FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/11UE/HMF/2020/0002 P**
Property	**:**	**82 Kings Mill Way, Denham, Uxbridge, UB9 4BT**
Applicant	**:**	**Samuel Geoffrey Ruff (1)** **Alexander Guy Spedding (2)** **Maximus Cosmo Somerset Burnham (3)** **Timothy Keith Costello (4)** **Stephen Shane Packer (5)**
Representative	**:**	**Mr Ruff**
Respondent	**:**	**Mr Ka Fai Tai**
Representative	**:**	
Type of Application	**:**	**Application for a rent repayment order under the Housing and Planning Act 2016**
Tribunal Members	**:**	**Tribunal Judge Dutton**
Date of Decision	**:**	**16th July 2020**

DECISION

DECISION

This has been a remote determination on the papers, which has not been objected to by the parties. A face to face hearing was not held because it was not practicable and all issues could be determined on papers before me as was requested by the applicants in their application. The documents that I was referred to are in a paper bundle of some 48 documents together with a number of zip files including statements in support and reply by the applicants and a statement in response and a witness statement by the respondent all with exhibits, the contents of which I have noted but will not repeat in detail as they are common to both parties.

The Tribunal determines that the Respondent has breached section 72(1) of the Housing Act 2004 (the 2004 Act) and determines that the Respondent must pay to the Applicants the sum of £29,283.60 by way of Rent Repayment Order (RRO) within the next 28 days and refund to the Applicants the Tribunal's fees of £100 also within 28 days of this decision.

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BACKGROUND

1. On 24th January 2020 the applicants, through Mr Ruff, applied to the tribunal for a Rent Repayment Order (RRO) in respect of their occupancy of the property, 82 Kings Mill Way, Denham, Uxbridge UB9 4BT (the Property). The period for which the RRO was sought was from 10th February 2018 to 9th February 2019 (the Period). Directions were issued on 19th February 2020 initially indicating a hearing but, as a result of the Covid-19 pandemic, no such hearing could be arranged.

2. In support of their case the applicants produced a statement of case, which addressed the background, their submission on the law as they saw it, the evidence in support of the claim for an RRO, any relevant conduct and finally quantum. In this latter part the applicants sought to differentiate between the provisions of RRO's under the Housing Act 2004 (the 2004 Act) and those, the subject of this application under s41 of the Housing and Planning Act 2016 (the 2016 Act). I have noted carefully all that has been said. It is alleged that the sum due for recovery in respect of rent paid for the Property during the Period totals £29,283.60. I have noted the contents of the exhibits annexed to the written bundle.

3. In response the respondent served a statement of case dated 15th April 2020. The statement told me that the respondent is a Hong Kong national, living there. With two others he had acquired the Property in 2013 at a price of £600,000 using a mortgage of some £360,000. The statement asserts that the respondent will be, in all likelihood, due to retire in August 2020 and would then have to live on his savings and the income generated from the Property and another, a flat,

66, St. Williams Court, 1 Gifford Street, London N1. I have noted all that was said about these two properties.

4. There are a number of exhibits which in the main seem to be attached to the letting of the flat at Gifford Street but do include documents confirming the disability of the respondent's daughter, with which one can only feel sympathy.

5. The statement contains an admission on behalf of the respondent that the Property was an HMO which required to be licensed and that during the Period there was no such licence. I am not told whether a licence has now been applied for and if it has what the present state of play may be. It is accepted that an RRO can be made under s45 of the 2016 Act, an offence having been committed under s72(1) of the 2004 Act.

6. The statement went on to set out factors it is said I should take into account when assessing the quantum of any order by virtue of s44 of the 2016 Act. I have carefully noted all that has been said concerning the income and expenditure relating to the Property, his capital assets, his lack of knowledge of the law, his use of a letting agent, the fact that he is said not to be a professional landlord and that he has not been convicted of any offence under the 2016 Act.

7. The applicants served a detailed reply. Much is supposition. I have noted all that has been said, which includes a request for the refund of the fees paid to the tribunal in respect of this application.

8. This reply was followed by a further statement from Mr Tai, seeking to respond to the issues raised in the applicants' reply and provide the information which they appeared to be seeking in the reply statement. This was objected to by the applicants for the reasons set out in in a letter to the tribunal dated 19th May 2020. I have not been provided with any response from the tribunal.

9. My finding on this point is that the witness statement should be admitted. It was served and filed a month before the hearing and the applicants had opportunity to respond, which they did. It replies to the statement in reply by the applicants, which I consider contained something of a fishing expedition as to the respondent's statement and matters of supposition and assumption. The witness statement seeks to clarify issues which assist me in reaching a decision on the quantum of the RRO to be made. Further the applicants appear to accept the statement but suggest that the respondent should request a telephone hearing to clarify issues and enable the tribunal to "cross-examine" the respondent. It is not for me to descend into the arena and cross examine the respondent. For my part I had understood that the applicants only sought a refund of the fees paid and not costs. My entitlement to allow this statement to be considered is to be found in rules 3 and 6 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013

FINDINGS

10. As I have indicated I have considered all that has been said by the parties in the documents before me. I agree with the applicants that if we are to consider the capital wealth of the respondent then up to date valuations of the two properties

he owns in the UK would have assisted. We were referred to the Upper Tribunal case of Parker v Waller and others a decision of the President of the Tribunal at that time. This decision was made before the 2016 Act when differing matters to be considered by the Tribunal were brought in. Those were set out at section 44(4) and are the conduct of the landlord and a tenant, the financial circumstances of the landlord and whether the landlord has been convicted of an offence. The latter does not apply in this case. I do not think that the UT decision in Parker v Waller represents the current law.

11. That is now to found in the latest UT case under reference [2020] UKUT 0183 (LC). The case is Mr B R Vadamalayan v Elizabeth Stewart and others and is a decision of Judge Elizabeth Cooke dated 11th June 2020 and is intended to be the route the tribunal should henceforth follow in considering RRO under the 2016 Act. (the Case)

12. I appreciated that this Case was unlikely to have been known to the parties and accordingly I adjourned the application to give the parties time to file any further submissions following consideration of the UT findings. A letter was sent to both parties following the initial consideration by me of the papers. Neither party responded. I will therefore make my decision based on the evidence before me. The applicants sought to argue that the latest findings of the UT in the Case, unbeknownst to them, was the route I should follow in any event. For the respondent there has been detailed disclosure of his financial circumstances both in his original statement and his subsequent witness statement, which I have allowed to stand.

13. I set out below the relevant extracts from the judgment of Judge Cooke. They are to found at paragraphs 52 onwards.

"52. However, as I said above, there is no longer any reason to limit the order to make it in effect a repayment of the landlord's profits for the relevant period.

53. The provisions of the 2016 Act are rather more hard-edged than those of the 2004 Act. There is no longer a requirement of reasonableness and therefore, I suggest, less scope for the balancing of factors that was envisaged in Parker v Waller. The landlord has to repay the rent, subject to considerations of conduct and his financial circumstances. There may be a case, as I said at paragraph 15 above, for deducting the cost of utilities if the landlord pays for them out of the rent (which was not the case here). But there is no justification for deducting other expenditure. The appellant incurred costs for his own benefit, in order to get a rental income from the property; most were incurred in performance of the appellant's own obligations as landlord. The respondents as tenants were entitled to the items set out in the appellant's schedule of expenditure (insofar as they do relate to the property; in the circumstances I do not have to resolve disputes of fact for example about item 8). The respondents are entitled to a rent repayment order. There is no reason to deduct what the appellant spent in meeting one obligation from what he has to pay to meet the other.

54. The appellant also wants to deduct what he had to pay by way of mortgage payments to the TSB and interest on another loan which has not been shown to relate to the property. The FTT refused to deduct the mortgage payments

because the mortgage was taken out in 2016 whereas the property was purchased in 2014, so that the mortgage did not appear to have funded the purchase. The appellant says that the property was bought some years before that and that this was a re-mortgage. He did not produce evidence about that to the FTT and he could have done so. More importantly, what a landlord pays by way of mortgage repayments – whether capital or, as in this case, interest only – is an investment in the landlord's own property and it is difficult to see why the tenant should fund that investment by way of a deduction from a rent repayment order. The other loan has not been shown to relate to the property and I regard it as irrelevant, as did the FTT".

14. I do not consider that there is any conduct, on either side, to be taken into account in this case. The suggestions that there may have been short comings as to the standard of the Property for the purposes of an HMO, is not in truth, supported by evidence that the Property was not wholly acceptable to the applicants. Indeed, their renewal of lettings as set out in the respondent's original statement in reply would seem to suggest to me that the Property was in perfectly acceptable order. In addition, there is no suggestion that the applicants have behaved in such a way that their conduct should be taken into account. Indeed, it is the opposite as stated in the respondent's statement of case at paragraph 14 (h)

15. The only matter that I need to consider is the financial circumstances of the respondent. It is said that he will cease gainful employment in August 2020 and given that his statement contains a statement of truth I see no need to question that issue. I accept that sadly, he has a disabled daughter. He is however married although I have no indication that his wife contributes to the family budget. If he received poor advice from his agents then that is a matter he could consider but I do not see that has any impact on the decision I should make in this case.

16. The income derived from the Property appears to be set out in exhibit 24 to his statement. This shows that the rental income for a period September 2018 to March 2020, only partially within the Period, is some £30,750. There are management fees to deduct and what would appear to be substantial reserve fund payments. If those are extrapolated from the account the respondent is making a handsome profit before the mortgage payments, which as a result of the Case, I should no longer deduct. The suggestion by the applicants that the exceptional circumstances under s46 of the 2016 apply but I think not, as this relates to convictions, which is not the case here.

17. The respondent's retirement will not occur, if it does, before August 2020. The period I am asked to consider is February 2018 to February 2019. It seems clear to me and I find, that the respondent is the owner, with others, of two properties in the UK and a further property in Hong Kong which he occupies. I have been told the price paid for these properties but not their current value. It would appear he has some savings but I do not know the amount, nor do I know his income. I can see nothing in the respondent's financial position which persuades me to reduce the amount of rent sought by the applicants under the RRO.

18. In those circumstances I order that the respondent should pay to the applicants the sum of £29,283.60 within 28 days. This is to be repaid to Mr Ruff as the representative of the applicants and he is to distribute the funds in accordance

with the rent paid by each applicant during the Period or such other amounts as they agree between themselves. I also order that the respondent should reimburse the applicants with the application fee of £100 again within 28 days

Judge: Andrew Dutton

A A Dutton

Date: 16th July 2020

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.