
  - (2) A (RRO) is an order requiring the landlord under a tenancy of housing in England to
    - (a) Repay an amount of rent paid by a tenant
- Subsection 3 then sets out a table of 7 offences to which the Tribunal’s powers apply:
- 1 using violence to secure entry to residential premises
  - 2 eviction of harassment of occupier
  - 3 failure to comply with an improvement notice
  - 4 failure to comply with a prohibition notice
  - 5 and 6 offences in relation to houses required to be licenced
  - 6 breach of banning orders in relation to the provision of housing

- 17            18 Section 43 H&PA then provides that
- (1) The First-tier tribunal may make a RRO if satisfied, beyond reasonable doubt that a landlord has committed an offence...(whether or not the landlord has been convicted)
  - (2) A RRO under this section may only be made on an application under section 41
  - (3) The amount of a RRO ... is to be determined in accordance with
    - (a) Section 44 (where it is made by a tenant)

Section 44 provides a table (Sub-section 2) whereby the amount of the order 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 and, (Sub-sections 3 and 4)

- Must not exceed the rent paid in respect of that period, less any relevant payment of universal credit in respect of the rent under the tenancy in that period
- In determining the amount, the tribunal must, in particular take into account
  - (a) the conduct of the landlord and tenant,
  - (b) the financial circumstances of the landlord and
  - (c) whether or not the landlord has at any time been convicted of a (relevant) offence.

### **Submissions**

- 18 The Tribunal received extensive submissions from the both the Applicant and the Respondent and which gave a very full picture of what had happened, and when. The Tribunal has taken those matters raised that are relevant to its decision into account and considered them below.
- 19 It would appear that if the Tribunal's reading of correspondence is correct, the Applicant paid a deposit that was subsequently refunded. She then paid £4,053.00 in rent. This includes payment for August 2019 irrespective of any date she may actually have vacated her room.

### **Decision**

- 20 In order to reach a decision favourable to the Applicant the Tribunal must firstly be so satisfied that it is sure a relevant offence within Section 40 of the H&PA 2016 has been committed. satisfy itself beyond reasonable doubt considers that it may take into account any circumstances it regards as reasonably relevant to its determination, provided it gives appropriate consideration to those matters specifically mentioned in section 44(4).
- 21 The most relevant of these offences to the matter now before the Tribunal is that of an offence under items 5/6 in paragraph 16, above, being the offence under Section 95(1) Housing Act 2004 of having control of or managing a house required to be licenced... but is not so licenced

- 22 It is important to note that committing an offence is not synonymous with being convicted of an offence in a court exercising a criminal jurisdiction, but is regarded as requiring any decision as to such an offence being to the same standard as if in a court exercising a criminal jurisdiction. That is what the Council did in its decision as to a financial penalty and it is clear to the Tribunal that this is a correct decision.
- 23 Section 95 (see paragraph 12, above) allow a defence to the Respondent if she had a reasonable excuse for operating the premises without a licence. She outlines the circumstances of having an agent on whom she relies and is ignorant of the property falling now within the licensing requirements. She receives no guiding push towards a licence form the Council.
- 24 Somewhat reluctantly, the Tribunal is drawn to the conclusion that these do not amount, separately, or together, to a reasonable excuse, even though she only has to establish that defence on the balance of probability. It is for a landlord to ensure that his, or her, property is operating within the law, ignorance is no excuse. The mitigating circumstances are precisely that they are not a reasonable excuse, continuing over some 9-10 months. The Tribunal is satisfied that it is sure that at some point in that period, without needing to ascertain a precise date, any relevant excuse ceased to be reasonable and an offence was then being committed. The Tribunal acknowledges that any culpability on their part is correspondingly limited.
- 25 The Tribunal then moves on to consider whether an order should be made. It has taken into account all matters raised by the parties and considers these to be the most pertinent:
- (1) If an offence relevant offence has been found the Applicants are entitled to make application for an order
  - (2) The Tribunal has a very wide discretion as to whether it should make an order, and if so for what amount.
  - (3) The property was required to be licensed only from 1<sup>st</sup> October 2018. There is no question of the Applicants taking up occupancy of a property that needed to be licensed, but was not.
  - (4) The culpability, noted above, on the part of the Respondent was limited
  - (5) There does appear to be one relatively minor issue raised in relation to the standard of accommodation provided, as identified by the Council on its inspection, and which the Applicant enjoyed, licensed, or not, for the whole of the tenancy
  - (6) That would appear to be borne out by the very limited requirements imposed upon the Respondents to secure a licence following the licensing application.
  - (7) The Applicant was in a position at the start of the tenancy where she was effectively excluded by the continued occupation of the previous tenant, although a rental adjustment was made for that month in her favour.
  - (8) The Applicant is entitled to expect the Respondent to comply with statutory requirements within as reasonable a timescale as possible.

- (9) Neither party should be entitled to an unmeritorious financial benefit from a failure to comply with the requirements, either by an automatic return of all rent, or retention of undeserved rental payments.
- (10) The Applicant had the use and enjoyment of the room for nearly a year.
- (11) The Tribunal has received no clear evidence as to the Respondents financial position (see paragraph 20, above)
- (12) The Respondent has not, to the Tribunal's knowledge, ever been convicted of a relevant offence. A finding by the Council/Tribunal that an offence has been committed is not the same thing.

26 The Tribunal has sought to weigh all the relevant factors in order to reach what it considers to be a just and equitable determination for both parties. **It takes the view that it is appropriate to make a repayment order in favour of each of the Applicant in an amount of £760.00, being 20% of the rental payments made for the period for which the property was unlicensed (from 1<sup>st</sup> October 2018)**

27 **The Applicant should also recover from the Respondent her Application fees in respect of this application.**

**Judge J R RIMMER**  
**27 April 2020**

