



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

**Case Reference** : **MAN/00CJ/HMF/2019/0075**

**Property** : **49 Cavendish Place, Newcastle upon Tyne  
NE2 2NE**

**Applicant** : **Henry James Stokes**

**Respondents** : **Mrs I Sattar & Miss B Ahmad**

**Type of Application** : **Application for Rent Repayment Orders  
under s41 Housing and Planning Act 2016**

**Tribunal Members** : **Judge WL Brown  
Mr I R Harris MBE FRICS**

**Date of Determination** : **23<sup>rd</sup> March 2020**

**Date of Decision** : **7<sup>th</sup> April 2020**

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**DECISION**

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## **Order**

The Tribunal orders rent repayment of £3,412.50 from the Respondents to the Applicant.

## **Introduction**

1. The Applicant made application (the “Application”) on 3 September 2019 to the Tribunal under Section 41 of the Housing and Planning Act 2016 (the “Act”) claiming a rent repayment order (RRO) for rent paid to the Respondents by him as tenant in respect of the Property. The Applicant relied upon the failure by the Respondents to hold a licence for the Property contrary to Section 72(1) Housing Act 2004 when in control or management of a house in multiple occupation (HMO).
2. The Tribunal issued Directions on 20 September 2019. No party having requested a hearing the Tribunal convened in Newcastle upon Tyne to make its decision.
3. The Tribunal learned from the evidence of the Respondents’ agent that the Property has 5 bedrooms over 2 floors. It was not disputed that it is required to be licensed as an HMO

## **The Law**

4. Section 40 of the Act states:

(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,  
.....

(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 2004 Act: “control or management of an unlicensed house”.

5. Section 41 of Act states:

“(1) A tenant ..... 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.”
6. Under section 44(4) the following must be taken in to account by the Tribunal:
- a. The conduct of the Landlord
  - b. The financial circumstances of the Landlord
  - c. Whether the Landlord has at any time been convicted of a relevant offence
  - d. The conduct of the tenant
7. Section 43 directs the Tribunal to make a RRO if satisfied, beyond reasonable doubt, that a landlord has committed an offence to which the Chapter applies (whether or not the landlord has been convicted).
8. s72 2004 Act states:
- “ (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...but is not so licensed.”

### **Issue**

9. The Respondent has not been prosecuted for the matter giving rise to the Application. Therefore the Tribunal must be satisfied on the criminal standard of proof (beyond a reasonable doubt) that the Respondent committed the offence of having control or management of the Property without a licence, contrary to Section 72(1) of the 2004 Act (the “Offence”). If so it is for the Tribunal to decide whether it is satisfied that a RRO should be made and in what sum for what period.

### **Representations**

10. The Applicant presented a statement dated 4 October 2019 in which he recorded that as a student at Newcastle University he took a tenancy of the Property from the Respondents with four other students. He paid a deposit of £455 in February 2018. His father agreed to be a guarantor of the rent of £105 a week, which was payable in eight instalments of £682.50 over eight months beginning in July 2018. He moved into the Property in September 2018. The term recorded in the tenancy was 10 July 2018 until 9 July 2019.
11. The Applicant claimed rent paid by him from 1 October 2018 being £3,412.50, equivalent to 5 months’ rent. He informed the Tribunal that had the rent not been required to be paid in 8 instalments but had been payable monthly, the figure would have been higher - £5,460 for the year, at £455 per month.

12. As to commission of an alleged offence, the evidence relied upon was in an undated letter to the Applicant from Ms Jo-Anne Hunt, Senior Technician, Housing HMO Team, Newcastle City Council in which she says: *“I am writing in response to your email dated 21 September 2019. A complaint regarding 49 Cavendish Place was received on 15 April 2019. The complaint alleged that the property which is a two-story mid terrace property with five unrelated tenants who share amenities would require an HMO licence.*

*A visit was carried out at the property on 26 April 2019. During the visit I spoke to tenants of the property and they advised who was staying in each room. The property was occupied by five tenants who were sharing amenities.*

*The tenants provided a tenancy agreement which showed that the property was required to be licensed from October 1st 2018.*

*Our initial investigations indicate that an offence of operating an HMO without a licence has taken place. The City Council are continuing to investigate this case.”*

13. Regarding the conduct of the landlord and condition of the Property the Applicant stated that no gas safety certificate was provided until inspection on 30 August 2018; the fire and smoke alarms did not work and were not linked into the mains supply. There were signs of rodent infestation. No carbon monoxide detector or fire doors were provided. It also was alleged that the Respondent had not secured the deposit until 15 October 2018, beyond the statutory timelimit. A letter from the Applicant’s father, Michael Stokes dated 15 October 2018, to the Respondent’s agent complained about poor cleanliness of the Property on letting and a defective washing machine supplied
14. Evidence for the Respondents was from their brother, who managed the Property, Mr Mudassar Ahmad, in a statement dated 11 February 2020. He indicated that he had held an erroneous belief that licensing of HMOs was only being consulted upon and accepted that the Property had not been licensed following it becoming necessary on 1 October 2018. Application for an appropriate licence was made on 13 June 2019, validated on 2 August 2019 and granted on 24 September 2019 for a period of 5 years (from the date of submission). He suggested that the grant indicated local authority satisfaction with the Property, its proposed management arrangements and the suitability of the owners.
15. He indicated that the Property had been let since January 2018 before the compulsory licensing under a tenancy that commenced on 10 July 2018. He disputed the suggestion that there were continual issues with the tenancy and indicated that all deposits had been returned to the tenants.
16. He represented that the Applicant had enjoyed the benefit of the tenancy. The Respondents had not sought to take advantage by failing to register. The failure was due to a misunderstanding. If the Tribunal is to make a RRO should not be for the whole period sought by the Applicant and not beyond 13 June 2019, the retrospective date from when the granted licence was deemed to run.

## Decision

17. The Tribunal found from the admission of Mr Ahmad and on the facts showing that the Property as an HMO ought to have been licensed from 1 October 2018, having been let from 10 July 2018 until 9 July 2019, that beyond reasonable doubt the Respondent committed the Offence.
18. The Application was issued on 3 September 2019 within twelve months of the commission of the Offence, which had begun on 1 October 2018.
19. Accordingly, the Tribunal has the power to make a rent repayment order and it determined that it should do so, but it must take into account the matters referred to in paragraph 6.
20. The duration of the Property being let out unlicensed was from 1 October 2018 until 9 July 2019, being 40 weeks. The weekly rent apportioned to the Applicant was £105, meaning the maximum amount of a RRO is £4,200.
21. The Tribunal has no information about the financial circumstances of the Respondent. The Tribunal had regard to the management issues referred to in paragraph 13, which were not denied by the Respondents. The points presented supporting mitigation of the amount set out in paragraphs 14, 15 and 16 are not significant, but the Respondents have the benefit of the concession made by the Applicant in seeking a sum of £3,412.50, almost £800 less than the maximum award. The Tribunal considers this sum is more than a fair sum to take account of the admission for the Respondents of failure to licence, the generally reasonable quality of accommodation and the application for licence made and granted following the Respondents' realisation of their oversight.
22. Rent Repayment Orders under the Act are fairly new. Similar Orders have been possible under the 2004 Act. While the two Acts do not have identical provisions, substantially equivalent words are used. The two notable cases on rent repayment orders under the 2004 Act namely *Parker v Waller* [2012] 301 UKUT(LC) and *Fallon v Wilson* [2014] UKUT (LC) gave guidance as to the exercise of discretion by the Tribunal in deciding upon the reasonableness of the amount to be repaid. In *Fallon* HH Judge Huskinson said when allowing an appeal in which the First-tier Tribunal had not exercised its discretion properly: "*In Parker v Waller it is stated in paragraph 26(ii) that there is no presumption a RRO should be for the total amount received by the landlord during the relevant period unless there are good reasons why it should not be.*"
21. The Tribunal exercises its discretion when determining what sum is repayable in accordance with the statutory framework, but with the benefit of the approach adopted by the Upper Tribunal in the cases mentioned.
22. Therefore, the Tribunal orders rent repayment of £3,412.50 from the Respondents to the Applicant.

Date: 7 April 2020  
Judge: L. Brown