



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

Case Reference : **MAN/OOCG/HMF/2020/0004P**

Property : **77 Glencoe Road, Sheffield, S2 2SG**

Applicant : **Mr Joe Hensey**

Respondent : **Mr William McLean**

Type of Application : **Housing and Planning Act 2016-Section 41(1)**

Tribunal Members : **Tribunal Judge J.E. Oliver
Tribunal Member S.A. Kendall**

Date of Determination : **13th July 2020**

Date of Decision : **31st July 2020**

DECISION

Decision

1. Mr McLean is ordered to repay rent to Mr Hensey in the sum of £2374.

Background

1. On 11th December 2019 Mr Joe Hensey (“Mr Hensey”) applied to the First-tier Tribunal for a Rent Repayment Order pursuant to Section 41(1) of the Housing and Planning Act 2016 (“the 2016 Act”).
2. The application relates to 77 Glencoe Road, Sheffield (“the Property”).
3. The Respondent to the application is the Landlord William McLean (“Mr McLean”).
4. The Applicant has been a tenant of the Property from 16th June 2018 and continues to live there.
5. On 17th January 2020 the Tribunal issued directions to the parties providing for the filing of statements, outlining how the Tribunal must approach the application and thereafter for the matter to be listed for a paper determination. The directions confirmed the Tribunal would endeavour to deal with the application in March 2020.
6. However, due to the Covid19 outbreak the determination could not take place at that time. This has now been a paper hearing on the papers that has not been objected to by the parties and is not provisional. A face to face hearing was not held because it was not practicable to do so and all issues could be determined on paper. The documents referred to in this decision are those contained in the papers submitted by the parties to the Tribunal.
7. The Tribunal did not undertake an inspection of the Property; it was not necessary for the determination of the appeal.
8. The Tribunal has made a determination upon a similar application made by a former tenant of the same Property and the same Respondent. **Edward Harford v William McClean MAN/00CG/HMF/2019/0062** was determined on 7th April 2020. This application details the same or similar issues upon which a determination was made in that matter.

The Law

9. A Rent Repayment Order is an order that the Tribunal may make requiring a Landlord to repay rent paid by a tenant. In order for such an order to be made the Landlord must have committed one of the offences set out in Section 40(3) of the 2016 Act. Those offences were set out in the Tribunal’s directions referred to in paragraph 4 above.
10. One of those offences, as set out in Section 72(1) of the Housing Act 2004, (“the 2004 Act”) is controlling or managing an unlicensed property in multiple-occupation.
11. Section 41(2) of the 2016 Act provides a tenant may apply for a rent repayment order only if:
 - (a) the offence related to housing that, at the time of the offence, was let to the tenant, and
 - (b) the offence was committed in the period 12 months ending with the day on which the application is made.

12. Section 43 of the 2016 Act provides that, in order to make a Rent Repayment Order, the Tribunal must be satisfied beyond reasonable doubt the Landlord has committed one of the offences specified in section 40(3) (whether or not the Landlord has been convicted).
13. Section 44 of the 2016 Act thereafter provides that if the Tribunal determines a Rent Repayment Order should be made then it must calculate the amount as prescribed. If the Landlord has committed the offence of controlling or managing an unlicensed HMO, then the amount must relate to the rent paid by the tenant during a period, not exceeding 12 months, during which the Landlord was committing the offence. However, the amount to be repaid must not exceed the rent paid in that period, less any relevant awards of universal credit or housing benefit.
14. Section 44(4) of the 2016 Act requires the Tribunal to take into account the conduct of both the Landlord and tenant, the financial circumstances of the Landlord and whether the Landlord has been convicted of any of the specified offences.
15. Article 4 of the Licensing of Houses in Multiple Occupation (Prescribed Descriptions) Order 2018 sets out those properties that must be licensed as follows:
 - (a) the property is occupied by five or more persons;
 - (b) it is occupied by persons living in two or more separate households;
 - (c) it meets the “standard” test for an HMO under section 254(2) of the 2004 Act.
16. Prior to 1st October 2018, a property was only a mandatory HMO if it fulfilled the conditions referred to in paragraph 14 and it was a property of three floors or more. This latter requirement was removed from 1st October 2018.
17. A property meets the standard test if it fulfils the following requirements:
 - (a) it consists of one or more units of living accommodation not consisting of a self contained flat or flats;
 - (b) the living accommodation is occupied by persons who do not form a single household;
 - (c) the living accommodation is occupied by those persons as their only or main residence or they are treated as so occupying;
 - (d) their occupation of the living accommodation constitutes the only use of that accommodation;
 - (e) rents are payable in respect of at least one of those persons’ occupation of the living accommodation;
 - (f) two or more of the households who occupy the living accommodation share one or more basic amenities.

Submissions

18. Mr Hensey confirmed he sought a Rent Repayment Order for the sum of £3600, being rent paid by him for the 12 months prior to his application to the Tribunal dated 11th December 2019. He advised he had been a tenant at the Property from 16th June 2018 and continues to live there. His rent is £300 per month, although in June 2019 he only paid rent of £170. Mr Hensey stated this was to reflect items purchased by him for the benefit of the Property, those being a kettle, toaster, microwave and ironing board. He provided the Tribunal with the e-mails exchanged with Mr McLean who agreed with this.
19. Mr Hensey stated Mr McLean had committed the offence of controlling or managing an unlicensed property. This Tribunal had determined such an offence had occurred in **Harford v McLean**. Moreover, Mr McLean admitted the offence.
20. Mr Hensey asked the Tribunal to take into account a number of issues relating to Mr McLean's conduct. Those included:
 - (1) the failure to provide adequate smoke alarms for a significant period of the tenancy,
 - (2) the lack of a Gas Safety Certificate/Electrical Testing Certificate for a period of more than two years,
 - (3) his failure to remove redundant white goods from the property in a timely manner,
 - (4) a failure to obtain replacement bins from the local council
 - (5) a campaign of harassment against tenants Mr McLean did not like
 - (6) harassing tenants regarding the payment of rent
 - (7) coercing tenants to provide front door keys
 - (8) staying at the Property when asked not to do so
 - (9) failing to provide a lock to the bedroom door.
 - (10) failing to provide an address pursuant to section 48 of the Landlord & Tenant Act 1987
21. Mr Hensey provided witness statements from Mr Harford and Mr Benjamin Rae in support of the complaints made against Mr McLean.
22. Mr Hensey advised that although a HMO licence had been granted, this was conditional and work remained outstanding. He provided the Tribunal with a copy of a Notice of Entry to enable the Council to re-inspect the Property on 28th January 2020. The Tribunal was not given the outcome of that visit.
23. Mr McLean admitted the offence of managing or controlling an unlicensed property. He admitted Sheffield Council had imposed a financial penalty for the offence of £5000.

24. He confirmed that following the inspection by Sheffield Council, he had applied for a licence in August 2019. One was granted on 23rd October 2019, excluding the room occupied by Mr Harford. The licence allows

for 5 occupants and was conditional upon certain remedial work being completed. Those works included the provision of an additional WC (to be completed by 31st January 2020), supplying and fitting privacy locks to all bedrooms (to be done by 23rd November 2019), installing carbon monoxide detector where specified, providing a fire blanket in the kitchen and fitting a handrail to the cellar staircase, all to be completed by 23rd November 2019.

25. Mr Hensey provided a list of occupants of the Property during his tenancy, confirming that, as at February 2020, only 2 tenants were in occupation of the Property. Room 2 had been unoccupied since October 2019, Room 3 since December 2019 and Room 5 since February 2020.
26. Mr McLean stated that he had difficulty in completing the additional work required by the licence due to a lack of co-operation by Mr Hensey and Mr Harford and this had been reported to the Council. Mr McLean advised all the necessary outstanding work was scheduled for early March 2020. In particular, Mr Hensey did not co-operate with requests for access to allow his door lock to be installed as required by Sheffield Council and this remains outstanding.
27. Mr McLean advised that in response to the allegations regarding his conduct, he did accept there had been an issue with the smoke detectors. This had now been rectified and new detectors had been installed. He also accepted the allegations regarding the white goods and garden debris, although those matters had now also been resolved. There are now current electrical and gas safety certificates.
28. Mr McLean denied the allegation he had coerced tenants to provide front door keys or harassed them.
29. In response to the allegation of his failure to provide his address, Mr McLean stated Mr Hensey had never requested it.
30. In response to the allegation he had advertised the Property with a “live in” Landlord, he confirmed that when first letting the Property, he had retained a room for his own use. The advertisement was therefore accurate. He confirmed he had subsequently stayed at the Property and slept in the communal areas when visiting for maintenance purposes.
31. Mr McLean stated he bought the Property in 2015 but had subsequently moved to Scotland. This resulted in him dealing with the Property from a distance, frequently communicating with the tenants on a WhatsApp group. A copy of some of the e-mails had been provided. He experienced financial difficulties in 2019 when he advised the tenants of his intention to sell the Property. This, in turn, resulted in problems with the tenants, giving rise to the action by Sheffield Council.

Determination

32. In order for the Tribunal to make a rent repayment order, it must first be satisfied, beyond reasonable doubt, Mr McLean has committed an offence as set out in section 40(3) of the 2016 Act. Mr McLean admitted he had committed the offence of managing or being in control of an unlicensed HMO. Sheffield Council had imposed a financial penalty of £5000 for the offence, although he had not been convicted of an offence
33. The Tribunal is therefore satisfied, beyond reasonable doubt, that Mr McLean has committed an offence under section 72(1) of the 2004 Act in respect of the Property for the period 16th June 2018, being the commencement date of Mr Hensey's tenancy to 23rd October 2019, being the date of the licence.
34. Mr Hensey made his application to the Tribunal on 11th December 2019. This is within 12 months of the end of the relevant period and the Tribunal can therefore make a rent repayment order, as asked.

Rent Repayment Order

35. The maximum amount of the rent repayment order is £3600. This is Mr Hensey's rent for a period of 12 months at a rate of £300 per month. The Tribunal must take into account any housing benefit or universal credit received during the same period, but there is no evidence any such payments have been made.
36. The Tribunal has noted that in June 2019, Mr Hensey paid rent of £170, rather than the full amount due of £300. However, the reduced payment was made in recognition of items purchased for the Property by Mr Hensey and agreed by Mr Mclean. The Tribunal therefore makes no reduction to the claimed sum of £3600 for this.
37. Section 44(4) of the 2016 Act provides that when making an order the Tribunal must take into account the conduct of the landlord and tenant, the financial circumstances of the landlord and whether the landlord has at any time been convicted of a relevant offence.
38. Mr McLean has not been convicted of a relevant offence.
39. The Tribunal notes a conditional HMO licence was granted on 23rd October 2019. Mr McLean was no longer committing the offence of controlling or managing an unlicensed property from that date. Mr Hensey states the HMO was conditional and those conditions, or some of them, were still outstanding in January 2020. However, Mr Hensey had advised Tribunal that one room was unoccupied from October 2019, resulting in only 4 tenants living at the Property. Therefore, from this date it was no longer an HMO requiring a licence. It is therefore irrelevant to this matter whether Mr McLean has complied with the HMO conditions.
40. The amount to be paid under the Rent Repayment Order, for that period, is £3107.

41. In his submissions Mr McLean confirmed the rent included all bills and TV licence. He did not provide details of those expenses in his submissions, but did so in the matter of **Harford v McLean**. In that

- matter this Tribunal found those expenses to be £849 per room/tenant per year. The Tribunal finds here those expenses should be deducted from any Rent Repayment Order since it would be inequitable for Mr Hensey to recover his living expenses. The relevant amount is £733.
42. The Tribunal further considered whether Mr Maclean's conduct should affect the amount to be paid under the rent repayment order and determines it would not. Mr McLean advised he had found himself in financial difficulties in 2019, resulting in his decision to sell the Property. He had, however, continued to receive an income from his self-employment, together with rental income from the property. He had attempted to resolve issues at the Property personally and that had resulted in matters not being dealt with promptly. Mr McLean lived in Scotland and had tried to manage the Property from a distance.
43. The Tribunal therefore finds there should be no further deductions from the amount sought and determines Mr McLean is to repay rent to Mr Hensey of £2374. This is the sum of £3107, less the amount allowed for bills of £733.

Tribunal Judge J Oliver